



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, January 27, 2020 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of January 13, 2020.

[Draft PC Work Session Minutes 01-13-2020](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of January 13, 2020.

[Draft PC Reg Session Minutes 01-13-2020](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

4.A Adoption of Planning Commission 2020-2021 Goals.

4.B Amendment to Initiate the Legislative Process for the Sewer Facilities Element of the Comprehensive Plan.

4.C File No. 1-VAR-19: Final Order and Findings.
[Final Order and Findings](#)

5. PUBLIC HEARINGS

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

8.A Short-Term Rental Implementation Work Group Report to City Council.
[Memorandum](#)
[Quarterly Report](#)

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
January 13, 2020
6:00 p.m.

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

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

PC Citizens Advisory Committee Members Present: Braulio Escobar.

PC Citizens Advisory Committee Members Absent: Greg Sutton, and Dustin Capri (*all excused*).

Public Members Present: Lisa Phipps, and Heather Wade (*both by phone*). Mona Linstromberg, and Wendy Engler.

City Staff Present: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **New Business.**
 - A. **Estuary Management Plan Update.** Tokos asked to move the discussion on the Estuary Management Plan first. He reviewed the email sent by Lisa Phipps with the DLCD concerning the Estuary Management Plan updates. Lisa Phipps and Heather Wade introduced themselves and reported that they were willing to support the project.

Wade explained that the idea was to find a way to update the Estuary Management Plan. She felt that with the help of the DLCD the Yaquina Bay would be a good pilot project. The DLCD would hire a contractor to facilitate estuary planning. They would lead the process, do the plan drafting, and coordinate with all jurisdictions. They would then form a guide for other jurisdictions to update their estuary plans. Wade explained that the project was in writing now and would last for 18 to 36 months. They felt Yaquina Bay would be a great project to show how to do a plan properly.

Phipps noted the DLCD wanted to give \$5,000 to help Newport, Toledo and Lincoln County absorb costs for the plan update. Wade explained that they would know by March or April of this year if they got this money. If they did, it would be available next year. She noted that there would be someone in Newport and each jurisdiction who would be on the steering committee. There would be a taskforce to review the plan and participate in the process. Phipps thought the workload would be spaced out enough that it would move forward smoothly and accomplish things for the area.

Berman asked if the project was dependent on all the jurisdictions buying in. Phipps reported that Toledo had agreed to do it. They could go ahead without everyone, but she thought it would be a problem if the County didn't because they had a huge voice in it. Berman asked why the Port wasn't on list of stakeholders and participants. Phipps explained that right now they were just submitting the application and there was time to make adjustments. The Port would be on the technical advisory committee, but as far as the land use oversight, the Port didn't regulate its activities and was the thinking on why they were not included.

Hanselman asked where the upstream limit was for the estuary, and who would have jurisdiction and control of the estuary. Wade explained they were trying to address where the upstream limit for the estuary was as part of this exercise. This would determine where the limit was and how to address discrepancies. Hanselman

asked who controlled the estuary. Phipps clarified that there were multiple authorities that regulated estuaries. This plan would be dealing with land use oversight and they would be determining the types of uses being allowed in the estuaries, independent of what the State and other agencies would allow. The technical advisory committee would have invested entities who would be at the table for engagement. The Planning Department would help to line up all entities who would be involved.

Tokos reported he thought the County was on board with the plan. Berman asked for Tokos' thoughts on the Planning Department facilitating this. Tokos said it wouldn't be too much of a hit and work would be intermittent. Berman was in favor of a letter in support. Patrick thought the steering committee would be better off with the County. Tokos thought the City would need to participate in it otherwise there could be surprises.

B. Review Goal Setting Process. Tokos reviewed the goal setting dates on the work program. Patrick asked if the Short-Term Rental and Vision 2040 Work Groups had goals. Tokos thought they would have their own goals.

C. Updated Planning Commission Work Program. Tokos reviewed the work program with the Commission. He noted the placeholder for car camping that the Homeless Taskforce recommended. Tokos would be bringing the Sewer Facilities amendments to the Commission, and explained that the Tsunami Hazards Overlay amendments needed to be done by the end of the year. The Commission would also be discussing the Transportation System Plan before spring break to be able to make adjustments before open houses were done. There would also be a discussion on the parameters on needed updates in the Nye Beach Overlay.

Tokos noted there were four significant quasi-judicial actions that would be coming to the Commission. This included changes to the old Apollo's property, and the Whaler expansion up to Olive Street. Branigan asked if the Commission had to get involved with the work on the land for the animal shelter by the airport. Tokos thought this would be a conditional use review. The two other quasi-judicial actions were the Urban Growth Boundary land swap, and the third amendment to the OSU student housing planned development.

Tokos reminded the Commission that the work program was a living document and would be adjusted to accommodate things that came in.

D. Discussion on "Ex Parte Contact" Disclosure Requirements. Tokos asked Berman to explain why he wanted the Commission to review ex parte contact. Berman explained that the acting City Attorney discussed ex parte contact at the City Council meeting, and he needed clarification on it. Tokos explained how in the context of quasi-judicial land use proceedings, disclosure of ex parte contacts needed to be placed in the record for anything that was the substance of any written or oral ex parte communications concerning the decision or action at the first hearing following the communication.

Berman was concerned that the Commissioners wouldn't know when the first notice for a hearing was published if they didn't read the newspaper. He asked for clarification on when the actual start of communications would start. Tokos explained that when the Commissioners became aware of something, that's when they should be concerned about ex parte contact. Hardy asked if this included communications between commissioners. Tokos would check with the City Attorney on this. Patrick asked if emails between two Commission members would count as ex parte contact. Tokos said as long as the contact wasn't between a quorum it was okay. He did note that if the email was relevant to the record it should be submitted. Hanselman was concerned if discussions on items that hadn't been brought forth to the Commission yet needed to be reported. Tokos explained that if there wasn't a formal application, it wasn't required to be reported.

2. Public Comment. Wendy Engler thanked the Commission for agreeing to look at the Nye Beach Design Review Overlay. She thought there were a few big issues they should be looking at during the review. This included how lots could be combined on Cliff Street to build large homes. She noted the City had done a huge investment to make Cliff Street a walking/commercial pedestrian street and their intent was to have to have small cottages, not big homes. The core area between Olive, 6th, Coast, and Cliff Streets was an area

that the Glich report done in the 1980's thought it should be mixed use, and was what the city agreed to look at in 2011. Engler also thought the vacation rental regulations should be specific to Nye Beach instead of the broad Short-Term Rental Overlay, especially when it comes to parking for rentals. She thought the Commission should look at how many parking spots the short-term rentals in Nye Beach have before the updates were put in the Comprehensive Plan. Engler also asked for the Commission to look at what should be done with the old Brownfield.

Adjourned at 6:57 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
January 13, 2020

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

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

City Staff Present: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners East, Hardy, Berman, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Regular Session Meeting Minutes of December 9, 2019.

Commissioner Berman submitted minor corrections to the minutes.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve the Planning Commission Regular Session Meeting Minutes of December 9, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.**

A. **Appointment of Planning Commission Officers.**

MOTION was made by Commissioner Branigan, seconded by Commissioner Berman to appoint Jim Patrick as Planning Commission Chair. The motion carried unanimously in a voice vote.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to appoint Bill Branigan as Planning Commission Vice-Chair. The motion carried unanimously in a voice vote.

5. **Public Hearings.** At 7:03 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Commissioner Berman reported a site visit and an ex parte contact with Mona Linstromberg concerning the variance public hearing at the evening's meeting. Commissioners Hanselman, Branigan, and Patrick reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

B. **File 1-VAR-19.**

Tokos reviewed his staff report. He noted the additional public testimony he received that included a letter submitted by Fahrendorf, Gregory and Benedetti which was handed out to the Commission at the meeting,

and an email from Yaron Yuval who lived across the street to say he was opposed to development to the lot in general.

