

Minutes  
**City of Newport Planning Commission Regular Session**  
**Monday, February 27, 2012**

**Commissioners Present:** Jim Patrick, Jim McIntyre, Gary East, Rod Croteau, Melanie Sarazin, Glen Small, 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 February 13, 2012.

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

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

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

**E. Public Hearings.**

Legislative Actions.

Patrick opened the public hearing portion of the meeting at 7:02 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 noted that at the beginning of the process for File No. 1-Z-11, she was on the ad hoc committee. Since the matter has gotten to hearings before the Planning Commission, the firm she works for became more and more involved representing their client in this. For that reason, Sarazin recused herself. Patrick noted that his mother, sister, and niece have a business that deals in property management. He called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised. Sarazin stepped down from the dais and left the meeting.

1. File No. 1-Z-12. A Newport Municipal Code text amendment to Chapter 10.10 (Signs) requested by Thomas Fox Properties, LLC (Michael Robinson & Seth King (Perkins Coie, LLP), agents, to allow electronic message signs in the C-3 zoning districts. The Planning Commission will entertain language to allow the signs in all commercial and industrial zones with limitations. The Commission will make a recommendation on this matter to the City Council.

Patrick opened the public hearing for File No. 1-Z-12 by noting that a request had been received from the applicant's attorney to continue the hearing.

**MOTION** was made by Commissioner Fisher, seconded by Commissioner McIntyre, to continue the hearing for File No. 1-Z-12 to March 26, 2012. The motion carried unanimously in a voice vote.

2. Continued Deliberation on File No. 1-Z-11. Zoning Ordinance text amendments to Section 2-4-11 ("Bed & Breakfast and Vacation Rental Facilities"), Section 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 held a public hearing on this matter on January 9, 2012, closed the hearing, and held two work sessions following that to discuss and incorporate changes related to testimony received at that hearing. The Commission will make a recommendation on this matter to the City Council.

Patrick opened the continued public hearing for File No. 1-Z-11 at 7:04 p.m. He noted that on January 9<sup>th</sup> he had closed the hearing but had to reopen it for testimony. He called for the staff report. Tokos noted that he had included in the packets a mark-up copy of the draft that shows changes made since the January 9<sup>th</sup> hearing. There is a rationale for the changes, which were made in response to public testimony received at that meeting or since then. The packets included copies of written testimony received since January 9<sup>th</sup>. He noted that the Commission had held two work sessions to discuss these changes since then as well. Also included was a supplemental memo from Tokos containing two additional changes to address comments received in a letter from Chris Minor on February 22<sup>nd</sup>. Tokos said that he and Minor had a conversation about this, and he thinks this gets to their concern. He had a chance to include a portion of the changes to the one section regarding transferability

in the markup document already. But, this additional change to Section 2-4-11.010(D)(1) makes it very clear what standards existing establishments must satisfy when obtaining their endorsement by listing them. The other change on the memo pertains to Section 2-4-11.025(B) regarding maximum building occupancy and some added language. This addresses Minor's concern that there might be some grandfathered language dealing with maximum occupancy that just referencing the Uniform Fire Code might not cover; and he didn't want to preclude that. Tokos didn't have a chance to add this language to the markup copy before tonight's meeting. He said those were the other two changes not included in the packet, so that is why he is bringing it forward tonight. Patrick called for testimony.

**Testimony:** Chris Minor, on behalf of the Whaler Motel, noted that Tokos has been very accommodating. He said that the two big concerns that they had have been addressed by the changes Tokos made.

Patricia Patrick Joling of Dolphin Real Estate came forward to testify. She had a concern about the section that requires the person doing vacation rentals to gather information about the tenant to provide to the City. Tokos noted it was on page 6 of the markup document under Guest Register. Joling read from that section and emphasized the part that says "this information shall be provided to the City upon request". She wondered when it becomes "shall". She said that if they ever have a problem, they call the police. At that point it is one-on-one between the tenant and the police. Joling said that if they are required to provide information more than that, they are happy to do that; but the word "shall" really bothers her. She said this information on her clients is considered private and confidential. She is a licensed real estate agency, and there was a law passed that their agreements with owners are confidential. The only way to obtain it is through a subpoena. She added that if it's a police matter, of course they will cooperate with the police and give them all the information. She needs to know what this means. Fisher said that any document you provide the City becomes a public document. He said that he is not really satisfied with this. He thinks it is a fair issue that needs to be handled. Joling said that these are her clients; if it were commercial, she would cooperate. She doesn't see any other reason to have this information at the City. She said that when she fills out agreements with her clients, she doesn't say that this will be subject to public record. When it's public information, anybody can start soliciting these people, and that is not what they signed up for. Joling said this part really bothers her.

