

MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, January 24, 2011

Planning Commissioners Present: Mark Fisher, Melanie Sarazin, Rod Croteau, Gary East, Glen Small, and John Rehfuss.

Planning Commissioners Absent: Jim Patrick.

Citizens Advisory Committee Members Present: Lisa Mulcahy, and Bill Branigan.

Citizens Advisory Committee Members Absent: Dustin Capri.

City Staff Present: Community Development Director (CDD) Derrick Tokos, Senior Administrative Assistant Wanda Haney, and City Attorney Penelope McCarthy.

Vice Chair Rehfuss called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos. Tokos said the purpose of tonight's work session is to hold discussion on the remand from the City Council.

A. Unfinished Business.

1. Following the City Council remanding the proposed amendment of the Geologic Hazards code back to the Planning Commission, renewed discussion regarding the update to the code in order to formulate a recommendation to the City Council on how to proceed with requirements for new construction on properties within the moderate zone. First, Tokos had a brief PowerPoint to present in order to frame the process, and then he will open up the meeting for discussion. Tokos had furnished the Commissioners with the minutes of the City Council December 6th meeting. The PowerPoint explained the remand nearly verbatim from that meeting. He said the request from the City Council is the focus of what the Planning Commission needs to talk about. In the PowerPoint, Tokos included a series of maps showing only the moderate hazard zones. Going over these maps, he noted that starting at the north side of town it is mostly bluff erosion. There is small dune erosion half way down the map toward Walmart. The south side is primarily dune erosion mostly in the state park and some in Southshore. Much of it is outside the city limits but within the urban growth boundary. He noted that most coastal properties have more than one designation. There are some 800 tax lots in bluff erosion and 73 in dune erosion areas. Tokos said for the decision-making framework, the recommendation must be consistent with the Comprehensive Plan. Discussion is limited to the question raised by the City Council, and the decision must be based on testimony and evidence already in the public record. The recommendation can be a concept already presented to the City Council or can give an option. On the PowerPoint, Tokos displayed the Comprehensive Plan policies. Policy 1, regarding natural features, states that areas of known hazards require site evaluation prior to city review and approval of proposed development. Policy 2 states that the city shall maintain and update ordinances that control development in environmentally hazardous areas. Policy 3 states that when a property is not specifically identified, but there is reason to believe a potential hazard exists, a site-specific investigation by a registered geologist or engineer shall be required prior to development. With the PowerPoint, Tokos showed the original Planning Commission recommendation, which provided that new development in moderate zones were required to have a certified engineering geologist's report or to do a reconnaissance form that showed the site suitable for development. Testimony after the Planning Commission made their recommendation included the letter from OSBGE. They had put together a subcommittee to work on this issue, which determined that moderate zones have substantial hazards that call for more rigorous investigation, and the reconnaissance form is only appropriate in low risk zones. More rigorous investigation is needed for moderate, high, and active zones. Other comments received regarding moderate zones by and large are looking for the City Council to drop the requirement because of lack of a track record in requiring reviews in moderate areas, costs of the reports, and an adverse impact on property values. Tokos noted that all of these letters were in the packet of materials the Commissioners received. For the Planning Commission to consider when formulating a recommendation, Tokos provided some options that he has discussed with the City Council: 1) Drop the review requirement on low, but retain the full report on moderate zones. 2) Expand exemptions for moderate zones so that reports are needed only for new or reconstructed primary structures; not for a detached garage or shed or expansion to existing structures. 3) Have a sunset option for reports in moderate zones in 5 years with a provision that a hearing will be held before then to determine if the reports for moderate zones are improving safety of construction or not. At that point the city would have tangible information to make a determination. 4) Any combination of the above. Rehfuss asked about the 5-year sunset. Tokos explained that this approach requires a hearing to be held before the sunset date. Affirmative language would be required to keep that in the code. He said that there are different ways to tackle that issue. If the result of the hearing was that the City Council didn't want to continue to require reports in moderate zones, let the 5 years pass. If they do believe that the reports are worthwhile, then the Council would give direction to strike the sunset clause. It would end automatically unless there is a decision to strike the sunset clause. That is the strongest way to draft it.

