Minutes
City of Newport Planning Commission Regular Session
Monday, June 8, 2009

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

Commissioners Absent: Dawn Newman (excused).

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 Council Chambers of Newport City Hall at 7:05 p.m.

A. Approval of Minutes.

1. Approval of the regular session Planning Commission meeting minutes of May 11, 2009. **MOTION** was made by Commissioner Rehfuss, seconded by Commissioner Atwill, to approve the minutes of the 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. No items on the consent calendar.

D. New Business. Bassingthwaite noted that the City Council voted on May 18th to start the Nye Beach Parking district process. There will be a public hearing on July 6th before the City Council to make a determination of whether to actually form a district. If Council votes to form the district, the fees will be set and will be subject to another hearing. There will be an open house to discuss the parking district for the Nye Beach community on June 23rd starting at 6:00 p.m. at the PAC. Bassingthwaite noted that the new Community Development Director, Derrick Tokos, will start on June 22nd, and he provided some background on Tokos.

E. Public Hearings.

Patrick began the public hearing portion at 7:09 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contact, or site visits. Rehfuss declared that he had spoken to one of the people that lives there but had not discussed this meeting, and on his site visit he noted that the back of the Local Ocean Seafood building is very close to the brush area of the bluff. Patrick asked for objections to any of the Planning Commissioners or the Commission as a whole hearing this matter; and no objections were heard.

Legislative Action:

1. File No. 2-CP-09/2-Z-09. A request submitted by Front Street Marine, LLC (Pavitt Land Use Consulting, LLC, authorized representative) involving a minor Comprehensive Plan map amendment and Zoning map amendment. The subject property includes three tax lots, which have W-2/"Water-related" zoning adjacent to Bay Boulevard and R-4/ "High Density Multi-Family Residential" zoning at the rear (north side) of the property. The Zoning map amendment is requested so that the property will be entirely zoned W-2, and a Comprehensive Plan map change is requested to replace "High Density Residential" with the "Yaquina Bay Shoreland" designation in order for the land currently zoned R-4 to be designated with the requested zone change to W-2. The subject property is located on Tax Lots 12200, 12301 & 12400 of Lincoln County Assessor's Map 11-11-08-AC (213 SE Bay Blvd.).

Patrick opened the hearing for File No. 2-CP-09/2-Z-09 at 7:11 p.m. by reading the summary of the file from the agenda. He asked for the staff report. Bassingthwaite gave the applicable criteria from the Comprehensive Plan and the Zoning Ordinance. He entered into the record the DLCD notice mailed on April 22nd, the affidavit of mailing of the public hearing on May 19th, proof of publication in the News-Times on May 29th, and the complete set of application materials. Bassingthwaite noted one correction to the staff report where the topography and vegetation is discussed. A sentence was omitted that should have noted that up the slope there is more brush and trees as can be seen in the photos distributed by the applicant. He described the application as relatively straight forward and noted that the staff report goes through the criteria and staff analysis. The applicant has property that is zoned both W-2 and R-4 and they would like to expand the W-2 zoning. One of the elements for consideration is the change in the economic section of the Comprehensive Plan regarding the need for commercial land; which states that north of Yaquina Bay, the City will focus on redevelopment opportunities for commercial uses. This proposed application would meet that implementation measure. Bassingthwaite noted that there are a set of applicant findings and staff comments in regard to the Bay Front Plan. The property for the proposed zone change, even though it was in the study area for the Bay Front Plan and may be considered by people as part of the Bay Front, is not actually within the designated area of the Bay Front Plan, which is limited to