Chris Minor wanted to comment as a citizen. He said that over the years he has seen a lot of people who rent vacation rental homes who don't want their competitors to get names of people they rent to because then they go and solicit those people. On the other hand if the police are investigating a criminal matter, they should get that information. He suggested changing the language to something like, "in the event of a police investigation at that location", then that information would be submitted to the police. Croteau said that maybe in the event of an earthquake or a tsunami, those names would be needed. Minor added, "or in case of other emergency". McIntyre said that he was told that in case of a fire or such emergency, the fire department needs to know the number of people there and who they are. That would be in the case of something such as a fire, major storm, or tsunami. Fisher said that the responsible agent will have that. McIntyre said they are required to hold a register, and this just says provided upon request. Tokos said language could be added that this will be provided "to emergency providers upon request". He noted that this provision came from the ad hoc group. They felt it was the same requirement as for temporary lodging like hotels and motels. They felt that then that information is at least available from somewhere. In the event of a catastrophe, those individuals can be identified. The police wanted at least to have the local contact's information if they had to get this information.

Joling said that she has no problem with her contact information being posted in the window or something so that emergency personnel can see it and immediately contact her. She is not going to collect all names and addresses. She said that she can't do that; it is a violation of the ORS. But then, again, she noted that is for her as a realtor. She said she gets calls from the police, the water department, or the fire department; and she cooperates with them. McIntyre said that in emergency situations, you want to be able to know you got everybody out of the house. If the emergency responders don't have a clue who is there or get a list, they can't be certain they got everybody out. Joling said now that we have CERT in Newport, everybody kind of knows what is going on; it helps. McIntyre said that in his community, they have one property owner renting his house unauthorized. They have a CERT person in the neighborhood, but that person doesn't know all of the time who is in that property. If they are licensed and required to provide information, then they will obviously do it or they won't continue to hold their endorsement. He said that what we are trying to make certain of is that emergency providers have access to that information. Not that they will need it all the time, but they will have the ability to access it. Joling said she loves the word, "access". She said her other concern was about parking and how it pertains to Nye Beach. She said everyone is familiar with how difficult parking is in Nye Beach. She isn't sure what solution they came to on how the parking standards relate to Nye Beach. Tokos explained ways that can play out. When an existing VRD or B&B, that under existing approval doesn't have to provide off-street parking, comes in for their endorsement within the 120 days, they don't have to meet that one standard. If somebody comes in and has an ideal site for a vacation rental and under the current code they can't provide off-street parking; there is a conditional use option where they can make their case to the Planning Commission. The Planning Commission can grant a conditional use to provide relief to that standard. That would be for a new establishment. If the Commission approves that, then that conditional use runs with the land. That operator doesn't have to meet that standard, and any future buyer still doesn't have to meet it. Joling asked what a business license endorsement is, if there is a form to see, and has it been approved yet? Tokos said the form will implement what is in these standards. The applicant would complete and acknowledge (probably initial) each one and provide a site plan at the time they pull their business license. He said the form doesn't exist yet, but it will be limited to what is in here. He noted that this has

a relationship with the business license issue that the City has been working on. An example would be someone pulls their business license and gets three endorsements (one for each VRD they are operating). When they come in for their business license, that is when they provide their site plan and check the boxes so we can confirm that they are meeting the standards before the business license is issued. Patricia said that this makes mention of the fire code or something about inspections. Tokos said that there is a building inspection up front. Then there is the fire code. The Building Official will do the building inspection. Joling asked if this is all new, and Tokos confirmed that this hasn't been done before. The Building Official will do most of this; he may tag up with the Fire Marshal. He confirmed that we have thought about resources in this regard. McIntyre raised a question about the memo mentioning something about inspections. Minor said that he had raised that question because he thought that state law only required a carbon monoxide detector where there is a known source of carbon monoxide and maybe the City could look into that. Tokos said that is why he didn't go ahead and make that change; but that would just be a minor change under Item No. 8 of the list of things the Building Official will be looking at. He said there may need to be some language added like, "if required by state law" or something of that nature. Joling said she could see it just saying "compliance with all state regulations". Tokos said we want to make sure it is clear in this code so that we don't have to look up all the different codes. Minor agreed that it serves as a reminder as well.

With no more testimony, Patrick closed the hearing at 7:28 p.m. for Commission deliberation. East thought now that the Commission has come through all of the public hearings and made all the changes with the exception of a couple that were done here tonight, we should go ahead and pass this on to the City Council. Fisher said we obviously had numerous goals. He said this was a goal given to the Commission by the City Council. One thing that he felt was important and one of the reasons he was in favor of doing this was to make this process fair to everybody. He remembers that some realtor talked about people out there getting by with not registering with the City and not paying what money they owe; and how as a realtor she absolutely tries to do it the right way. He said that is not fair, and fairness is important. He said one of the questions they raised in that regard was out of 100% of VRDs in the City, how many are registered properly and what percentage are skating by? He said he doesn't know that we ever came up with any numbers that are close to the truth. Fisher noted that the letter from Dave Graham also talked about the fairness issue. He said that to do this job properly, we needed to come up with a way to bring all of these into our system, be able to monitor them for the quality of their units, that they meet the requirements, and that they pay the City fees. He said that his gut feeling is that we haven't done enough in that regard. He thinks that is essential to make this work. He said it isn't like a police officer out there with radar; these people are under the radar. He said he will have a hard time voting for this if he doesn't believe there is a way to bring these other people in. He would like to see that. Croteau has had an objection to allowing VRDs in residential neighborhoods; however he has come to the conclusion that this is the best that the Planning Commission can do. He agrees with the issue of enforcement that Fisher brought up. He hasn't been able to come up with a way to do this other than it being complaint-driven. He believes the criteria have been satisfied, and it's time to move forward to the City Council for their deliberation. Small said that his concern and approach is that we don't need to make this more burdensome for those that are doing the right thing. Those that are doing this as a business and an investment for the most part are doing a good job of self-policing. It is those few that are not doing it well that cause problems. On one hand, he wants not to make this more burdensome; but on the other, he wants to offer increased protection to neighbors from those not doing this correctly. His concern is whether this does provide increased protection. Do they have a better avenue of making their complaints known and having them satisfied? Small said he is not sure it does. Another concern he has is the guest registry part. He thinks it may be excessive and burdensome to have vehicle license plates for every guest. He agrees with knowing the primary contact and their vehicle; beyond that he thinks it becomes excessive. He said that at this point, he is unsure whether he feels we have a good ordinance in place or if it needs more protection and to be less burdensome. McIntyre noted that we have revised it, and a lot of effort and consideration have gone into it. He thinks it is a good plan and a good ordinance to bring in the people that are operating short-term rentals. He said it is going to take time to get them all registered, but they have an incentive to register within 120 days. He said that nothing is ever perfect, and perhaps there will need to be some massaging as time goes on. McIntyre thinks this is a good start and feels the Commission should recommend it to the City Council for their consideration. Patrick noted that the only thing the Commission didn't talk about was the question about the 200-foot notice area raised in one of the letters. He wondered if the City provides those names. Tokos said that, as with all applications, we would be happy to provide that service; but at this time, we don't have up-to-date information. We have no better access to that than the general public. This means notice to current owners, and it is the County that has that information. We would like to resolve the issue of not having up-to-date information in our GIS system so that we can start providing that for all property notices. Chris Minor added from the audience that title companies provide that information at a fair charge. Croteau said that he thinks that for many neighbors this is the first time they will be receiving notification of vacation rentals in their neighborhood. Patrick said that he thinks this is a good document. He said judging from the responses tonight, we have basically beaten it to death. He thinks that with the previous changes and what we talked about tonight, we can at least pass this on. If some rubbing occurs, we can work on that later. He said that we have heard about maybe three problem owners in this entire process. Out of 30 or 40 properties, that is like 10%. He said that we have made provisions to do something about it. Patrick said he agrees with Minor that the City had the ability to do it before, but they weren't doing it. With tighter standards for them to meet, maybe we will get better enforcement. Patrick wanted a summary of tonight's changes. Tokos said the code would be as presented in the packet, with the two section changes in his memo dated today, and the guest registry language will be changed to include "provided to City emergency responders upon request", and "as per state law" language is appropriate to plug in under carbon monoxide detectors. Fisher said that McIntyre's discussion reminded him of the incentive we would have for people to get registered in time. He agreed that no plan would be perfect. We have done a lot of work and cleaned up a lot of areas. He said he still would

like to see a way to bring these people in. He noted that they had talked about the Chamber having a list of registered vacation rental properties in Newport. He still is not sure that we have corrected that weakness, but he probably would vote in favor of what we have. Patrick said he would like the City to think about this as a business by putting up on its own website a link to that. At least we would have a list of what is registered.

**MOTION** was made by Commissioner East, seconded by Commissioner McIntyre, to pass on to the City Council a favorable recommendation on File No. 1-Z-11 with the additional changes mentioned tonight. The motion carried in a 5-1 vote, with Commissioners East, McIntyre, Fisher, Patrick, and Croteau voting in favor; and Commissioner Small opposed.

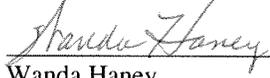
**F. Unfinished Business.** No unfinished business.

**G. New Business.** No new business.

**H. Director's Comments.** Tokos said that he covered most of his comments in the work session in terms of goals and things of that nature.

**I. Adjournment.** Having no further business to discuss, the meeting was adjourned at 7:43 p.m.

Respectfully submitted,



Wanda Haney  
Executive Assistant