

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
November 9, 2015
6:00 p.m.

Planning Commissioners Present: Jim Patrick, Lee Hardy, Gary East, Rod Croteau, Bill Branigan, and Bob Berman.

Planning Commissioners Absent: Mike Franklin (*excused*).

PC Citizens Advisory Committee Members Present: Dustin Capri.

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Draft Changes to the Local Improvement District (LID) Code. Tokos said he has started to receive materials from the consultant, and this seemed like an opportune time to bring this to everybody at this work session. He wanted to spend most of the time talking about policy language, but he said he'd be happy to go through the code as well. Tokos noted that this is a TGM State-funded project to help us rework our rules, but also to create a model that can be used by small jurisdictions statewide. LIDs haven't been used effectively, particularly in small jurisdictions. We also have a work group that Hardy and Franklin are assisting on. This technical advisory committee will be scheduling another meeting in the latter part of this month or in December. Tokos went over the Comprehensive Plan policies, which are as he received them. He really thinks the policies are the place to provide guidance on how this type of tool should be used. He thinks this is a little bit light. There should be some scope here. We could start by putting in policy language for how to deal with implementation. The subdivision code isn't supposed to be what this is about as far as the consultant's work. He noted that Policy 4 is about identifying the cost to support subdivisions; and Policy 6 similarly. It's suggesting approval without essential services in place. The city code has current rules that wouldn't allow land divisions without sufficient services. He said that Policy 10 goes in a similar direction getting into the relocation of infrastructure placed in rights-of-way or easements. Tokos said he's not saying that may be good or bad. There's probably a lack in the public facility elements now. He hopes the Planning Commission can help with this. He thinks Policy 8 is a key one, but needs work. He thinks this policy should be split to provide guidance on when to initiate LIDs; when should it be done. There is no guidance there; and he thinks there should be. That would not only help staff for knowing where to focus but also for the elected officials to decide how to use this tool. How do they go about deciding to proceed with one? Once they've held the public hearing and took testimony, are there factors they should be leaning on more than others to create a district to fund improvements.

Regarding emergency approval, possibly we want in the code that the Council could say there's an emergency, and it would trump the waiver of remonstrance. But what constitutes an emergency. That should be framed in the policies. Certainly the failure of a water line or asphalt in an area where there's maybe a dozen homes may be an emergency. There's also room for a fiduciary policy. The consultant didn't put any of those together. What assessments, what measures are favored over others? We need some language in there about financing. Do you use interest off the capital fund to catalyze an LID fund that people could tap into? There's room for what kind of financial exposure the City is willing to take.

Tokos said that Policy 7 seemed fine; it's just general scope of different funding tools the City can tap into for maintaining public facilities. He wondered if LIDs are just a tool of last resort. Should it be framed that way? You can pad together funding if you need to do other things; urban renewal, loans, revenue bonds. If you're down to the last \$50-100 thousand, should that be used to make a project go?

Branigan said if a group gets together and requests an LID, then the question is who controls what they do. They would have to get funding. He assumes the property owners themselves must have some sort of loan they get to make the improvements. Hardy thought they would finance it as a line of credit on their mortgage. She said if this can be "not to exceed 30% of the value of the property," you're looking at big bucks. She would say most can't do it. Tokos said it's correct that property owners can approach the City. The City helps administer it. Hardy said if you have two scopes of work, who has the final say. Tokos said that's a good policy consideration. How should we approach something that doesn't meet the TSP? If it's just a partial improvement, should the policy be that the City initiates for something that is less than the standard. How do we decide what's appropriate? Hardy said some are hinged on other projects. Tokos said his sense is to set the policies up so that we do not allow LIDs to proceed for improvements that don't meet the TSP. If you take it through the TSP, it gets adopted in. But on an ad hoc basis, it

puts the City Engineer in a pickle because then he has to auger out if it's okay in a vacuum. Branigan asked if property owners get together and want to do an LID and the City Engineer says they can do this or that, does the City Council still have to get in and approve an LID. Tokos said yes because it's public it's designed, constructed, and held in perpetuity. It's not like it's a private shared water line; you're coming in to replace a public water line along a local street that the City has to maintain. Croteau said it ends up public, and the City has the ultimate responsibility so it has to set standards for doing it and for financing as well. He agreed that this document is a little light on those aspects. He wondered what this was supposed to do; just present an overview of intent. Tokos said there are a couple of documents; two that would be code-related, and another that is administrative. The policy memo he emailed to the Commissioners. This he thinks needs a lot of work. We need more policies. The code would be redrafted and there would be the actual ordinance that we would implement the LIDs with, which would be far more detailed as it should be. It gets into details. Tokos planned to spend time on that; but getting back to the Comprehensive Plan, he asked if the Commissioners had any other observations about policy direction or areas that should be concentrated on.