that area one block deep on the landward side of Bay Boulevard. The applicant notes that goals and objectives of the Bay Front Plan would be met because of this property's close proximity to the Bay Front. The staff report goes through the state land use goals, most of which are not applicable. Goal 9 regarding economic development and providing additional opportunities for commercial areas would be the most applicable. Bassingthwaite noted that there are topographic constraints. The property could be developed as R-4, but it seems logical to develop it in the W-2 zone in conjunction with the other property. The applicant has explained the possibility of expanding the building containing Local Ocean Seafood to the north of the existing building. In answer to Commissioners' questions Bassingthwaite noted that the height limitation is the same for R-4 and W-2 except that W-2 has additional height buffer requirements where it abuts residential. R-4 allows for some commercial, but W-2 allows more. Bassingthwaite talked about the uses in the area and noted that many are commercial or quasi-commercial. Bassingthwaite noted that the property could be built on as R-4, possibly with condominiums, right now. It may require geo tech analysis, but the bluff does not preclude them from building. Access was discussed. Bassingthwaite said that the primary access would be likely be from the lot with Local Ocean Seafood or to the west. SE 13th Street abuts the property at the very north end. There is public right-of-way but there is a vacated section, and whether there is an easement right over the museum property would have to be researched. Discussing percentage of lot coverage, Bassingthwaite noted that with the 10-foot yard buffer for W-2 abutting residential, they may not be able to build to the full lot coverage. In answer to a question about the lot dimensions, Bassingthwaite referred to staff report attachment "A-2", which shows that the lot is about 190' x 75' for both the R-4 and W-2 properties.

PROPONENTS: Dawn Pavitt, Pavitt Land Use Consulting, LLC, PO Box 5, Newport, and Janet Webster, 113 SW Bay Blvd, Newport, came forward as the applicant and her agent. Pavitt had brought a slide presentation. The first two photos showed what the property looks like from the west and from the east. The next slide showed the zoning map, which the Commissioners had as Attachment "C" in their packets. Pavitt noted that W-2 (Water Related) is on the first row of lots along Bay Boulevard. The property directly to the east has both rows (or levels) of lots with W-2 zoning. The last slide was the same as Attachment "D", which is a topo map based on aerial photography. Pavitt noted that at the general location of the property, the elevation jumps up about 50 feet from the street (from 25 feet to 75 feet). Bassingthwaite pointed out that just to the south and west of the general location of the property is a large rectangle that is Port Dock 5 condo complex built into the hillside in the R-4 zone. He said that is an example where this has been done in that general location. Pavitt described the uses that are in the area. She discussed the topography. She said that access is difficult and is really from SW Bay Boulevard that is built. Looking at the plat map, SE 13th Street is up to the east of the property but is not built. The property that was a portion of SE 13th Street surrounds the north portion of the property and is vacated. She believes the access is from Bay Boulevard. Pavitt described that Local Ocean Seafood is marine-related retail sea food and restaurant on the main floor with machinery and related uses on the second floor. The applicant wishes to expand to the rear of the building or perhaps put a second building attached by a ramp or stairway for a use that is associated with what is there now. All city services are available except for street, but there is a platted street up at the very top. Pavitt noted that in terms of zone change, this neighborhood has undergone revitalization; and Local Ocean Seafood has been an important element of that. The applicant wishes to have a commercial water-related use. The use will not be a big sea food processing plant; the size is limited by the topography. She said it is in the City's interest to have something related to the Bay Front. Pavitt said she believes this furthers a public necessity in that it allows the owner to have a wholly zoned property, and split zoning is hard to manage. The setback between R-4 and W-2 within their own property makes it hard to develop. There is the separated yard and height buffer. There is a city alley that has been vacated. The alley behind the Webster's residence has not been vacated. She believes that having a single zoning rather than split furthers a public necessity. It benefits the owner in using this property in a viable manner. It also allows the City to have a little more commercial possibility, which is something the City has been trying to find. Pavitt noted that Ordinance 1842 changed the split zoning on the neighboring lots to the east because the City believed it was in their best interest. Addressing comp plan amendment criteria, the first of which is that there is a change in a goal or policy, Pavitt noted the City's Economic Goal 1 requiring an adequate supply of land be maintained to accommodate the anticipated need and believes that Newport needs commercial land. This can allow the owner to expand their building to house an associated use and perhaps increase employment. Pavitt believes that the expansion supports Statewide Planning Goal 9, which requires adequate opportunities for a variety of economic activities. Pavitt said the request is minor in size when you consider the setbacks adjacent to R-4 and the height is the same. This will not impact any views, but which is not a formal criterion. Because of its proximity to the Bay Front, the property is served by all public facilities. The change wouldn't impair those facilities to nearby properties. There is no spot zoning with this. City services are already there and being used. These services will not be impacted. The proposed changes will not be significant. Both zones have the same height limitation, but there is the special setback buffering between R-4 and W-2. The properties to the east and to the south are already W-2 use. There is a 50-foot jump in topography to the north. To the west are the Webster's house and the Schiewe's property. Pavitt said that she knows that the Maritime Museum to the east has no objection. She said that this is giving the Websters a chance to totally integrate their property and abut to W-2. They will be doing something with no more intensity but more water related. The property as it is zoned now is not useable except for potentially condominiums and doing something interesting for access. Pavitt said that she thinks W-2 will allow a good use that makes since physically and will still protect the neighbors. Janet Webster said that she thinks R-4 zoning is inappropriate given the slope hazard and ingress and egress. She feels it makes more sense to integrate the property so they use the back lot to support the use in the front. They may move some of the equipment on the second floor outside the building. They are not thinking of a large footprint for the expansion. Webster said she feels very strongly about preserving and expanding W-2 on the Bay Front. She said that she talked to the Schiewes, and they had no objection. Bassingthwaite noted in response to a question that if the applicant expands their restaurant, it would require a conditional use permit; and the Planning Commission would review that request. If the sea food market use were expanded, which is a use permitted outright, a conditional use permit would not be required. Webster said that their thought is to add a supporting

