MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, February 14, 2011

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

Planning Commissioners Absent: John Rehfuss (excused).

Citizens Advisory Committee Members Present: Bill Branigan.

Citizens Advisory Committee Members Absent: Dustin Capri and Lisa Mulcahy.

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

Vacation Rental Code Update Ad Hoc Committee Member Present: Bob Berman.

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

A. New Business.

1. Public records, meetings, and ethics. City Attorney McCarthy was going to present this agenda item, but was not able to attend the meeting. Tokos said he would touch on a couple of things that relate to the Zoning Code and the Council Rules and leave the rest until the 28th meeting when McCarthy returns. The first were the procedural requirements from the Zoning Ordinance and quasi-judicial versus legislative hearings; especially how the Commissioners need to approach ex parte contacts and thing of that nature. Tokos referred to page 138 of Section 2-6-1 regarding disqualification, ex parte contacts, bias, and challenges applying to quasi-judicial or limited land use hearings. He said this applies to a particular application, and the Commissioners are essentially acting as judges. Legislative actions are citywide or for large number of properties. He noted that under the rules the standards for disqualification are more extensive for quasi-judicial matters. The financial aspect of disqualifying you for a quasi-judicial hearing includes any member of the family. You must disqualify yourself if the action involves a business of which you are a member directly or have been associated with in the past two years. If you own property within the area entitled to receive notice of the action, you should disqualify yourself. Any other reason that would make it difficult for you to make an impartial decision can disqualify you. Disclosing potential ex parte contact includes site visits. Tokos said that people have the right to challenge whether you should be able to participate in the decision making. He noted that if you choose not to participate, you still count toward a quorum. If everybody is abstaining or are disqualified, everybody would be requalified and get to participate. Tokos said his advice for quasi-judicial actions is to take a hands off approach and don't talk to anybody about the matter. Referring to page 142, Tokos said that you can see that the disqualification language for legislative actions is much more limited. It is simply whether there is an actual conflict of interest under the state law; which means financial. He said that beyond that there are not any other state provisions to worry about. Patrick asked about a member participating in a land use action if they were absent. Tokos said that if you are absent during the presentation, you cannot participate in a decision unless you have reviewed all evidence to date, including recordings. He noted that it is not the same for legislative. The other item Tokos wanted to discuss was from the City Council Rules concerning testimony before them by Planning Commission members. Tokos cautioned to be careful who you are weighing in as; yourself or a Planning Commissioner. If you testify and don't say that, the Council may think you are representing the Planning Commission as a whole, which may not be the case.

2. Vacation rentals. Tokos had put together a brief memo regarding vacation rental code update. He has a list of a small ad hoc group, which he was charged to put together when the Commission talked about this in late September. The code update got put on hold with the business license and room tax revisions. However, the code update really doesn't need to happen at the same time as the business license and room tax revisions. This is a land use matter, not a licensing or taxation matter; so we will move this ahead. Tokos read the list of members of the committee; who are: Tracy Wiley of the Embarcadero Resort Hotel, Lee Hardy of Yaquina Bay Property Management, Bob Berman who is a property owner that has been impacted by vacation rental activity and was present in the audience, and Cindy Reid who owns a vacation rental. Tokos said that he would like to have a Planning Commissioner as a liaison, and Sarazin volunteered. Patrick suggested also talking to Norm Ferber, who is a builder and vacation rental owner, about being on the committee. Tokos will give Ferber a call. To help the ad hoc group, Tokos would like to have a sense of scope of what the Commission is looking for them to do, so he put some questions together. In the context of vacation rentals, we have issues with the current code. In our current code, the weekly rental definition drives things. Under the weekly rental definition (which falls under a hotel/motel use), an owner can rent up to ten

times a year. In commercial districts, hotels and motels are outright uses, so vacation rentals are allowed; but there are no standards to speak of. In the R-4 zone, a conditional use has to be pursued for a vacation rental; but again, there are no specific standards – just conditional use permit criteria. Branigan asked what constitutes a "time", and Tokos replied that is another ambiguity. Patrick said now it's interpreted as 10 times up to a week, but it's not really clear. The general consensus was that there needs to be some work done on this; it's not working the way it should.

Tokos said that he would like to know the Commissioner's desired outcomes. He asked, now that we are opening this book, what is the scope of this endeavor. To accomplish this, he had prepared several questions. His first question was if the Commissioners are really interested in looking at where vacation rentals should be allowed as a use. If so, should it be something close to what it is now with being allowed outright in commercial, with some review in high density, and very limited in R-1 and R-2? Or should that be taken off and not be bound by prior uses? East asked what the county does. Tokos said he did not do an extensive review of other codes prior to this meeting. It has been a while since he looked at them, but each jurisdiction takes its own approach; from outright, subject to standards, some are very restrictive, and some don't even tackle it. Tokos wanted the Commission to give the committee their thoughts. Do they want to change? Keep it very restrictive in low density residential? Have some discretion in higher density? Tokos said it is effectively happening anyway because of the weekly rental. Patrick said that he's been told that if a property doesn't have an ocean view, it won't rent as vacation property. The R-1 and R-2 zoned properties have the ocean views. Nye Beach has a chunk of commercial, though. Sarazin wondered if it is complaint driven, if it is that the city is not given revenue from room tax or is it the neighbors complaining. Tokos said that is a question further down the page. What's the difference between vacation rental and residential use. Why does it warrant different regulations? Branigan said a lot of the population in Newport is retirees. Sarazin said that those are things that should be resolved by law, like noise and parking wrong. She said we can't restrict people's use of their property. Those things will be resolved by the nuisance code whether for full-time or weekend visitors. Branigan said his experience is that nothing really happens when you make the call. It was noted that hotels and motels collect room tax, but a lot of these rent their places 50-70 times a year and don't contribute to the city. Tokos said that he encourages the Commission to stay out of the tax collection side of this. The charge for the Planning Commission is to look at the use side of it. Patrick said he thought we should open this up because we have people doing it anyway. East thought the limit of no more than ten times needs to be looked at. He said it is such a small number. Patrick said we need to look at the whole thing; what zones vacation rentals are in, how they are ran. We are looking at the zoning and the ordinance, not the nuisance code or tax code. We need to figure out what works best for our piece. We need clear and objective criteria. Tokos said that he is hearing that the Commission is interested. Then we need to determine in terms of criteria what to give to the ad hoc committee; what standards we are looking at that would be applicable to how a vacation rental is different than single-family occupancy. He gave an example that with a vacation rental there is a greater chance that occupancy would be greater or would fluctuate, and services (such as sanitation) may not be the same because someone is not there all the time to make sure garbage cans get hauled in or whether there should be a dumpster. Parking and maintenance could be different as well. They could take out their front lawn to put in gravel parking spaces. Tokos wondered if vacation rentals should be treated any differently than any other temporary occupancy situation. Apartment complexes, hotels, and motels have to have certain things that focus on fire, life, and safety aspects. He said that we don't want to have a code where we have to inspect vacation rentals on a certain basis but not hotels. East said that depending on how it's set up, there could be a house that could sleep a maximum of 6-8 people, which would be two families at the most. We should be sure that these facilities at least have parking and services for the maximum number of people that it could have. He said it's mostly up to the people renting to clean up. Usually someone comes in to inspect after. It is left up to the owner to make sure these are cleaned up. Patrick said there are occupancy standards for hotels and motels written into the building code, but there aren't for single-family residences. He said what his mother uses for her rental company is two for every bedroom plus one. Branigan said that for the Seafood and Wine Festival, for example, some rentals will have 40 in there because it's just a night or two. East said that hopefully owners have some common sense and some kind of rules and regulate how many people they let in. They should have some set standards if they want to use it as a vacation rental and are up front with it. Tokos asked if the Commission would like the committee to explore occupancy. He asked if the Commission agreed that the standards we look at should focus on how a vacation rental is used versus a single-family residence. Patrick said it would be no different than if he had a single-family house and had 16 of his closest friends living with him. If the standard is written, it should apply to everything. Tokos agreed that we can't go after the family definition. It gets back to the earlier discussion where the general consensus was to handle it under the nuisance code and apply to any occupancy. If we adopt standards specific to vacation rentals, they are needed because vacation rental use is different than single-family. Patrick agreed that they are more like a hotel/motel; a shorter time and a more intense use. Croteau said that parking would be the other issue tied to occupancy, and the other continuity of sanitation is recycling. Tokos asked if the Commission wanted only clear and objective criteria; or if discretionary standards are okay. Should standards be discretionary, or should they have to submit for application that provides notice and appeal options, or a combination? Patrick said that in a commercial zone, it is an outright use and would be over the counter; but if it is in R-1 or R-2 it needs a conditional use. Tokos said that there is a challenge with discretionary criteria; at least as it is now for a conditional use permit, which is no greater impact on neighborhood or services. He said that is not hard to meet. Patrick thinks we could make a good case for commercial, R-3, and R-4 zones across the counter, and R-1 and R-2 discretionary. He thinks some part of the program should be ministerial or over the counter. Fisher said some people do it and don't get business licenses if we don't require them to come in. Patrick said that gets in the taxing or licensing issue. Fisher said that if they don't get a

business license, then they are home free. From the audience, Bob Berman said that if this is complaint driven, the next-door neighbor complains. Fisher said then at least have them register and made aware of what the provisions are. Tokos advised staying away from the business license side of it. That will be addressed and updated just like the room tax. We have vacation rentals as a use and should determine how they should be treated. Is it some form of permitting? It can be dovetailed with business licenses such that we provide some additional standards at that time that need verification before you can get a license. If the standards are clear enough, we can do it over the counter; but if they are fuzzy, it is discretionary. Fisher thought they need to come in and sign up that they are doing it. Tokos said that if it is ministerial, there is no notice to the neighbors. If they meet the standards, they get the permit. Patrick said that he thought we will need a combination because it runs across several zones. Small said if we're not choosing an administrative action and neighbors are notified and it's treated like a conditional use, then there could be opportunities to add provisions to that such as additional parking or side buffer or be limited to some number. He said that if a neighbor were doing a weekly rental, he probably would want to speak to that. Sarazin asked Small how he would feel if he was transferred and had to rent out his house. Small said that, just like everyone else, he wants to be able to do what he wants with his property; but on the other hand, he wants to be protected against neighbors doing what they want. Tokos said that what he is hearing is that the Commission is open to discretionary criteria, but a lot should be ministerial with clear and objective standards. The suggestion was to keep it simple. Croteau asked if there was a set of standards in the code for monthly rentals. Tokos said there are nothing but building code standards for such things as apartment buildings. Patrick said most would be governed by CC&Rs. It was noted that partying is a nuisance issue. Rod noted that a characteristic of a vacation rental is rapid turnover; and Patrick added, intense use over a small amount of time. Berman reminded that there had been discussion about the definition of weekly rental. Tokos said we need to have more precise definitions. East said that "short-term rental" would probably be a better term. Patrick noted that if they go to monthly rentals, the vacation rental goes away. He said that enforcement regulation is a given, and the city needs to get reimbursed for it. If there is an administrative cost, the permit should cover that. Berman said that Lincoln City hired a full-time code enforcement person. Tokos asked what the Commission's philosophy toward enforcement is. The city's approach is complaint driven. If someone complains to the city, then we look into it. He asked if that is appropriate, or should it be more actively enforced. The question was raised as to whether we want to go down the path that Lincoln City took. Sarazin wonder who enforces it. Fisher said the police will talk to the renters, but the owner is not there. Tokos asked if they are setting up a process that requires active enforcement or something that can be handled on a complaint basis. He noted that if we are setting up enforcement, then we have to come up with funding for it. Patrick prefers complaint driven. East said if it's complaint driven, then it may trigger a compliance hearing. Tokos noted that the revocation procedure on the books now would only apply to a land use action on the books now. Branigan wondered if we could put in that if there is a complaint, and they have to come in and get a permit, then they have to pay an extra fine. Tokos said that yes, quite often if obtained retroactively, they have to pay an extra fee. Tokos said he is hearing that complaint-driven enforcement is okay. Patrick said that once it is set up, we can always go back and fix it later. At least we have something on the table. There should be an appropriate fee to offset the cost of administering the program. East said he thought this was a good start. Patrick said that will give the committee something to go on.

The Planning Commission's desired outcomes for amendments to the vacation rental code are summed up as follows:

- The Commission is open to looking at a vacation rental code.
- Need to consider what area they should be allowed in.
- The Commission would like maximum occupancy to be explored.
- Standards should address how vacation rental use is different than single-family dwelling use.
- Consider parking & sanitation.
- The Commission is open to discretionary standards, but a lot should be clear and objective standards.
- Keep it simple.
- Need more precise definitions.
- Complaint-driven enforcement is okay.
- There should be an appropriate fee to offset the cost of administering the program.

Tokos said he will contact all of the individuals on the ad hoc committee and set up a time to meet. He will take them the Planning Commission's desired outcomes. Draft amendments will be brought back to the Planning Commission.

B. Unfinished Business.

1. Update on conversations CDD Tokos has had regarding the combination of the I-2 and I-3 zones in amending NZO Sections 2-2-1.030 & 2-2-1.035. There wasn't time to get to this agenda item during the work session.

C. Adjournment. Having no further time, the work session meeting adjourned at 7:00 p.m.

Respectfully submitted,

Wanda Haney
Senior Administrative Assistant