Hardy asked if you'd use the same for pre-existing versus new. She thought they almost need to be approached differently. In a subdivision, you're starting with bare ground and theoretically a financially-capable developer. In a pre-existing neighborhood, it can be a combination of variable qualities of services, a variety of age. It's more complicated when you're looking at improving something that already exists as opposed to new. Patrick said he's not sure why we'd be doing LIDs for brand new subdivisions. Tokos said that strikes him as a developer's way of getting the City to finance the infrastructure. Capri said there's a development on 68th Street where that's essentially what the developer did. Tokos said for that particular development that strikes him as a failure of the land division code, which is to ensure that there are enough improvements so that when you buy a vacant lot you can do what you actually want without having to extend sewer or water mains. The buyer should just be responsible for building their home and their own service line; nothing beyond that. That is the developer financed aspect of it. We don't have to allow that. Patrick said the City's been burnt by that before; twice in Lakewood and once in Candle Tree. He said the other one was Running Springs that went back to the bank, and the City wasn't in that. Tokos asked, so you would like to see some language? Patrick said unless under some scenario; maybe if it's possible to do affordable housing, but anything normal then no. Croteau asked if a planned development thing is what he's thinking. Capri asked if the City contributed in Wilder. Tokos said Urban Renewal contributed at 40th and 101. That's a collector road. They didn't look at the City to help them finance anything. Capri asked if they came in in the first place asking the City, it wouldn't have happened. Tokos said no; where we did contribute it was Urban Renewal. OMSI is an example. There was a partnership there, which is a common tool with Urban Renewal. Croteau asked if an LID is a viable mechanism for an affordable-housing-type project as Patrick had mentioned. Patrick said he sees a possibility where it could be used like that. Tokos said we could build that in, or we could use something else; we could do it with Urban Renewal. He expects that conversation in Agate Beach. Berman said, but you're restricted to the current Urban Renewal area. Patrick said you don't do new subdivisions under Urban Renewal. Tokos said you could absolutely use Urban Renewal in subdivisions. There's no reason it couldn't be used for local streets, too. It can be done; he's not saying that's what should be done. Berman said that's not like an LID, which can be used anywhere. Tokos agreed, only in the Urban Renewal area. Patrick thinks LIDs shouldn't be used for new subdivisions. He can't think of a good reason to hang the City out there. He said the City has to come up with financing and get money back out of it. Tokos said we basically fund the construction. We have to find a way to pay for it. With this set up, that would happen. He thinks more work is needed on it to create an LID fund that generates interest off other capital.

Capri asked how property owners pay into the fund. Tokos said when they pay their share, that would be revenue allocated to that specific project, or revenue that would go into that LID fund. We have to budget for the project. We have to make sure there's enough of a balance to cover the cost of construction, the LID is formed, and then we wait to get it paid back into that fund. Capri asked if it's paid from their taxes or if they write a check. Tokos said they write a check, or we lien their property and get paid when they sell. If it's as a lien, we could be sitting there a very long time before we recover that. That's the danger of up-fronting all of that; it takes time to get paid. Croteau asked if we couldn't do a payment schedule. Tokos said yes, pay up front with a payment schedule. He said it has to be paid up front, so the money has to come from somewhere. Capri asked about where the City gets their money if they have to lien ten of twelve. Patrick said wait for them to sell or they die. Tokos said they are hit with interest; but in the lien scenario it's outstanding for a while and we don't know when it's coming back in. Croteau said the City's hanging out there until everybody pays up. Patrick said if it can be 30% of the property value, a lot of people will walk away. Hardy said look what that does to property values. They have a pre-existing mortgage, a declining market, and this lien. She said somebody will get burnt. Patrick said that's what happened in the past. Capri asked if any worked out well. Tokos said yes. The intention is that it would be smaller stuff. The last one was a sewer extension for a half dozen homes off Vista. Small ones work out better. It's desirable for some folks. Tokos said in that area south of Southshore where the developer sold the lots and walked away, and they don't have adequate access, there is one property owner trying to get an LID. Capri said they don't have adequate water, road width and grade, turnaround, septic, and they need a geologic survey. There are five property owners. The lots got sold. His clients bought thinking they were going to be able to build right away. One owner's been working on the issue for twelve or thirteen years. Tokos said that gives a good sense of how difficult it is for individuals to organize an LID. If the City Council initiates it, that drags everybody in for a conversation at that point. He thinks there needs to be policy language when that power is exercised. He thinks the City Council would appreciate that. Berman said it's a huge power. If it can be up to 30%, think how much money could be involved. He wouldn't be amenable if the City Council decided his neighborhood needs sidewalk. He would fight it. He wondered if he would have no basis for fighting it. Tokos said that