Tokos explained that the City had allowed variances in the past on other properties when there was steep terrain and noted the different variances that had been approved on Spring Street. He reported that there was general recognition that steep terrain was a justification for setback variances. Tokos pointed out that the stub of Spring Street terminated near the location and Mr. Roth would be required to widen the street to 24 feet, along with doing curb and drainage improvements. This meant that if the variance was granted the driveway would be well in excess of 20 feet making it closer to 30 feet.

Berman asked why the previously approved geological report for the property was not included in report. Tokos explained it wasn't included because it wasn't relevant to the criteria of approval for a variance. Hardy asked if there was a recommendation in the geologic report for placement of the buildings. Tokos didn't recall at that time if the language was in the geological report. Hanselman asked what hazard zone was affiliated with this property. Tokos said it was in active and high hazard zones depending on where you were on the property. Hanselman asked if adding fill in the ROW was permissible. Tokos explained that this was done on many occasions for driveways. Hanselman asked if this meant the owners would need to implement larger drainage lines. Tokos confirmed they would. Hanselman had concerns that the trees that were being taken down on the lots would destabilized the bluff. Tokos explained that this was addressed in the geological report but the report wasn't a part of the criteria consideration for this hearing.

Patrick asked if the geological report was based on the current footprint or if it was site specific. Tokos said the report had construction recommendations and the foundations they were proposing could be placed in a number of locations on the property. The report also required specific work on the lots as part of the site prep, including work near Spring Street. Tokos believed this was why they were removing a number of the trees as part of the remedial work they would be doing.

Proponents: Tim Roth addressed the Commission. He thought staff did a thorough job of describing the property, evaluating the application, and showing that all criteria had been met. He explained how Spring Street ended near his property and his development would be required to do improvements to the right-of-way (ROW). Roth noted that the building heights would meet the code. He felt the variance was a logical approach to keep the home away from the shoreline.

Berman asked if Roth had given any consideration for design the dwellings 10 feet shorter to be able to stick to the setback requirements. Roth said the lots were narrow and created some constraints. They couldn't build the homes to certain widths which forced them to be built further back. Roth noted he talked to the City to see if they could vacate any further portions of the ROW but the City confirmed they couldn't. The City thought the more logical thing to do was to ask for a variance. Roth's thoughts were to build the dwellings further away from the embankment to the west.

Hanselman was concerned about Roth's position on building away from the bluff when it meant he would be building on a cliff. He thought there were a lot of options instead of asking for a variance. Roth noted that the geologic permit noted they would be staying away from certain areas of the steep embankment. A discussion ensue regarding the terrain of the lots and how the buildings would be built to allow changes to the current grades. Roth didn't believe the steepest grade on the lots were where they were going to build. Hanselman thought the maps were misleading on this.

Opponents: Mona Linstromberg addressed the Commission. She asked for clarification that the site visits weren't done at the Lund property nearby. The Commissioners confirmed they hadn't. Linstromberg noted that public members had the option to make an appeal of the geological permit that was approved for the property. There were two people who had written letters about the geologic permit but couldn't afford to appeal this site's geological report. Linstromberg didn't think there was enough information in the record to make a decision on the variance. She didn't think the question was answered on designing homes for the property, and thought more consideration could be given to developing the property without a variance.

Hearing closed at 7:42 pm.

Branigan thought the staff report showed that the six criteria had been met. He reminded the Commission that they needed to base their decision on the information presented and it appeared all criteria had been met. Branigan thought reducing the setback to 10 feet was prudent and he didn't have a problem approving.

Hanselman explained that he was having trouble giving approval. He didn't think the applicant meet the unnecessary hardship because they could redesign to meet the setbacks and would then not have to ask for a variance. Hanselman thought the property was better suited for smaller homes.

Berman explained that he had some of the same concerns as Hanselman and noted that before the homes were designed, the applicant knew the rules. Berman thought a smaller house could meet the setback requirements. He thought a variance was a rare occurrence and didn't think the applicant demonstrated that the constraints were sufficient to justify a variance.

Hardy thought the applicant satisfied the criteria. She thought the owners were allowed to design what they wanted and reminded that variances were granted all the time. Hardy had no problem approving the decision.

East thought the staff recommendation had shown that all the criteria had been met and didn't have problem granting approval.

Patrick thought the variance criteria had been met. He noted other variances that had been granted were done for setbacks, and geologic or topography conditions. Patrick objected to developments not having room for cars to park and thought the new street width accommodated this. He didn't have a problem granting approval.

MOTION was made by Commissioner Branigan, seconded by Commissioner East to approve File 1-VAR-19 with the conditions of approval presented. The motion carried in a voice vote. Hanselman and Berman were a nay.

Tokos noted the final order would be brought to the Commission in two weeks.

6. **New Business.** None were heard.
7. **Unfinished Business.** None were heard.
8. **Director Comments.** None were heard.
9. **Adjournment.** Having no further business, the meeting adjourned at 7:49 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 1-VAR-19, APPLICATION FOR A) FINAL
VARIANCE, AS SUBMITTED BY J. T. ROTH, JR., ON) ORDER
BEHALF OF HIMSELF AND THERESA ROTH, OWNERS)**

ORDER APPROVING A VARIANCE pursuant to Chapter 14.33 of the Newport Municipal Code (NMC) to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots. The property is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on January 13, 2020; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from Community Development Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, **APPROVED** the request for the variance.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the variance as requested by the applicant with the following condition(s):

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall survey and stake the property line adjacent to NW Spring Street and 10 foot setback line and stakes shall be in place until footing inspections have been performed.
3. Pursuant to NMC 14.52.140/"Expiration and Extension of Decision," this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a variance is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 27th day of January, 2020.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-VAR-19

FINDINGS OF FACT

1. J.T. Roth, Jr., on behalf of himself and Theresa Roth, submitted a request on December 12, 2019, for approval of a variance to Sections 14.11.010/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots.

2. The property subject to the variance application is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.

3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Low Density Residential.
 - b. Zone Designation: R-2/"Medium Density Single-Family Residential."
 - c. Surrounding Land Uses and Zoning: Surrounding uses include a single-family homes to the north and east, condominiums to the south, and the Pacific Ocean to the west.
 - d. Topography: The developable portion of the lots is moderate to steeply sloped, dropping in elevation as the property extends west from NW Spring Street. The average slope is 30 percent from the street right-of-way line west to the edge of the bluff overlooking the Pacific Ocean. From the bluff, the property drops in elevation precipitously to the statutory vegetation line (60 percent slope). The developable portion of the lots, between the street right-of-way line and edge of bluff, varies from about 105 feet deep on the north line to a little more than 130 feet on the south line (Ref: Site Plan labeled as Attachment 2 to the applicant's narrative (Staff Report Attachment "C")).
 - e. Existing Structures: None.
 - f. Utilities: All are available to the property.
 - g. Past Land Use Actions: *File No. 5-PLA-07*. Minor property line adjustment to the south line of Lot 1, Block 49, Oceanview Subdivision to prevent a side-yard setback encroachment identified when the foundation was poured for the condominium development to the south. *File No. 8-GP-18*. Geologic permit to establish home sites on each of the three lots. Development may be in the form of single family dwellings or two-family attached (duplex) units.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on December 23, 2019, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., January 13, 2020.

Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on January 8, 2020. Two letters were received, one from Mona Linstromberg, dated January 8, 2020, in opposition to the variance and the other from the joint owners of the Wizards of the Sea Condos (David Gregory, Christine Benedetti, and Joseph Fahrendorf), dated January 10, 2020, in support of the variance request. Both letters were received after the staff report was prepared, and were distributed to the Commission members in advance of the hearing and are incorporated by reference into the findings.

5. A public hearing on the application was held on January 13, 2020. At the hearing, the Planning Commission received the staff report and oral testimony from the applicant and Ms. Linstromberg. The minutes of the January 13, 2020 hearing are hereby incorporated by reference into the findings. The Planning Staff Report and Attachments are hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Land use application form

Attachment "B" – County property report and assessment map

Attachment "C" – Application narrative with attachments and exhibits

Attachment "D" – Aerial map with zoning designation

Attachment "E" – Records from File No. 91-VAR-79 approving a 10 foot front yard setback variance for the property at 1541 NW Spring Street (Lot 4, Block 49, Oceanview Subdivision)

Attachment "F" – Final Order for File No. 1-VAR-12 approving a variance to eliminate the front yard setback for property at 845 SW 12th Street to allow the construction of a two-story, two car garage.