enterprise; an ancillary use. Pavitt added that the use is not determined at this point. In response to a concern about parking, Bassingthwaite noted that the Bay Front is pursuing a parking district, and Janet Webster has been one of the leads in that project. Bassingthwaite briefly discussed Bay Front parking and the shuttle service that is operating. There were no other proponents present wishing to testify.

Opponents and Interested Parties: John Barker, 3124 SE Tabor, Portland, OR, who has a family home on Penter Lane, came forward to express concerns. Barker said that the biggest concern the upper neighbors have is a geologic issue. He assumed that any new addition would have to use step footing and wondered what the effective height is and where it is measured. Bassingthwaite explained that the 35 foot height limit is based on an average of the four architectural elevations and is the same for both R-4 and W-2. He added that a geologic survey requirement would depend on what is proposed. Cutting into the bank would probably require a civil engineer and/or geo tech. Bassingthwaite said the advantage of the zone change would be for the applicant to use their property. With the W-2 zone, there would be the 10-foot yard buffer. With R-4, the SW 13th frontage on the north side could be considered a side yard, which is a 5-foot setback; and they could build up to 35 feet at that point. Barker mentioned that several neighbors are on septic and, if this lot is developed, they were wondering about the possibility of running sewer down across and connecting at the street. Discussion indicated that there are potentially four or five homes still on septic because they are not in the proximity for connection to city sewer. Bassingthwaite said this was probably an engineering question and would likely require an easement through the property. Barker requested that the record remain open for a 7-day period for further testimony.

John Ball, 908 Crestview Place, Newport, OR, who married Sarah Barker, John Barker's sister, from the same family home on Penter Lane, was next to testify. Ball asked if this becomes all W-2, if down the road it would be possible to cut into the bank at the Bay Front level. Bassingthwaite noted that the zoning doesn't change the property owner's ability to do that; it will change the type of use allowed and a few other setback requirements. Ball asked if anything has been said about building extension. Bassingthwaite said that they have discussed extending right off the back of the existing building. He reiterated that one of the reasons they requested the change in zoning is that otherwise they would have to maintain the 10-foot set back between the two zones even though they own both properties.

Rebuttal: Pavitt returned and began her rebuttal by explaining that tonight's hearing is about zoning, which involves uses. Construction techniques are not being talked about. Those will be addressed in geologic permits, engineering designs, and building permits. They are unsure of what the building will look like or what it will be. If a conditional use permit is required, they will be back for another hearing. She said that whatever they do, it will all be done with governmental review. Pavitt asked for clarification on the time line because of the request to keep the record open for seven days. Bassingthwaite noted that the Planning Commission will make a recommendation, and there will be another hearing before the City Council. If the Commission chooses to leave the record open for seven days, the applicant has the opportunity for rebuttal. The Commission could choose to continue the hearing to their next meeting on June 22nd, which would be the earliest they would be able to make a recommendation either way. July 6th was considered for the City Council hearing, but that will probably have to be moved to the City Council's second July meeting.

The Commission discussed whether to leave the record open or continue the hearing. McIntyre stated that the process before the Commission tonight is whether to allow a change in zoning so the applicant can combine their property into one site for construction. The second issue is separate in that a building that is designed or planned for that property if the zoning is changed, will have to come back to the building department and possibly before the Planning Commission to determine if it meets the criteria if a conditional use permit is required. He thinks that there is a tie between zoning and construction. With either zone, McIntyre believes construction on this property will be very difficult. Discussing SW 13th Street, Bassingthwaite noted that at one time there was a request to vacate the remaining portion of 13th Street, but the Bay Front Plan did not allow vacation of streets above the Bay Front so the request was withdrawn. The Bay Front Plan was changed somewhat, but no new application was received on the street vacation. He said that perhaps access could be developed by Local Ocean Seafood. Because of Commissioners' absences on June 22nd, it was discussed that moving the Planning Commission meeting to June 29th rather than the 22nd may be better to insure that there is a quorum.

MOTION was made by Commissioner Fisher, seconded by Commissioner Rehfuss, to continue the Planning Commission hearing for File 2-CP-09/2-Z-09 to June 29th to be held at 7:00 p.m. in the City Council Chambers at City Hall or location otherwise decided by staff if the Council Chambers was unavailable. The motion carried unanimously in a voice vote.

F. <u>Unfinished Business</u>. At the earlier work session, Bassingthwaite had been discussing the roles of the Planning Commission and the City Council. As time had run out before he could finish, Bassingthwaite continued this discussion. He noted that typically on appeal, the City Council has upheld Planning Commission decisions but may add additional conditions or modify conditions. When the Commission approved the Blakeslee variance, for example, they debated on whether to attach a condition regarding replacing the trail across the property. The Commission decided it wasn't an issue for a condition, and voted 4-2 to approve the request without the condition. The parties appealed the decision to the City Council, which upheld the variance but modified the conditions to require the trail to be put back in but in the right-of-way. There are often those types of modifications. The City Council made several changes to the design on Archway Place. An additional condition was added with regard to the property line adjustment of Brusselback and Ramsey, which was appealed by the Connells. Most of the time, the Council has held

appeal hearings on the record rather than *de novo*. The other role of the Planning Commission is to make recommendations to the City Council on legislative matters. Both the hearings on legislative matters are *de novo* hearings, and there often is additional testimony and evidence entered into the record before the Council which can result in modifications. Frequently Planning Commission recommendations are taken into account, and sometimes there are modifications. There have been times when the Council chose not to follow through with all of the Commission's recommendations. The Council's decision may vary based on public input received by the Council. The Commissioners shouldn't look at this as the City Council overturning their decision any more than when the Planning Commission makes changes to a task force recommendations through the hearing process. Bassingthwaite noted that there have been very few appeals. If the Commission is sticking to the criteria in reviewing applications, that will reduce the likelihood of appeals. Additionally, people don't spend money to prepare and pay the fee for an application if they don't think they will have reasonable success in meeting the criteria. Bassingthwaite typically doesn't make formal recommendations whether to approve or not but does include suggested conditions if the Commission chooses to approve the application. Staff prepares detailed findings, which takes more staff time to prepare, but the Commission decision is better supported in the final order. Bassingthwaite said that the City has received a very professional approach from the Planning Commission on how they view the process and their role and the way they treat each other and the audience. Atwill thanked Bassingthwaite for providing this information and informed the others that, depending on her work load next year, she may have to resign from the Commission.

G. <u>Adjournment</u>. There being no further business to come before the Planning Commission, the meeting adjourned at 8:36 p.m.

Respectfully submitted,

_____

Wanda Haney
Senior Administrative Assistant