

Minutes
City of Newport Planning Commission Regular Session
Monday, January 9, 2012

Commissioners Present: Jim Patrick, Jim McIntyre, Gary East, Melanie Sarazin, Glen Small, Rod Croteau, and Mark Fisher.

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

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, McIntyre, Small, Croteau, Patrick, Fisher, East, and Sarazin were present.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of November 14, 2011, and the work session minutes of November 28, 2011.

MOTION was made by Commissioner McIntyre, seconded by Commissioner Sarazin, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No comments regarding non-agenda items.

D. **Consent Calendar.** Nothing on the consent calendar.

E. New Business.

1. **Reappointment of Commission members.** Tokos noted that at their last meeting, the City Council reappointed three Planning Commissioners, Jim McIntyre, Rod Croteau, and Mark Fisher.

2. **Election of Planning Commission Chair and Vice Chair for 2012.** **MOTION** was made by Commissioner Fisher, seconded by Commissioner Sarazin, to continue this year with Jim Patrick as Chair and Glen Small as Vice Chair. The motion carried unanimously in a voice vote.

3. **Discuss a March date for a joint meeting with the Newport City Council.** Tokos noted that the City Council has expressed an interest in meeting with the Planning Commission in March, and he wanted the Commissioners thoughts for a date. The consensus was to hold the joint meeting on the regularly-scheduled Monday, March 12th; and Tokos will take that back to the Council.

F. **Public Hearings.** Patrick opened the public hearing portion of the meeting at 7:03 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. Sarazin declared a site visit to Fred Meyer and disclosed that recently one of the interested parties in the vacation rental ordinance contacted the firm she works for; and they are doing work on his behalf, which is being entered into the record tonight. The rest of the Commissioners declared site visits to Fred Meyer. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised.

Quasi-Judicial Hearings.

1. **File No. 2-ADJ-11.** A request submitted by Fred Meyer Stores, Inc. (Brian Peters of Mulvanny G2 Architecture, authorized representative), for an adjustment to NZO Section 2-3-6.015 (Number of Parking Spaces Required). The applicant is seeking an adjustment because they intend to do interior remodeling that will result in an increase of retail floor space and thereby require additional parking spaces; and the store is not able to provide the required number of spaces.

Patrick opened the hearing for File No. 2-ADJ-11 at 7:05 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that this is an application for adjustment to the City's parking standards that apply to this property located at 150 NE 20th Street. Fred Meyer is proposing a little over 15,000 square feet of second floor addition within the existing footprint of 158,000 square feet. This would require 528 parking spaces, and they are providing 408; which is a little over 20% reduction below the minimum. The City's code provides for adjustments to numerical standards. The applicant has the burden of showing they are mitigating impacts to the extent practical, that the adjustment is equally meeting the objectives of the code, and that the adjustment is not impacting utilities or fire access. When the Commission considers the adjustment, they look at the cumulative effect if adjustments to more than one standard are being requested. In this case there is only the one. Tokos noted that the staff report outlines the criteria and shows steps that Fred Meyer has taken to offset the adjustment. He said

that what they have offered is a pretty good package to help improve the safety for pedestrians and vehicles in that lot. He added that the purpose of parking lots is to provide safe access to the business. Tokos said that focusing on those aspects; Fred Meyer has gotten to the core issue here. The site plan included in the packet shows there will be a raised sidewalk from NW 20th to the main entrance of the store, which provides safer pedestrian access. They propose moving the transit stop from the front of the store to a dedicated location south of the bottle return and constructing a bus shelter there. Tokos noted that the Commissioners have an email from Cynda Bruce with Lincoln County Transit basically saying that they are on board with this arrangement. There will be new stop bars at the angled stops next to the bottle return, which should make that area a little safer. They are proposing to add 18 additional bicycle spots to better accommodate that form of transportation and adding, he believes, five employee parking spaces to the rear of the building. Tokos said it seems reasonable for the Planning Commission to find that these changes mitigate the impact such that they are achieving the objective of the code. Tokos said the one area the city had encouraged the applicant to look at was that angled intersection; and the use of stop bars is a reasonable approach. It may require more than that if it proves to be ineffective. Tokos said it is a tough site. McIntyre asked if there is rear access permitted for employees to the store, and Tokos said he would let the applicant speak to that. Fisher noted that he was surprised that there were no comments from the Sea Towne Center. He said that several times a day he goes by there and frequently the Fred Meyer parking lot is very full; so he assumes if there are fewer parking spaces, there will be a fall over into the Sea Towne Center. That is why he is surprised there is no comment here. Croteau asked that with an amendment of this type if it is appropriate to add a landscaping requirement. Tokos noted that there is a standard for 10%. They already meet the landscaping requirement. It's not something related to the criteria, so it's not something we can add.