gets at what constitutes an emergency. A property owner can otherwise remonstrate against it if they haven't already signed a waiver to opt in as part of a development. Berman asked how he would know. Tokos said when you buy your property, it shows up in the title search. He said he thinks it's highly unlikely that a sidewalk would constitute an emergency. Berman said there's been talk about a signal at NE 73rd. If that's through an LID, he may get forced to pay for that. Tokos said what if there are fatalities at that intersection. He could see that as an emergency. East said he was surprised the Fire Department didn't ask for a signal when they put their station up there. Tokos said we have business owners on the hook to pay for the signal. There were some residential owners, but they were time limited. There was a ten-year period that has passed. So most are just industrial property owners. Tokos said he could see public safety being a good reason to initiate an emergency. He said the same for chronic. Along the golf course, the water lines keep breaking all of the time. An LID could be formed to replace the water lines because it serves a limited number of residents. That's the type of thing where property owners will say they will pay money because they're tired of being without water. Croteau said it could be that we incorporate examples of what constitutes emergencies; traffic safety, infrastructure collapse. Patrick added, failure of the roadbed. Capri said the water is a big one for fire safety as well; fire hydrants. Tokos also thought public health. Patrick asked, like a broken water line. Tokos said that would be infrastructure failure. Collecting storm water could be a health hazard because of mosquitos. Patrick thought that sidebars on emergencies should be listed.

Tokos asked if the Commissioners agree that policies regarding subdivisions and partitions isn't what we are talking about right now. The consensus was that they didn't think so. Patrick said there might be a case for minor partitions. Tokos didn't think we were talking about LIDs in the context of these either. It's more of a land use tool. LID is just the financing. Tokos said he has noted the emergencies we just talked about, and clear policy for when the City Council should initiate an LID. Croteau said decision-making criteria. Tokos said, define how to proceed. Croteau said and fleshing out finances. Patrick said, and when it's owner-driven, what the forms of LIDS are. Capri mentioned fire equipment turnarounds. He said there are a lot of streets that don't meet what the Fire Marshal and the code would now say. He said the trucks keep getting bigger. Tokos said he could see an emergency to be hammerheads where they have repeat calls and have difficulty getting access. Capri asked if the development on 68th that we talked about would qualify for an LID. Tokos said certainly, if the owners can get organized. East asked where the breaking point is if all of the homeowners don't want to participate. Tokos said there's some discussion about owner-initiated LIDs that gets to how many property owners it takes. Patrick thought it was 50% plus one.

Tokos said that's another question. What's the relative priority when someone files a petition? He said some of this isn't easy. The City Engineer has to prepare a cost estimate and plans. It takes a dedication of resources. He wondered if there should be a policy for relative priority. He said the policy could say "addressed by the Public Works Director as resources permit" unless it's an emergency. Tokos said that gives him, the City Council, and the Public Works Director direction on how to apply LIDs. Patrick said if it's owner-initiated and they have a failed sewer line, they could declare an emergency and get moved to the head of the list from that side too. Tokos wondered if the policy should be that if it's an emergency it becomes priority; and others are as resources permit. Hardy asked if something like that occurs, why it wouldn't be the City's responsibility to step up and fix it. Tokos said there's fixing; and then really fixing it. The City would patch it, and it comes out of the maintenance fund. We can't do a full fix given the maintenance budget. Patrick said, say 32nd was the only way to ten or twelve residences, and the road slipped. If the City made it one-way, that wouldn't be popular with the owners down there. Berman asked what the typical time cycle would be. If they walk in with an emergency and all neighbors agree, when would the equipment roll? Tokos said it will take some time. If it's an emergency and we're moving really fast we could probably have a cost estimate and concept-level plans within a week if Public Works drops everything else. If it's an emergency we could immediately hire contractors; otherwise we have to put it out for bid and are looking at four to six months. Croteau said you have emergency emergencies and long-term emergencies that need a permanent fix; like when it's obvious that you can't continue paving. Capri said maybe it shouldn't be labeled emergency. Maybe high priority fixes. Tokos said we might need to take a look at the statutory language; we'd have to use the same references. Branigan said a water or sewer break would be an emergency; but if it's a real emergency the City will patch it. So he questions whether property owners are going to try to form an LID. Croteau said not after the first time, but after chronic failure. Branigan said the City is paying for repairs so eventually will do an LID, but he doesn't think the property owners will. Croteau said if your basement fills with sewage three times in a year, you'll look differently at the picture.

Tokos noted that there was some time to begin going through the structure of the code. He said again, as the Commissioners have observations to please let him know and he will share them with the consultant, Todd Chase. Branigan asked if the consultant has done work for other municipalities; and if so, have they done anything for this code. Is there something to take a look at? Tokos thought that was Chase's approach. He's sure for this Chase borrowed from a lot of jurisdictions. This was his initial cut. Tokos said the first part is typical for a code. Then it goes through definitions. Hardy had a question under section 5 of 12.05.010 where it mentions "overall citywide benefits." She asked how you quantify that. It says at least 25% benefit accruing to city residents if improvements enhance property. She said now you're back to benefitting people. She thinks Chase floats between those two concepts; and they are entirely different. Tokos said there are different ways of looking at this benefit; and it might be worthwhile to define that in the context of the LID code. It could mean enhance its value, improve service; if you're looking at the broader community, maybe a section of a gravel road. Maybe it's a commonly driven street that a large percentage of the community uses. Patrick said that doesn't strike him as being right for triggering this. Hardy said there are areas that were annexed at different times and have different conditions. You can't use a one-size fits all; you have to make it

specific. Tokos gave an example of a collector street parallel to 101 that you're able to construct except for the last 200 feet, and the broader public uses it. To fund that last 200 feet, you need to form an LID. You could make the case that the broader public would benefit. Patrick said this is saying that you can do an LID if 25% is attributable to the public. He said that would be a reason to use other funds. He doesn't see this tracking as a triggering mechanism for an LID. Hardy said, like Urban Renewal. Tokos said it could be a question of what constitutes benefit.

Going back to the definitions on the first page, Branigan had a question about the timeline in number three. Tokos wondered why even have that in the definitions. Branigan didn't understand why that was in here. You have to pay it all or pay over ten years. Patrick agreed, you can pay over ten years but not in three. He wondered why string it over ten years. Branigan said it didn't make sense. Tokos wasn't sure why it was in the definitions.

Moving on to 12.05.015 (Engineer's Report), Tokos noted that Tim Gross and company would have to put this together to have an informed conversation whether or not an LID should occur. Capri asked where you come up with a realistic cost estimate without knowing the design. Tokos said we have to do preliminary cost estimates for lots of different things. We're pulling from past experience with like-type projects, or we contact other jurisdictions that have done something similar. When you're pulling from the TSP or facility plans you know what you are putting together. Berman wondered if there's some way to come up with better estimates than they did for the water treatment plant and the swimming pool. Tokos noted that the water treatment plant was before Gross' time, and he didn't pull the cost estimate together for the pool; that was Parks and Rec. Gross was only involved in the design. Tokos said there are provisions that should be in here to deal with when actual costs come in in excess of estimates so that you're not on the hook to commit. He's not sure what percent of the estimate. Patrick wondered if Tokos has talked to Gross about how much it costs them to do this work. Tokos said that's one thing we should think about. By and large this work is handled in-house and not farmed out. Patrick said there's still cost associated; and he would be interested in how much. If it's owner-initiated, and Engineering goes to all this trouble; maybe the City should get reimbursed for it. East said if it's owner-initiated, maybe they should be responsible for all engineering costs. Tokos said say it's owner-initiated and meets the threshold. So Engineering puts all this work in and there's the City Council's time. Then the owner changes his mind and it gets remonstrated. Should there be some reimbursement? Is that getting at it? The consensus was, yes. East said that way the City is just looking at it and approving the plans; and the owners are on the hook for the scheduling costs. Patrick said also then they can do it outside the City. Capri said we'd have standards. Is there a fee associated? Tokos said that's what we are talking about; at least administrative costs if the LID doesn't proceed. East said if they did everything privately on their own, the additional cost when it comes to the City would be like a plan check or approval; not the full engineering fee. Tokos said he will take a look at it.

Tokos explained that 12.05.020 says what the City Council can do with the engineer's report. He said it allows the body to make sure what is in that report is what they want. This would be more if it's City Council initiated. Capri asked if the Council knows enough about criteria one through six to make any changes. Tokos said conceptually maybe they don't, but they can decide if it makes sense to move forward when they have the scope and the cost. They have the right to stop it. Capri said it says here that the Council can change the report and then approve it. Patrick said there should be some room for the City Council to do certain things; like say the scope will be this rather than this. Tokos agreed that to say something like the Council can direct that it be modified and brought back would make sense. He said that's a good point.

Because time was running short, Tokos suggested tabling the review of the rest of the code until the next meeting. He can get a revised set of the Comprehensive Plan for the Commissioners to look at.

B. Adjournment. Having no further time for discussion, the meeting adjourned at 6:57 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant