Minutes
City of Newport Planning Commission Regular Session
Monday, March 9, 2009

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

City Staff Present: Community Development Director (CDD) James Bassingthwaite, Senior Planner Meredith Savage, and Senior Administrative Assistant Wanda Haney.

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

A. Approval of Minutes.

1. Approval of the work session and regular session Planning Commission meeting minutes of February 23, 2009.

MOTION was made by Commissioner Rehfuss, seconded by Commissioner McIntyre, to approve the minutes of the February 23, 2009, Planning Commission meetings 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. Bassingthwaite noted one item that was actually unfinished business, which was that he had received a letter from DLCD with a few more suggested changes to the flood plain ordinance. He will incorporate those changes into the draft that will come back to the Planning Commission. Also, Bassingthwaite noted that the Commissioners had received a notice of a training session that may be useful to them. It is entitled "What's in Your In-Box", and is for public officials and volunteers for the public. It will cover what constitutes a public record involved with email.

E. Public Hearings.

Patrick opened the public hearing portion of the meeting at 7:04 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Bassingthwaite noted that all the Commissioner had attended an earlier site visit to the Landwaves property, which was included as part of the hearing notice and was listed on the work session meeting agenda. Beemer said that he is involved with the "Corvallis to Coast" trail project that will go through South Beach and had attended a meeting on trails in South Beach and would potentially involve the Wilder development and also had attended a meeting with Jim Protiva, Parks & Rec. Dept. Director, and Mark Barnes (who works for Will Emery) about the Corvallis to Coast trail. Patrick 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. Continued hearing on 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. A public hearing on this matter was held on February 9, 2009, and was continued to February 23, 2009; but because the applicant was unable to attend the February 23rd meeting, the Planning Commission agreed to continue the hearing to March 9, 2009.

Patrick continued this hearing at 7:05 p.m. by reading the summary of the file from the agenda. Bassingthwaite noted a letter had been submitted by Mrs. Hollen, which was included in the Commissioners' packets for the last meeting. One letter had been received today from Rick Wright, which was before them. He noted that there hasn't been any additional written testimony. As Commissioner Newman had not attended the original hearing and had not had an opportunity to listen to the entire meeting recording, she recused herself from this hearing.

Proponents: Dawn Pavitt, agent, and Kyle Langeliers, applicant, came forward as the proponents. Pavitt noted that she and the applicant have been before the Commission five times regarding this development. Because some of the Commissioners weren't there previously, she wanted to give some history and bring the members up to date. Langeliers distributed some packets of exhibits to the Planning Commission and to the audience. She began by discussing the zone change from C-1 to R-4 to reduce the impact on the neighborhood and to offer townhomes instead of condos. At that time, Langeliers asked some of the neighbors if they wanted to join in the zone change at no charge, but they did not. She covered the handouts. Handout number 1 discussed the