Proponents: Chris Ferko of Barhausen Consulting Engineers came forward to testify. Ferko said they are the civil engineer consultants for Fred Meyer and have worked with them for over ten years. He noted that with him tonight was Tom Gibbons with Fred Meyer Real Estate. Ferko first addressed the question about employee access behind the store. He noted that there are two employee entrances near where they are putting the parking stalls. McIntyre asked if those are secured accesses. Having been in a similar retail industry, McIntyre noted that they never allowed their employees to go out the back because that is where the majority of shrink would occur. Gibbons explained that there are specific doors that all employees have to use to come and go that are specifically set up to watch that shrink; and these are those rear doors. Ferko continued that staff had done a really good job with the staff report. There were just a couple of things that he wanted to speak to further. He noted that the remodel is fully within the walls of the store. There will be a 15,400 square-foot mezzanine of additional retail area added. Also, before the meeting, Ferko had distributed a colored exhibit showing what the exterior of the building will look like. It will be in earth colors. He said they are excited to be upgrading the store and improving the shopping experience. Ferko explained that in regards to the proposal, as of today they are 14% below what the code requires. With this 15,000 square-foot addition, that increases that up by 8%. He said that they are not asking for the full 22%; it is more like an 8% change. He said they are adding a couple of stalls over all. Having been to the site, he said that the pedestrian access is definitely something that is needed because there is not really a safe means for the interplay of pedestrians from the streets. He said that will have value. He noted that the bicycle parking will add an alternative mode of transportation rather than driving a car. Also, someone can take the bus somewhere when they park their bicycle there. He said that it will be good to have those stalls for bicycles. He added that moving the transit stop and adding a shelter makes sense instead of being right in front of the store where it's the busiest. He noted that adding some employee parking behind will offset the increase in square footage and provide additional parking on site. Ferko said that the internal intersection with the diagonal and square approaches is confusing. They will add stop controls; otherwise it is still free-flowing. He said that by adding stop control, everybody has to stop like at a 4-way intersection. It makes everybody slow down, watch, and make sure they are doing it right. It will make that intersection safer than it is now. Ferko summed up by asking the Commission for their approval tonight. Small asked Ferko if they had any studies of what impact this 15,000 square-foot addition of retail space will have on the increase in the number of shoppers it will bring. Gibbons said that they don't believe there will be an incremental increase in number of shoppers. He said the store is in dire need of a remodel. He said the aisles upstairs are so close together. The added square footage is basically more for marketing. They will get new gondolas and people will be able to navigate the aisles. He said that is what they are after. McIntyre asked if their intent was to put non-grocery items upstairs and leave the main floor for mostly groceries. Gibbons confirmed that saying that groceries require carts, and getting carts upstairs is challenging. Food will be on the ground floor and also items that need carts, so some of the non-grocery stock will use part of the ground floor as well. It will provide a more logical pattern. McIntyre wondered if the mezzanine would expand more to the front of the store. Gibbons said he wasn't sure what portion is being expanded, but obviously they will be trying to keep it from coming out to the center of the store because of light. He noted that with the new gondolas you can look down at the store itself. He said that the store in Redmond, Washington shows how impressive it really looks. He said the store will look completely different when it's finished. Small said that he was interested on the impact the expansion has on the need for parking, but asked for confirmation that they don't anticipate any more shoppers per hour or per week as a result of this expansion; and Gibbons said that is correct. Gibbons added that Fred Meyer is more sensitive to parking than others. They wouldn't be doing it if it created a negative impact because shoppers would stop shopping them.

Bill Branigan, Planning Commission Ad Hoc Committee Member, asked a question from the audience. He wondered if, as part of the remodel, Fred Meyer will be doing something with the bottle return area because he thinks where it is presently located adds to the confusion to customers going in. Gibbons explained that it will remain roughly in that location.

There were no other proponents present wishing to testify.

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

Patrick closed the public hearing at 7:25 p.m. for Commission deliberation. Sarazin said that speaking from her experience of shopping at Fred Meyer she doesn't feel that parking as it is now is a problem. She thinks the traffic patterns in the congested areas are the problem; and hopefully the stop bars will be helpful for that. She noted that she has never been unable to find parking and thinks it is ample. She thinks Fred Meyer has tried to mitigate and lessen the impact. Sarazin believes the expansion is more for the convenience of shoppers than to bring in more shoppers. East agreed. He doesn't think the remodel will necessarily increase customer flow by much. He said that he shops there and has never had a problem with parking. Fisher said that parking is the question. He noted that where they are going to put the facility for the transit bus has always been his fall-back place when the rest of the lot is full. Croteau said he appreciates that they have made a real effort to justify this adjustment. He added that he would appreciate it if they would try to improve the curb appeal by improving the landscaping along 101 and along NE 20th because he believes that as it is now is poorly done. Small said that in looking at the proposal he was concerned right off that at present they didn't meet the standards and then with the addition they further don't meet the standard. He said that is why he asked the question about more shoppers. If in fact it wouldn't increase shopping visits, then there isn't an increased demand on the parking lot. Small said that he does appreciate some of the changes and modifications like the stop bars, the bicycle parking, and transit stop. He thinks those are good improvements. He said that, while he doesn't know if they have fully satisfied the requirements, he thinks they have made significant enough changes that this is an acceptable plan. McIntyre said this could be looked at two ways. It could be a defensive move to compete with the expansion of Wal-Mart and inclusion of groceries. If Fred Meyer doesn't do anything, there is the potential loss of customers due to natural attrition going to the new Wal-Mart. Also, it is a safety factor to protect what they have. McIntyre thinks it is a great idea and he is much in favor of it. He thinks the transit stop on the side of the building is good because currently the transit bus stops right in front of the main entrance. But, he noted that it looks like the bus will still pull off 101, pull up to the transit stop, and move around the front of the store and out the current NE 20th entrance. He said that he works for the school district and travels NE 20th every day. One thing he notices is that if there is traffic congestion, it is at that entrance off 20th with people coming out and going to the signal at 101. He said he doesn't know how they can mitigate that, but it is a concern. McIntyre said that based on his past retail experience, you have to look at the fact that typically you don't expand a store if you don't think it will increase business. It just doesn't pencil out, but he understands you protect what you do have. He noted that this store does a great business, and he anticipates there will be some increase in traffic. He said those are his only concerns. Other than that, he thinks it is a great plan and a great opportunity for the City of Newport to have a relatively new Fred Meyer. McIntyre complimented them on that. Patrick said he is in favor of the proposal. He is also in favor of not increasing the parking so that it doesn't end up looking like Wal-Mart with a lot of parking it doesn't need. He said he would just as soon look at the store. If they think it won't increase shopping trips, it is their data. If they think they can make the store work with that size parking lot and additional square footage, he's happy with that.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to approve the amendment in File No. 2-ADJ-11 as written. The motion carried unanimously in a voice vote.

Legislative Hearings.

2. File No. 1-Z-11. Zoning Ordinance text amendments to Section 2-4-11 ("Bed & Breakfast and Vacation Rental Facilities"), Section 2-1-1.101 ("Definitions"), and Section 2-2-1 ("Zoning Districts") to clarify how the City regulates these establishments and to incorporate recommended changes to those rules. The Planning Commission will make a recommendation on this matter to the City Council.

Patrick opened the public hearing for File No. 1-Z-11 at 7:33 p.m. by reading the summary of the file from the agenda. He noted that this is not the final hearing. He said the intention is to take testimony and go back and work on this. He said it is a work in progress. Patrick asked for the staff report. Tokos noted that the staff memo outlines the process to date and includes copies of the draft ordinance and a matrix that outlines the criteria and how that came about based on public feedback and how it was addressed. Tokos noted that the process began back in March of 2011 when the Commission decided that the existing codes were in poor shape and needed to be overhauled. The Commission appointed an ad hoc group consisting of folks familiar with these issues to work with staff. That group met seven times; five of those were to put a proposal together. They looked at codes from nine jurisdictions getting a sense of how others deal with vacation rentals and bed and breakfast issues. After the fifth meeting, they had a draft proposal, which was presented at a public open house last September. Notices of that open house were distributed through the water bills and press releases. At that open house, we received public feedback. The Planning Commission and ad hoc committee members were present at that open house. The comments received were taken back, and the ad hoc group met two more times to make adjustments based on that feedback. The Planning Commission stayed engaged. Tokos noted that the materials are posted on the City's website as well. Tokos said that right now the City's code is definition-driven. In residential districts, it's basically weekly rentals, where it is no more than ten occurrences in a calendar year. It's not restricted in commercial. If it's in the R-4 zone, you can seek a conditional use permit to use it as a hotel/motel use. The R-3 and R-4 zones allow B&Bs. The criteria for a conditional use permit are not specific for these types of uses. They are broad

standards. The Planning Commission's reasoning for doing the amendments is that the ten occurrences have proven to be unenforceable. In addition, conditional uses have been applied differently over time; and maybe there were different standards applied one year than in another year. There have been issues with the conditional use being understood by current owners, but then new owners are less familiar with the rules. The proposal is structured around allowing these uses anywhere, provided certain standards are met. It will be market-driven. Those standards are set out in the code, such as occupancy, parking, waste disposal, and contacts. These approvals are personal to the owner. It's designed so that when a new owner acquires the property, they need to understand those rules and sign off. There is a provision for a building inspection by the building official because when single-family residences are built, they are not approved with vacation rentals in mind and sometimes they are not to code. When the commercial component is introduced, the concerns go up a little bit. The purpose is to afford folks a safe place to stay. Tokos noted that the matrix in the packet and on the website goes through each item by item and explains the ad hoc's rationale for each of these. Much of it was borrowed from other jurisdictions, so a lot of the proposed code has actually been in place by other jurisdictions. Tokos noted that the Commissioners were also provided with the three letters received prior to the meeting. Fisher said that updating this portion of the code isn't a simple task. He asked Tokos what the definition is for "person" where it refers to "two persons per bedroom" and if an infant would be a person or if they could be in the bedroom with their parents. Tokos said that there were different definitions for occupancy; sometimes it distinguished and sometimes it didn't. The ad hoc committee thought that saying "two persons per bedroom" was appropriate. Therefore, a baby would be a person. Fisher thought that could be better written. Tokos said these are setting a maximum occupancy. Tokos was asked if emergency provisions are part of the regulations we have now for hotels and motels. Tokos noted that regarding emergency preparedness addressed in Norm Ferber's letter, hotels and motels are required to have evacuation routes posted in every room, and they must have fire suppression systems and fire alarms. Those requirements are to get people out and accounted for in case of a fire or something. It does not extend to FEMA. Hotels don't have to provide water; but they typically do have first aid kits, which is more of an insurance requirement; where the other is more fire code. While tsunami maps are something the Fire Department supports and suggests that hotels have, Tokos doesn't believe that is a current code requirement.