Attachment "G" – Public hearing notice

6. The variance request is being made because of the topographic constraints inherent to oceanfront property in this particular portion of the City. The variance will allow the homes to be located further away from the bluff, where the property is most steeply sloped and subject to erosion over time. NW Spring Street is improved to 22 feet in width, and the applicant will widen the street to 24 feet, with concrete curb and gutter along the property frontage, concurrent with construction of the dwellings. The NW Spring Street right-of-way is 60 feet in width and the street is located on the east side of the right-of-way (Ref: Staff Report Attachment "D"). The edge of pavement is 20 to 25 feet from the right-of-way line, and it is unlikely that NW Spring Street will be widened beyond 24 feet at this location given the limited number of properties being served. This means that even with the variance being granted, the driveways serving the homes will be close to, if not more than 30 feet in length, which is more than sufficient for off-street parking, particularly considering the applicant proposes to construct garages with the dwellings.

7. Pursuant to Section 14.33.030(C), Approval Authority, of the Newport Municipal Code, applications seeking more than a 40% deviation from a numerical standard shall satisfy criteria for a variance as determined by the Planning Commission following a public hearing.

8. Section 14.33.060 lists approval criteria for approval of variance application. Those criteria are as follows:

- a. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.
- b. That the circumstance or conditions above are not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.
- c. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
- d. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.
- e. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.
- f. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

CONCLUSIONS

The subject proposal constitutes a 50% deviation from the 20-foot garage setback required pursuant to Section 14.11.030; therefore, Planning Commission approval of the variance is required. In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis can be made:

1. Compliance with Section 14.33.060, Criteria for Approval of a Variance Application:

- a. *Criterion #1. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (The circumstance or condition may relate to: (a) The size, shape, natural features and*

topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.)

- i. To grant a variance, the Commission must find that a circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district and that the circumstance or condition prevents the owner from using the property in a manner comparable to how similarly-situated and zoned properties are used in the area.
- ii. The applicant, J. T. Roth, Jr., provided narrative responses to this criterion and the other approval standards (Ref: Staff Report Attachment "C"). Mr. Roth notes that the property is located on the west side of NW Spring Street and is an oceanfront site with steep sloped terrain. He points out that the westerly (approx.) 50 feet of the developable portion of each lot consist of a 2:1 sloped embankment (i.e. bluff) that drops down to the beach. This is typical for the neighboring properties located on this west side of NW Spring Street.
- iii. An existing residence located on the lot immediate north of the applicant's property, at 1541 NW Spring Street, was held forward when constructed, and the front yard setback for that property is approximately 10 feet. This is the same setback that the applicant is requesting. The property to the north was approved for a 10 foot front yard setback with a variance granted in 1979. The City's justification in granting the variance related to the topography of the site (Staff Report Attachment "D").
- iv. The applicant explains, and the Commission accepts, that similarly zoned properties located on the east side of NW Spring Street do not share the same terrain constraints and exposure to embankment erosion, as properties situated on the west side of the street.
- v. Each of the three lots owned by the applicant were platted with a width of approximately 54 feet, meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The applicant points out that the outcome of this characteristic of the lot(s) is that the further the house structure is pushed back on the lot the closer the structure is located to the steep (2:1) sloped embankment.
- vi. Public right-of-way for NW Spring Street fronting the subject property has a dedicated street width of 60 feet, and is currently improved (paved) to a width of 22 feet with no curbs on either side of the street. The applicant notes that they have been informed by the City that they will have to widen NW Spring Street to a paved width of 24 feet with concrete curb/gutter along the property frontage concurrent with development of the property. They further acknowledge that they will need to prepare civil engineering documents, subject to City approval, before the work is performed (Ref: Exhibit 1 to Staff Report Attachment "C").

- vii. With the improved street width of 24 feet, and approximately 2 feet of unimproved ROW along the east side of NW Spring Street, the applicant points out that there is approximately 24 feet of unimproved public ROW fronting their property between the proposed curb/gutter and property line. This area, in conjunction with the requested 10 foot setback, provides sufficient space for residential driveways.
 - viii. Considering the above, the Commission concludes that the narrow configuration of the lots, steep terrain, and embankment creates a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district.
- b. *Criterion #2. That the circumstance or condition in Criterion #1 is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.*
- i. Mr. Roth notes that the circumstances described existed before he and his wife secured a possessory interest in the property. He further points out that they have made no changes or improvements to the property that would have exacerbated the conditions that currently exist.
 - ii. The three lots subject to this request were created with the Oceanview Subdivision Plat, recorded in 1884, in Book 1 at Page 19 of the Lincoln County Plat Records. The property was designated by the City of Newport for low-density residential development with the adoption of the City's first Comprehensive Land Use Plan (Resolution No. 1788, effective March 3, 1975), and has been continuously under such residential land use designation since that time.
 - iii. Considering the above, the Planning Commission concludes that the unique configuration of the property, terrain, embankment, and zoning are not circumstances or conditions created by the applicant.
- c. *Criterion #3. That there is a practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.*
- i. Mr. Roth notes that the dimensional limitations of the property, when considered in conjunction with the terrain and location/configuration of the street, create a condition that warrants moving the improvements (structures) forward and further away from the sloped embankment.
 - ii. The City has historically viewed the application of dimensional standards, such as setbacks, as creating a practical difficulty when they would force development to occur on more steeply sloped terrain or close to a bluff/embankment. Examples include the 10 foot front yard variance approved for the residence immediately to the north, under criteria in effect in 1979 (Ref: Staff Report Attachment "E"). The same can be said for development that has occurred in reliance upon the current variance criteria, as evidenced with the

approval of a variance for a garage addition on property adjacent to SW 12th Street (Ref: Staff Report Attachment "F").

- iii. Conditions inherent to the applicant's property are effectively the same as those that exist on the lot to the north, which was granted the same 10 foot variance now being requested, and the fact that a home was constructed in reliance upon that variance is evidence that a 10 foot reduction is sufficient to alleviate a practical difficulty attributed to the application of the City's setback requirements.
 - iv. In objecting to the variance, Ms. Linstromberg argued that the applicant could have altered the design of the dwellings such that a variance wouldn't have been necessary. Two Planning Commissioners shared this concern; however, a majority of the Commission felt that topographic constraints inherent to the property, coupled with the desire to see development setback further from the bluff/embankment, were the more compelling factors. The majority further pointed out that the City has granted setback variances due to topographic constraints on many occasions without requiring that applicants design dwellings smaller than what they would otherwise be permitted to develop pursuant to the underlying zoning, and to do so now would be inconsistent with past precedent.
 - v. Given this information, the Planning Commission concludes that applying a 20 foot garage setback and 15 foot front yard setback creates a practical difficulty for the owner and that a 10 foot variance is sufficient to alleviate the practical difficulty.
- d. *Criterion #4. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.*
- i. Mr. Roth points out that adjacent properties to the north and to the south are currently improved with residential structures, and that their planned improvements are in line with such development. He further notes that property(s) to the east, on the opposite side of Spring Street, will not be impacted by a reduction to the front yard setbacks. The new development will be consistent with the existing building line established with the home to the north, and Mr. Roth points out that the 24 feet of unimproved right-of-way creates an additional buffer (i.e. a 34 foot setback from the back of curb/gutter to front of the improved structure(s)). He goes on to state that the effective setback of 34 feet exceeds the zoning code setback of 20 feet that would apply to a normal building lot. Additionally, Mr. Roth points out that the additional setback will allow for off-street parking of no less than 2 cars per lot, in addition to the parking garage designed with the structures.
 - ii. NW Spring Street is not a through-street. Mr. Roth points out that the north end of the street was vacated by the City, allowing a residential structure to be constructed at the end of the street, approximately 140 feet to the north of the subject lots. He notes that this

condition limits the traffic servicing the 5 existing homes on the street. This is also a reason why a 24 foot wide paved street is sufficient to meet the needs of adjoining and nearby development.

- iii. Mr. Roth acknowledges that the dwellings he is planning to construct will be required to conform to the City's building height limitations, and points out that such height limitations would apply to the structure(s) regardless of the front yard setbacks being 20 feet (current zoning code) or 10 feet (requested variance).
 - iv. While the property has been surveyed, and property corners adjacent to the NW Spring Street right-of-way have been identified, the location of that line may not be evident when construction is commenced. Therefore, it is necessary to require the right-of-way line be confirmed by survey and 10 foot setback line staked before construction of the dwellings is commenced. This can be addressed with a condition of approval.
 - v. Considering the above, the Planning Commission concludes that this criterion has been satisfied.
- e. *Criterion #5. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.*
- i. Mr. Roth indicates that the proposed variance will not interfere with access to the existing utilities. Sewer and water are existing in Spring Street. The new dwellings he is planning to construct will require he provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.
 - ii. The City's storm drainage requirements (Ref: Exhibit 4 to Staff Report Attachment "C") will require the applicant install a new catch-basin along the curb line. Mr. Roth further notes that he has been working with the City to resolve needed improvements to the public storm drainage system and that such work will not be impacted by the requested variance.
 - iii. Utilities are located within the right-of-way, so as long as the addition does not extend beyond the property line it should not interfere with the utilities in the area.
 - iv. Considering the above, the Planning Commission concludes that this criterion has been satisfied.
- f. *Criterion #6. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.*
- i. This criterion is limited to impacts that can be directly tied to the variance, as opposed to other impacts that might be associated with site development. Mr. Roth argues that the variance to allow the structure(s) to be located 10 feet closer to the front property line will

have no impact to the adjoining properties. He further points out that moving the structure(s) forward helps create more separation from the existing embankment.


- ii. There does not appear to be any impacts attributed to the variance that require mitigation. If approved, the building line of the new dwellings would be consistent with what has already been established for the property to the north. Undeveloped right-of-way between the street and property line provides additional separation that has the effect of establishing a setback that is more than sufficient to address any lighting or privacy concerns.
- iii. Considering the above, the Planning Commission concludes that there are no adverse impacts requiring mitigation.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate that the applicant has demonstrated compliance with the criteria for granting a variance, and, therefore, the request is **APPROVED** with the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall survey and stake the property line adjacent to NW Spring Street and 10 foot setback line and stakes shall be in place until footing inspections have been performed.
3. Pursuant to NMC 14.52.140/"Expiration and Extension of Decision," this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

Memorandum

To: Planning Commission
From: Derrick I. Tokos, AICP, Community Development Director 
Date: January 23, 2020
Re: Quarterly Report from Short-Term Rental Ordinance Implementation Work Group

Enclosed is a copy of the quarterly report provided to the City Council, as called for in Resolution No. 3857. The next work group meeting is scheduled for February 26, 2020 at 10:00 am. The meeting will be held at Newport City Hall.

This report was presented to the City Council at its January 21, 2020 meeting. That same evening, the Council considered a request by Mona Linstromberg that it initiate work on an ordinance to amend the short-term rental land use regulations in a manner that would phase out vacation rentals, situated outside the permissible area boundary, within a specific number of years. After taking public testimony, the Council elected to take no action on Ms. Linstromberg's request, preferring instead to see what, if any, recommendations the work group comes up with regarding the need for further changes to the City's short-term rental regulations.

Attachments
Quarterly Report

CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: January 21, 2020

Agenda Item:

Status Report from the Short Term Rental Implementation Work Group.

Background:

Resolution No. 3857 established a work group to evaluate the City's short term rental regulations to evaluate the implementation of those evaluations. The work group was also tasked to provide recommendations to the City Council on any adjustments that may be needed regarding Ordinance No. 2144. The resolution calls for the work group to provide status reports to the City Council on a quarterly basis. The first meeting was held on August 20, 2019, with the second meeting being held on November 19, 2019. The attached report, and other attachments outline the activities to date that have taken place with the implementation process of this ordinance.

Implementation of this ordinance has impacted a number of departments, including Community Development, Finance, and the Police Department. These departments have been implementing various measures that were called for in the ordinances adopted by the City Council.

24-7 - Hotline has been established and advertised, as well as the operators posting uniform signs providing this information to neighbors. This system was operational towards the end of October of 2019. Since this time, eight incidents have been submitted by phone, and sixteen have been received via the online form. The third party provider has provided data on operations that are not licensed. Community Service Officer Folmar has provided a report on enforcement actions taken by the City in response to these reported incidents. In addition, we have received e-mails that have been followed up by Community Service Officer Folmar. We are now certainly light years ahead of where we were since rolling out these new regulations on July 1, 2019.

A report will be made by the work group to the City Council in September of 2020 to discuss Ordinance No. 2144, the implementation of the ordinance, and any recommendations relating to the code or administrative procedures related to code enforcement. The work group will complete their efforts at the end of 2020.

Recommendation:

None

Fiscal Effects:

None.

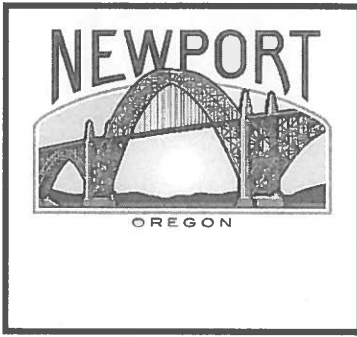
Alternatives:

None recommended.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "S. R. Nebel". The signature is written in a cursive, flowing style.

Spencer R. Nebel
City Manager



STAFF REPORT CITY COUNCIL AGENDA ITEM
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Title: Status Report from Short-Term Rental Implementation Work Group

Prepared by: Derrick I. Tokos, AICP, Community Development Director

Recommended Motion: None.

Background Information: Resolution No. 3857 established a work group to evaluate the City's recently updated short-term rental regulations for a period of time to determine if desired policy objectives are being achieved. This includes collecting and assessing information related to the implementation of the new rules (i.e. Ordinance No. 2144) and providing recommendations to city administration on how implementation of the ordinance can be improved. The work group will prepare a report with any recommendations for administrative changes or revisions to the ordinance by the end of September.

Resolution No. 3857 calls for the work group to provide status reports on a quarterly basis. This staff report and its attachments serve that function.

The work group has met on two occasions. The first meeting was held August 20, 2019 shortly after the 45-day period within which existing short-term rental owners could apply to renew licenses under the requirements of the new ordinance. At this meeting, the work group discussed its roles and responsibilities; reviewed the newly adopted ordinances and resolutions; was provided an overview of staff roles and responsibilities; and received updates on the status of the license renewal process and implementation of the third-party enforcement contract. Complaint resolution and frequency of meetings were additional topics covered.

A second work group meeting was held on November 19, 2019 at which members were updated on the number of licensed rentals, the wait list, implementation of the 24/7 hotline, and enforcement efforts. The group also discussed outreach needs and how they would like to proceed with the quarterly reports. There was general agreement that this initial report should consist of this memo, minutes from the two meetings, and an enforcement summary from Community Service Officer Folmar. Public comment was accepted at both meetings, as summarized in the meeting minutes.

There are presently 209 licensed short-term rentals in the City of Newport. Of that number 200 are vacation rental dwellings (i.e. whole house rentals), 6 are home shares, and 3 are Bed and Breakfast establishments. With regard to vacation rental dwellings, 155 of the licensed units are located inside the overlay zone that was established to define geographic areas where such uses would be permitted moving forward. The remaining

45 licensed vacation rentals are located outside the overlay, where they may continue as non-conforming uses until sold or transferred, or the use is discontinued for a period of 12-consecutive months.

With Resolution No. 3850, the City Council capped the number of short-term rental licenses within the overlay at 176. As noted, there are presently 155 licensed vacation rentals subject to this limitation. Additionally, there are 18 dwellings within the overlay, licensed prior to the adoption of the new ordinance, that are no longer being operated. Since these units were non-conforming, having been licensed prior to adoption of Ordinance No. 2144, vacation rental use of the units must be discontinued for 12-consecutive months before the right for these units to be licensed as vacation rentals goes away. Accordingly, these 18 inactive properties are still counted against the license cap.

Between the licensed dwellings within the overlay (155) and the inactive dwellings (18) there are 173 units that count against the cap. This means that three (3) licenses are available to properties on the waitlist. Assuming none of the 18 inactive properties are re-licensed, then those licenses would become available on August 15th of this year. There are presently 45 properties on the waitlist.

A total of 24 incident reports have been received since the 24/7 hotline was established and advertised, and operators posted signs on their properties listing the hotline number. The first incident reported via the hotline was submitted October 30, 2019. Eight (8) incidents have been submitted by phone, and 16 have been received via the online form. Of the incidents reported, the most common related to illegal rentals (7) and parking (6). Trash management, lack of required signage, and occupancy in excess of license limits were other issues that were raised. A report from Community Service Officer Folmar outlines enforcement actions taken by the City in response to reported incidents (only some of which were received via the hotline), information collected by the third-party vendor, or other available evidence.

The next work group meeting will likely occur in mid to late February.

Fiscal Notes: None.

Alternatives: None.

Attachments:

- Approved minutes from the August 20, 2019 work group meeting
- Draft minutes from the November 19, 2019 work group meeting
- Memo from Community Service Officer Folmar, dated January 15, 2020

MINUTES
City of Newport
Short-Term Rental Implementation Work Group Meeting
City Hall, Conference Room A
Tuesday, August 20, 2019

Members Present: Bill Branigan, Dietmar Goebel, Cynthia Jacobi, Jamie Michel, Spencer Nebel, Bill Posner, and John Rogers.

City Staff Present: Community Development Director (CDD), Derrick Tokos; Police Chief, Jason Malloy; Community Service Officer, Jim Folmar; Finance Director, Mike Murzynsky; and Executive Assistant, Sherri Marineau.

Public Members Present: Carla Perry, Cheryl Connell, Wayne Benson, and Mona Linstromberg.

1. **Call to Order**. The meeting was called to order at 1:05 p.m.
2. **Introductions**. Introductions were done. Tokos noted that Bill Posner and Jamie Michel served on the Short-Term Rental Advisory Committee (AC). He explained that the Short-Term Rental Work Group (WG) were exempt from the disclosures requirements required of that prior group because the new work group was appointed to fill specific roles as outlined in the resolution.
3. **Review and Amend Agenda as Needed**. Tokos reviewed the agenda and pertaining materials. He asked for adjustments to agenda. None were heard.
4. **Committee Scope of Responsibilities**. Tokos reviewed Resolution No. 3857 for the establishment of the Short-Term Rental Implementation Work Group, including the responsibilities of the group and staff.
5. **Short-Term Rental Ordinance Q&A**. Tokos noted that the ordinance was currently a part of the Municipal Code and was what the City was working under. He covered NMC Chapters 4.25 and 14.25, maps of the overlay zone, and Resolutions 3850 and 3849.
6. **Staff Roles and Responsibilities**. Tokos reviewed the staff roles and responsibilities. The Community Development Department (CDD) would ensure that Short-Term Rental (STR) licenses meet the current land use rules, or if they fell under the prior rules as nonconforming to the new rules. The CDD would also answer questions on the standards and land use rules. Nebel asked for an explanation of what nonconforming was. Tokos explained that most of the licensed STRs didn't meet current rules due to things like occupancy, parking, spacing standards, B&Bs that have more rooms than permitted in the new rules, and landscaping. This meant they did not conform to the new rules. Tokos explained the CDD maintained the STR waitlist, answered questions on the applicability of the rules, and supported the Police Department (PD) in the enforcement of the rules. He also explained how violations for licensed and non-licensed STRs would be enforced. The PD did the enforcement. The Finance Department did the license renewals and room tax collections.

Jacobi asked when would a suspension start when someone had two strikes with a suspension. Tokos explained it would be determined on the letter. If they didn't amend then they would get to another strike. Jacobi asked if the owner would have to cancel reservations. Folmar explained they are expected to take down advertisements and stop operations. Malloy said there was a challenge with the units that weren't licensed and were booked out a number of months, and it was hard to be sure that they stopped the rentals they had booked already when they took down the listing. The PD had to make a decision on how to enforce this. Folmar noted that the goal was to have everyone follow the rules, and they were in the process of finding the people who weren't doing this to educate them.

Branigan asked what happened with challenging complaints. Malloy said there was a recent complaint that was a continuation of the same complaint, that the person disagreed should be a continuation. When this happened the PD would open up the complaint list and look at the history to determine if it was another complaint. Tokos

noted the way the ordinance was drafted was the second and third letters went to the City Council and the Judge. The first violation needed to be worked out internally for the appropriate course of action. Malloy said the first letter didn't have a monetary loss and didn't hold as much weight as the next letters that did. The City still needed to map out a due diligence process.

Michel asked if the property owner had to bring the appeal to the city or if a property manager could. Folmar thought the property manager or representative could if they had written authorization. Tokos explained the violation would be against the property owner.

7. **Renewal Update.** Tokos reviewed the status of the STR renewals and the procedures going forward. He noted the STRs that didn't renew were not licensed at that time. They would remain eligible for STR use for 12 months under the nonconforming rules, starting on August 16, 2019.

Tokos reviewed the STRs that were still in process under the old rules. They had until November 1, 2019 to complete their applications before they were considered expired, because they had 180 days since the date the ordinance was approved (May 6, 2019) to bring their applications to licensing.

Tokos noted that when the numbers were tallied up for the STRs in the overlay, it came up to the cap number of 176. As of the date of the meeting, there was a waitlist with 15 people on it. Tokos noted that once the November 1st deadline passed, he expected some of the pending applications to not be complete, and assumed there might be open spots for new STRs at that time. Nebel asked when the nonconforming status would go away for the STRs that didn't renew. Tokos said it was 12 months from when the STR ceased its nonconforming use. Tokos said the City would have to wait for 12 months for the nonconforming uses to go away until the city added new licenses from the waitlist for those spots. He explained that there would be open spots after the 12 months was up on August 16, 2020.

Tokos reported that the City had forgone enforcement of the sign requirement until the third party vendor was hired. The City was in the process of ordering the uniform signs that would need to be posted. Michel asked if the property management placard could be posted alongside the City sign. Tokos said there were no rules that said they couldn't post the management sign as well. Michel asked if the City would be providing the signs to be installed, and if it would be at the City's expense. Tokos said he would look at the fee contract collected for the third party to see if it offset the costs. He thought it was reasonable to have the City cover the costs. If the fee contract didn't cover the costs, it would be on the property owner to pay for the signs. Michel suggested writing in the fees for the sign with the license costs.

Tokos explained that a more detailed list of licensed units would be posted on the website when the renewal list had been confirmed. Michel requested the contact information for the management or local contact be included on this list. She also requested the list on the website be searchable.

8. **Status of Third Party Enforcement Implementation.** Tokos noted that the 24-hour hotline was now up and operable. LodgingRevs was the vendor who the City contracted with. Tokos reported they had just completed a sweep of addresses in Newport to compare it to the list the City gave them on licensed rentals. LodgingRevs would send out one of two violation warning letters to the rentals that weren't licensed. Tokos noted the online version was in English and Spanish. He explained that the online complaint system wasn't active yet because staff training hadn't happened yet. The City would send a letter to everyone who participated in the process when the online system was open. Tokos explained that LodgingRevs would dispatch on complaints to the manager/local representative of the unit and the Community Service Officer (CSO) would follow up with these individuals.

Tokos said at first the City hoped to do online room tax payments through the LodgingRevs system but the City decided to use the Caselle system. Each owner would do this online as part of their room tax remittance and was about 3 months out for it to start. In the meantime, owners would do paper submittals. LodgingRevs would be auditing what the City should be collecting, and they would do a boiler plate reminder to owners to pay room taxes. Nebel thought the reminder would have a link to the website.

Posner asked if the City would get a feedback report from the public on how the vendor was doing. Malloy said the PD could monitor when calls came in and when they were dispatched to see if there was follow up as a way to monitor the vendor. Goebel asked how LodgingRevs would report to the City. Tokos explained the enforcement would be given to the PD and the room tax estimates would be submitted to the Finance Department. Murzynsky reported that owners would get a pin number to pay the room tax payments.

Michel asked if the report the vendor gave on the number of nights a unit was rented for room tax remittance took into account different times of the year the unit was rented and the different rates. Tokos said they would look at significant discrepancies for issues. Michel voiced concern about complaints not being assumed to be violations. She asked if a neighbor called about a disturbance and the management called the guest and it was stopped, would it be a violation. Folmar said it wouldn't be a violation until it reached the PD and there was multiple evidence. A letter wouldn't be sent for every call. There needed to be evidence that the violation occurred and something to support it. Michel was concerned that the signs would only have the 24/7 hotline information, and not the management information on it. Folmar said the PD would be looking at complaints on a case by case basis. Nebel noted that the 24/7 hotline would call the managers first. Malloy said that the PD needed to determine how to be consistent with the complaints and how violations were determined. Tokos said a violation needed tangible evidence to prove it violated the code.

9. **Complaint Resolutions.** Folmar reviewed the PD memorandum on letters sent out for violations. He noted he was looking at various websites to determine if STRs were licensed until the third party website was up and running. Letters had been sent out for over occupancy and were complaint driven. Nebel noted there would be a better report at the next meeting on where things stood. Tokos thought it would be helpful for the CSO to get as much of his research and complaints he had dealt already within the system. Nebel thought the PD needed some standard protocol when responding to STR complaints to make sure the CSO was informed.

Branigan asked if there was a backup for the CSO when he was out of the office. Malloy said there were two CSOs and each would back up the other. They were establishing protocols, and Officer Ballentine would be trained to step in when Folmar was gone. They would both share job duties until close to the beginning of the year when they would see what happened with the third party vendor. Goebel asked if the CSO saw an increase in complaints. Folmar said they had not received a lot of complaints. There had only been one or two complaint driven letters sent out to owners. Folmar thought a lot of people didn't know how to log a complaint yet. He felt signage would help officers. Malloy said there had been about a dozen complaints that came in before Folmar started and they were from people who were part of the STR process. He worked with Tokos on responding to them. There had been four cease and desist letters sent and a few phone calls. Malloy thought there would be more of this happening after people understood the process.

10. **Frequency of Meetings.** Tokos noted that the resolution committed the WG to report to the Planning Commission and City Council on a quarterly basis. He asked for input on when the WG should meet. Nebel thought a meeting in the next month would be advantageous. Tokos would do a poll to get dates in October/November for the next meeting. Malloy noted that if the WG had enforcement questions they could reach out to him and Folmar.
11. **Public Comment.** Tokos opened up the meeting for public comments. Carla Perry asked how people would provide direct evidence if they used the phone to make a violation report. Tokos would talk to the vendor about this and thought the vendor would direct them to upload the evidence. Perry was concerned that not everyone had a computer to do this. Malloy said there could be a request for follow up by the CSO to talk to the complainant about the evidence. Nebel thought they City needed to have a discussion with LodgingRevs on what the agents should say. Tokos would write a script for the agents at LodgingRevs to use.

Perry asked if the information on the list of licensed STRs would be done and how the local representatives were going to be shared. Marineau explained that the list provided had the most up to date information on the local representatives. This information was what was provided as part of the STR license renewals. Some of the STR renewals listed as "incomplete" were still missing the local representative information. Perry didn't see Meredith Lodging on the list and she knew there were some rentals that used them as a manager. Folmar reported that he had been looking at Meredith Lodging's website along with other property management websites for compliance.

He reminded that the owner would be contacted first and then would talk to the manager. Perry suggested that LodgingRevs said “property violation report form” instead of just saying “property complaint form”. She felt complaint was a negative word and thought violation would go over better with the populous. Malloy said complaints was a standard word. Using the word “violation” indicated there was already a violation.

Cheryl Connell addressed the WG. She wanted to rename the complaint button and try to get the nomenclature different. She asked the WG to consider that many of the people reporting complaints had been undergoing this for many months and needed to be treated with respect. She wanted to know what the process would be to let people know about the new reporting process. Nebel said once the City knew things were working with the third party vendor, they would look at ways to get the word out. They could look at a standard press release and giving it a prominent place on the website. They could also possibly put a notice in a utility bill mailing. Tokos explained that they wanted to reach out to everyone who participated in the process to let them know. He hoped the signs would also inform the public. Connell thought multiple types of notifications would reach many people and was necessary for the City to be successful in getting the word out. Nebel thought it was important to direct people to a central location and do internal training with staff on forwarding complaints in this system. Connell requested that whatever they decided, they should do a direct mailing to residents next to STRs. Nebel asked to add an agenda item on the next meeting to discuss the outreach process. Connell requested the CSO be available to speak to groups on how to make a report on complaints.

Wayne Benson asked for clarification on how an STR could operate for 12 months if they didn’t renew. Tokos explained the STRs that didn’t renew couldn’t operate, but had a right to come in to get a proper license within 12 months. If they were operating at the time, they were in violation. Tokos explained that these STRs could still get a license, but it would be a brand new license with their spot held open for 12 months. Once the 12 months passed and they discontinued use, this went away. Wayne suggested “incident” instead of “complaint” when reporting. He asked if the signs would be clear that the units were STRs. Tokos confirmed they would.

Goebel asked if someone who called in a complaint report had to follow up with a written form. Nebel explained that the call would generate a report and the vendor would call the owner. The CSO would get a report each morning on who called in, what the complaint was, who responded, and a brief description of what happened. Michel asked if the property manager would have to report back to the city on how they responded. Folmar hoped that there was something on the complaint system to request the property management report back to the CSO on what had been done. Michel requested this be discussed in the staff training.

12. **Adjournment.** The meeting adjourned at 2:53 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

Draft MINUTES
City of Newport
Short-Term Rental Implementation Work Group Meeting
City Hall, Council Chambers
Tuesday, November 19, 2019

AC Members Present: Cynthia Jacobi, Jamie Michel, Bill Posner, Dietmar Goebel, Spencer Nebel, Bill Branigan, and John Rogers.

City Staff Present: Community Development Director (CDD), Derrick Tokos; Police Chief, Jason Malloy; Community Service Officer, Jim Folmar; Finance Director, Mike Murzynsky; and Executive Assistant, Sherri Marineau.

Public Members Present: Carla Perry, Mona Linstromberg, Anne Sigleo, Wayne Benson, Elaine Karnes, Chris Schneller, Cheryl Connell, Ona McFarlane, and Teresa Inman.

1. **Call to Order.** The meeting was called to order at 10:34 a.m.
2. **Review and Amend Agenda as Needed.** Tokos asked for amendments to the agenda. None were heard. Tokos noted that the City Council had been contacted by several short-term rental (STR) owners who the City couldn't assist in issuing licenses to due to the new ordinance rules. Tokos asked to add this topic to the agenda. The committee was in general agreement to add the item to Section 8. B.
3. **Approval of Minutes.** Motion made by Jamie Michel, seconded by Spencer Nebel to approve the August 20, 2019 Short-Term Rental Implementation Work Group meeting minutes as written. The motion carried unanimously in a voice vote.
4. **Update on Licensed Short-Term Rentals, Cap, and Waitlist.** Tokos reviewed the staff memorandum noting the STR renewal process had been completed. The deadline for the STRs that had submitted applications before the new ordinance had passed. Tokos reviewed the current counts of STRs in and out of the overlay zones, and the number of home shares and B&Bs. He explained the nonconforming rights for licensed STRs that didn't renew. Jacobi asked if there were any STRs included in the counts that were currently under construction. Tokos reported there weren't because only existing dwelling units could be licensed.

Goebel asked what the total housing percentage of VRDs were for those in and out of the overlay zone. Tokos would provide these percentages. Michel asked when the three open spots on the STR waitlist would be available. Tokos explained that now that the counts were cleared, under the new rules the City's intent was to start contacting owners of units on the waitlist.
5. **Disposition of Short-Term Rental Applications Submitted Prior to Ordinance Adoption.** Tokos reviewed the staff memorandum. He explained that nine of the 23 applications that were submitted before the deadline didn't follow through with the licensing process. These units were notified in writing that the City would not be doing anything further with their applications. Tokos noted that one applicant asked to be placed on the waitlist.
6. **24/7 Hotline Implementation.** Tokos reviewed the staff memorandum. He explained the third party vendor had been hired and 24/7 hotline signs had been distributed. A notice was sent out by mail and email to all licensed STRs to pick up the signs. Tokos explained that the ordinance didn't address signs for condo units, so it was decided that they would only require one sign per building. The Embarcadero had multiple buildings so their signs were placed in locations as per units in the buildings. Branigan asked what would happen with owners who didn't pick up signs. Folmar reported that he had contacted the owners of these units and gave an update on who responded to his requests. Tokos noted that there had been complaints that some owners had picked up signs but hadn't installed them. Folmar would be following up with these owners.

Tokos reviewed the types of complaints that had been reported on the 24/7 hotline. He noted there was a centralized database for the Police Department (PD) to follow up on. When complaints were lodged outside of

the system, Folmar entered this information into the system. Posner asked if the response time was tracked in the system. Tokos explained that it was and he would be speaking on this when he talked about the LodgingRevs interface. He noted he would be talking to the vendor and getting a report on this. Tokos reported that there were now links to the hotline on the City's website.

Jacobi requested that acknowledgements be sent out when a person submitted a complaint on the hotline to make sure they received confirmation that the complaint was received. Folmar said when he saw a complaint submitted he added a note to the record so there is a time stamp. He wasn't sure if the complainant could go back in the system and see his notes. Tokos reviewed incident reports that showed what the City saw in the system and the notes that Folmar logged. He reviewed the audit log where the time stamp was recorded. Posner asked if updates were requested from the vendor. Tokos said they were and the incident form was an example of this. Posner thought that if the customer's email was in the complaint it would be easy for the vendor to send out an email to them confirming the status. Tokos would talk to the vendor about this.

7. **Enforcement Update.** Folmar gave an update on enforcement and reviewed the report he handed out to the Work Group at the meeting. He noted that a lot of the complaints were happening over the weekends and he was following up on these on Mondays because of his work schedule. Folmar reviewed his workflow on following up on complaints. Posner asked if the system prioritized complaints. Folmar explained they didn't but he would prioritize them as they came in. Malloy asked if LodgingRevs triages and then sends the complaints to dispatch for pressing issues such as loud noises, and blocked driveways. Tokos explained LodgingRevs would first contact the local representative of the unit, and if the issue was more criminal LodgingRevs would contact the police. He would follow up with LodgingRevs to understand what circumstances the City wanted the issues referred to the nonemergency lines. Nebel asked what happened if the complaint with the local contact person remained unresolved. Folmar said they were trying to work through how to know when to involve an officer and who called dispatch directly. He said he hadn't had an instance where the contact didn't respond. Folmar reminded that the public could call the police first for issues as well. Nebel thought the protocol needed to be sorted out to understand if LodgingRevs was initiating to dispatch or directing them to contact 911. Goebel asked what happened when calls came in directly to the PD. Malloy said they are working through this with officers on how to make sure that Folmar was notified, how officers responded, and how to know if a complaint constituted a strike.

Goebel asked if strikes on STRs ever went away. Malloy said strikes stayed on their record for 12 months, and they would review every complaint reported to determine if it was a strike. Michel asked Malloy to share what the basic outline of the findings for strikes was. Malloy said when an issue was a blatant violation of one of the listed violations, they would be hard pressed to say it was not a strike. Folmar said there were a couple of violations that fell in the gray areas and the findings didn't fit. He was working through the complaint issues and once this was figured out they would see gray areas get smaller. Michel asked if someone responded to a complaint and corrected it, would the complaint go away. Folmar explained if they did the corrections it wouldn't be considered a strike. Malloy reminded that this would be determined case by case. Branigan asked if anyone had ever tried to appeal a citation. Folmar said they did, and gave an example of a long term rental that was advertising on Airbnb. The owner had to submit information that proved the unit wasn't a STR. Malloy reported that nobody had pleaded not guilty or asked for a court hearing. Goebel asked how much the citation was. Folmar explained it was a monetary citation of \$500 per day.

Tokos reviewed enforcement issues the City was having with time shares, which were resorts where the units were owned for a portion of the year. He noted that as long as owners of time shares were going through the resort to rent their units, they would fall under the hotel/motel category. If the owner was going through Airbnb to rent, it would be a code violation. Folmar reported on the time shares he had followed up with to find out who wasn't compliant. Malloy noted that trying to track down noncompliant time shares was labor intensive and hard to do.

Tokos explained the City was looking to shut down STR units that were operating without licenses. In cases where the units were rented with Airbnb, their room taxes were being collected and submitted by Airbnb to the City. Tokos noted that Airbnb did not remit which unites they were collecting room taxes for. He noted that State law required intermediaries to collect room taxes. Goebel reported that there were some cities who required

Airbnb to have a business license and asked if they had one for Newport. Murzynsky reported that he thought they did have a license with the City and would look this up for the work group.

Rogers felt that owners who operated STRs without a license should share in the expense of the officers assigned to perform duties across the City. He thought the Work Group should discuss requiring a reimbursement for services the STR owners received even though they didn't submit revenue for their support. Folmar noted that other cities ran into issues with citing for STR operations without licenses. There were instances where owners went to court and argued they couldn't cite based on advertising because this only showed intent, not actual proof of operations. Folmar said this was something they could do but they would have to decide how far they would ask the owner to report on their rental listing. Tokos reminded that in the circumstances where the rentals were renting through Airbnb or other intermediaries, the City knew these units were paying room taxes. If they weren't using an intermediary, the City wouldn't have the data and this would be more challenging. Michel thought the City would be chasing their tails by pursuing this because they would be relying on the owner to provide the data and the records might not correct. She thought this was a waste of City money. Tokos thought the City could require the units that received a cease and desist letter to log if they were are using an intermediary to make sure the City had the information. He suggested tracking this for a given time and then report back to the group. Tokos said that because the City was operating in a situation where they weren't adding licenses, this would be an ongoing problem. A discussion ensued regarding one off rentals and the City not going through a full summer rental season yet.

Michel asked if there could be a ruling going forward that said if someone was caught or received a cease and desist letter, they would be required to owe back taxes going forward. Nebel thought this issue might need a resolution from the City Council on room taxes. Tokos said they could try and track which units were already paying taxes through Airbnb. Goebel asked if there were any requirements for someone to use someone's house without money being exchanged. Tokos said this was allowed outright as long as there wasn't money exchanged.

8. **Outreach Needs.** Nebel noted that the City had been dealing with fallout from owners who didn't have a license when they thought they did, and weren't able to get a license. They City had been receiving communication from these people who were unhappy that there wasn't a remedy. Nobel wanted the Work Group to know how these were being dealt with. Goebel asked if a group email report could be done to the Work Group. Nebel thought they probably could but it was good for the Work Group to be aware that it was taking a fair amount of time for the City to respond to the issues. He noted some issues that were coming up that included people who were appealing but there wasn't an option for appeals. Tokos would put together correspondence from these instances so the Work Group could review them the next meeting. He explained they were required to work within the framework of the ordinance as it was written, then identify what the rental options were for these owners such as renting month to month. Tokos noted there was also an option to do home shares for their rentals as well. Owners could also contact the City Council about what the issues were. Tokos felt it was important for the responses to be the same from everyone at the City. He noted that staff could be pulled in to help with responses. Jacobi wanted to acknowledge any letters the City Council received and then refer them to staff. Tokos said it was important for the Council to respond first, but he was happy to do this. Nebel noted there were people who were frustrated and thought some of them would be coming to the City Council to address their concerns. A discussion ensued regarding what the City Council was expected to do, and ways the City Council could acknowledge concerns then direct them to staff.

Nebel suggested putting together responses to certain issues for the City Council so they could be consistent with language. He said the key thing to note was that the City needed to get the process in place, they had made a lot of progress to get this fully in place, but they weren't there yet. Tokos would put together suggested language for the City Council. Goebel asked if the City Council was notified in all of these instances. Tokos reported that most of the instances were taken care of at the department level. A discussion ensued regarding how unlicensed units were handled and what the different options were for owners. Nebel noted that the new ordinance put distinctions in place that hadn't been defined before. They would have to sort through issues that were new to the ordinance to clarify and clean things up.

9. **Workgroup Status Reports.** Tokos reviewed the staff memorandum. He noted the ordinance required status reports on a quarterly basis to the City Council and Planning Commission. Tokos asked how the Work Group

would like to do the reporting and suggested using the meeting minutes as the reports. Posner wanted to see the stats come out of the system on complaints by pulling the dashboard out of the system. Michel asked if they could collect in the minutes what the findings were on incidents. Tokos suggested attaching a summary memorandum to the minutes, along with a summary from Folmar, as the report. The Work Group was in general agreement to do this.

Murzynsky reported the Finance Department was starting the process to work with Casella to do room tax reporting. They were hoping to have it done by December 31, 2019. Murzynsky explained they were working on the foundation of Casella to make sure the system was set up properly. Tokos noted that there was one component with LodgingRevs that the City hadn't implemented yet because it was dependent upon the ability of STR operators to make online room tax payments. This was what the Finance Department was working on. Tokos explained that LodgingRevs monitored what the STRs collected for room taxes and compared this to what people actually reported to the City to find significant discrepancies. Michel questioned if LodgingRevs was looking at block outs on online calendars to monitor this. She noted that people would block out rental dates without actually renting them. She was concerned this could mean discrepancies and might be misleading. Michel gave an example of units that were currently under renovation that were blocked out on calendars. Tokos noted that the LodgingRevs reports would flag the property for a follow up and wasn't an immediate violation.

10. **Public Comment.** Tokos opened up the meeting for public comments. Anne Sigleo addressed the Work Group and reported she had a complaint about dogs at STRs and thought that STR renters shouldn't be allowed to have them at rentals. She also had concerns about how renters parked and reported experiencing the renter's cars being parked out on the street. Sigleo thought there needed to be a stronger emphasis for renters to park where they were required. She asked what should happen in instances where the public had proof that a unit was being rented without a license. Nebel noted the public could submit a complaint in the system for this. Malloy said the Police Department wouldn't know about some of the unlicensed units unless people reported them. Folmar noted that anything that was reported would be followed up on and enforced.

Cheryl Connell addressed the Work Group. She asked for clarification on if "nonconforming" was for the property or for the use. Tokos explained that this was a nonconforming use for all of the STRs that were licensed and fell under the 2012 ordinance. These units became nonconforming because they didn't satisfy the full parameters of the new ordinance. Connell asked if the nonconforming use went away when ownership changed. Tokos explained that if the unit was outside the overly zone the license went away as soon as ownership changed. If the unit was within the overlay zone and in a residential zone, the license would go away. If it was in the C-2 or water related zones, an ownership change would mean the owner would have the right to sell the unit as a vacation rental and their place in line was held open.

Connell asked how long a strike lasted. Folmar confirmed it lasted 12 months. Connell noted that LodgingRevs was still listing the form as a "complaint" form and wanted the word taken out. She requested Folmar's report that was handed out to the Work Group be provided to the public. Tokos confirmed that the report would be uploaded to the Work Group's web page. Connell noted that the minutes from the last meeting noted that Nebel wanted the list of STRs provided in an Excel spreadsheet as well as a PDF. She requested this be done in the future. Connell noted that the hotline signs were critical for when the PD went out so that they could identify the unit as a STR. She reported that she had observed signs that were not located in an area that was easily seen on the property. Connell wanted signs posted at the front doors. She asked for clarification on the follow up on violation reports, and noted that she contacted Folmar with a violation report three weeks before without a follow up. Folmar noted that Connell sent her email complaint to an incorrect email address for him. He thought he had sent her a reply already but would resend it to her.

Elaine Karnes noted she submitted a couple comments online without having any follow up. Folmar noted the system had some problems and there were a couple of complaints that still needed to be addressed. Karnes thought it was an issue that complainants weren't getting a response. Folmar hoped they could build something in LodgingRevs so the complainant could see that he placed noted on the complaint. Tokos would talk to LodgingRevs on getting an automated response to complaints sent out to acknowledge they were recorded in the system.

Mona Linstromberg addressed the Work Group. She had concerns about issues with septic system capacities for STRs properties in the City. She questions if any licensed STRs were on septic systems and requested the City look into this to determine who was. Linstromberg noted that properties in unincorporated communities were having problems with septic systems accommodating the number of rooms for STRs. Tokos explained this was not easily determined and thought the City's bedroom limitation was more strict than the County. He noted the City dealt with modest residential homes and the County had larger sized residences on septic systems. Tokos reported that the City didn't know all the properties who were on septic but generally most of them were not sizeable. Linstromberg noted that when someone made a complaint they should be able to do it anonymously. The system was requiring people to have a name attached to the complaint. Tokos noted that he saw where no email was provided and thought a field could be noted as blank.

Carla Perry addressed the Work Group and reported that a person told her they couldn't file a complaint without submitting a name. Folmar thought they should have the option to not give a name. Tokos would follow up with LodgingRevs on this. Perry recommended that a STR application has a statement that the applicant is signing off that the above information was true. She also wanted the person listing the complaint to be able to print out a report of the complaint on LodgingRevs so the person listing the complaint had a record of it.

Perry asked if there was a time that the data of all complaints would be made available to the public online. Folmar thought this could be discussed with LodgingRevs. Perry noted that Meredith Lodging was a major player in rentals but didn't see them as being one of the sites checked. Tokos thought that LodgingRevs had done this and there had been a check on them since the last meeting. Folmar reported that the STRS that were advertising and had discrepancies were reported to him by LodgingRevs. The PD depended on the public to report other unlicensed STRs that weren't advertising. Perry reported there were issues with STR hotline signs being hidden. She asked what was being done about getting these signs moved. Folmar noted the STR that was reported had a sign that was visible from the adjacent street. The ordinance said signs needed to be visible from the adjacent street. Perry suggested that if STR owners be encouraged to put the signs in more visible spots. Folmar thought they could suggest this to the owners. Perry noted the complaint she submitted said it was closed on the report because the parking wasn't in violation. She explained that her complaint wasn't for parking, the renters were using the adjacent property for parking, which blocked a public the trail. Folmar explained the 72 hour rules and requested that they be contacted when the renters were blocking access to the trail again. A discussion ensued regarding STR parking requirements and how people utilized public parking. Clarification was given that STRs needed to provide one off-street parking space per bedroom but renters weren't required to park in the designated parking spaces if none were available. There was nothing in the ordinance that limited the number of vehicles renters had when staying at STRs.

11. **Adjournment.** The meeting adjourned at 12:46 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant



Noble
Professional
Dedicated

Newport Police Department
Memorandum

One Team - One Future

Date: 01/15/2020

To: Chief Malloy

From: CSO Jim Folmar

Subject: Current Status of STR Compliance

This letter is to inform you of the enforcement actions taken since the inception of the amended VRD ordinances. These actions cover to present.

“Cease & Desist” Letters issued to properties in the overlay zone – 27

“Cease & Desist” Letters issued to properties outside the overlay zone – 11

Citation Letters issued – 17

“First Strike” Violation Letters issued – 8

“24/7 Sign” Violation Letters – 18

Of the above listed numbers, compliance had been achieved on a majority of the violations listed. A small number are still being investigated and will be resolved soon.

Sincerely,

Officer Jim Folmar