intent of the R-4 zone. She explained that this just extended the designation across the street. They were trying to make the property residential but still allow some small-scale commercial uses, as R-4 intends, which they felt would be a better fit. Pavitt noted that at that time, Commissioner Newman voted against the zone change request because she wanted to keep the commercial zoning as commercial. The rest of the Commission felt that the R-4 zone still allowed for some limited commercial uses and they voted for the zone change. Exhibit 2, which was a site plan, shows the parking lot they proposed in 2007, which was to come off the wayside and support the townhouses. The townhouses met the requirements for off-street parking and the parking lot was not required as a condition of approval by the Planning Commission at that time. Regarding the application for the townhouse subdivision, Pavitt noted that the permitted density would have allowed 19 units, but they only asked for 12. Handouts 3A and 3B showing traffic impacts were given to the Planning Commission several years ago. With full-time residency of all units at full build out of 19 units, there would be 141 trips per day; with 12 units, there would be 89 trips. Assuming the units would be second homes, the trips would be less. Pavitt noted that is what Rick Wright is referring to in his letter when he says trips are less for second homes than for first homes. The applicant tried to reduce the impact by first the zone change, and secondly by reducing the density of the townhouses. Page 3B is a chart showing off-street parking that Pavitt made to better explain the off-street parking. According to City code, 1.5 spaces per unit are required for townhouses. The 12 units are providing 18 spaces with the driveways and garages; so the Planning Commission found that they met the code outright. However, for vacation rental use, according to the code, the parking for a vacation rental dwelling is considered like parking for a motel, which is less than for townhouses; one for each of the 12 units and one for a manager (13). Just as the townhouses are built, or will be, they will be providing 18 spaces and will be exceeding that requirement by 5 spaces. In addition, the applicant is offering the second lot with 8 spaces, which wasn't required before; but he is still providing it. Eighteen spaces plus the 8 in the lot will be a total of 26 spaces; so the applicant will then exceed the required vacation rental off-street parking by 13 spaces. Pavitt said the next time they came before the Planning Commission was an appeal by Mr. Kelley regarding storm water issues. Handout number 4 is a note to ODOT about the extra parking lot, and they replied that they would not allow Gilbert Way to connect to the wayside or the highway. Pavitt noted that ODOT wanted all townhouse traffic to access 101 at the signal at Lighthouse Drive. Pavitt added that they worked with the fire department and public works to put in a safe end on Gilbert Way. Pavitt said that they are applying through one hearing for vacation rental for each of the units although they do not expect them all to be used as vacation rentals. They could have the individual buyers make the requests, which would be done at staff level and no extra parking lot would be offered because the individuals would not own that lot. They want the Planning Commission to be able to assess the impacts as a whole. Pavitt noted that the last time they were before the Planning Commission was modifying the platting into four phases instead of one phase, which they found they needed to do. Tonight they are here for the vacation rental request. In response to neighbor's testimony who asked that each unit come separately to request this, Pavitt noted that she was before the Planning Commission previously with another client, and was told they shouldn't come after the buildings were built, they should have come before. She said she is trying to be as straight forward as possible. She added that these are not condos. Langeliers didn't want condos; he wanted townhouses. They own the land just as these neighbors do. Pavitt wanted to remind the Commissioners that this applicant not only met all the required conditions at all stages but has offered to do more. The applicant has signed an LID waiver for improvements to the neighborhood. He and his family have done many things to improve this neighborhood. The applicant has concerns about these same neighborhood issues such as vandalism and illegal parking. He believes that a local professional management company will do well to manage these units along with the CC&Rs. Regarding the current request, Pavitt referred to page 5. She noted that vacation rental is an important feature for the sale of these units. Not all buyers will want to use their home as a vacation rental, but many will want the opportunity to do that. Regarding the first criterion for a conditional use permit, she noted that they are not asking for any structural changes, simply to allow vacation rental uses to a use that was previously approved. There are no special requirements in the R-4 zone applied to vacation rentals other than for townhouses, which are already approved. They believe that the vacation rental request is supported by Goal 1 of the Agate Beach Neighborhood Plan, which is to "foster a sustainable urban living environment". They need the ability to rent more than the outright allowed 70 days per year. Langeliers has talked to a couple of local rental companies, who estimate that ocean view townhouses are rented about 195 days a year. The townhouses were approved for full time residency; and they only want to offer buyers the opportunity to have someone else in their home when they are not there. Impacts would still be less than approved by the Planning Commission for the townhouse subdivision. The applicant feels that the City needs to address issues with the public access as a separate concern. She said that the neighbors should consider a zone change to R-2 or R-4 from commercial. Langeliers offered that to them before, and Robys would support that change. Handout number 6 lists a series of public improvements the Robys owners made for the benefit of the neighborhood, which includes maintaining the wayside, paving, curb and gutter, additional fire hydrant, installing a storm sewer line, and improving ODOT run off in Circle Way, which made the tree removal necessary. She further noted that these trees were given to ODFW for stream enhancement use. Rebutting comments made at the last meeting, Pavitt referred to the notice map (Assessor's map). She noted that this area was platted with 50 foot streets. She said that Gilbert Way was built the way it was because, looking at handout number 2, the existing Agate Beach Motel, which has been there since 1935, is right at the right-of-way edge. On Circle Way, there is a building within the platted right-of-way. There are serious constraints to improvements. The applicant's handout materials included some photos, which Pavitt described. Photo A shows the Robys truck and the loading dock and the loading zone put in by City Public Works. Langeliers noted that when the building was built, there was a loading zone given to Robys. Ron Garrison, City Street Superintendent, looked at the site and agreed the area should be painted. Photo B shows Agate Way improvements and the curb cuts on the other side of the street. Photo C is looking down Agate Way toward the ocean. It shows the fire hydrant marking. Some of the photos submitted last time showed diagonal parking along there. The diagonal parking has been taken out; and curb, gutter, and sidewalk has been installed instead. Photo D shows how close Agate Beach Motel is to Gilbert Way. Photo E shows the curb, gutter, and sidewalk and public parking in front of the townhouses. Photo F shows the construction including the platted right-of-way for Circle Way. Langeliers noted that when they