Another way is that it not automatically fall out of the code but just require an evaluation after a certain time. Tokos said that if the sunset option were in effect for 5 years, the city would be collecting reports for development that occurs in moderate areas. Toward the end there would be something tangible to determine whether the requirement for reports continues or not. Tokos said the challenge we face here is we go on the strict side, just think a full report should be required. On the lenient side, you can explore a recommendation of not requiring anything in moderate. The challenge is the information in the record and the Comprehensive Plan policies. You have to have some rationale why you are not requiring reports in moderate risk when you have this testimony in the record. Tokos said that we cannot be silent on the issue; that would be problematic because of the Comprehensive Plan and the record. Fisher noted that he has not been able to find any historic events taking place in the moderate zones. Because of the high cost of these evaluations, he feels the city shouldn't require the reports but monitor events. If a need is shown, then modify the city code. He said that he went out and found someone that had just had a geologic report done, and it cost them more than \$10,000 out of pocket. Without knowing there is history showing that there are these events happening, Fisher doesn't think it is fair to make them go through that expense. He went out to the six areas where the city has had erosion and slide problems in the last ten days. Fisher said these were obvious, but noted that none of those were in the moderate zone. He thinks this just puts an additional burden on the cost unless there is a record. Fisher suggested developing a record over one to five years; and when it becomes obvious, to change the code then. Croteau said he agreed but explained how he came to his conclusion. As before, Croteau noted that his property is located in the moderate and low risk zones; and in case of casualty loss, this ordinance could be of significance to him. He said there are a lot of materials and a lot of information in the record. He went back to see what the DOGAMI maps were about and what the information in the text said about the moderate zone because that is the basis of decisions. He said the DOGAMI report gives a bunch of scenarios. He said that in the worse-case scenario their model shows a low probability of failure occurring in the moderate risk zone (60-100 years). They say low probability, so he is having a hard time justifying \$10,000 for a report when DOGAMI says it will be here for 60-100 years. He doesn't think that makes any sense. He suggests exempting moderate until somebody proves otherwise. He said that DOGAMI mapping is down to a scale of 20 feet, and that is pretty good. He said the basis of his decision is that he has to go along with DOGAMI's assessment; not whether it's being a burden on these folks. East wondered how to monitor a lot in the moderate zone during construction to keep it safe. Small said that the erosion piece stays in to make sure that there is some care given in erosion that protects the neighbors. He said that as he looks back at the Commission's discussion about the reconnaissance report, his thinking was that was an important option for the moderate areas to do that so that we don't place an additional burden on those property owners. He doesn't think that it is inconsistent then that if the reconnaissance form is not allowed to still not require a full geologic report. If the owner wants to have a report, that is good; but the city is not requiring it. Fisher agreed that they have a right to get an engineer; but a formal report is not required. Sarazin also thought that the recommendation should be consistent with the discussion back then. East said just for new construction; not anything existing without evidence of erosion over 20-30 years. Active and high zones would require full reports. Rehfuss asked whether the moderate zone would be moved down to low risk or up to high. Tokos explained that the moderate zone wouldn't be moved. He said that these areas are what they are. He noted that there is an issue if the Commission is inclined not to require a report in moderate. There is ample testimony in the record; and DOGAMI notes that this is not site-specific mapping, and the only way of knowing is to go out and identify. Croteau said that if any of the property is identified as high or active, that kicks it into that category. Tokos said we need to flush out some of these things and noted that erosion standards only apply if a permit is required. If no geologic permit is required, those standards aren't triggered. Sarazin noted that as the Commission looks at this section, it may create a trickle-down effect on more sections and we will have to revisit those. She said she is willing to tackle that if that is what needs to be done. Croteau agreed that erosion control should be in any permitting program, not tied to geologic. Fisher asked if a planned development always requires a geologic report. Tokos answered that it doesn't; only if certain site conditions warrant it. East agreed that even if they don't have a geologic report, they should have some sort of erosion control in place. He added that we know from looking at our area that even if not in a geologic hazardous area, water infiltration can cause problems.

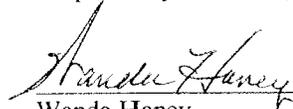
Stepping back, Tokos said the formal issue is what to require for moderate areas. He said that what he is hearing a few Commissioners say is that they don't want to require geologic review in moderate zoned areas; and what he is hearing for the underlying rationale is that they don't believe the level of risk is sufficient to require review under the Comprehensive Plan policy. He told the Commissioners to understand that if this isn't articulated, we are left with the Comprehensive Plan policy that could require it. Croteau said that he would never recommend it based on the fact that DOGAMI data doesn't seem to be cause for alarm to have a report on moderate zoned property with a 60-100 year time frame. Tokos clarified then that while there is testimony from engineering geologists that rigorous reports are needed in moderate zoned areas, given the DOGAMI 60-100 year time frame, that the Commission believes that is not sufficient enough to classify these areas as hazardous as framed within the Comprehensive Plan policy. Fisher said that he can't see doing this unless we can prove a need. Small said that he would be comfortable proposing to the City Council doing the sunset thing in reverse. After 5 years, review and see how many moderate zoned properties have experienced geologic events. Tokos said that regarding the discussion about a track record; if something is a known hazard, we don't wait until somebody loses life or property. But if the Commission feels it is not a hazard because of the time frame, that is fair. Fisher wondered about including purely as a recommendation that people in moderate zones consider a survey by an engineer. Small added not require, but encourage; recommend that they may want to. Fisher said for their peace of mind. Croteau said that we could recommend that anybody would be wise to have a report, but he questions how to legislate this in the absence of an example. Tokos clarified that this is the Commission's view for

property entirely in the moderate or low zones; if not entirely, then a full report is required (even if it's only a portion). Croteau agreed that is worthy of a geologic report. Tokos said that there is a fair amount of testimony in the record, and the maps are not site-specific, only suitable for a trigger. He said then it turns to what if anything in this code should apply to moderate zones. East said something regarding erosion. Fisher said any new construction needs erosion control, even in low zones. East agreed that tearing out of vegetation and trenching a lot needs erosion control as well. Croteau said erosion is bigger than geologic. East suggested something that makes them replant if they tear out vegetation. He said as soon as they do a geologic, there will be erosion control. If in the moderate zone, there has to be some sort of erosion control or way to insure the lots are stable. Branigan thought the code should be modified so that any time there is a permit, a certain level of erosion control measures should be required. East said there should be an erosion control plan submitted with construction plans. Fisher wondered if this may need to be set up as a separate thing rather than right now. Tokos said this gives hook saying some provisions should apply to moderate and low as set up in the original recommendation.

Tokos said that he can take this and work it into language for consideration at the next hearing along with text explanation of why that language is being recommended. The Commission can look it over and determine if it's acceptable and move it on if it is. The next meeting is February 14th. Tokos can set this up for consideration and proposed action on the 14th. If the Commissioners are not comfortable with the language, they can work through whatever those changes are and set it up for decision at the second February meeting. Tokos would like to give them that option. He can have something ready so the Commissioners can have a week and a half to look at the language before the hearing.

B. Adjournment. Having no further business to discuss, the work session meeting adjourned at 6:40 p.m.

Respectfully submitted,



Wanda Haney
Senior Administrative Assistant