Interested Parties: Bonnie Saxton, Advantage Real Estate, 1081 SE 1st St, Newport. Saxton noted that she had attended the open house and thought there was a lot of good input there. She said that being in real estate; she has heard both sides of this story. On the whole, she is for it; especially with provisions for parking, which seems to be one of the biggest issues, and garbage too. Also important is the notification to the home owners' association or subdivision if there is one. She said that there are certain subdivisions that don't allow any rentals so it's good to put the neighborhood on notice of what is going to happen. Saxton said that she had set in on a meeting where they were talking about the business licenses and rentals. She wondered if someone has a vacation rental and has it managed by a property manager, the PM has the license and pays the transient room tax so does the owner need an additional license. She was unsure whatever became of that discussion. She wondered about monthly rentals. She suggested that whatever the City decides about this, to do it the same across the board whether it's a monthly rental or a vacation rental. She thinks that is important. She thinks it's really good that the City knows who to contact in an emergency. She said she isn't sure about the tsunami evacuation. If they are not in a tsunami zone, why should they have that? She disagrees with the thought that we would want a tenant to know how to turn off the water or gas; an emergency person should be responsible for that. She said that several years ago she was against B&Bs in any residential zone; but since then, the economy has really changed. She has seen people lose their homes, and now it's harder to sell homes if people can't utilize them for some uses. She said that Newport is a tourist destination. If it doesn't impact other neighbors with garbage and noise, which are regulated, she is all for it. Small asked Saxton if she was for vacation rentals in all zones; and she said yes, the way it is written up. Fisher didn't see a problem with having information about the logs that roll on the beaches or about tsunamis even though they are not on the beach, many people go to the beach. He doesn't think it hurts to have it.

Lill Patrick of Dolphin Real Estate. Patrick said that she has been doing property management and vacation rentals in Newport since 1978. She also manages monthly rentals. She said that she has had very few problems with vacation rentals. She said she doesn't think she ever had police called to one of their vacation rentals. They have contracts with people; they know who they are, where they come from, and what vehicles they have. Patrick wondered why what's good for vacation rentals shouldn't be the same for monthly rentals and homeowners. She thought that some items in this code are discretionary to vacation rentals. Regarding the emergency kits, there is no insurance that she knows of that requires that. Smoke alarms, CO2 monitors, fire extinguishers are standard in most rentals. Regarding noise levels, the City has an ordinance that certainly can be enforced. Regarding inspections, the City doesn't require regular rentals to be inspected, so why would you require vacation rentals to be. The market will take care of that. If the property is not kept up, they won't be rented. She wondered if the building code applied will be when the structure was built or the current code. Many couldn't afford to update their properties. She said it seems only the building official is qualified to do the inspections unless he has someone trained to do that. That will involve a lot of time and expense; and in this economy, the City doesn't need a whole lot of extra expenses. Patrick asked what kind of complaints the code is talking about. Tokos explained that complaints typically tend to involve noise, parking, waste disposal, unattended garbage cans, excessive number of people in the building, or too frequent change of renters. Patrick said that north county is totally different than here. Regarding keeping a written log of complaints, she said they handle complaints when they happen. A written log is more paperwork than they need. She said that not once has the City asked for information on any of their rentals. They have never been audited by the City for room tax. She noted that where the code leaves it up to resolution by the City Council, it needs to be specified so somebody can go on line and know what they have to have without leaving it up to the City Council to change that from one time to the next. She said the Planning Commission should look hard at more regulations.

Certain regulations are fine. She said to consider in Nye Beach the possibility for garbage cans being screened. Many homes have a garage and a place to put garbage cans; but in Nye Beach there is not a place. They have to be put on the street where they are collected.

Mike Rickus, 150 NW 73rd Ct, Newport. Rickus wanted to explain the horror story about that vacation rental situation in their neighborhood. They have talked to the enforcement officer, talked to the City Council, met with the former City Attorney and Tokos. He said the current rules don't work; we need new rules. The current rules are not enforceable. The City cannot enforce what they have. Also, he said the City is getting shorted in taxes. He explained that there is a piece of property in their neighborhood being rented through VRBO on the website and not through an agent. Croteau asked in what zone, and Rickus said R-1. Rickus further noted that he doesn't think the City should allow daily rentals in the R-1 zone. He said this property is rented basically by the day the entire summer and periodically the rest of the year. Summer is the big time. There have been as many as thirty people there at a time. The streets were littered with SUVs, ATVs, motorcycles, etc. He noted that the new code talks about off-street parking. He said it is a serious problem as it currently exists. He said it got to the point where the City Attorney drew up a specific agreement for this specific purpose. That owner said he was trying to sell the property. When the City Attorney contacted him, he rented the property for nine months at a time, so now he is only renting three months on a daily basis. Rickus said it is a daily rental issue and when groups of people come in. He said that in the R-1 zone it is different for B&Bs because when someone goes to a B&B, they don't bring twelve relatives and friends and have parties. There have been beer cans thrown off balconies. Rickus said anyone would say they don't want this next to them. It doesn't increase their property values. They have been frustrated by the empathy to enforce the existing ordinance. The neighbors have taken down license plates. They went to the Finance Department to see if they are paying taxes. The City has told them that they don't have the "teeth" it needs to do anything about it. He said not everybody is honorable in their intentions. Rickus said that he would like the Commission to consider the impact in R-1 versus R-3 or R-4. He doesn't think that daily rentals should be in an R-1 zone. He said that a two-week minimum in R-1 doesn't seem unreasonable. Rickus said we will continue this discussion.

Neal Glaske, 151 NW 73rd Ct, Newport. Glaske is another neighbor in that neighborhood on 73rd. He noted that the vacation rental house has three garbage cans that are full. They put them out on Friday, and their garbage pickup day is on Monday. At the coast the wind blows. He spends time picking up their garbage. Glaske said they come with thirty people. The neighbors called the city official to come down, and he told them it is unenforceable. Glaske suggested that while looking at these changes, to make them enforceable. He agreed that R-1 shouldn't have rentals. McIntyre asked if he meant short-term rentals, and Glaske confirmed that he meant daily rentals.

Chris Minor, attorney representing John Clark of the Whaler Motel. Minor said that he lives in an area where there are two vacation rentals to the south and one to the north. He said that he has had better luck than the previous speakers. Minor said what concerns him a bit is to make sweeping changes because we can't enforce what we have on the books. He said that what has just been described is something that you could do something about under existing laws. Minor said that the concern of his client is that all of their property holdings are in the C-2 zone. They have a 73-unit motel and four individual houses that they rent out. He said that Mr. Clark said he doesn't keep a log of complaints, but he hasn't had one in the thirty years he's been operating. Minor said they don't think the City has a problem in the C-2 zone other than perhaps missing out on some room tax. He believes there are better and easier ways to collect room tax. Minor said that his client is more than happy to register or get another business license if it's called for. Clark fills out his room tax reports faithfully. If someone is renting and thinks they aren't going to be discovered so are not filing room taxes, something can be done; but sometimes enforcement doesn't happen. Minor said that many times when something noncompliant happens, we come to the conclusion that we need to create a new law rather than deal with enforcement. Minor said they believe that the ordinance doesn't need to apply to the C-2 zone because as far as they know there is no problem in that zone. Although it doesn't impact his client, it's fine if the City beefs up the registration or room tax reporting requirements. Minor noted that traditionally, residential has not been encouraged on the lowest portions of buildings in commercial zones; as he recalls only the upper floors. You have it now as an outright use, and he doesn't see anything preventing an owner of commercial property building a residence to become a residential rental property. Once it comes into existence, it will look a lot like a house. If they lose their license to operate it as a residential rental, you have a house and will be under pressure to let them occupy it as a house. Minor said that they don't care if the City allows vacation rentals in the R-1 zone or not. If the City wants to prohibit them, they are fine with that. He added that maybe that isn't a use that is truly compatible. In the written materials Minor submitted, he made a number of comments; but basically their concern is that they don't want to see a loss of ability to continue rentals because they don't meet some new building code. Minor said that Lill Patrick made the point that if the building codes are applied as of the date of construction, unless there is some new construction, they don't have to update in order to comply with the new codes every year. He said it is also going to be very difficult to inspect to determine compliance. If the City applies the building code as of the date of construction of the building, you will have a hard time determining what those standards are. He wondered how far the City wants to get into that issue. Minor said that he believes someone said that we don't really want to get into having tourist visitors turning off gas and disconnecting water. He doesn't think the gas company goes for that, and the city says the property owner is not supposed to turn off their own water. Minor said he is not an EMT, but has had first aid training. He doesn't think you want people to use a first aid kit if they don't have training. Minor said there are a number of issues the Commission is going to have to look at. He noted that a lot of work went into this, and more will. He said their concern is not being put in a position where they have to reapply if they sell their business or houses as residential rentals. What are the chances that the new owner is not going to be

able to get a permit? What if the doubt surrounding that prevents a sale? Fisher agreed that rules and regulations should be reasonable, and they need to be enforced. He said this project has taken a lot of time, but there are areas where the Commission should go back and do a little cleanup. He noted that Bob Berman's letter states that in general the city doesn't allow businesses to operate in residential areas and shouldn't allow it now. He wondered legally how difficult it would be to limit in zones. He thinks it makes it difficult for the City to control. Minor said the easiest way would be to prohibit them outright in certain zones. Fisher said that he lives in a fairly nice neighborhood that is zoned R-4. He could have a vacation rental next to him, but in an R-1 zone they wouldn't. He thinks it is difficult to dig through all this. Minor said the City does that with other things. There are things allowed in R-4 not allowed in R-1. He thinks the City can do this. He said it's not a piece of cake. The City has to have resources to devote to enforcement if you adopt the ordinance. You will need a whole lot more of enforcement. Sarazin asked Tokos to recap under the current ordinance in what zones vacation rentals are allowed. Tokos said in all residential zones if they don't exceed the ten occurrences in a calendar year. He said the ad hoc group looked at using zoning districts for whether to allow vacation rentals. The issue was our zoning districts were not set up with vacation rentals in mind. The thought was the view of the ocean will have more to do with it. The ad hoc group felt it wasn't a justifiable way to go about tackling that. Croteau asked if when there is a sale of a business, if the license goes with that business. Minor said that most business sales would not go through if there were uncertainty of the ability to obtain a new license. When a business changes hands, a new license has to be obtained, but there are not criteria determining whether or not that license will be issued. In this proposal, when a new owner decides they want to apply for a license, they will be inspected and will be subject to a whole lot of scrutiny. There is a lack of guarantee what will be applied; original construction standards or the current. A normal business license is simply in the nature of a tax and a means of keeping track of who is where. This endorsement really becomes a land use approval. If a house or building had a conditional use permit, it would be devastating if with the sale the buyer had to go get a new conditional use permit not knowing whether they would get it or not. Minor said that they don't care how many licenses or what kind of registration the City wants them to get. The log is not a problem where they have never had a complaint to log in.

Mike Rickus had an additional comment. He noted that with the existing ordinance regarding the ten times, in their particular case the City was told that those people were friends, family, or business associates that he didn't charge. Rickus again said that the current ordinance as written is unenforceable. He said we can't live with what we have.

Lee Hardy, Yaquina Bay Property Management, testified next. Hardy was on the ad hoc committee. She said that there was a lot of back and forth regarding enforcement. At the same time she was on the business license task force. She noted that one of the changes in business licenses being proposed is licensing property owners themselves. That would accomplish an identification of who is renting what. She said that is a first step needed to enforce this ordinance. She wondered how you can enforce the ten times or more if you don't even know who is doing it. She said there was a lot of going back and forth regarding the coming and going and not knowing your neighbors. There is a nuisance ordinance in place already that could be enforced. One of the people dealing with a rental in R-1 didn't want to bother the police with complaints of noise and traffic. They didn't want to become known as a complainer. Hardy said that is what the police department is for. She thinks the Commission might want to sit down with the police department and see what is feasible with their abilities. She had talked to a long-time police officer about how many times he has responded to a complaint at a vacation rental, and he said maybe five times in his 20 years. He said it's the locals that cause problems. Hardy said the City has to start structuring regulations better than they are now. She suggested maybe taking a look at whether the City will be able to enforce the regulations. She said to get some feedback from law enforcement and fire department staff. Hardy said that long-term rentals have natural protection with landlord/tenant laws; nightly rentals don't in a commercial situation. Those renters pay their money and take their chances. It is to provide assurance of a safe place to stay. Hardy thinks the discussion is not over yet; there is more to do.

Kevin and Janet Cornelius. Cornelius lives in Philomath and own two vacation rentals in Newport. He said that they got their business license in October 2006. They bought an existing vacation rental and went through the same process as the previous owner did. They bought another house up the street and put it in as a vacation rental. Cornelius said they collected \$8400 in room taxes for the City last year. He said he is impressed that the people who came to the previous meeting had an impact. He is happy to find out that Newport operates differently. He said it was a thrill to get the letter that some of the changes that people suggested were implemented. He said that a couple of issues he sees are parking and landscaping. He said their properties are in the Nye Beach area. The lots are 50 feet wide, and the house takes up a lot of that 50 feet. There is a 2-car garage facing the street with a driveway. Any grass they have is in the back yard. He said that if they park in the garage, seven cars can park off-street at their 4-bedroom house. He noted that in order to meet what the code currently suggests (50% being landscaped); he would have to dig up concrete and plant lawn greatly reducing the parking. He said he doesn't know if he can get two cars in the garage. Cornelius said it seemed that these two requirements are at odds with each other. One of the houses is on High Street, and he said that looking in that neighborhood, people either have a garage or no garage and have lawn. He said the City will be eliminating a lot of possible sources of City revenue from room tax. Cornelius would like to see some of the ideas raised here tonight implemented. He said maybe there should be a business license for each house. If the one out on 73rd Street doesn't have a business license and he advertises on VRBO, he can be shut down. Everybody in this business should be forced to collect room tax. Cornelius said that one of the changes he appreciates is that they don't have to post on the door. He said that people choose to stay in a house because they don't want to stay in a hotel. If they have to post on the door the same as hotels, it lessens the flavor of what these people were trying to get. Mrs. Cornelius said that she appreciates the opportunity of the open house and this meeting. She agrees that the City needs to decide between parking or landscaping and what the City would rather have. She

said that the occupancy issue is another one of those things that will be impossible to enforce. She noted that their homes are close to each other. People rent them to come to a wedding. They go to the event and come to one of the houses to congregate before or after the wedding. She said there are more people than actually stay at the house. Those that rented the house are the ones sleeping there, but for hours there are more there than are staying at the house. She said she can tell them that they can't do that, but she can't actually enforce that. If they got out of hand, then the noise ordinance can go into play. She said the fire code is fine for people staying at the house, but to say they can't have more than that coming into the house is when you get into a situation that we won't be able to enforce. Cornelius would like to see that stricken. She said they are in favor of the policies that can be enforced. She suggested making improvements to the ordinance where it is fair across the board. McIntyre asked if the people that rent their house through VRBO don't have to be licensed to rent their home as a vacation rental. Cornelius said that VRBO doesn't require them to be licensed in order to be listed. Mrs. Cornelius added that it would be easy for the City to go through the list of those on VRBO.

Lill Patrick had an additional comment about the 30-minute response time. She noted that even our police don't make 30-minute responses unless there is someone injured.

Chair Patrick closed the public hearing at 8:35 p.m. for Commission deliberation. McIntyre said he knows that one of the toughest parts is enforcing whatever we come up with. He thinks there is a lot more we need to do and discuss in sessions. He said he knows there are many issues and he understands both sides. McIntyre said that he thinks we need to get a real good method of controlling who does short-term, day-to-day rentals. He said he is unsure we can restrict it from certain residential zones. He is in a quandary of how to come up with something that works really well there. McIntyre thinks we need a lot more discussion and input. Small agreed that this needs more work, and we need more discussion and input. He said he was impressed by several things tonight. Those who are in the business of managing their own properties or someone else's property are self-policing. His impression is that those rogue VRBOs are causing the problems. He made a note to himself not to punish those who are doing the right thing. He said more regulations may not be the answer, especially if they are not enforceable or we are not willing to enforce the regulations. Small thinks there are some good things in this code. It is in process, but is not there yet. There needs to be more discussion here and decisions made. Croteau said that he couldn't agree more. He said the big issue is where we should regulate and where we shouldn't. He said most complaints seem to be in R-1 and R-2 where they are operated through VRBO. Commercial is being done according to principles. Fisher agreed with the other three. He said it's the ones causing problems we should go after, the others we should try to enable. He said it does come down to money, because this is a business. Fisher noted that a comment in Norm Ferber's letter was that the City, with property taxes and room taxes, are major recipients from the lodging industry. Operators donate 10.5% off the top to the benefit of the city and state. Fisher said that is a significant contribution. Fisher further noted that Norm Ferber wrote about protecting the character of residential neighborhoods; and he agreed that is a real problem. If there are very few problems maybe it can be handled by hitting those individually; and at some point if we see a continuing problem, then we have to take action for a group. Fisher noted that Ferber also had a comment about the difficulty of putting property up for sale when a buyer realizes there is no guarantee of the continued existence based on a whim of the city government. When you are ready to retire, it would be nice if those people know they could continue the business. Fisher noted that Ferber also talks about policing problems of vacation rentals. He said that Ferber also appended a copy of the emergency preparedness from the Red Cross and FEMA. Fisher said maybe we would have a 5-item kit, not all that is listed. He said that at some point you wonder about it. Fisher pointed out that Ferber ends his letter with a comment that the city government's purpose was to inhibit business growth. Fisher said we have to look at it as a business. Fisher noted that Gary Mines had talked about people living next door to vacation rentals having to deal with loud parties, and then it goes downhill from there. Fisher said we can't blame it all on college students. Fisher continued that Bob Berman made a comment about allowing commercial businesses in residential neighborhoods. Fisher said that we did a lot of discussion and looking into these questions. Fisher read from Chris Minor's letter talking about emergency preparedness. Fisher said if it's used as a business, it has to have fire alarms and smoke detectors. Fisher agreed, as McIntyre had said, that we need to look at a lot of this and reach definitive conclusions and bring it back to another public meeting where people can have more input. East thanked everybody for coming and providing great comments. He said we want to make sure this is fair across the board for everybody. He said we have a lot to consider and look at and bring it back. Sarazin was in agreement that more discussion is needed. She said that when this process started, we wanted maximum input from everybody. She said she is not a vacation rental owner nor is affected by one. She said that is why the Commission formed an ad hoc committee with that experience, which did an outstanding job and helped a lot. Sarazin said that she would be in favor of what Lee Hardy had said earlier about getting together with Officer Kittle and the police department to see if what we are creating has any "teeth". She doesn't know if that has been done or not. She asked if anyone from the police department reviewed it, and Tokos said he had shared it with them. Sarazin said that she would like to specifically ask them to give input. She said she does favor more input and more discussion. Patrick said he shared everybody's opinion. He said one thing he hadn't considered that was raised tonight was a one- or two-week rental requirement in R-1 zones. Sarazin asked if that wouldn't be back to where we are now with the ten occurrences. Patrick said to tackle the license enforcement, if a property is advertised for rent, could that be considered renting. Tokos said that is in there. Patrick said the Commission will probably throw out the emergency kit requirement, but the informational-type things should probably be kept. He also thought we have problems with inspections and codes. Patrick thought we had taken out the 1 per 200 square feet. Tokos said at the advice of legal counsel, we didn't want them both in there. It was decided we would show the 200 square feet in informational material, but just reference the fire code in the code. Tokos said one avenue is to continue the hearing to February 27th, which would give the Commission two work sessions between