did the storm water improvement in Circle Way, a lot of this was cleaned up. Photo G shows the garage that is partially in Circle Way right-of-way. Photo H is looking the other direction on Gilbert Way and shows where the right-of-way is located. Photo I is taken in a large gravel area and in back of the fire hydrant. Photo J shows a no parking sign in the public right-of-way at Gilbert Way and Agate Way (not City issued). Photo K shows another no parking sign in the right-of-way. Photo L is looking back down Gilbert Way toward the townhouses showing the right-of-way. Pavitt said that last time she heard about Rocky Way. She noted that the building to the right is the Walsh house that was discussed as being a surf camp. Photo M is looking up Rocky Way. She said that Lighthouse Drive comes off 101 to Rocky Way where there is a paved approach. The next photo shows a boat and truck parked along Rocky Way in the right-of-way. Photo Q shows the parking area proposed for the eight spaces. Langeliers said this shows the area they have set aside for overflow parking. The next photo where the trailer is parked shows the parking lot looking toward 101. The alleyway coming behind Robys will go right into that parking. Photo S is from the wayside at the other end of Gilbert Way where the access is to the Tyee Lodge, the Ocean House, the SeaKrest Lodge, and the driveway to the Agate Beach Motel. In Photo T, the townhouses can be seen right behind the dead end sign. Photo U shows the wayside with only one car parked that day. Regarding testimony, Pavitt said that Mr. Harrington was concerned about parking. He didn't think there was enough off-street parking and didn't like the garages and driveways. Pavitt thinks the applicant has shown that there are driveways there. There is a lot of space for parking with plenty right on the subject property and excess spaces in the lot. In response to Harrington's photos, Pavitt noted that there has been illegal parking on Robys' lot. That was one reason to do this project, which will provide a more managed use than there was originally. The townhouses were built with no variances. In addition to there being sufficient parking on site, there are 12 spaces along the public street improvement on Gilbert Way on the side by the Agate Beach Motel. The street is 28 feet wide with no curb cuts on that side. The street is built to current standards and was approved by the Planning Commission and staff. Pavitt noted that the homes without sufficient parking add to the congested parking in the streets and suggested that the neighbors should consider finding off-street parking. Pavitt reiterated how the project exceeds both the required parking spaces for townhouses and the vacation rental requirement (which is classified under the motel requirement). Harrington had shown photos of Robys' loading dock. Pavitt noted that Robys is an outright use. They are required to use the loading area, and the City striped it. Pavitt added that this is a neighborhood of mixed uses. Mr. Husing had testified that he owns but rents out his home in the neighborhood. The neighborhood also contains weekend homes, the surf shop, motels, duplexes, second homes, as well as commercial uses. There will be six townhomes served by the alley adjoining Robys. The other six will access from Agate Way and then Gilbert Way. One of his photos showed a single family home with parking in gravel next to the street, which is really public parking. The applicant has made improvements such as a new fire hydrant and improvements to Agate Way and Gilbert Way. Hollen was also concerned about noise and partying. The police department has no records showing calls specifically for vacation rental properties. There will be a local management company that will screen the clients and manage the property. Pavitt believes there will be no more noise from the townhouses than from single-family homes. She added that the City has a noise ordinance. She believes these townhomes will be better than surfers living in their cars. She also believes that renters of these townhomes would be a different group. They have a lovely home to stay in. She sees them using the cultural amenities in the community. Pavitt noted that, unlike some comments she had heard last time, Langeliers lives and works locally. Husing had talked about his rental property. At the time of the zone change, he was contacted but wanted to keep his commercial zoning. Pavitt said that she knows there are vacation rentals already in the neighborhood. Mr. McConnell wanted each unit owner to apply separately for vacation rentals. Pavitt reiterated that the applicant is asking for all owners; and if each individual requested a conditional use, it would be done at staff level and there would not be the lot with the additional 8 spaces. Regarding the comments about tree removal in Circle Way, she reiterated that it was done for storm drainage and the trees were used by ODFW. Pavitt said that Langeliers has the same concerns as Mr. Donovan, who lives on Rocky Way, which was a concern about traffic and the condition of his neighborhood for his family. Pavitt noted that the photo of Rocky Way showed a boat and pickup parked in the right-of-way, and Rocky Way does need to be improved. Again, she suggested that maybe the neighbors could get together on this. She said that she doesn't see why Donovan, living on Rocky Way, couldn't have a nice neighborhood with vacation rentals on Gilbert Way. Pavitt noted that in the letter received from Julie Hollen, she stated that the applicant was asking for special favors. Pavitt said that they are not asking for any variance; but are simply requesting a conditional use permit in an honest and straight-forward manner. Pavitt reiterated that they are asking for the conditional use to pertain to all of the units prior to the sale and completion of the others so that the Commission can assess all impacts. She said they have shown that they are offering more parking than is required. With the improved streets and sidewalks, they have increased fire safety and have provided twelve parking spaces on Gilbert Way. Pavitt said that the applicant feels he has met all four criteria and summarized those. They feel that there are many outright uses in the R-4 zone that would have more impact than the 12 townhouses that are already approved being used as vacation rentals. She noted that there was a 48-unit hotel proposed by the prior owner of the property. She reiterated that they believe the request would be consistent with Goal 1 of the Agate Beach Neighborhood Plan to "foster a sustainable urban living environment". Pavitt noted that there is no significant change to the 12 townhouses as vacation rentals. They are already approved for full time use. They are allowed the 70 days per year outright rental and are simply asking to be able to rent for other times of the year. They are not asking for any change to the structure that has already been approved and are being built to R-4 standards. She noted that there are no color requirements in the code. Showing a photo, she added that all the colors used on the townhouses are reflected elsewhere in the neighborhood. There are many large buildings in the area, and the Planning Commission felt before that they were comparable. Langeliers said that the big concern for him and his business is that because of the popularity of the area, even with the parking spaces they are putting in, they still are not going to address the parking issue. He noted that many of the pictures showed cars parking where they could on his lot, which seemed okay because it wasn't affecting anyone else in the neighborhood. However, he wanted to do something with the property. He talked about the improvements of curb, gutter, and sidewalks he had made to address those concerns. He reiterated that he is providing a lot with 8 more spaces. He noted however that the parking issue will still be there because of the people that want to get to the beach. He

realizes that parking is an on-going concern for the neighbors, but together they can take care of this with the City's help. He feels that one person shouldn't have to shoulder the whole thing. Langeliers pointed out that the criteria for this conditional use permit are what need to be the concern. Pavitt said that they would like to formally offer an amended request that the 3 homes already built can obtain vacation rental use for now and, if after two years the Planning Commission hasn't revoked the vacation rental approval, then they ask that the conditional use permit become effective for all 12 units without any further review. Commissioner Rehfuss asked for clarification on this amendment. Bassingthwaite explained that the conditional use permit would be structured to approve all 12, but only 3 would be allowed to be used as vacation rentals for the first two years. If there are no problems and the Planning Commission doesn't revoke the permit, the conditional use permit for the rest of the 9 units would then become effective. He noted that one condition of approval does cite revocation of the conditional use permit and the Planning Commissions authority, which has been added as a standard condition of approval as a reminder. Commissioner Atwill had some questions about parking. In answer, Bassingthwaite explained that for parking, although a motel unit can be more than a 1-bedroom unit, that the parking requirement has been applied on a unit basis. Langeliers explained that the easement for the parking lot can stay with the property just as for the alley and is written on the title. When the property is bought, the easement stays with it. Bassingthwaite noted that the condition can be structured so that if the easement is ever revoked, the Commission could go back and revoke the conditional use permit because they would be out of compliance with the conditions. In answer to a question from Commissioner McIntyre about parking along one or both sides of Gilbert Way, Pavitt said that would be a Public Works decision. Bassingthwaite noted that because of the 28 foot width, providing a 20 foot clear area would only leave 8 feet of parking on one side, and the City would probably choose the west side where there is an unrestricted curb. He added that less than a 20 foot clear area can be allowed with parking on both sides of the street, so it is possible to have less travel lane width. He noted that until the other units are built, parking on the street may not have to be limited.

Don Huster, PO Box 800, South Beach, Oregon, came forward as a proponent. Huster discussed his Archway Place development, which is in a C-2 zone where vacation rentals are permitted outright. He said that when they were writing their CC&Rs, they had a chance to rule that out. Just looking at the nature of the neighborhood and its popularity as a tourist destination, they kept that in and allowed vacation rentals. He noted that Archway Place has condos instead of townhouses, and the configuration is somewhat tighter than this applicant's. Archway Place has one condo being used as a vacation rental now. He said that in the eight to nine months since, they have had absolutely no problems with noise. Even the adjacent owners haven't had concerns. He added that tourism is an important part of Newport's economy. Huster said they retained ownership of the commercial spaces below the condos, and these shop owners state that visitors staying upstairs have come down and bought from them. This is bringing business to the community. He said that he wouldn't support tourism to the detriment of the quality of life; but if his experience is any indication, when handled responsibly, it can be a benefit to the community.

Opponents or Interested Parties: Jeff Hollen, 223 NW Gilbert Way, Newport, Oregon, spoke in opposition. He encouraged the Commissioners to look at his photographs again as they tell what they are dealing with in that neighborhood. He noted that the applicant's photographs didn't show many cars; but he has lived in that neighborhood for most of his life, and traffic has increased. Hollen said that he took pictures at some of the worse times, but not "the" worst. He believes that the Commission can make it worse by allowing 12 vacation rentals. He objects to granting vacation rentals in advance of them being built. He said that what the Commission is being asked to do is to prejudge, and it goes through unless the neighbors come back and fight it. He said that the applicant has consistently said that if the neighbors don't like it, they can do something about it; but that is not the way conditional use permits work. One of the prerequisites for a conditional use permit is that there are no adverse impacts on the neighborhood. Hollen noted that the house with a no parking sign shown in the applicant's photo K doesn't have any off-street parking. He said that is his house, and he thinks he may be the only one in the neighborhood that doesn't have off-street parking. That may be because it was built in 1908. He noted that the photos show the actual width of the street. He doesn't believe the neighborhood should form an organization to widen the street to accommodate vacation rentals. He said that the picture showing the entrance to the Tyee Lodge, Ocean House, and the Agate Beach Motel is Gilbert Way. He said the applicant is trying to show it like their end of Gilbert Way, but these facilities access directly off 101 and don't go through any neighborhood. It was discussed that there were some other houses there. Hollen added that he believes there is a difference between a bed and breakfast and a vacation rental. Hollen said that the top of Rocky Way from Lighthouse Drive is the parking lot for the old Agate Beach community hall. He said that Rocky Way is not improved through to Lighthouse Drive. It dead ends at the house shown in the picture. He said that looking down Rocky Way, that area was improved so they could move that house up the hill. He said Rocky Way is one lane and does not provide access to their neighborhood. The no parking sign shown in picture J is at the corner of Agate Way and Gilbert Way because they are trying to get people to not park on this corner like they do all the time. Regarding the picture right in front of the units, Hollen said their driveways are a joke. There is barely room in the driveway for one car. He said that the first one had to be jack hammered twice to even be able to get into it. There is no parking on one side of the street, and there is no turn around. It is a dead end street that is only 28 feet wide. Hollen said that picture A shows what used to be a parking spot but is now green striped. It is also posted no parking on this side of the street for the whole length up to the café. In terms of safety, he sees a problem with Robys' trucks backing in to unload and reducing the roadway making it unable to get around. Hollen said that when 12 vacation rentals are added, this will magnify the problem. He doesn't believe the alley way to get to the parking area will be used when all of the units are developed. Also, because the alley way is a single lane, he believes traffic will stop on Agate Way and wait for the alley way to clear, which will cause more congestion. Regarding exhibit 5, he said from someone who has lived there all his life, this won't sustain an urban livable environment. Hollen said that traffic is tremendous, and parking is horrendous. He said that the applicant suggests that the City get together with the neighbors and do something about it. He doesn't believe this will happen after having approached Public Works about putting a bathroom and

shower off the parking lot and being told it was too costly. Hollen said that he heard testimony about the current economy and how owners of second homes and many of first homes need the ability to rent their homes. He said you just can't say "let's down-zone or up-zone so we can sell it". He said that looking at the zoning map; it is not viable for Rocky Way to connect to Lighthouse Drive. There isn't access on Gilbert Way through to 101. If you go down Agate Way it dead ends at the beach. He believes that trying to increase use with vacation rentals is the wrong response. He doesn't think vacation rentals are appropriate at this time. He said that it is not like having a neighbor that comes and goes. His experience with vacation rentals is that there will be families and extended families convening there, and they are not familiar with the area. He thinks this will make a bad situation worse. Hollen asked the Commission not to do this.

Julie Hollen, 223 NW Gilbert Way, Newport, had submitted written comments but wanted to speak. Ms. Hollen noted that all the men in the neighborhood had talked about parking. She said that when her family has stayed in vacation rentals, there is always somebody that comes to party. She is worried about the noise.

Rebuttal: Pavitt and Langeliers returned for rebuttal. Pavitt said that Mr. Hollen objects to them asking for vacation rentals prior to being built. She said that she has come before the Planning Commission both ways and has heard opponents say they want it the other way. She reiterated that they are trying to give the Commission an opportunity to assess impacts prior to all of the homes being built. Pavitt said that her clients and their conditional use will not contribute to the existing problem. She said that what they are trying to say in a pleasant way to the neighbors is that the neighborhood should get together and look at some of these concerns and come up with a resolution. There could be some tourist money available to help address it. Her clients have done a lot to improve this neighborhood already. Some of the neighbors on Agate Way have contributed as well. Pavitt said that what she was trying to do by showing the photo of the area with the Ocean House and Tyee Lodge access was to give a tour of the neighborhood. Regarding Rocky Way, Pavitt said that Lee Ritzman said that it did cut across a public lot. Regarding the loading zone behind Robys, she noted that they are a commercial use and are required to use a loading zone. The alley was designed to handle traffic from Agate Way. She added that ODOT's recommendation for using Lighthouse Drive to Agate Way is because of their concern not to have the parking lot connected to the wayside. Pavitt said they don't know if these will be first or second homes. Her client is willing to have either kind. She noted this is a mixed neighborhood. Her client is not saying this is a bail out. He wants it as another feature he could offer. If these homes sold, this summer they will use the 70 days that are allowed. What they are talking about in terms of a conditional use is other times of the year. Pavitt noted that these are small two to three bedroom units with no large party rooms. Langeliers added that there are no large balconies. If they are making noise out in the street, that is a City issue. The units are designed to limit noise with common walls of 8 inches of concrete. Pavitt said that Mrs. Hollen was concerned about them being party houses. Pavitt said that she doesn't think these are those kind of units; not any more so than any other residence. She was trying to get all the facts she could, but the Police Department has no records kept just on vacation rentals. She had presented some statistics from the ITE trip generation manual regarding daily trips. Pavitt contends that the conditional use permit would not be making more impacts on the neighborhood. There is more than enough parking on site. The applicant has done everything he can to soften the blow of traffic and parking and improve the neighborhood.

Chair Patrick closed the hearing at 8:47 p.m. for Commission deliberation. Beemer was not convinced that the conditional use permit would have great adverse impact. He thinks the applicant has shown compliance with the four requirements. He was in favor. Rehfuss said that he basically was inclined to grant the request. It was zoned originally for commercial; now high density residential. They do not have as many units as they could have. There is a parking problem not caused by the applicant. The problem is the City's. He said the Commission can't prevent the permitted use just because someone else is abusing it. They could rent for 70 days anyway. He thinks the cars would remain the same. He said the Commission can't penalize the property owner for the surfers. Rehfuss believes the conditions are reasonable. He said he would recommend approval. McIntyre said that in reviewing the four criteria, he believes the applicant has shown proof that they meet the criteria for the units. He said he had a problem with the reason the applicant has come before the Planning Commission. He sees that they may be using the conditional use permit because the economics have changed their mind on what to do with the property. He wonders if anytime an owner gets into trouble with a development, we will see them come back and ask for vacation rental. However, he agrees it meets all criteria, and he would vote in favor of it. Atwill said she is leery of vacation rentals. She doesn't want to run into the problems like other communities. She understands that the criteria involve noise and parking. She would like to see an easement added as a requirement and build in that if they lose the easement, then they lose the vacation rental conditional use. Bassingthwaite said that the Planning Commission could adjust the condition to reflect that. She said then she would be more willing to support the request. She felt that because of the type of neighborhood this is with nearby stores, bed and breakfasts, and commercial; it is a better neighborhood for vacation rentals than some. She said she could support the request with the change in the easement. McIntyre said that he definitely would request that the conditional use permit only be for two years. Bassingthwaite explained that it would be a limitation to the CUP that it would be effective for the first 3 units for two years, and if the Planning Commission revoked the permit within that time, the CUP would cease for all 12. A revocation would go before the Planning Commission in an evidentiary process, and notice will be sent to the neighbors. Fisher said this is a development he is familiar with because this is the third evening he has heard testimony. He said that he doesn't like overnight rentals as conditional uses in the R-4 zone and would prefer that vacation rentals be placed in a different category. Under the zoning ordinance, they are eligible for a conditional use for the vacation rentals. The Planning Commission is obligated to evaluate the request in that light with fair and reasonable conditions. Fisher said that after reviewing all information, testimony, pictures, and comments; he doesn't believe the CUP will exasperate problems already in the neighborhood. The problems probably aren't going to be caused by changing into vacation rentals. Fisher agrees with the other Commissioners that the four criteria have been met; and based on that, he will probably vote

in favor. Patrick agreed that the four criteria are met, but he feels somewhat like Fisher. He said the Commission will have to deal with point use. The problem up there in that area is point use because surfers go to the beach. The Planning Commission doesn't have the tools to address it. Patrick said the conditions are met, so the Commission has to rule in favor until the approval manner is changed.

MOTION was made by Commissioner Beemer, seconded by Commissioner McIntyre, to approve the conditional use permit as described in File No. 9-CUP-08 with the recommended conditions of approval listed in the staff report plus the following two additional conditions: 1) a limitation to the three units that are currently constructed for two years; and then if the conditional use permit has not been revoked, the applicant can proceed with the remainder of the units; and 2) a requirement that the 8-space parking lot is recorded by easement and is tied to the conditional use permit. The motion carried unanimously in a voice vote.

Patrick called a brief recess.

2. File No. 1-PD-09/2-PD-09/3-PD-09/1-SUB-09. Multiple requests submitted by Landwaves, Inc. (Mike Miller/MGH Associates, Inc., authorized representative)for a mixed-use planned development within Phase 1 of the proposed Wilder (formerly titled "South Beach Village") Community Master Plan site located on approximately 86 acres, including the Oregon Coast Community College (OCCC) property: File No. 1-PD-09: A modification of a preliminary planned development plan approval in File No. 1-PD-07 for Phase 1 of Wilder to adjust land use designations consistent with recently-approved Comprehensive Plan and Zoning Map amendments and due to specific site conditions such as topography and engineering requirements. File No. 2-PD-09: A modification of a final planned development plan approved in File No. 2-PD-07 for the OCCC property to reflect recently-approved Comprehensive Plan and Zoning Map amendments and adjusting the boundary and size of the OCCC site to reflect actual property acquisition. File No. 3-PD-09: Approval of a final planned development plan for a portion of Phase 1 of Wilder near the entrance to the OCCC site that would include a range of single-family residential lot sizes, cottage units, townhouse units, multi-family units, and commercial floor area in the village center. File No. 1-SUB-09: Tentative subdivision plan for a portion of Phase 1 of Wilder as part of File No. 3-PD-09. The subject property includes Tax Lots 100 & 101 of Assessor's Tax Map 11-11-20 and a portion of Tax Lot 700 of Assessor's Tax Map 11-11-21 (located in the South Beach neighborhood directly east of Mike Miller Park and south of 40th Street).

The Commission reassembled with Commissioner Newman participating in this hearing. Patrick resumed the meeting and began this hearing at 9:10 p.m. by reading the summary of the file from the agenda and asking for the Staff Report. Bassingthwaite gave the applicable criteria from the zoning ordinance and the subdivision ordinance. He noted that there are a couple of conditional use requests within the application such as upper floors as residential in C-1, and shared parking arrangement also covered under NZO criteria. In addition, Bassingthwaite noted an error in the notice regarding the modification to the plan. The west side of the Wilder property will be conveyed to a neighbor which will become the east side of the neighboring property. He entered into the record the affidavit of mailing of notice on February 17th, the proof of publication in the Newport News-Times on March 4th, the complete set of file materials, as well as the colored map handed out at the Planning Commission site visit. Bassingthwaite said this is a large request; some parts straight forward and some more detailed. The staff report identifies issues involved with the request and has a number of recommended conditions of approval. Atwill asked about the process of reviewing these applications; whether as a whole or in pieces. Bassingthwaite explained the different requests within the application. There are modifications to preliminary plans and final plans. The College had previously received final plan approval. The Wilder property only had preliminary plan approval. The tentative subdivision is for that portion of Wilder requesting final development plan approval. All of these are illustrated on the maps submitted by the applicant. Bassingthwaite said that there are a number of different configurations that the applicant is asking for in the final plan outlined in the application. These include commercial with housing on the second and third stories, changes in street widths, and adjustment to the height in the R-3 zone for 3 stories where the roof would go beyond 35 feet (up to 45 feet) located toward the interior of the development. As far as considering the specific applications individually or everything in its entirety, Bassingthwaite said that everything is tied together. He said that the Planning Commission may be able to make a decision or may want to continue the hearing for further consideration of the information. Beemer asked if the Fire Department didn't have the final approval for reduced street width. Bassingthwaite said that if the Planning Commission approves reduced street width, the fire chief could also; but if the Commission doesn't approve it, the fire chief can't over rule it. The Commission could approve subject to the approval of the fire department. McIntyre said he would like to see a continuance in order to evaluate all the material. Fisher said that because there is so much material, he thought maybe the hearing needed to be divided into two or three sessions covering a certain amount at each one. Beemer noted that there is a certain amount of urgency on the applicant's part. He suggested maybe figuring out what the Commission could approve to help them get started. Again, Bassingthwaite noted how the requests are tied together. He said for instance that in order to modify the final development plan, the preliminary plan modification would also have to be approved.

Proponents: Will Emery, President of Landwaves, 1733 NE 7th, Portland, OR, Eric Ridenour of Sera Architects, 338 NW 5th St, Portland, OR 97209, and Mike Miller of MGH Associates, 104 W 9th St Ste 207, Vancouver, WA 98660, came forward to testify as the applicant and proponents. They had brought a brief PowerPoint presentation. Emery first thanked the Commissioners for coming out and looking at the site. The applicants had posted a large format site plan showing Wilder Phase 1, which was like the one handed out at the site visit. Emery referred to it as their business plan. He said Wilder is further growth of the City. He said the colored part of the map needs to be done before they get to the uncolored parts. Emery said that regarding the issue with the fire department, the fire marshal needs to sign off. He said with Wilder they have tried to envision creating something that is

appealing. The "Kit of Parts" that is part of the application shows various building styles they plan to use. These will be green constructed, including the college which will have LEED silver certification. He said that from a marketing perspective, this is a good thing. This should solidify South Beach as an education center and a progressive place to live. This has led to designs that are not customary, and these things need to be discussed and will be reconciled. Emery said that they will be back before the Planning Commission again. This is just the beginning of the dialog. He said that they are trying to bring the product on line this summer to be timed with the college opening. He said that yes there could be a continuance; but not a delay. Ridenour stepped up to give the PowerPoint presentation. He said that they have been working over four years on the master plan and are now at the full subdivision phase. His presentation began by giving an overview. Ridenour said the Commissioners are familiar with the site after being up there this afternoon. Looking at the site plan, he described that Phase 1 is to the right of the college campus. Ridenour listed the project goals for attainable and sustainable development. Referring to the site plan, he pointed out that the building on the corner of College Way and Wilder will be approximately 3,000 square foot of commercial space on ground level with residential up above. This will be the village center. Going from the college out, is the village center (commercial) shown in red, then the higher density shown in orange. Three-story townhouses will be along Wilder, with 3-story multi-family behind them. These buildings will be 35 feet high; but with the sloped roofs, will actually be 45 feet high. Ridenour said that Phase 1 includes the commercial, multi-family, and single-family on individual lots and cluster housing. He said that the Commission had seen that the college is well under construction. They saw the bio swales and multi-use bike and pedestrian path along Wilder. The street lighting is in place. He noted that the "Kit of Parts" illustrates development built elsewhere; but shows the intent and type of development for Wilder. With the PowerPoint, Ridenour showed examples of the building types and open spaces. He noted that this application includes the first of the neighborhood parks. The presentation showed "streets for people". He said that they have shown and have been talking about narrow streets and explained that there are two factors that led to proposing those. It allows more progressive storm water management; but more importantly, is speed and safety, which his next slide presented. He noted that the International Fire Code does allow the fire marshal to go with skinnier streets through the adopted Neighborhood Street Design Guidelines. That came up with streets as narrow as 14 feet with parking on each side. Wilder is proposing streets no narrower than 16 feet clear path. Ridenour said that they hope to leave that in the fire marshal's hands and specifically requested that the recommended condition of approval addressing this topic be amended by deleting the final sentence, which specifically requires the twenty-foot clear path. Emery discussed the different storm water approach with the bio swales. He talked about the construction firm out of Portland that uses recycled steel, which is a more efficient way to deliver the cottages. He said that is the kind of approach they are trying to take. Emery noted that no houses open onto 40th (Wilder Avenue). The cottages will have cluster construction. Some people like cluster housing with common parking area. There was discussion about the type of individual streets and how the fire marshal may feel about access for fire apparatus. Mike Miller stepped up next to explain the requests. He said that there are actually four applications involving a preliminary plan, two final development plans, and the tentative subdivision plan. He added that the modification of the preliminary plan allows flexibility in development standards. The final development plan for Wilder is half of Phase 1 to implement the sub-phase. The final development plan modification is really just a housekeeping measure to accurately reflect the boundary. The tentative subdivision is for a portion of Phase 1 of Wilder. Miller said that there are seven basic criteria in order to comply. He briefly went through the criteria and how they meet them. He discussed the innovative mixed-use development and the sustainable and green standards to which they will be building. Miller went over the next steps. They are currently before the Planning Commission, then in March to May they will be doing the engineering and final plat. Construction is scheduled for June to October, with sales in October. Emery said that is why he needs the Commission to focus on the application. Bassingthwaite said that the Planning Commission could continue the hearing to March 23rd. To keep the applicant on schedule with their next steps, if the Planning Commission is ready to make a decision on March 23rd, they could meet on March 30th for final order approval if they are willing. In response to a question from Atwill, Emery said that Landwaves is looking for builders provided they can build within their standards. Emery said that he will stay involved in this. He has no plans to sell off the rest of this project.

Pat O'Connor, OCCC President, 332 SW Coast Hwy, Newport, came forward to speak in favor of the application. O'Connor said this is a true public/private partnership. He said that it has taken the last four years to come all together on the same page as far as sustainability and to work to energize South Beach for economic development and affordable housing. O'Connor thanked the Commission for taking a tour of the college today. He said they are looking forward to the opening of the college and the development of the commercial corner in Wilder.

Russ Engle with OCCC Facilities Maintenance and Safety, and lives in Seal Rock (PO Box 242), wished to testify next. Engle said that one of the safety issues is the isolation. He sees this development coming on quickly as a way to help this situation. He said that he thinks that Landwaves' development approach is favorable.

There were no other proponents present wishing to testify.

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

Bassingthwaite reiterated that if the Commission is looking at a continuance until March 23rd, and a decision is reached at that time; then if the Commission is willing they can hold a special meeting on March 30th at 6:00 p.m. to consider the final order.

MOTION was made by Commissioner McIntyre, seconded by Commissioner Atwill, to continue the hearing for File No. 1-PD-09/2-PD-09/3-PD-09/1-SUB-09 to the March 23, 2009, meeting with a special meeting on March 30th to adopt the final order if a decision is reached. The motion carried unanimously in a voice vote.

Bassingthwaite told the Commissioners that if they had any specific questions on the application, the applicant might be better able to respond if questions are emailed to him, and he will email the applicant.

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 10:10 p.m.

Respectfully submitted,

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Wanda Haney
Sr. Administrative Assistant