now and then. He said tonight we received specific comments. We could work through that at those two work sessions and get the draft to where you want it. Tokos said he could discuss this further with the police department. He would like to close what we have on February 27th with what we are responding to. Patrick said he didn't understand Norm Ferber's concern about transferring a license. Tokos said that he will clarify that. He doesn't think Ferber understands that was modified following the open house. He explained that if they are operating today but can't meet one of the standards required today (such as parking), as long as they come in within 120 days to get their endorsement, they can rely on the current approval. They have to meet the other requirements. That would transfer from owner to owner and only expire if a business license lapses for twelve months or more. Tokos noted that the other outlet of a conditional use permit is still going to be there. If an operator can't meet the standards, they have the option of going to the Planning Commission to ask for a conditional use permit. That would transfer from owner to owner. If it's transferred, a new owner has to come in and check off on an endorsement. He said that the ad hoc group went through great pains to come up with those. He thinks it is workable; we just need to explain it a little better. He said we can put more thought to what building code is used. He said we do need to make sure it doesn't inadvertently allow residential to be built in commercial zones to be used for vacation rentals. Tokos said that he believes that tonight we received specific and clear testimony, and he can certainly address that at the next work session. East asked about a large hotel that operates several individual units and if that wouldn't be covered under their business license. Tokos explained that this is set up that it would be one business license with endorsements for each of the houses. Patrick said the Commission also has to be careful how we ratchet this down. If vacation rentals are now allowed in any residential zone and we restrict that, it becomes a taking issue. Fisher said that there was no reason those zones couldn't stay ten times, but the others said there was because that is unenforceable. Patrick wondered if corporations have to apply when they change ownership. Tokos said that when entities change, part of that is so they come in and let the City know. Presumably the rest of the ownership shouldn't be an issue. Patrick noted that anyone that buys a business with a liquor license has a process to go through so that they are not guaranteed they will get a liquor license. Sarazin wondered if the Commission meets on January 23rd and February 13th for work sessions, if Tokos would be able to do a draft for review by Officer Kittle or someone from the police department and ask them to be present on February 27th to give their enforcement view. Tokos said the input could be discussed at the work session on January 23rd. The draft could be fine-tuned at work session on February 13th. He then could get the draft to the police department and those in attendance to look at to see how we are dealing with the input a week prior to the February 27th meeting. He said he could have it available on Friday, February 17th.

MOTION was made by Commissioner Sarazin, seconded by Commissioner McIntyre, to continue deliberation on this matter on February 27th after working through changes made to the draft ordinance based on tonight's testimony at a work session on January 23rd and then fine tuning the draft code at a work session on February 13th. Written testimony, preferably directed toward comments received tonight and changes made, will be accepted until February 27th. The motion carried unanimously in a voice vote.

G. Unfinished Business.

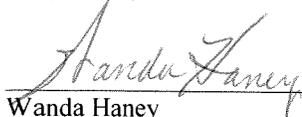
1. Discuss status of SW 12th Street Vacation. Tokos explained that the City Council denied the street vacation in a 5-2 vote. He said their reasoning was that they didn't feel that the property owners had a compelling case for the need of that right-of-way. They took the Public Works Director's testimony over the neighbors. They pressed the applicants for why they needed the vacation, and all they could come up with was for peace of mind down the road that a sidewalk will not be right in front of their houses. Ms. Huff was able to put up a picket fence through an encroachment permit. The Council thought the recommendation from the Commission was very reasonable, but the City will look very critically at vacations that involve rights-of-way that are improved, even if under-improved. The Council thought it was best to hold on to that right-of-way for now.

2. Update on status of Tree City USA. Tokos noted that the process for a "Tree City USA" designation is moving along; and the Commission will see that again soon. He said the Parks and Recreation Committee are on board and has embraced their new role. McIntyre asked about the benefit of this designation. Tokos said mostly PR benefit, and it may be advantageous for grants. He believes it is more about controlling what gets planted in the right-of-way next to sidewalks and streets so that it doesn't destroy our infrastructure and what is planted in parks is what will survive. It helps to organize ourselves a little better.

H. Director's Comments. Tokos had no additional comments.

I. Adjournment. Having no further business to discuss, the meeting was adjourned at 9:06 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant