



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, November 26, 2018 - 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 Regular Session Meeting Minutes of November 13, 2018.

[Draft PC Minutes 11-13-18.pdf](#)

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 Final Order and Findings for File No. 2-SUB-18/4-GP-18 (Continued): Four Lot Townhouse Subdivision.

[File 2-SUB-18 -- 4-GP-18.pdf](#)

5. PUBLIC HEARINGS

5.A File No. 6-MISC-18-A: Appeal for the Request to Retain Existing Timber Curb Instead of Required Concrete Curb.

[File 6-MISC-18-A.pdf](#)

5.B File 4-NCU-18: Surfside Mobile Village Addition of One Permanent Space.

[File 4-NCU-18.pdf](#)

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
November 13, 2018

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

Planning Commissioners Absent: Jim Hanselman (excused)

City Staff Present: Community Development Director (CDD), Derrick Tokos; City Attorney, Steve Rich; 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 5:00 p.m. On roll call, Commissioners Hardy, Berman, Franklin, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work session meeting minutes of October 22, 2018.

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan to approve the Planning Commission work session meeting minutes of October 22, 2018 with minor corrections. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of October 22, 2018.

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan to approve the Planning Commission regular session meeting minutes of October 22, 2018 as written. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.** No Action Items.

A. **File No. 1-GP-18-A.**

Patrick asked the PC for their comments. Hardy stated there had been better geological reports submitted in the past and this report lacked any reference of the impact uphill on the site. Berman stated that he had reviewed the audio, video, and materials from the first public hearing and felt he was familiar enough to give a vote. He read his testimony into record stating that when he was making his decision he was only looking at the requirements in the Newport Municipal Code. Berman said he would vote to override the Director's decision. He stated he thought it may be possible to develop on this site but thought they needed a new geological report. Berman encouraged Lund to resubmit a new application with new data for consideration.

Patrick read a statement from Commissioners Croteau and Hanselman into the record as they were not present for the hearing. Croteau listed additional studies that he felt were needed for the geological report data and felt if these were done he could approve the application. Hanselman listed his concerns with the geological report and thought a more thorough report needed to be completed.

Franklin agreed with everything that had been stated and thought there needed to be actual studies on the site where the house would be built. Branigan stated that he had reviewed the audio, video, and materials from the first public hearing and said he was up to speed to give a vote. He acknowledged all the testimony that had been given and noted because he wasn't a geologist, he relied heavily on Newport Municipal Code (NMC) 14.21, NMC 13.05, KD Engineering, and HG Schlicker for his decision. He concluded that these had been met the criteria. He felt the recommendation to do additional borings would mitigate any potential issues. He felt that Mr. Lund's delay on responses to the City to get various permits should be dealt with harshly and would leave this up to the City.

Patrick said there was four ways the PC could rule on the matter. He felt the first argument, for the need of additional housing, wasn't a proper argument in this case when health and safety was involved. He didn't want to set a precedence. Patrick said they also could rule the application incomplete and wasn't complete. The third choice was to uphold an appeal based on the thought that the information provided didn't apply to the site to be built on. The fourth option would be to accept the geologic report but apply conditions. Patrick stated he was in favor of options three or four. Tokos reminded the PC they needed to be as explicit as possible when doing a motion for the final order and findings.

Patrick asked if the PC upheld an appeal, would the process for the appeal be done. Tokos said it meant it would be brought to the next PC meeting for final order and would be subject to an appeal to the City Council (CC). Berman asked if the PC approved the appeal, the motion and final order were prepared, and there was no appeal, would Lund be able to start over with a new application to prepare materials to address areas of concern. Tokos said Lund would have the right to appeal to the CC and if he didn't he would be able to submit a new application for the property.

Franklin asked what the difference would be to view this as an incomplete application. Tokos said it was just a different reason to uphold the appeal. Patrick asked if the PC could add in the concerns about hydrologic report. Tokos cautioned the PC to be careful about going outside of the context of the code and encouraged them to not put this in as a reason for denial.

Steve Rich addressed the PC and said he echoed what Tokos. He said to make sure the reasoning was in the code and said that the concerns on the hydrologic report would be outside of the criteria. Berman felt that the geologic report didn't apply to the current development plan was reason enough. Tokos asked if Berman was saying that he wanted to see additional borings around the specific development. Berman agreed and said they couldn't have a development plan and then have a geologic report that didn't speak to the development plan. Patrick asked if this could be the basis of the appeal. A discussion ensued regarding what to base the PC decision on. Berman said the code states that the geological report needed to be based on the intended development report and it didn't. Tokos noted that the plan that was included in the report showed the sites outside of the Jump Off Joe's right-of-way. The applicant said in their report that if they were successful in the right-of-way being vacated, they would like to move back to the prior location. Tokos asked if the PC was saying it wouldn't be complete if they went back to their prior location and this wasn't on the plans, or were they saying borings were not done in specific locations where they show the home sites on the site plan. Berman stated it was because the geological report was done under the assumption of the original home site location and the home sites were moved after the geologic report was done and didn't match. He said if Lund was able to get the vacation and the homes would be able to move back, then that point would be moot.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to uphold the appeal and request that the applicant Mr. Lund, should he choose, submit another detailed geological report to address the issues pointed out in prior testimony that was insufficient for File 1-GP-18-A: Appeal of Geologic Permit (File 1-GP-18) West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903). Hardy, Berman and Franklin were a yes. Patrick and Branigan were a nay. The motion carried in a voice vote.

Tokos said the next steps were to prepare a final order and findings to uphold the appeal on a basis that there are elements of the plan of the geologic report prepared by the applicant that comport to their prior plan of building where the road is as opposed to the location illustrated on the plan set that was provided to the PC. The PC was in general agreement with this. Tokos said the final order and findings would be presented at November 26th PC meeting.

The PC took a break at 5:28 p.m. and reconvened at 6:00 p.m. Commissioner Croteau arrived to the meeting at 6 p.m.

5. Public Hearings. At 6:00 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. Berman, Croteau, Patrick, Franklin and Branigan 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.

A. File No. 2-SUB-18/4-GP-18.

Tokos gave his staff report and listed the conditions of approval. Berman asked for clarification on "the agency" in the report. Tokos said it was a typo, the applicant would be the one to finalize this. Berman asked about the steep slopes on the property, and how the grading and layout of the driveway was going to be approved. Tokos said the applicant would have to provide a detailed grading plan, which would have to be approved before permit issuance.

Proponents: Dylan McEntee addressed the PC and said he was present to answer questions. Branigan asked if it was his intent to build up the back lots so they didn't exceed City height limits but would allow them to gain a view. McEntee said all four townhomes would enter from 5th Street and the slope would be pretty minimal. The units would be two stories high, won't exceed 30 feet, and the land would be cut away to do this. Berman asked if all the old fill and everything they found there would be taken out. McEntee said this was correct.

Opponents: None heard.

Patrick closed the hearing at 6:10 p.m. Branigan said he missed the first hearing but reviewed the materials. He said NMC codes found that the H.G. Schlicker report and mitigating comments of the Director filled all the requirements and he was in favor of the application. Franklin thought the report was thorough and said he would approve it. Croteau thought all applicable requirements were met and had no issues. Berman agreed with the other PC members. Hardy thought the report was thorough and had no problem approving it. Patrick agreed with the other PC members.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve File No. 2-SUB-18/4-GP-18: Four Lot Townhouse Subdivision with conditions. The motion carried unanimously in a voice vote.

B. File No. 5-Z-17.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of actual or potential financial interest they might have related to the agenda item. Hardy reported two potential conflicts. She managed on VRD and would benefit if there was a cap. She noted she did not do online booking so she didn't think there was a chance she would be taking on any additional VRDs, meaning an expansion wouldn't impact her. Berman stated he had been a generator of several complaints for a problem VRD in his neighborhood in the last 10 years. Croteau read a statement about what short term rentals provided for Newport. He was sensitive of the housing needs of Newport and the hope of keeping the integrity of the neighborhood character. He currently lived in a R-2 zone. Croteau stated that there was a prohibition of motels, hotels, and boarding houses in single family R-1 and R-2 zones. He thought this would be the basis of prohibiting VRDs in R-1 and R-2 zones, and felt it was the best solution. Croteau stated he had no financial conflicts of interest or biases. Patrick reported two potential conflicts. His mother, sister and niece ran Dolphin Real Estate that managed VRDs in the past, but no longer managed them. He said he did the books for Dolphin Real Estate and ran and maintained a computer program for them. He also owned Dolphin Construction where he worked on VRDs and bid projects on them. Patrick noted that this was work he would be doing anyways. Franklin reported that he had no conflicts. Branigan reported he had no financial conflicts but lived in a neighborhood that had a VRD with numerous complaints that Berman had mentioned.

Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Patrick read the requirements for the PC to hold a hearing and how the CC would be taking testimony at a later date. He then opened the hearing for public testimony.

Michelle Longo Eder addressed the PC and stated she owned two VRDs, and some month to month rentals. She was concerned about transferability of a permit and was in favor of B.3. She would be in support of grandfathering in VRDs but noted that some VRDs wouldn't fit into the most restrictive options. Longo Eder supported density restrictions around four to five percent, and occupancy limits of two per bedroom plus two, excluding under three. She said in the event overlay districts were created, she opposed options that sought to eliminate an owner's current permit to operate a VRD. Longo Eder felt homeshares were commercial enterprises but stated her experience with them was that they had the same impact as VRDs. She said the notice and contact requirements for someone to be able to be there within 30 minutes would mean she wouldn't be able to leave the area for 75 percent of the year. She felt this wasn't a reasonable restriction. She also thought a 24/7 response time was excessive and thought the Police Department could enforce this.

Frank DeFilippis addressed the PC. He thought transferability meant the license would stay with the house and thought it should stop with the sale of the property in order to open up a spot for another VRD. He noted that Newport had a housing issue and VRDs were displacing people from living in Newport. DeFilippis thought that enforcement was

another issue and the current 48 hour response time was a problem because in 48 hours the renters would be gone before they could be dealt with. Enforcement needed to be a priority. He wanted to see businesses in commercial zones not residential. He also wanted language that said VRDs should be spread around with a percentage cap.

Patti Littlehales addressed the PC and commended the Ad-Hoc Work Group's work. She objected to eliminating R-1, 2 and 3 and supported Alternative 4. She liked limiting the number of VRD licenses. Littlehales noted that in San Diego they adopted what was called the "Mayor's Compromise" that created a license base for VRDs and implemented a per night fee for VRDs that generated income. She asked the PC and CC to consider this.

Richard Rainery addressed the PC. He said he operated a home stay VRD that hadn't had any issues or complaints. He didn't think it was fair to penalize someone who had abided by rules and regulations with the threat of facing a loss of that investment. Rainery didn't think that the housing shortage would be solved by eliminating a few VRDs. Nationally the people who had VRDs were owners who needed the supplementary income to stay in communities. He asked the PC to look at the least restrictive options and reasonable costs for enforcement and issues. Franklin asked if his rental property was in a residential zone. Rainery said it was in a R-1 zone.

Cathey Briggs addressed the PC. She wanted to acknowledge the work of the Ad-Hoc Work Group and commended the City staff on their efforts. Briggs said she had an issue with housing and affordability. She thought the PC should go with homeshares as the option to keep a friendly vibe and not change the feel of Newport. She read a portion of the Newport Comprehensive Plan that talked about cost of housing and submitted it for the record. She also submitted an analysis on Lincoln County in general from the Oregon Housing Alliance on affordable housing and the increase on homelessness. Briggs noted she had been on the Strategic Plan Steering Committee and read what the committee agreed to do, which spoke to the priorities of housing and the need for options for housing. She noted House Bill 2140 concerning remitting taxes to the jurisdiction and reminded the PC this was something to keep an eye on. Briggs stated that seasonal visitors were not a protected class but seasonal workers were.

Larry Lacy addressed the PC. He wasn't in favor of his property value going down because of the amendments. He didn't rent his home but wanted to know he could rent it as a VRD if he wanted to.

Darlene Croteau addressed the PC. She read a statement about the frustrations she had with VRDs and stated she wanted them out of R-1 and R-2 zones. She also wanted a city wide cap on VRDs.

Ann Dennison addressed the PC. She said she didn't have anything to say but wanted to be notified of the next hearing.

John Simpson addressed the PC. He said the VRD he owned didn't have any big parties and wanted the PC to know there were good things happening with VRDs.

Vince Pappalardo addressed the PC. He said he had two VRDs located on either side of him and wasn't opposed to them. He didn't think the amendments would add housing for Newport. He noted the VRDs by his house wouldn't open up to housing if they weren't VRDs because the owners would be absorbing the costs of not having the income from their VRDs. Pappalardo said he was sensitive to bad VRDs and thought there needed to be ways to manage these. He wanted to see data on how much it would increase the rental property or housing market if they enforced this. He felt the amendments would be transfer problems around in different areas.

John Oksenholt addressed the PC. He noted that there hadn't been any facts on VRDs taking away from workforce housing. He stated he believed that VRDs helped workforce housing. His wife's company, Meredith Lodging, relied on the tourism industry. Oksenholt was sensitive on anything that affected VRDs adversely. He felt few people would use homes suitable for workforce housing as VRDs. Oksenholt agreed with Littlehales about adding a per night fee on VRDs to help affordable housing. He supported well managed VRDs and having a 24/7 response time.

Don Rairigh addressed the PC. He said he had a parent living in a home they built that was being used as a VRD to help pay for property taxes and keep the property. He said the sentiment to eliminate VRDs was a bad thing.

Wendy Engler addressed the PC. She said was speaking as a current resident and noted that she was a current City Council member. She spoke about the Nye Beach neighborhood and stated that it was a dumping zone for VRDs because of the C-2 zone. Engler thought it shouldn't be a dumping ground because it was a neighborhood. She suggested using the R-3 and R-4 spacing and density requirements in the C-2 zones. She showed the PC a map that she received from Tokos which showed a spacing density requirement applied to C-2 zone areas. This allowed

significant numbers of VRDs in the area because a large building of condos would be counted as one unit. She didn't feel that dumping VRDs in the Nye Beach area was right and said it was against the Comprehensive Plan. Engler also stated that the Newport 2040 Vision Plan supported mixed use neighborhoods. She wanted to see Newport do more for walking neighborhoods and asked that the R-3 and R-4 zone density requirements have the higher density of VRDs. Engler requested that the map Tokos provided to her be added to the record. Tokos would do this.

Nancy Warneke addressed the PC. She said her house was surrounded by VRDs that had problems. Because of this, she wanted to sell her home but said she wouldn't get the best resell value because of the disclosure of being near VRDs. Warneke felt that VRDs should be in areas other than residential zones. She thought that VRD owners that weren't local didn't maintain landscaping and thought there needed to be a balance for neighborhoods.

Sandy Phillips addressed the PC. She had a homeshare and understood the negatives and positives of VRDs. As a homeshare, they had a lot more pride, responsibility and investment in keeping a VRD. Phillips felt VRDs and B&Bs were separate than homeshares and they should be in their own category. Branigan asked if she rented her house out for more than 30 days. She said they rented on a nightly basis, under 30 days.

John Tesar addressed the PC. He thought some restrictions were necessary and the solution was to have tighter enforcement. Tesar felt a cap was difficult for purchasers because they wouldn't know if the property qualified to be a VRD.

Norm Ferber addressed the PC. He stated he owned Fairhaven Vacation Rentals and was on the Ad-Hoc Work Group. His issue was with transferability and minimum days of occupancy. He was in favor of two per bedroom plus two. Ferber stated the homes he owned and rented as VRDs were created as a business and weren't right for long term occupancy. This was a business for him and how he made a living. Ferber noted the Ad-Hoc Work Group represented all sides of the community and felt the media reporting at the beginning of the process was wrong. He said they made it feel like there was a bias and that the Ad-Hoc Work Group wasn't able to reach consensus. Franklin asked for clarification on Ferber's units not working for housing. Ferber explained the homes were built like hotels with the intention of renting them out short term. He didn't feel he should be punished for other VRDs abusing the system.

Ona McFarlane addressed the PC. Said she didn't like her neighborhood anymore because of the VRDs there. She was in favor of phasing out VRDs in her residential neighborhood.

William Chenoweth addressed the PC. He lived in Nye Beach across from a B&B and some VRDs. He stated he wasn't for or against VRDs. Chenoweth said that 40 percent of Newport was elderly and on fixed incomes. He asked the PC to take this into consideration.

Glenda Akins addressed the PC. She lived in the Nye Beach neighborhood and was concerned about what her children would have to do with her house when she was gone. She hoped the PC was general enough to take into account people with fixed incomes and was against having a restrictive cap that would mean her kids couldn't use her property as a VRD. Akins didn't think VRDs were a bad thing but did think there needed to be something done about affordable housing.

Wendy Engler addressed the PC again and requested the hearing be left open for 14 days and requested the PC hold a hearing when they whittled down some of the possibilities so the public could have a chance to weigh in.

Chuck Victor addressed the PC. He recommended looking at current overall zoning in Newport, when these zones had been created, and what was in each of the zones. Victor thought before any decision was made, the PC should look at the city and how the zones look like today instead of when they were created.

Richard Kilbride addressed the PC. He urged the PC to consider keeping VRDs out of R-1 and R-2 zones. R-1 zones were established for single family residences and VRDs were a business and outside of the intent of the zoning ordinance. Kilbride felt these zones were not business oriented areas.

Patrick asked Tokos how to proceed with Engler's request to keep the record open. Tokos said the hearing continuance would accommodate this. Patrick suggested the PC go to another work session, and then hold another public hearing for testimony. Tokos said this would mean a work session meeting on November 26th and then another public hearing on December 10th. He said if the PC wanted additional time to review, it would push the public hearing to January 14th. Franklin thought there should be two work session meetings. Croteau wanted to keep things open until after the

work session on November 26th, and come back for a hearing on December 10th. The PC was in general agreement with this.

MOTION was made by Commissioner Branigan, seconded by Commissioner Franklin to hold a Planning Commission work session meeting on November 26, 2018, and a continuation of the public hearing on the December 10, 2018 Planning Commission regular session meeting for File No. 5-Z-17: Newport Short-Term Rental Ordinance Amendments (Draft Ordinance No. 2144). The motion carried unanimously in a voice vote.

6. **New Business.** None were heard.

7. **Unfinished Business.** None were heard.

8. **Director Comments.** Tokos reviewed the work program with the PC. He asked the PC if they wanted to start the November 26th work session meeting at 5 p.m. The PC was in general agreement with a 5 p.m. start time for the work session. Tokos reviewed the two public hearings scheduled for the December 10th regular session meeting.

Tokos reviewed the 120 day process pertaining to geological permit appeals. He said if the city didn't issue a final decision within 120 days the applicant had the right to take it to circuit court. Tokos said the applicant hadn't filed to go to circuit court and didn't know what he would do. A discussion ensued regarding the 120 day process and the appeal process for the geological appeal.

Tokos suggested the PC should revisit the geologic permit appeals procedure and recognize the 120 days and whether or not the structure was the best structure. He noted there was an appeal beyond the CC and they would have to deal with the 120 days as well. Tokos stated that they could not require the applicant to waive the 120 days. He thought it wasn't ethical to even ask unless the applicant was asking for additional time. Patrick asked if an appeal could skip the PC in these instances and have the hearing go straight to the CC. Tokos said the PC could talk about this and he would have to give it more thought. He said there wasn't much they could do with a peer review. Patrick thought if appeals skipped the PC it would help with the 120 day timeline. Tokos said the PC could tie the discretion down tight that an appeal peer review would have to show something more specific and make it more prescribed to overturn a report. Croteau asked if there were guidelines from the State. Tokos said there wasn't really and they didn't have a whole lot of guidance. The City could do their own peer review or put someone on retainer. Croteau thought it would be better if it could be more of a qualified neutral peer review. Tokos said to do this, they would have to put out a request for proposals and put someone on retainer. A discussion ensued regarding geologic reports and the PC's mechanism for reviewing the reports. Tokos said he would add this discussion to a work session meeting.

Tokos noted that the PC would be talking about tiny homes and the State's permitting requirements at a later date. He said it would mean there would be smaller homes on lots. The PC would be looking at zoning standards and how to tackle them. Croteau asked about safety for tiny homes from the State. Tokos explained how the Oregon Reach Code had a reach down provision for tiny homes.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:17 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. 2-SUB-18/4-GP-18, APPLICATION)
FOR TENTATIVE SUBDIVISION PLAT AND)
GEOLOGIC PERMIT APPROVAL FOR A FOUR) **FINAL**
LOT TOWNHOUSE SUBDIVISION, AS SUBMITTED) **ORDER**
BY DYLAN AND CELESTE MCENTEE (NYE NBEACH)
HOLDINGS, LLC, OWNER))**

ORDER APPROVING the request for the tentative subdivision plat and geologic permit approval for a four lot residential townhouse subdivision. The property is located at the northwest corner of SE 5th street and SE Moore Drive. Its address is 847 SE 5th Street (Tax Lot 3100 of Lincoln County Assessor’s Tax Map 11-11-09-BC). It is approximately .48 acres in size per Lincoln County Assessor’s records.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request for the planned development, with a public hearing a matter of record of the Planning Commission on November 13, 2018; and
- 3.) At the public hearing on said application, and subsequent open record period, the Planning Commission received evidence and recommendations from the applicants, interested persons, and Community Development (Planning) Department staff; and
- 4.) At the conclusion of said public hearing and open record period, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, approved the request for the tentative subdivision plat and geologic permit with conditions of approval.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") are adopted in support of approval of the request for a tentative subdivision plat, geologic permit, and variance with the following conditions of approval:

1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Engineering Geologic Hazards and Geotechnical Investigation, prepared by H.G. Schlicker and Associates, dated November 6, 2018 (the “Geologic Report”).
2. Certification of land division compliance with the Geologic Report (e.g. site grading, buried utilities, condition of existing walls, etc.) is required prior to approval of the final plat. NMC 14.21.130 states

that no development requiring a Geologic Report shall receive final approval until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.

3. Any sedimentation caused by stripping vegetation, grading, or other development, shall be removed from all adjoining surfaces and the affected areas returned to their original or equal condition prior to the final approval of the plat for recording.
4. Developer shall install curb, gutter, and sidewalk along the stretch of SE 5th Street that abuts the subject property and is responsible for constructing water and sewer service laterals to serve each townhouse lot. All public improvements shall be accepted by the Public Works Department prior to approval of the plat for recording.
5. Developer shall secure from the non cityowned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.
6. Developer shall control the release rate of run-off from driveways, parking areas, or other “at grade” impervious surfaces in areas of 12% slope or greater. Such release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency and is to be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.
7. The maximum building height for the townhouse units shall be 30-feet, unless an alternative standard is established through an adjustment or variance process.
8. Developer shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements, and such documents shall be reviewed and approved by the Community Development Director and city Attorney prior to the final approval of the plat for recording.
9. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, improvements shall conform to any existing published set of standards designated by the City Engineer for the type of improvement. The City Engineer may approve designs that differ from the applicable standard if the City Engineer determines that the design is adequate.
10. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surfacemounted transformers, surfacemounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during

construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The developer shall make all necessary arrangements with the serving utility to provide the underground service.

11. Installation of public improvements, including excavation in the excess of 100 cubic yards, shall not occur until plans have been checked for adequacy and approved by the City, and shall not be commenced until after the city is notified.
12. All public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.
13. A map showing public improvements “as-builts” shall be filed with the city upon completion of the improvements.
14. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The developer shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

BASED UPON THE ABOVE, the Planning Commission determines that the request is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport.

Accepted and approved this 26th day of November, 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director
City of Newport

EXHIBIT "A"

File No. 2-SUB-18/4-GP-18

FINDINGS OF FACT

1. On November 13, 2018, Dylan and Celeste McEntee (Nye Beach Holdings, LLC, owner) submitted an application for approval of a four lot residential townhouse subdivision. Additionally, a geologic hazard report has been submitted outlining measures that will be taken to safeguard against existing hazards given that the subject property is within a mapped geologic hazard area.
2. The property is located at the northwest corner of SE 5th street and SE Moore Drive. Its address is 847 SE 5th Street (Tax Lot 3100 of Lincoln County Assessor's Tax Map 11-11-09-BC). It is approximately .48 acres in size per Lincoln County Assessor's records.
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: Single family and mixed density residential to the north, south, east and west. Commercial property to the east, including Oregon Coast Bank.
 - d. Topography and Vegetation: Moderate to steep slopes rising in elevation from the southeast to the northwest. The site includes scattered trees and shrubbery.
 - e. Existing Structures: None. A home and garage with an apartment were removed after the property was sold in 2016.
 - f. Utilities: All utilities are available to the site.
 - g. Development Constraints: The property is within a mapped geologic hazards area.
 - h. Past Land Use Actions: None.
 - i. Notice: The application was noticed for an October 22, 2018 public hearing with the understanding that a geologic report would be submitted prior to that date so that its findings could be addressed in the staff report. The Planning Commission continued the hearing to November 13, 2018 to provide additional time for the geologic report to be completed. Public notice of the application and initial hearing date was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on October 2, 2018. Notice of the public hearing was also published in the Newport News-Times on October 12, 2018.
4. The applicants, Celeste and Dylan McEntee, are seeking approval of a four lot, residential townhouse subdivision plat to accommodate the same number of townhomes. The units will be constructed in pairs, with eight feet of separation between the structures. Access to the site is available off of SE 5th Street. A geologic permit outlines measures that will be taken to safeguard against existing hazards, since the property is within the City of Newport's Geologic Hazards Overlay.

5. A public hearing was held on November 13, 2018. At the public hearing, the statement of rights and relevance and applicable criteria were read. The Planning Commission disclosed any ex parte contact, conflicts of interest, and/or bias. No objections were made to any of the Planning Commissioners hearing the matter. The Planning Commission received the staff report and heard testimony from the applicant, who was the only party present to provide comment on the proposal. The minutes of the November 13, 2018, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Application form

Attachment "B" – Lincoln County Assessor Property Report

Attachment "C" – Tentative Subdivision Plan for “5th Street Lofts” by Gary Nyhus, PLS, dated 9/11/18

Attachment "D" – Townhouse Site Plan by Oceanquest Design, dated 8/1/17

Attachment "E" – Letter from Central Lincoln PUD, dated 8/6/18

Attachment "F" – Ownership and Encumbrance Report by Western Title, effective 7/2/18

Attachment "G" – Geologic Report by H.G. Schlicker and Associates, dated 11/6/18

Attachment "H" – Zoning Map

Attachment "I" – Notice of Public Hearing

6. The application must be consistent with the approval criteria set forth in City of Newport Municipal Code (NMC) Chapter 13.05, for tentative subdivision plat approval, NMC Chapter 14.21, geologic hazards, and NMC Chapter 14.31, townhomes.

CONCLUSIONS

After consideration of the application materials, staff report and the testimony in the record, the Planning Commission concludes as follows in regard to the criteria established in Newport's Municipal Code for approving the requested tentative subdivision plan and geologic report for a four lot residential townhouse subdivision:

7. Compliance with NMC Chapter 13.05, Criteria for Approval of the Tentative Subdivision Plat. The criteria for a tentative subdivision plat have been addressed as follows:

(a) *NMC Section 13.05.015(A), Criteria for Consideration of Modification to Street Design. As identified throughout the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width, and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall*

assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:

- (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- (b) Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

This standard applies to new streets, and the applicant’s tentative subdivision plan (Attachment "C") shows that no such streets will be needed to serve the townhouse development. Each unit will obtain access off of SE 5th Street.

(b) *NMC Section 13.05.015(B), Minimum Right-of-Way and Roadway Width. Unless otherwise indicated on the development plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:*

<i>Type of Street</i>	<i>Minimum Right-of-Way Width</i>	<i>Minimum Roadway Width</i>
<i>Arterial, Commercial and Industrial</i>	<i>80 feet</i>	<i>44 feet</i>
<i>Collector</i>	<i>60 feet</i>	<i>44 feet</i>
<i>Minor Street</i>	<i>50 feet</i>	<i>36 feet</i>
<i>Radius for turn-around at end of cul-de-sac</i>	<i>50 feet</i>	<i>45 feet</i>
<i>Alleys</i>	<i>25 feet</i>	<i>20 feet</i>

Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.

SE 5th Street is paved to a width of 36-feet and is contained within a 60-foot right-of-way. This standard has been met.

(c) *NMC Section 13.05.015(C), Reserve Strips. Reserve strips giving a private property owner control of access to streets are not allowed.*

No reserve strips are planned. This standard is met.

(d) *NMC Section 13.05.015 (D), Alignment. Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical*

to do so because of topography or other conditions, this requirement may be modified by the approving authority.

No new streets are proposed; therefore, this standard does not apply. Therefore, this standard does not apply.

(e) NMC Section 13.05.015(E), Future Extensions of Streets. Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.

No new streets are proposed; therefore, this standard does not apply.

(f) NMC Section 13.05.015(F), Intersection Angles.

- 1. Streets shall be laid out to intersect at right angles.*
- 2. An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.*
- 3. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.*
- 4. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.*
- 5. No more than two streets may intersect at any one point.*
- 6. If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.1. be less than 80 degrees unless there is a special intersection design.*

This standard applies to new streets, and since no new streets are proposed it is not applicable to the application.

(g) NMC Section 13.05.015(G), Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.

No new streets are proposed; therefore, this standard does not apply.

(h) NMC Section 13.05.015(H), Sidewalks. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all streets within the proposed land division

and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.

The applicant's tentative subdivision plan (Attachment "C") shows that there are no streets within the proposed land division. It does; however, abut SE 5th Street and that street is not currently improved with sidewalk. There is sufficient area within the road right-of-way to construct sidewalk; therefore, the Commission finds that it is reasonable to impose a condition requiring the installation of sidewalk along the property frontage prior to final plat approval. This standard can be met with a condition of approval.

(i) NMC Section 13.05.015(I), Cul-de-sac. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

No cul-de-sacs are proposed; therefore, this standard does not apply.

(j) NMC Section 13.05.015(J), Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.

No new streets are proposed; therefore, this standard does not apply.

(k) NMC Section 13.05.015(K), Marginal Access Street. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting constrained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

The land division does not front along an arterial street; therefore, this standard does not apply.

(l) NMC Section 13.05.015(L), Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.

The project is not in a commercial or industrial district. This standard does not apply.

(m) *NMC Section 13.05.020(A), Blocks General. The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.*

This project involves a residential subdivision. This standard does not apply.

(n) *NMC Section 13.05.020(B), Block Size. No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.*

The applicant's tentative subdivision plan (Attachment "C") shows that the applicant is not creating any new blocks. This standard does not apply.

(o) *NMC Section 13.05.025(A), Utility lines. Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.*

No new sewer or water mains are proposed with this development. The proposed lots will be served by main lines located within the SE 5th Street road right-of-way. This standard is met.

(p) *NMC Section 13.05.025(B), Utility Infrastructure. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.*

The subject property does not border land within a subdivision or partition plat. This standard does not apply.

(q) *NMC Section 13.05.025(C), Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.*

The subject property is not traversed by a watercourse; therefore, this standard does not apply.

(r) *NMC Section 13.05.030(A), The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:*

Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

Since this is a townhouse development, lot area is calculated based upon the size of the parent property. At 22,039 sq. ft., the parcel is large enough to accommodate four units given the 5,000 sq. ft. of land area per unit density limit of the R-2 zone district. This standard is met.

(s) *NMC Section 13.05.030(B), Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.*

The applicant's tentative subdivision plan (Attachment "C") shows that each lot will possess at least 25-feet of frontage along SE 5th Street. This standard is met.

(t) *NMC Section 13.05.030(C), Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting such a traffic artery or other incompatible use.*

The applicant's tentative subdivision plan (Attachment "C") shows that the land division will not result in any through lots being created. This standard is met.

(u) *NMC Section 13.05.030(D) The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.*

All lot runs at approximate right angles to the new streets as shown on the applicant's tentative subdivision plan (Attachment "C"). This standard is met.

(v) *NMC Section 13.05.030(E), Special Setback Lines. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.*

There are no special setback lines listed in the Newport Municipal Code that would be applicable to this project. The applicant hasn't proposed any special setbacks and the Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates (Attachment "G") does not recommend such setbacks. This standard is met.

(w) NMC Section 13.05.030(F), Maximum Lot and Parcel Size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

The minimum lot area in the R-2 Zone is 5,000 square feet. As shown on applicant's tentative subdivision plan (Attachment "C"), the largest lot planned is $\pm 7,947$ square feet, and does not exceed 175% of the required minimum (8,750 square feet). This standard is met.

(x) NMC Section 13.05.030(G), Development Constraints. No lot of parcel shall be created with more than 50% of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource.

No wetlands or other Goal 5 or Goal 17 resources have been identified on the subject site. This standard is met.

(y) NMC Section 13.05.030(H), Lots and Parcels within Geological Hazard Areas. Each new undeveloped lot of parcel shall include a minimum 1,000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

The subject property is within a Geologic Hazard Area. However, the site does not contain any active landslide areas or active and high hazard zones, as documented in the Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates (Attachment "G"). This standard is met.

(z) NMC Section 13.05.035(A). Improvement work, including excavation in the excess of 100 cubic yards, shall not be commenced until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans shall be required before approval of the tentative plan of a subdivision or partition.

This requirement is advisory and can be reasonably addressed with a condition of approval.

(aa) *NMC Section 13.05.035(B). Improvement work shall not commence until after the city is notified, and, if work is discontinued for any reason, it shall not be resumed until after the city is notified.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(bb) *NMC Section 13.05.035(C). Public improvements shall be constructed under the inspection and to the satisfaction of the city engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(cc) *NMC Section 13.05.035(D). Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.*

This requirement applies to the construction of new streets and is; therefore, not applicable.

(dd) *NMC Section 13.05.035(E). A map showing public improvements as built shall be filed with the city upon completion of the improvements.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(ee) *NMC Section 13.05.035(F). Public improvements shall not be commenced until any appeals of the subdivision approval are resolved.*

The City can ensure that this does not occur through its review of the civil drawings for the public improvements. This standard is met.

(ff) *NMC Section 13.05.040(A)(1), Streets. All streets, including alleys, within the land division, streets adjacent but only partially within the land divisions, and the extension of land division streets to the intersecting paving line of existing streets with which the land division streets intersect, shall be graded for the full right-of-way width. The roadway shall be improved to a width of 36 feet or other width as approved by the approval authority by excavating to the street grade, construction of concrete curbs and drainage structures, placing a minimum of six inches of compacted gravel base, placement of asphaltic pavement 36 feet in width or other width as approved by the approval authority and approximately two inches in depth, and doing such other improvements as may be necessary to make an appropriate and completed improvement. Street width standards may be adjusted as part of the tentative plan approval to protect natural features and to take into account topographic constraints and geologic risks.*

SE 5th Street currently possesses the 36-foot of pavement width; however, it lacks curb and drainage structures along the property frontage. There is sufficient road right-of-way for the applicant to construct curb, drainage improvements, and driveway aprons where the new lots front SE 5th Street;

therefore, the Commission finds that it is reasonable to impose a condition of approval requiring that they be completed. This standard can be met with a condition of approval.

(gg) NMC Section 13.05.040(A)(2) Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the land division and to connect the land division drainage to drainage ways or storm sewers outside the land division. Design of drainage within the land division shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the land division and to allow extension of the system to serve such areas.

The applicant's tentative subdivision plan (Attachment "C") illustrates that the property slopes to the south toward SE 5th Street where surface drainage will be directed into a structured public drainage system. Specific direction for the design of on-site drainage systems is contained in the Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates (Attachment "G"), and it would be appropriate for the Commission to impose a condition of approval requiring H.G. Schlicker and Associates' recommendations be followed. This standard can be met with a condition of approval.

(hh) NMC Section 13.05.040(A)(3), Sanitary Sewers. Sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City, and sewer mains shall be installed in streets as necessary to connect each lot or parcel to the city's sewer system.

A Sewer laterals tying into the main in SE 5th Street will need to be installed to serve each lot. The lots possess sufficient street frontage for this to occur, so it is feasible that the applicant can complete the improvements. This standard can be met with a condition of approval.

(ii) NMC Section 13.05.040(A)(4), Water. Water mains shall be installed to allow service to each lot or parcel and to allow for connection to the city system, and service lines or stubs to each lot shall be provided. Fire hydrants shall be installed as required by the Uniform Fire Code. The city may require that mains be extended to the boundary of the land division to provide for future extension or looping.

As with the sewer laterals, water service lines tying into the main in SE 5th Street will need to be extended to each lot. The lots possess sufficient street frontage for this to occur, so it is feasible that the applicant can complete the improvements. A hydrant is in place at the southwest corner of the property. This standard can be met with a condition of approval.

(jj) NMC Section 13.05.040(A)(5), Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:

a. Delayed Sidewalk Construction. If sidewalks are designed contiguous with the curb, the subdivider may delay the placement of concrete for the sidewalks by depositing with the city a cash bond equal to 115 percent of the estimated cost of the sidewalk. In such areas, sections of sidewalk shall be constructed by the owner of each lot as building permits are issued. Upon installation and acceptance by the city engineer, the land owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of the reimbursement shall be in

proportion to the footage of sidewalks installed compared with the cash bond deposited and any interest earned on the deposit.

b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus funds shall be deposited in the city's general fund to cover administrative costs. Any shortfall will be paid from the general fund.

c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an Improvement Agreement as provided in Section 13.05.090(C).

The applicant has indicated that they intend to construct all four units at the same time, so it is unlikely they will elect to enter into an improvement agreement to defer the sidewalk construction. There is sufficient right-of-way adjacent to the subject property to accommodate the sidewalk improvements, so it is feasible that it can be built. This standard can be met with a condition of approval.

(kk) NMC Section 13.05.040(B). All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.

The applicant understands that they must comply with applicable City standards and a condition of approval is included noting this requirement. This standard is met.

(ll) NMC Section 13.05.040(C). Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

The applicant understands that public improvements are subject to inspection and acceptance by the city. This standard can be met.

(mm) NMC Section 13.05.045(A). Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division.

A letter from Central Lincoln PUD, dated 8/6/18 confirms that power is available to serve the four townhomes (Attachment "E"). Considering that the surrounding area is fully developed, it is feasible that phone service is also available; therefore, the Commission finds that it is reasonable to impose a condition of approval requiring service confirmation letter from the phone service provider (i.e. CenturyLink) prior to sign-off of the final plat. This standard is met with a condition of approval.

(nn) *NMC Section 13.05.045(B). For public facilities of sewer, water, storm water, and streets, the letter must identify the:*

- 1. Water main sizes and locations, and pumps needed, if any, to serve the land division.*
- 2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.*
- 3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.*
- 4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.*

The property is served by a 6-inch water main and 8-inch sewer main in SE 35th Street. Impervious surface attributed to the townhouse development is roughly equivalent to what was on the property in 2016 when it was developed with a large home, garage and apartment; therefore, the city does not anticipate an increase in run-off into the public system. At 36-feet in width, SE 5th Street is adequately sized to handle traffic generated from the proposed development. This standard is met.

(oo) *NMC Section 13.05.050(A), Underground Utilities and Service Facilities, Undergrounding. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.*

This standard is advisory and can be addressed with a condition of approval.

(pp) *NMC Section 13.05.050(B), Underground Utilities and Service Facilities, Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.*

This standard is advisory and can be addressed with a condition of approval.

(qq) *NMC Section 13.05.055, Street Lights. Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be placed in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.*

No new streets are proposed; therefore, this standard is not applicable.

(rr) *NMC Section 13.05.060, Street Signs. Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.*

No new streets are proposed; therefore, this standard is not applicable.

(ss) *NMC Section 13.05.065, Monuments. Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.*

This standard applies to projects that involve the construction of new public street surfaces and is; therefore, not applicable.

(tt) *NMC Section 13.05.085(A). The proposed land division will comply with the requirements of this chapter or can be made to comply by the attachment of reasonable conditions of approval. For the purposes of this section, a land division complies with this chapter if it meets the standard provided herein or if a modification or variance is approved by the approving agency to the standard.*

The findings contained herein address this requirement. This standard is satisfied.

(uu) *NMC Section 13.05.085(B). Any required submitted geological hazard report must conclude that the property can be developed in the manner proposed by the land division. The land division must comply with any recommendations contained in the report. Approval of the land division by the Planning Commission pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the geological hazard report, the Planning Commission shall establish when compliance with the geological report recommendations must be demonstrated. The geological hazard report shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.*

An Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates is enclosed as Attachment "G". The report is stamped by a Certified Engineering Geologist and includes the information required by the City for a Geologic Report. A condition of approval is recommended requiring a Certified Engineering Geologist certify compliance with the Report's recommendations prior to final plat approval. This criterion is met, as conditioned.

(vv) *NMC Section 13.05.090(A), Final Plat Requirements for Land Divisions Other than Minor Replats or Partitions, Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall*

be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

This standard is advisory and is addressed with a condition of approval.

8. Compliance with NMC Chapter 14.21, Criteria for Approval of a Tentative Subdivision Plat within a Geologic Hazard Overlay. The criteria for approval of a tentative subdivision plat in an area of known geologic hazards has been addressed as follows:

(a) NMC Section 14.21.020(A). The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Chapter 14.21:

1. Bluff or dune backed shoreline areas within high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report 0-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.

2. Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report 0-04-09.

3. Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

City of Newport zoning maps show that the subject property is in the Geologic Hazard Area. These regulations apply.

(b) NMC Section 14.21.020(B). The DOGAMI Open File Report 0-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report 0-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property as being in a different hazard zone than that identified in DOGAMI Open File Report 0-04-09, shall control over DOGAMI Open File Report 0-04-09 and shall establish the bluff or dune-backed shoreline hazard zone or landslide risk area that applies to that specific property. The time restriction set forth in subsection 14.21.030 shall not apply to such determinations.

The required report is included as Attachment "G". It has been stamped by a Certified Engineering Geologist and confirms that the site is within a geologic hazard area.

(c) NMC Section 14.21.020(C). In circumstances where a property owner establishes or a Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a bluff or dune-backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Chapter 14.21.

The report, included as Attachment "G", confirms that the property is within a landslide risk area and concludes that the site is suitable for development provided recommendations contained in the document are followed.

(d) NMC Section 14.21.020(D). If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report 0-04-09 then the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The agencies will have 14 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

The findings in the H.G. Schlicker and Associates report (Attachment "G") do not appear to conflict with the DOGAMI Open File Report. This standard is met.

(e) NMC Section 14.21.030, Geologic Permit Required. All persons proposing development, construction, or site clearing (including tree removal) within a geologic hazard area as defined in 14.21 .010 shall obtain a Geologic Permit. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit required by the city. Unless otherwise provided by city ordinance or other provision of law, any Geologic Permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

A Geologic Permit application is included in this submittal. This requirement can be met.

(f) NMC Section 14.21.050(A), Application Submittal Requirements. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and

The applicant's tentative subdivision plan (Attachment "C"), site plan (Attachment "D") and other information contained in the case record is sufficient to address this requirement. The standard has been met.

(g) NMC Section 14.21.050(B), Application Submittal Requirements. An estimate of depths and the extent of all proposed excavation and fill work; and

Grading recommendations contained in the H.G. Schlicker and Associates report (Attachment "G") are sufficient to address this requirement. This standard is met.

(h) NMC Section 14.21.050(C), Application Submittal Requirements. Identification of the bluff or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the hazard zone(s) within which development is proposed; and

A geologic report for the property is included as Attachment "G". The report identifies the nature and extent of landslide risk areas on the property. This requirement is met.

(i) *NMC Section 14.21.050(D), Application Submittal Requirements. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and*

A geologic report for the property is included as Attachment "G". This report is stamped by Certified Engineering Geologist and concludes that the site is suitable for the proposed subdivision provided recommendations contained in the document are followed. A condition of approval is recommended requiring a licensed Engineering Geologist certify the recommendations were followed prior to approval of the final plat. This requirement is met, as conditioned.

(j) *NMC Section 14.21.050(E), Application Submittal Requirements. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.*

A geologic report for the property is included as Attachment "G". This report is stamped by a Certified Engineering Geologist and includes the information required by the City for a geologic report. The report concludes that the site is suitable for the planned project. This requirement is met.

(k) *NMC Section 14.21.070, Construction Limitations within Geologic Hazard Areas.*

A. New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

This standard is advisory and can be addressed with a condition of approval.

(l) *NMC Section 14.21.090, Erosion Control Measures.*

In addition to completing a Geologic Report, a certified engineering geologist shall address the following standards.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

3. Dispersal of water runoff from developed areas over large undisturbed areas;

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

This standard is advisory and can be addressed with a condition of approval.

(m) *NMC Section 14.21.050(E), Stormwater Retention Facilities Required.* For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

Driveway may exceed this threshold, in which case retention may be needed. There is sufficient area on the property to construct storm water retention facilities; therefore, the Commission concludes that they can be built, and that a condition be imposed requiring the improvements if the slope of driveways, parking areas, or other “at grade” impervious surfaces exceed 12 percent. This standard is met with a condition of approval.

9. Compliance with NMC Chapter 14.31, Criteria for Approval of Townhomes. The criteria for townhouse development have been addressed as follows:

(a) *NMC Section 14.31.020(B), Definition of Townhouse.* A single-family dwelling in a row of at least two units in which each unit has its own front and rear access to the outside, no unit or portion thereof is located over another unit or portion thereof except for parking spaces or garages, each unit is separated from any other unit by one or more common walls, and each unit has its own underlying townhouse lot.

The applicant’s site plan (Attachment "D") demonstrates that the units will be townhouses situated on individual lots in conformance with this standard.

(b) *NMC Section 14.31.030, Zoning Districts Where Townhouses are Located.* Townhouse are an outright permitted use in the R-2, R-3, and R-4 zoning districts subject to the standards contained in this section.

The zoning map (Attachment "H") shows that the property is zoned R-2, a district where townhomes are permitted.

(c) *NMC Section 14.31.040, Density.* The overall density of a townhouse development shall not exceed the density allowed in the underlying zoning district and shall be computed on the parent lot.

The property is 22,039 sq. ft. in size per the tentative subdivision plan prepared by the applicant (Attachment "C"). Per NMC 14.13.010, the R-2 zone district has a density limit of 5,000 sq. ft. per house, meaning that four units are permissible on a parcel of this size. This standard has been met.

(d) *NMC Section 14.31.050, Number of Units in Building.* No separate building in a townhouse development may exceed six townhouse units.

The applicant's site plan (Attachment "D") shows that each building will have a total of two units. This standard is met.

(e) NMC Section 14.31.060, Development Standards. *All townhouse developments shall meet the following:*

A. *Minimum lot size: None.*

B. *Maximum parent lot coverage: Underlying zone (57 percent).*

C. *Maximum height: Underlying zone (30-feet).*

D. *Minimum outdoor open space or patio: 150 square feet per townhouse.*

E. *Minimum parking: 1.5 spaces per townhouse.*

F. *Minimum parent lot frontage: 25 feet.*

G. *Minimum parent lot setback: Underlying zone. (15 ft. front, 5 ft. side, 10 ft. rear)*

H. *Utilities: Each dwelling unit shall be served by separate utilities.*

The applicant's site plan and tentative subdivision plan (Attachments "C" and "D") show that these standards can be met, with the exception of building height. A number of different designs can meet a 30-ft building height; therefore, the Commission finds that it is reasonable to condition approval of the townhouse development on satisfying this requirement. This standard is met, as conditioned.

(f) NMC Section 14.31.070, Access. *The parent lot shall have a minimum of 25 feet of frontage onto a street. For purposes of this section, a street can be either a public or private way dedicated for street purposes. Townhouse lots are not required to have frontage on a street, but in no case may a townhouse lot be further than 100 feet from a street. For townhouse developments where frontage for townhouse lots is not provided, an adequate turnaround as determined by the Fire Marshal on the parent lot is required. In addition, townhouse lots with no frontage shall have a perpetual easement across any and all lots that have frontage and any intervening lot.*

The applicant's tentative subdivision plan (Attachment "C") shows that each of the lots will possess the requisite frontage along SE 5th Street; therefore, this standard is met.

(g) NMC Section 14.31.080, Deed Covenant and Maintenance Agreement. *The developer of a townhouse development shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements to the Community Development Director prior to final plat approval. Such documents shall be approved by the City Attorney and Community Development Director to assure that adequate provisions are contained in those documents for maintenance of buildings, utilities, landscaping, parking areas, common areas, private streets or drives, and other items held in common.*

Covenants and maintenance agreements are typically needed when shared common areas are proposed. The tentative subdivision plan does not show any such areas. Nonetheless, the developer may choose to adopt covenants or maintenance agreements, in which case this requirement would be applicable. The standard can be addressed as a condition of approval.

(h) NMC Section 14.31.090, Process. Townhouse developments are permitted in the R-2, R-3, and R-4 zoning districts as an outright permitted use. However, since a townhouse development will require a segregation of lots, a partition or subdivision, as applicable, will be required with its appurtenant requirements as per the City of Newport Subdivision Ordinance (No. 1285, as amended).

The application includes a request for subdivision approval. This standard has been satisfied.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the request as presented in the application materials complies with the criteria established for approval of a tentative subdivision plan, geologic permit, and townhouse development; and the request is hereby **APPROVED** with the conditions listed below.

1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Engineering Geologic Hazards and Geotechnical Investigation, prepared by H.G. Schlicker and Associates, dated November 6, 2018 (the “Geologic Report”).
2. Certification of land division compliance with the Geologic Report (e.g. site grading, buried utilities, condition of existing walls, etc.) is required prior to approval of the final plat. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.
3. Any sedimentation caused by stripping vegetation, grading, or other development, shall be removed from all adjoining surfaces and the affected areas returned to their original or equal condition prior to the final approval of the plat for recording.
4. Developer shall install curb, gutter, and sidewalk along the stretch of SE 5th Street that abuts the subject property and is responsible for constructing water and sewer service laterals to serve each townhouse lot. All public improvements shall be accepted by the Public Works Department prior to approval of the plat for recording.
5. Developer shall secure from the non city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their

extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

6. Developer shall control the release rate of run-off from driveways, parking areas, or other “at grade” impervious surfaces in areas of 12% slope or greater. Such release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency and is to be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

7. The maximum building height for the townhouse units shall be 30-feet, unless an alternative standard is established through an adjustment or variance process.

8. Developer shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements, and such documents shall be reviewed and approved by the Community Development Director and city Attorney prior to the final approval of the plat for recording.

9. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, improvements shall conform to any existing published set of standards designated by the City Engineer for the type of improvement. The City Engineer may approve designs that differ from the applicable standard if the City Engineer determines that the design is adequate.

10. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The developer shall make all necessary arrangements with the serving utility to provide the underground service.

11. Installation of public improvements, including excavation in the excess of 100 cubic yards, shall not occur until plans have been checked for adequacy and approved by the City, and shall not be commenced until after the city is notified.


12. All public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.

13. A map showing public improvements “as-builts” shall be filed with the city upon completion of the improvements.

14. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The developer shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: November 20, 2018

Re: Appeal of Staff Decision Denying the Applicant's Request for Relief from Street Improvement Requirements (File No. 6-MISC-18)

Enclosed is a copy of the written record, including the staff decision and notice of appeal. Please treat the staff decision, and this memo, as the staff report for the appeal hearing. The appellant, Lynn Cole, owns property at 640 SE 5th Street (County Assessor's Map 11-11-08-AD, Tax Lot 7800). The original home, built in 1950, burned down in 2017. Ms. Cole has placed a new manufactured home on the property; however, that residence has not received an occupancy permit because the city is requiring (a) the sewer lateral for the home be lined or replaced, (b) the timber curb along the property frontage be replaced with concrete curb, and (c) the driveway apron be reconstructed.

On August 24, 2018, Ms. Cole submitted an application to the city seeking relief from the curb and driveway apron improvement requirements. Since these are public improvements within the right-of-way for SE 5th Street, they are "exactions" governed by Newport Municipal Code Chapter 14.44. In circumstances where improvements are not voluntarily accepted by an applicant, the city must establish that the work it is requesting is roughly proportional to the impact of the development on public facilities (NMC 14.44.040). That analysis is contained in the staff decision that found the work was justified (Exhibit "A").

Ms. Cole filed a timely appeal of the staff decision on October 23, 2018. Specific grounds Ms. Cole is relying upon as a basis for the appeal include (a) that the city has not consistently applied its rules that set out street improvement requirements, (b) that the reference in NMC Chapter 14.44 to corresponding requirements in the subdivision code (i.e. Chapter 13.05) means that the improvement requirement applies to subdivisions and she is not seeking to subdivide her lot, (c) that the standards apply only to new lots, and (d) that the curb and apron work will not improve street safety.

Conclusion No. 6 of the staff decision addresses Ms. Cole's first point. As for her second point, NMC 14.44.050(A)(4) states "*Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.*" The code cross-references to street standards listed in Chapter 13.05 to avoid replicating them in Chapter 14.44. The language states clearly that it applies to existing lots and parcels. Chapter 14.44.050(A) further notes: "*Development Standards. The following standards shall be met for all new uses and developments.*" The replacement dwelling, while not a new use, is new development. Conclusion No. 4 of the staff decision explains why street improvement requirements apply to redevelopment. Ms. Cole's last point, related to whether or not the improvements improve street safety, is addressed under Conclusion No. 2.

With respect to the procedures for Monday's hearing, a script will be prepared for the Planning Commission Chair addressing the conduct and order of the proceedings in a manner consistent with the City of Newport's adopted procedures (NMC 14.52.080). Signup sheets will be provided for those wishing to speak at the hearing.

The sheets will include a statement asking that persons identify the criteria they believe the applicant has or has not satisfied before they provide their testimony.

If, after taking testimony, the Commission believes that it has sufficient information to render a decision on the appeal then it may provide direction to staff to prepare findings of fact for consideration at its next meeting. The Commission should identify the direction it wants staff to take in preparing the findings (e.g. approve the application in a manner consistent with the staff decision, approve the application but include alternative findings addressing specific issues, or deny the application). If the Commission is inclined to deny the application, it is reasonable for it to ask that the appellant prepare the findings. The Commission must approve the application (i.e. deny the appeal) if it believes the approval standards have been met or can be met through the imposition of reasonable conditions. It must deny the application if it believes the approval standards cannot be met, even with reasonable conditions.

The Commission may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments or testimony related to the approval criteria. If, after taking testimony, the Commission believes that additional information is needed in order for it to approve the application then this would be an option that it could pursue. In such a case, the Commission should be clear about the additional information that it wants to see submitted. Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of 7 days. Unless waived, the City must also afford the applicant at least 7 days after the record is closed to all other parties to submit final written argument in support of the application.

Exhibits

Exhibit #	Description
A	Staff Decision for File No. 6-MISC-18, with attachments
B	Appeal by the Applicant, Lynn Cole, dated October 23, 2018
C	Copy of NMC Chapter 14.44, Transportation Standards
D	Notice of Public Hearing



**BEFORE THE COMMUNITY DEVELOPMENT
DIRECTOR OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 6-MISC-18, APPLICATION FOR RELIEF)
FROM REQUIREMENT THAT CURB AND DRIVEWAY) FINAL
APRON BE REPLACED IN CONJUNCTION WITH) ORDER
REPLACEMENT DWELLING (LYNN COLE, OWNER))**

Order denying a request for relief from City requirements that a timber curb and driveway apron be replaced along a street frontage in conjunction with a replacement dwelling. The property is located at 640 SE 5th Street (Assessor’s Map 11-11-08-AD, Tax Lot 7800).

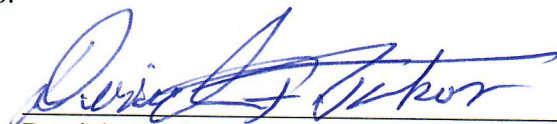
WHEREAS:

- 1.) The Community Development Director has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Community Development Director has duly reviewed the request; and
- 3.) The Community Development Director allowed for evidence and recommendations from the applicant, various City departments, and the Community Development staff; and
- 4.) At the conclusion of said review, after consideration, the Newport Community Development Director found the requirement that the owner replace the timber curb and driveway apron in conjunction with the replacement dwelling is consistent with the requirements of the Newport Municipal Code and is roughly proportional to the impact the new development will have on public facilities.

THEREFORE, LET IT BE RESOLVED by the City of Newport Community Development Director that the attached findings of fact and conclusions (Exhibit "A") support denial of the applicant’s request for relief from these public improvement requirements.

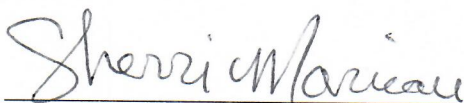
BASED UPON THE ABOVE, the Newport Community Development Director determines that the requirement that the curb and driveway apron be replaced is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 12th day of October 2018.



Derrick I. Tokos, AICP
Community Development Director

Attest:



Sherri Marineau
Executive Assistant

EXHIBIT "A"

Case File # 6-MISC-18

FINDINGS OF FACT

1. Patricia Lynn Cole submitted an application on August 24, 2018 seeking relief from a requirement that she replace existing timber curb with concrete curb along her street frontage in conjunction with a replacement dwelling.
2. The property is located at 640 SE 5th Street (Assessor's Map 11-11-08-AD, Tax Lot 7800).
3. Staff reports the following facts in connection with the application:
 - A. Plan Designation: Residential.
 - B. Zone Designation: R-2/"Medium Density Single Family Residential."
 - C. Surrounding Land Uses: Single family homes.
 - D. Topography and Vegetation: The property is gradually sloped where the replacement home has been placed adjacent to SE 5th Street and drops off steeply between the home and SE Bay Blvd.
 - E. Existing Structures: Manufactured dwelling has been placed but is not connected to services. The home is a replacement for a dwelling that burned down October of 2017.
 - F. Utilities: Water and sewer service is available to the site.
 - G. Development Constraints: None known.
 - H. Past Land Use Actions: None known.
4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on August 27, 2018 to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. 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., September 11, 2018. Comments were received from Tim Gross, Public Works Director, and Neal and Jana Rea, who own the home at 607 SE 5th Street.
5. The following attachments are included in the case record and are incorporated herein as part of the decision:
 - Attachment "A" – Application Form
 - Attachment "B" – County Assessor Information
 - Attachment "C" – Applicant's Narrative and Supporting Emails
 - Attachment "D" – Building Permit
 - Attachment "E" – Cost Estimates for Improvements
 - Attachment "F" – Public Notice

- Attachment "G" – Email from Tim Gross, Public Works Director, dated 8/27/18
- Attachment "H" – Letter from Neal and Jana Rea, dated 9/10/18
- Attachment "I" – Emails from Lynn Cole Responding to Rea Letter, dated 9/14/18
- Attachment "J" – Diagram of Street Design Standards, Newport TSP
- Attachment "K" – Topographic Map of the Property

6. Newport Municipal Code (NMC) Section 14.44.050(A)(4) requires that a substandard street adjacent to a parcel that is being developed be brought into conformance with the city street standards listed in the subdivision ordinance. Development may only proceed if the required public facilities are in place or guaranteed. The city may accept a future improvement guarantee, such as a non-remonstrance agreement, if the developed condition of adjacent properties is such that it is unlikely the street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, improve street safety, capacity, or pedestrian circulation (NMC 14.44.050(B)).

7. The subdivision ordinance is contained in Chapter 13.05 of the Newport Municipal Code. Section 13.05.015 sets out the design requirements for streets. For streets identified in the Newport Transportation System Plan as “minor streets,” the minimum required roadway width is 36-feet, which is sufficient to accommodate two, 10-foot travel lanes with 8-feet of parallel parking to either side. Curb gutter and sidewalk is also required (NMC 13.05.015(H)). A diagram illustrating the street design standards for a local road is included as Attachment “J” to this decision.

8. In circumstances where improvements are not voluntarily accepted by an applicant, the city must establish that the work it is requesting is roughly proportional to the impact of the development on public facilities (NMC 14.44.040). Ms. Cole’s application serves as evidence that she has not voluntarily accepted that the improvements are needed, as she argues that the required curb work is unnecessary because the timbers are in good condition, and that it is unfair to require her to install new curb when similarly situated properties in the area have not been required to install curb (Attachment “C”). Accordingly, this decision includes the required rough proportionality findings.

9. A written estimate submitted by Ms. Cole shows that the cost of installing the concrete curb along here property frontage is \$4,650. A separate estimate for a new concrete driveway apron is \$3,250. An estimate was provided as well for lining the private sewer lateral to the new home. That cost is listed as \$10,000 (Attachment “E”).

10. In response to the public notice, Public Works Director Tim Gross states that the timber curb is failing at this address due to dry rot, that he inspected the timbers himself, and that the development standards require the installation of curb in this circumstance. He further notes that the requirement for curb is consistent with how other development and redevelopment has been treated and is needed at this particular location because of the steep grade of the road, which is probably why the timber curb was installed in the first place (Attachment “G”).

11. The letter from Neal and Jana Rea notes that they paid for the improvement of all required public facilities at the time they built a replacement home in 2015 and that if development approval requires concrete curb in Ms. Cole’s case then she should have to complete and pay for the required improvements (Attachment “H”).

12. Ms. Cole replied to the letter from Neal and Jana Rea, indicating that they should have installed curb on their side of SE 5th Street (Attachment "I").

CONCLUSION

1. The Newport Municipal code requires frontage improvements in connection with development or redevelopment of a parcel and offers only limited circumstances when those improvements can be deferred into the future via a non-remonstrance agreement. SE 5th Street does not possess the 36-foot of street width required of a local street nor does it have sidewalk. This is true of the entire stretch of the roadway and is the reason why Ms. Cole is not being asked to construct those improvements at this time. Instead, the improvements will be deferred to a non-remonstrance agreement because it is unlikely such improvements would be made in the foreseeable future, which is one of the standards the city may rely upon to defer public improvements (ref: NMC 14.44.050(B)).
2. Curbs; however, do exist in various forms along the south side of SE 5th Street to channel run-off from roads and homes into a structured storm drainage system. The curbs are constructed out of concrete, asphalt, and in Ms. Cole's case treated timber. This appears to be largely a function of when the curbs were installed. The same goes for driveway aprons. Curbs and driveway aprons help to maintain the integrity of the road, minimizing edge wear and limiting the erosive impacts of storm run-off. Because the improvements exist on adjoining properties and there is a safety benefit associated with their installation, the city cannot defer the improvements into the future via a non-remonstrance agreement in the same manner as the street widening and sidewalk improvements.
3. Residential properties, including the property owned by Ms. Cole, rely upon public streets as a means of access and in some cases as a collection point for storm run-off. They similarly place demands on those streets and without viable street access the properties would not be useable. Therefore there is a rationale nexus (i.e. "connection") between the curb and driveway apron improvements to the street and the replacement home.
4. Curb and driveway aprons wear down and must be replaced just as homes do. Assessment records show that the residence Ms. Cole is replacing was constructed in 1950 (Attachment "B"). It is not unreasonable to expect that the driveway apron would need to be replaced due to normal wear and tear. Similarly, this also suggests that the treated timber has been in place for an extended period of time. Tim Gross is both the Public Works Director and City Engineer. He is uniquely qualified to determine when a curb has worn down to the point that it must be replaced and it is reasonable and appropriate for the City to rely upon his judgement.
5. Ms. Cole provided a value of \$66,500 for the manufactured dwelling. In reviewing the accompanying quote, it does not appear that the figure included site preparation and placement costs, which would be an additional expense. It is not uncommon for public improvements to be a significant project cost. In this case, when weighed only against the cost Ms. Cole paid to purchase the dwelling, the expense of the curb and apron work is about 10 percent of the overall project cost. Considering the lifecycle of the new dwelling, which could be as much as 50-60 years, and the impact of associated vehicle traffic to and from the dwelling over that same period of time, it is reasonable to conclude that the requirement that the curb and driveway apron be installed is roughly proportional to the impact of the development on the public facilities.

6. Ms. Cole points out that persons developing other properties in the area weren't required to replace or install curbs when they built new dwellings, including the property at 607 SE 5th Street. Other properties have been required to install curb, such as the home immediately to the west of Ms. Cole's parcel. Sometimes this is a function of the rules that were in place at the time a particular property developed, as they have changed over time. Other times it may be that the street frontage was in better condition and didn't need additional work, such replacement curb. It is also possible that City staff neglected to identify the need for certain improvements when evaluating development plans, as they are human and personnel change from time to time. That is to say, there are many reasons why the type and nature of frontage improvements the City requires varies from project to project, and the fact that a curb was not required to be replaced on one property is not a valid basis for determining that it is not needed for another. Standards the City must follow when determining when public improvements are needed are listed in this decision and the findings establish that the subject request for curb and driveway apron improvements are in line with those requirements.

7. The application includes cost information for a sewer lateral. That is a private service to the home, as opposed to a public improvement the City ultimately owns and maintains, and is; therefore, not an exaction that is subject to rough proportionality findings. Consideration of whether or not the City is or is not justified in requiring the private lateral be replaced is not a part of this decision.

For the reasons listed above, the request for relief from the requirement that concrete curb and driveway apron improvements be installed in conjunction with the replacement home at 640 SE 5th Street is **DENIED**.



City of Newport Land Use Application

Applicant Name(s):	Property Owner Name(s) <i>if other than applicant</i>
PATRICIA LYNN COLE	
Applicant Mailing Address:	Property Owner Mailing Address:
640 SE 5TH ST NEWPORT, OR 97365	
Applicant Phone No.	Property Owner Phone No.
(541) 270-0218	
Applicant Email	Property Owner Email
LYNNCOLE824@GMAIL.COM	
Authorized Representative(s): <i>Person authorized to submit and act on this application on applicant's behalf</i>	
N/A	
Authorized Representative Mailing Address:	
Authorized Representative Telephone No.	
Authorized Representative Email.	

Project Information

Property Location <i>Street name if address # not assigned</i>	
640 SE 5TH ST - NEWPORT, OR 97365	
Tax Assessor's Map No.:	Tax Lot(s):
11-11-08-AD-07860-00	LOT 4, 5, & PTN of 6
Zone Designation:	Legal Description: <i>Add additional sheets if necessary</i>
Comp. Plan Designation:	
Brief description of Land Use Request(s):	
RETAIN exist. timber CURB and NOT REPLACE with concrete CURB	
<i>Examples:</i>	
1. <i>Move north property line 5 feet south</i>	
2. <i>Variance of 2 feet from the required 15-foot front yard setback</i>	
Existing Structures: if any	
MFG HOME	
Topography and Vegetation:	

Application Type (please check all that apply)

<input type="checkbox"/> Annexation <input type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map <input type="checkbox"/> Amendment <input type="checkbox"/> Other
--	---	---

FOR OFFICE USE ONLY

File No. Assigned: 6-MISC-18		
Date Received: 8/24/18	Fee Amount: 504-	Date Accepted as Complete:
Received By: DT	Receipt No. 2493	Accepted By:

City Hall
169, SW Coast Hwy
Newport, OR 97365
541.574.0629

625-18-000079-PLNG



City of Newport Land Use Application

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Applicant Signature(s)

8-23-2018

Date

Property Owner Signature(s) (if other than applicant)

8-23-2018

Date

Authorized representative Signature(s) (if other than applicant)

Date

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R104054	Neighborhood:	NENI	Owner and	COLE PATRICIA LYNN
Map Taxlot:	11-11-08-AD-07800-00	Property Class:	101	Mailing Address:	923 SE BAY BLVD UNIT 31 NEWPORT, OR 97365
Tax Map:	11s11w08AD			Site Address(es):	640 SE 5TH ST
Web Map:	View Map				
Info:	OLSSON'S ADDN.-NEWPORT, BLOCK A, LOT 4,5 & PTN OF 6, MF435-1228				
Tax Code:	104				
Acres:					

Improvements							Value History				
Description	Area	Yr Built	Found	Heat	Plumb	BDMS Value	Year Imp.	Land	Total Market	Total Assessed	
MAIN AREA	2184 sq ft	1950	CS	BBH	B2	3	\$121,200	2017134,890	214,960	349,850	300,190
ATTACHED CARPORT	240 sq ft	1950	CS				\$6,190	2016111,160	214,960	326,120	291,450
ACCESSORY IMPROVEMENTS	1 sq ft						\$7,500	2015104,020	214,960	318,980	282,970
Foundation Code List Heating/AC Code List Plumbing Code List								201493,200	213,960	307,160	274,730
								201397,820	213,960	311,780	266,730
								201299,450	213,960	313,410	258,970
								2011100,200	254,670	354,870	251,430
Sales History							Sale Date	Price	Document	Type	Code
							11/15/2001	\$205,000	MF435-1228	32	WD

Land				Related Accounts		Disclaimer
Description	Acres	Market Value	Special Use Value			
DEV BAYVIEW LOT	0.25	193,460				For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. Tax data exported 10/2017.
SITE DEVELOPMENT		21,500				
Today's Date: 09/28/2018						

LINCOLN COUNTY, OREGON - 225 W OLIVE ST, ROOM 205 - NEWPORT, OR 97365

PROPERTY DESCRIPTION

5,046.58

OLSSON'S ADDN.-NEWPORT, BLOCK A, LOT 4,5 LAST YEAR'S TAX

& PTN OF 6, MF435-1228

See back for explanation of taxes marked with (*)

ACRES:

MAP: 11-11-08-AD-07800-00

CODE: 104

COLE PATRICIA LYNN
640 SE 5TH ST
NEWPORT, OR 97365

THIS YEAR'S TAX

A-LINC CO SCHOOL UNIT 1,258.48
A-OR CST COMM COLLEGE 45.06
A-ESD LINN-BENTON-LINC 78.17

MORT LENDER: WFR-WFR

EDUCATION TOTAL: 1,381.71

Table with columns: VALUES, MARKET VALUES, LAST YEAR, THIS YEAR. Rows include LAND, IMPROVEMENT, TOTAL VALUE, TAXABLE VALUES, ASSESSED.

A-LINC CO GENERAL 722.97
A-LINC CO EXTENSION SE 11.60
A-LINC CO ANIMAL SCVS 28.21
A-LINC CO TRANSPORTATI 25.01
PORT OF NEWPORT 15.62
CITY OF NEWPORT 1,450.90
H-PACIFIC COMMUNITIES 92.97
URBAN REN NPT AGENCY 491.13

NET TAXABLE: 282,970 291,450

GENERAL GOVERNMENT TOTAL 2,838.41

BILLING QUESTIONS (541) 265-4139
VALUE QUESTIONS (541) 265-4102
LENDER ACCT. # 0323087288
If a mortgage company pays your taxes,
This statement is for your records only.

A-LINC CO SCHOOL BOND 211.88
A-OR CST COMM COLLEGE 75.57
PORT OF NEWPORT 154.09
CITY OF NEWPORT 528.52
H-PACIFIC COMMUNITIES 253.10

BONDS AND OTHER TOTAL: 1,223.16

Table with 3 columns: Full Payment with 3% Discount (5,279.98), 2/3 Payment with 2% Discount (3,556.28), 1/3 Payment No Discount (1,814.43)

2016-17 PROPERTY TAX TOTALS 5,443.28

TOTAL TAX (After Discount) 5,279.98

2016-17 Property Taxes

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT LINCOLN REAL

ACCOUNT NO.: R104054

Table with columns: Pay By, Discount Allowed, Net Amount. Rows for Full Payment Enclosed, 2/3 Payment Enclosed, 1/3 Payment Enclosed.

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE

Mailing address change on back

Enter Payment Amount \$

REMIT TO:

LINCOLN COUNTY TAX COLLECTOR
225 W. OLIVE ST - ROOM 205
NEWPORT, OR 97365

COLE PATRICIA LYNN
640 SE 5TH ST
NEWPORT, OR 97365

From: Lynn Cole
Sent: Friday, August 24, 2018 11:41 AM
To: D.Tokos@NewportOregon.gov
Subject: CURB APPEAL

Appeal to replace the existing 10" x 10" treated timber curb with a concrete curb.
Property: 640 SE 5th Street – Newport, OR 97365

May 31, 2018

Tim Gross, Public Works informed me I had to replace my existing timber curb with a concrete curb even though there are no other curbs in my neighborhood, including no curbs on the new homes built within the last two years which are one house away from my property.

June 13, 2018

I wrote an appeal letter to the City Manager and subsequent e-mails to him. I also wrote letters to the City Council members regarding this matter.

June 29, 2018

I received an e-mail from Spencer Nebel, City Manager, stating he had reviewed the matter with Tim Gross and he listed Section 14.44.020 of the code ".....apply to new development or redevelopment for which a building permit is required....." however this code was NOT APPLIED to the two new houses built one house away from mine and I have asked numerous times for an explanation, with no answers.

Spencer Nebel also said in the same e-mail that "Decisions on land use issues can be appealed either on the basis of interpretation of the zoning ordinance language or that the exaction is excessive in relation to the project.

I wish to appeal the curb requirement "regarding whether the exaction is roughly proportional to the improvements being made to the property".

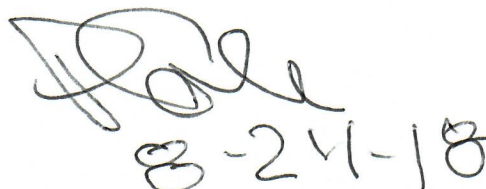
- 1) Two new "developments" in the last two years, one house away from mine, were not required to put in curbs.
- 2) There are no other curbs on 5th street anywhere near my house.
- 3) There is an existing solid treated timber curb already in place which has been there for years and will continue to be sturdy for many, many more years.
- 4) The cost to replace the existing curb with a concrete curb will be \$7,900 which is money I do not have as I am retired and living on social security.
- 5) Replacing the existing curb will not improve pedestrian traffic.

The public works department is withholding my occupancy permit until I comply with his curb request, which is EXTORTION.

Sincerely,

PATRICIA LYNN COLE, homeowner and Newport tax payer for 18 years.

Sent from for Windows 10



8-24-18

From: Melanie Nelson
Sent: Friday, June 15, 2018 1:44 PM
To: 'Lynn Cole'
Subject: RE: 640 SE 5th Street - Newport

Is this information which has been sent to Tim Gross?

From: Lynn Cole [mailto:lynncole824@gmail.com]
Sent: Friday, June 15, 2018 12:39 PM
To: Melanie Nelson <M.Nelson@NewportOregon.gov>
Subject: FW: 640 SE 5th Street - Newport

Sent from for Windows 10

From:
Sent: Thursday, June 14, 2018 12:09 PM
To:
Subject: 640 SE 5th Street - Newport

Chris.

I am attaching 2 photos of homes within one block of my property which were built as "new" developments in the past two years. The first house is on the corner of Fogarty and 5th street, 607 SE 5th Street, and the other home is one house away from my property. As you can see, they do not have curbs, and so I assume the City of Newport did not require curbs to be built.

My concern is that I am being unfairly required to put in a curb, even though these other homes were not required to build curbs, and according to you, all new developments are required to build curbs.

My next concern is that I have not found any City of Newport Municipal code requiring curbs so it seems this requirement is the whim of City planning with no real, voted for code.
Please send me the code requirement for curbs.

I would also like, in writing, the curb requirement and the lateral sewer line replacement requirement so I may better state my case for an appeal, or variance to the City Council.
Patricia Cole

Spencer R. Nebel
City Manager
City of Newport, Oregon 97365
541-574-0601
s.nebel@newportoregon.gov

-----Original Message-----

From: lynncole824@gmail.com [mailto:lynncole824@gmail.com]
Sent: Thursday, June 28, 2018 6:59 PM
To: City Council <CityCouncil@NewportOregon.gov>
Subject: Contact Us - Web Form

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 6/28/2018 at 6:59:09 PM

To: City Council
Name: PATRICIA COLE
Email: lynncole824@gmail.com
Phone: 5412700218
Subject: Appeal- Public Works Director's Requirements

Message: My house was damaged by fire in late October 2017 and subsequently had to be demolished in March 2018. I am replacing the home with a modular home on the same property where I have resided for 18 years. In applying for the permits, Tim Gross informed me I had to put in a curb, even though there are no other curbs in the neighborhood. There is an existing 8x8 treated timber curb on the property frontage which has been there since I purchased the property in 2001 and is in great shape. When I appealed putting in a new concrete curb (on city property) I was informed, by Tim Gross I had to do that and that the existing timber curb was "temporary and would soon fail" even though it had been there for decades and is in fine condition. I also appealed the "new curb" requirement because the property frontage is 85 feet and I am retired, on social security and do not have the funds to put in an unneeded curb. Tim Gross told me on May 31st that I had to "camera" my sewer line to see if it was clear. I hired that done at my expense and took the video to Public Works which showed the line was clear. I was then informed by Chris Janigo in that department that Tim Gross had already decided to make me replace the lateral sewer line, at great cost, even though he had not even looked at the video. Tim Gross is now holding up my permits until I comply with his unreasonable and unneeded requirements. I have lived in Newport for 18 years and would think the City would help a retired tax payer rebuilt her home and provide much needed housing. There are no requirements in the City of Newport Municipal Codes for these items, for a single residence in an already developed neighborhood (which, again the neighborhood has no curbs now) but there are curb requirements for NEW DEVELOPMENT for land divisions and sub-divisions, which Tim Gross thinks applies to my property. I

have sent several e-mails to the City Manager and have yet to hear from him regarding my appeal so I am appealing directly to the City Council and will provide all back up desired supporting my case. My property is 640 SE 5th Street - Newport--My modular home is ready to be installed, and I have the site permits, but am being stalled by the ROW permit from Public Works, even though I will not be doing any work on the Right Of Way as my sewer line is fine.
Please help me. Patricia Cole

(541) 270-0218

From: Lynn Cole
Sent: Wednesday, June 13, 2018 5:56 PM
To: Martin Desmond
Subject: FW: SE 5th St. Development

In this e-mail Chris says the city "needs to know if the 4 inch sewer line" is in good condition...IT IS
Also, I have read the 800 pages of the city of Newport muni codes and still have not found any codes requiring curbs.

First we need to get the code requiring curbs, and then get in writing from tim gross requesting us to put in a curb and why. Also in writing from Tim a request for us to get the ROW permit and why (even though we are not doing any work on the ROW) and get in writing why he is now asking for more sewer line work even though the sewer line is clear and in good condition.

Then we can file with the City Council, an appeal or a variance for the property.

Sent from for Windows 10

From:
Sent: Friday, June 1, 2018 12:47 PM
To: ; ; ;
Subject: Re: SE 5th St. Development

Hi Chris, Thanks for printing out the aerial photo with the sewer and water gps lines. After I met with you, I went over to Rich Rau at Rau plumbing and described the problem with tying into the sewer line 11 feet down. He suggested that we camera the existing sewer line as the roots may not be affecting Lynn's sewer line close to the road. I then talked with joel stevenson who we have set up to dig the trench. The plan now is for joel, Lynn, Rich, and myself to meet next Thursday to camera the existing sewer line and then decide if we can tie into that line. I will bring by the camera footage to you for your review. Martin

On May 31, 2018 10:48 AM, "Chris Janigo" <

> wrote:

Hi Martin,

Upon further review of your development. The City of Newport needs to know that the 4" sewer line on leading on the property is in good condition for future development. You can submit to us a video file of the sewer lateral being TV'ed in order to verify this. The City also requests new ODOT Type "C" curb across the frontage of the property and a driveway apron for the driveway. With this development in the ROW, we will also need you to submit a ROW permit application which I have attached in this email so we can schedule inspections of the work. Upon approval of the ROW permit application we will send you City standard details regarding construction specifications.

From: Derrick Tokos
Sent: Thursday, July 5, 2018 4:33 PM
To: 'Lynn Cole'
Subject: RE: Appeals

Ms. Cole,

I have looked at your property and I believe the City Engineer has as well. The City requires safety improvements, such as the installation of curb, when property is redeveloped. It doesn't matter if the redevelopment is the result of a casualty loss (as in your case) or someone simply wants to tear an old house down to build a new one.

Our City Engineer has stated that the existing timber posts will fail in the foreseeable future and that they need to be replaced with concrete curb. I understand that you disagree with him on this point. Your options are to either install the curb as requested, or to challenge that determination by seeking a formal interpretation from the citizen Planning Commission (if you think city staff is misinterpreting its codes) or a decision from the Community Development Department on the question of whether or not the cost of the curb work is roughly proportional to the impact of the improvements you are making to the property. There are costs associated with each of these applications, as noted below, and for subsequent appeals if it comes to it. I would be happy to meet with you to further discuss those options if you like. I have time tomorrow afternoon after 2pm if that is convenient for you.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
189 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644

From: Lynn Cole [mailto:lynncole824@gmail.com]
Sent: Monday, July 02, 2018 6:31 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: RE: Appeals

Have you looked at my property? The timber curb has been in place since before I purchased the property in 2001 and is a treated, 8x8 timber which is very substantial and has the City Engineer even looked at the curb? That curb will be there long after any of us. Also I have stated many times that if my neighbor does put in a concrete curb, it will be about 10 feet long whereas my property frontage is 85 feet long. Do you see any difference in the costs? I do not have the funds, and I do not have the funds to file a petition to the Comm Dev Dept for \$504 and then to possibly have to appeal to the planning Dept for another \$443.



Building Permit
Residential Manufactured Dwelling
Permit Number: 625-18-000289-MD
IVR Number: 625025150564

Web Address: www.newportoregon.gov

Email Address: permits@newportoregon.gov

Permit Issued: July 20, 2018

Project: Patricia Cole Residence

TYPE OF WORK

Category of Construction: Manufactured Dwelling

Type of Work: Replacement

Submitted Job Value: \$108,000.00

Description of Work: Placement of a 27x58 Modular Home to replace a MH that had fire damage.

JOB SITE INFORMATION

Worksite address

Parcel

Owner:

COLE PATRICIA LYNN

640 SE 5TH ST

11-11-08-AD-07800-00

Address:

640 SE 5TH ST

Newport, OR

NEWPORT, OR 97365

LICENSED PROFESSIONAL INFORMATION

None Specified

PENDING INSPECTIONS

Inspection

Inspection group

Inspection status

5999 Final Manufactured Dwelling

Mfd Dwelling

Pending

SCHEDULING INSPECTIONS

Various inspections are minimally required on each project and often dependent on the scope of work. Contact the issuing jurisdiction indicated on the permit to determine required inspections for this project.

Schedule or track inspections at www.buildingpermits.oregon.gov

Schedule by phone call 1-888-299-2821 use IVR number: 625025150564

Schedule using the Oregon ePermitting Inspection App, search "epermitting" in the app store

Permits must be posted in clear view on the worksite. Permits expire if work is not started within 180 Days of issuance or if work is suspended for 180 Days or longer depending on the issuing agency's policy.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ATTENTION - CALL BEFORE YOU DIG: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center at (877) 668-4001 or dial 811.

All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010 (Structural/Mechanical), ORS 479.540 (Electrical), and ORS 693.010-020 (Plumbing).

AUGUST 22-2018

City of Newport
Community Development

RE: PATRICIA LYNN COLE
640 SE 5TH ST
NEWPORT, OR 97365

COST OF MANUFACTURED HOME \$ 66500.⁰⁰

COST OF REQUIREMENTS by
the PUBLIC WORKS DEPT.

1) LATERAL SEWER LINE
LATERAL LINED \$10,000.⁰⁰

2) COST OF CURB & APRON 4650.⁰⁰

(Bids ATTACHED) 3250.⁰⁰

\$17,900.⁰⁰





2655 Progress Way
Woodburn, OR 97071
Phone: 503-981-3136

Fax: 503-982-2646

Quote

Quote No: 2018-186023-00
Quote Date: 02/12/2018
Purch. Order No:
Model No: 210WV28502L
Serial No:

Part Number/Description	Qty.	Price	Extension
210WV-Weston Super Value-28502L		<i>Base Price</i>	<i>66500.5</i>
EXTERIOR			
Dormer - Metal 18' For tower dormer	1.00	\$680.00	\$680.00
Dormer - Tower	1.00	\$2,095.00	\$2,095.00
Ship Loose - Siding - Lap Stained Certainteed End walls	54.00	\$41.00	\$2,214.00
Metal Roof - Standing Seam	60.00	\$95.00	\$5,700.00
INTERIOR			
FLOORS			
Carpet Pad - Upgrade	1.00	\$130.00	\$130.00
DOORS & WINDOWS			
Door - Exterior - Inswing 9 Light Rear	1.00	\$115.00	\$115.00
36" Single Patio Door w/Internal Blind Add a single full light patio door back in at the standrd front door location. (This door is taken out by the trap window front wall option, so we are adding it back in.	1.00	\$785.00	\$785.00
EXTERIOR WINDOWS			
Blinds - 1" T/O	1.00	\$350.00	\$350.00
Trap Window Package w/Patio Door With full lite patio door. See print.	1.00	\$2,195.00	\$2,195.00
BATHS			
MASTER BATHROOM			
Faucet - Single Lever - Master Bath Upgrade for second sink (1 is in package)	1.00	\$90.00	\$90.00
Lavy - China Bath Lavy - Each Upgrade for second sink (1 is in package)	1.00	\$75.00	\$75.00
Shower Stall - 60"	1.00	\$395.00	\$395.00
GUEST BATHROOM			
Tub/Shower - Fiberglass - 60" - G/Bath	1.00	\$195.00	\$195.00
MISC - BATH			
STRUCTURAL			
Foundation Ready	1.00	\$395.00	\$395.00
Package - Energy Star	1.00	\$1,395.00	\$1,395.00
Porch - 8' w/Roof & Cedar Decking DW 28'30' Deck is now treated Hem-Fir, not cedar.	1.00	\$5,995.00	\$5,995.00
PH210 - Package - Energy Star Note 2 x 6 Exterior Walls R-40, 21, 33 Insulation 50 Gallon Electric Water Heater (40 Gallon if gas house) Digital Set Back Thermostat	1.00	PKG	\$0.00

we approve this quote as per floor plan. we do not offer other options, have been promised nothing but what is in writing. We understand factories may make specification or feature changes without notice or obligation.

[Signature] 2-15-18

6 door hardwood cab - linen master

6957
23107
C



2655 Progress Way
Woodburn, OR 97071
Phone: 503-981-3136

Fax: 503-982-2646

Quote

Quote No: 2018-186023-00
Quote Date: 02/12/2018
Purch. Order No:
Model No: 210WV28502L
Serial No:

Part Number/Description	Qty.	Price	Extension
Gasket All Recept and Switch Boxes on Exterior Walls Gasket and Seal All Penetrations			
UTILITY ROOM			
Water Shut Off Valves T/O	1.00	\$120.00	\$120.00
KITCHEN <i>Disposal</i>			<i>120.-</i>
Dishwasher	1.00	PKG	\$0.00
Garbage Disposal	1.00	PKG	\$0.00
Light - Can Package (5)	1.00	\$330.00	\$330.00
Microwave - Over Range	1.00	\$440.00	\$440.00
Range - Electric - Smooth Top	1.00	PKG	\$0.00
Refrigerator - 25 CF SxS w/ice & Water in Door Includes Plumbing for icemaker	1.00	PKG	\$0.00
CABINETRY			
Cab Finish - Knotty Alder	1.00	\$420.00	\$420.00
Counter Top - Granite Kitchen counter tops only. Includes 4" granite backsplash. Will require walls under bar for support.	60.00	\$65.00	\$3,900.00
ELECTRICAL			
Light - Ceiling Bedrooms, kitchen, den.	4.00	\$45.00	\$180.00
PACKAGES			
Package - Appliance 3	1.00	\$1,450.00	\$1,450.00
Package - Interior Rustic Alder Includes: Square alder base board throughout and Alder window jambs and window trim. (Omitting the Alder door trim from package and leaving std white- see MGC).	1.00	\$2,850.00	\$2,850.00
Package - Upgrade Faucets & Sinks T/O	1.00	\$395.00	\$395.00
THERMAL			
PLUMBING			
MISCELLANEOUS			
Misc. General Construction	1	\$275.00	\$275.00
*Install pine shelves with bullnose edges replacing wire shelves in master bath next to shower. \$175			
* Add support walls under granite bar. \$100			
* Add shipping walls between LR and DR.			
Engineering Fees For tower dormer and trap window combination.		\$500.00	\$500.00

I/we approve this quote, sheet order/
floor plan. We desire no other options.
have been promised nothing but what
is in writing. We understand factories
may make specification or feature
changes without notice or obligation.

[Signature] 2-15-18

7030
e



2655 Progress Way
Woodburn, OR 97071
Phone: 503-981-3136 Fax: 503-982-2646

Quote

Quote No: 2018-186023-00
Quote Date: 02/12/2018
Purch. Order No:
Model No: 210WV26502L
Serial No:

Page 4 of 4 Printed on: 2/13/2018

Part Number/Description	Qty.	Price	Extension
Misc. General Construction Credit to omit interior door trim from Rustic Alder Package.	-1	\$250.00	\$-250.00
National Dues	1	\$35.00	\$35.00
HUD Fees (Multi)	1	\$410.00	\$410.00
State Fees 1	1	\$200.00	\$200.00

315
C

Options Total: \$ 34059.5
Quote Total: \$ 100559.5

Retailer's Signature Date

All prices and specifications are subject to change without notice. Confirmation to be sent to manufacturing center by return mail or fax. Retailer to report any corrections required to the manufacturing center immediately.

V.P.S. - This source qualifies for a Volume Incentive or Volume Rebate payment that may exceed 5% of the invoice amount.



August 20, 2018

RE: - Newport, OR – Lateral Liner

Lynn Cole Property – 640 SE Fifth Street

Flow Technologies Incorporated is pleased to provide the following quote to your firm for the above mentioned project, per your request. The following prices should be considered confidential. Your investment for this project includes, all scope and pricing listed below, one mobilization, pre CCTV and clean lateral pipe to be lined, furnish and install LMK lateral CIPP liner at requested location, post CCTV upon completion of CIPP installation. Due to deflection and bend in pipe, installed CIPP can wrinkle at bend. If customer wishes for wrinkles to be sanded out, Flow Technologies Inc. can will perform work on a time and material basis. Customer agrees to pay total amount listed below after work is complete.

Bid Item Number	Description	Unit of Measure	Unit Quantity	Bid Price /Unit	Total Dollars
1	Mobilization	EA	1	\$3,500.00	\$3,500.00
2	CIPP Installation	LS	1	\$6,500.00	\$6,500.00
				Total	\$10,000.00

Flow Technologies Incorporated

8215 SW Tualatin Sherwood Road Suite 200 | Tualatin, Oregon 97062

Oregon CCB # 208473
 Oregon ESB # 10079
 WACL # FLOWTTI859MU



August 20, 2018

Client to provide to Flow Tech at no cost:

- **Notification of ALL affected parties on a daily basis of the status of the project.**
- **A mutually agreed upon schedule for the project.**
- **All permits, plans, fees, licenses, taxes, engineering, water meter, etc.**
- **Bypass pumping.**
- **Minimized mainline sanitary sewer flow during Flow Tech. operations.**
- **Legal and physical access to all manholes/access points for Flow Tech. operations connected to the pipeline system being constructed.**
- **Traffic Control and Flaggers.**
- **Site restoration of work area after construction.**

Flow Tech to provide the Following:

- **One mobilization to and from project site. Any further mobilizations will be negotiated.**
- **CCTV and clean above mentioned pipe sizes and lengths.**
- **Tools to perform removal of material from host pipe.**
- **Labor and equipment for Confined Space Entry.**
- **1 Operator of CCTV/Cutter equipment**
- **1 Operator of hydro cleaner.**
- **DVD or thumb drive of post CCTV.**
- **Reports & documents logs of work performed for each task (upon request of client).**
- **LMK Licensed installers, materials, and equipment.**

Joel Stevenson Construction

Proposal #0028-4

Joel Stevenson Construction
P.O. Box 145
Toledo, OR 97391
CCB# 216249
Office: 541-635-0207
Cell: 541-270-8204
Email:

Name: Patricia Lynn Cole
Address: 640 SE Fifth St. Newport

Home: 541-270-0218
General Contractor: Martin Desmond
CCB#218090
Phone: 541-968-5143
Email: martinjdesmond@gmail.com

July 24, 2018

1. We will construct one concrete curb 80' long X 16" tall X 6" thick that will run along 5th St. on property.
2. We will haul away any excavated material not needed.
3. The curb will maintain 6" to 8" approximately above city street.
4. The curb will have controlled joints 10' on center throughout.
5. The curb will have 2 #4 rebar running horizontal throughout.
6. The curb will have a broom finish,
7. We will purchase a dig in the right of way permit.
8. Total cost of the job with all materials, labor, excavation, will be \$4,650.00. WE will need half down of \$2,325.00 and the remaining balance of \$2,325.00 is due upon completion of the job.

We propose: hereby to furnish all materials and labor – complete accordance with the above application, for the sum of: (\$4,650.00).

I have received the Consumer Protection Notice, Notice of Procedure, and the Information Notice to Owner about Construction Liens. All material is guaranteed to be specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alterations or deviations from above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accident, or delay beyond our control. Owner is to carry fire, tornado, and other necessary insurances. Our company is fully licensed, bonded and insured.

Signature: _____

Note: This proposal may be withdrawn by us if not
Accepted within **30 days:**

Acceptance of proposal: the above price, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payments will be made as outlined above.

Date of Acceptance: _____ Signature: _____

Date of Acceptance: _____ Signature: _____

Joel Stevenson Construction

Proposal # 0028-6

Joel Stevenson Construction
P.O. Box 145
Toledo, OR 97391
CCB# 216249
Office: 541-635-0207
Cell: 541-270-8204
Email:

Name: Patricia Lynn Cole
Address: 640 SE Fifth St. Newport

Home: 541-270-0218
General Contractor: Martin Desmond
CCB# 218090
Phone: 541-968-5143
Email: martinjdesmond@gmail.com

August 15, 2018

1. We will construct approximately one 24' long by 5' wide by 6" deep concrete apron at the front of your driveway.
2. The new apron will have a monolithic curb poured in it at city street that will be 20' long by 6" wide by 12" deep.
3. The new apron will have a broom finish.
4. We will work with the city inspectors so that the apron will meet all city requirements.
5. Total cost of the job with all materials, labor, excavation, will be \$ 3,250.00. WE will need half down of \$1,625.00 and the remaining balance of \$1,625.00 is due upon completion of the job.

We propose: hereby to furnish all materials and labor – complete accordance with the above application, for the sum of: (\$3,625.00).

I have received the Consumer Protection Notice, Notice of Procedure, and the Information Notice to Owner about Construction Liens. All material is guaranteed to be specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alterations or deviations from above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accident, or delay beyond our control. Owner is to carry fire, tornado, and other necessary insurances. Our company is fully licensed, bonded and insured.

Signature: _____

Note: This proposal may be withdrawn by us if not

**CITY OF NEWPORT
PUBLIC NOTICE¹**

NOTICE IS HEREBY GIVEN that an application has been filed with the Community Development (Planning) Department to review the following matter.

File No. 6-MISC-18:

Applicant & Property Owner: Patricia Lynn Cole

Request: Application for a formal determination that the requirement to replace the existing timber curb with a concrete curb is roughly proportional to the impact of the replacement dwelling.

Location: 640 SE 5th Street (Lincoln County Assessor's Map 11-11-08-AD; Tax Lot 7800).

Applicable Criteria: NZO Section 14.44.040: No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision; failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to the issue precludes an appeal based on that issue. You may submit testimony in written form by **5:00 p.m. September 11, 2018**, to the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365.

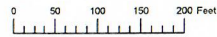
Those making written comment will be notified of the Community Development (Planning) Director's decision.

Contact: Derrick Tokos, Director, Community Development Department, (541) 574-0626; d.tokos@newportoregon.gov (mailing address above under "Testimony").

MAILED: August 27, 2018.

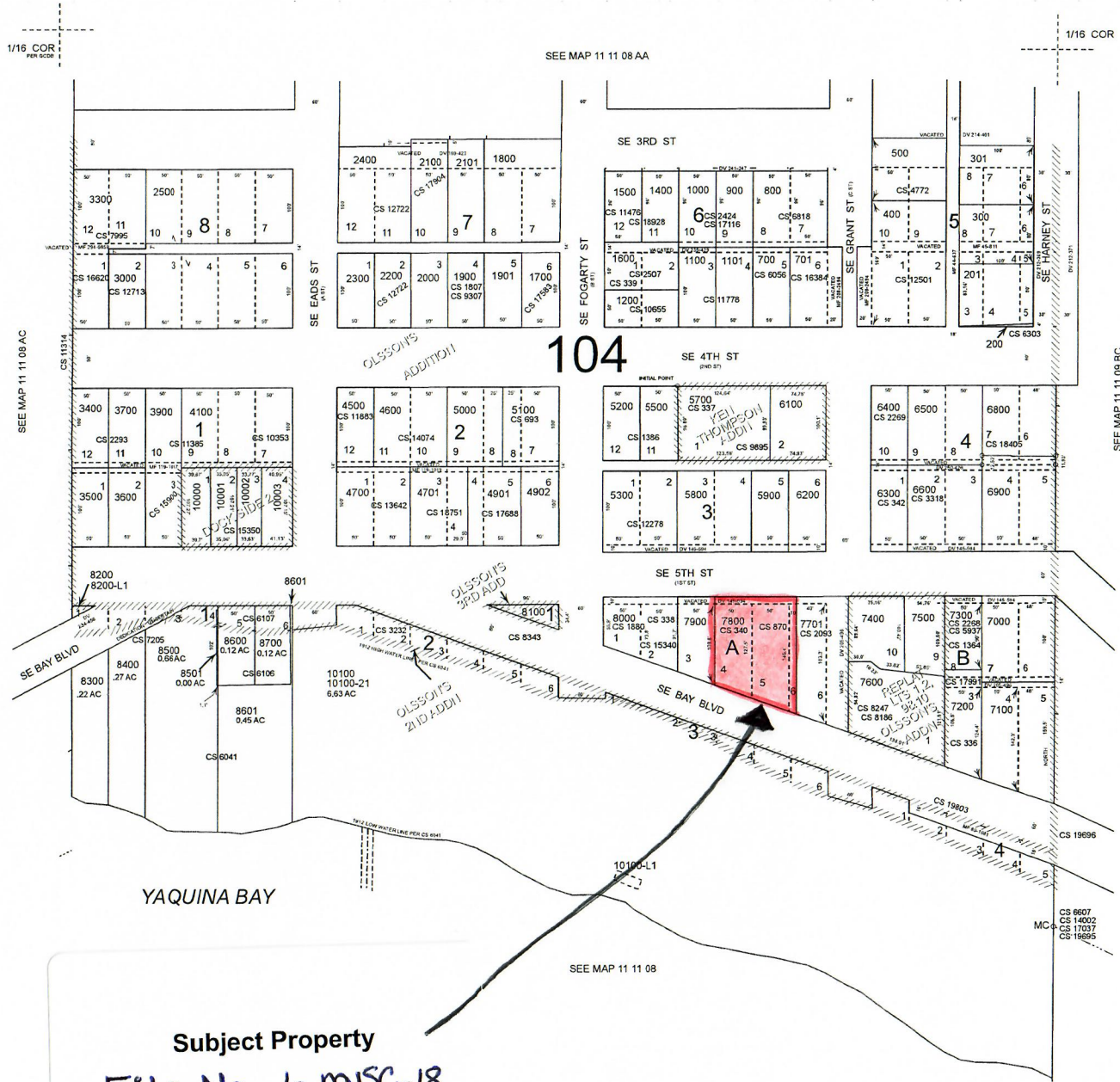
¹Notice of this action is being sent to the following: (1) Affected property owners within 200 feet of the subject property (according to Lincoln County tax records); (2) affected public/private utilities/agencies within Lincoln County; and (3) affected city departments.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



S.E. 1/4 N.E. 1/4 SEC. 8 T. 11S. R. 11W. W.M.
LINCOLN COUNTY
1" = 100'

11 11 08 AD
NEWPORT



Subject Property
File No. 6-MISC-18

- Cancelled
- 100
- 401
- 600
- 601
- 1300
- 2600
- 2700
- 2800
- 2900
- 3000
- 3100
- 3200
- 3800
- 4000
- 4200
- 4300
- 4400
- 4601
- 4602
- 4800
- 4900
- 5400
- 5600
- 6000
- 6700
- 7700
- 8800
- 8800-21
- 8800-22
- 8900
- 9000
- 9100
- 9200
- 9300
- 9400
- 9500
- 9600
- 9700
- 9800
- 9900

Revised: SAO
11/21/2017

NEWPORT
11 11 08 AD

BAKER JOHN H; TOD &
BAKER SANDRA K; TOD
6300 SE ROETHE RD
MILWAUKIE, OR 97267

BARTOLDUS DENNIS L &
BARTOLDUS JANE S
PO BOX 925
NEWPORT, OR 97365

CHALUMEAU REMY
PO BOX 1957
NEWPORT, OR 97365

COLE PATRICIA LYNN
640 SE 5th ST
NEWPORT, OR 97365

FAIRMAN BRUCE L &
FAIRMAN MARCIA
PO BOX 1206
NEWPORT, OR 97365

FULLER JAMES K COTRUSTEE &
FULLER SHARON C COTRUSTEE
715 SE 5TH ST
NEWPORT, OR 97365

GRAY JOAN M TRUSTEE
411 SE FOGARTY ST
NEWPORT, OR 97365

JOHNSON RUTH A LIVING TRUST &
JOHNSON RUTH A TRUSTEE
PO BOX 149
SOUTH BEACH, OR 97366

KAY KENNETH E &
KAY DIANE S
612 SE 5TH ST
NEWPORT, OR 97365

KELLER RICHARD J
700 SE 5TH ST
NEWPORT, OR 97365

MURPHY THOMAS A TR &
MURPHY KAREL J H TR
718 SE 5TH ST
NEWPORT, OR 97365

PENTER WARREN H TRUSTEE
434 SE GRANT ST
NEWPORT, OR 97365

PORT OF NEWPORT
600 SE BAY BLVD
NEWPORT, OR 97365

REA NEAL F &
REA JANA J
607 SE 5TH ST
NEWPORT, OR 97365

WROBEL CHARLES TRUSTEE &
AFFENTRANGER HELEN H TRUSTEE
16971 S CLACKAMAS RIVER DR
OREGON CITY, OR 97045

Exhibit "A"
Adjacent Property Owners Within 200 Ft

File No. 6-MISC-18

MEMO

City of Newport
Community Development Department



*****Distributed Via Email*****

Date: August 27, 2018

To: Spencer Nebel, City Manager
Tim Gross, Public Works
Rob Murphy, Fire
Jason Malloy, Police
Mike Murzynsky, Finance
Jim Protiva, Parks & Rec.
Ted Smith, Library
Victor Mettle, Planner/Code Administrator
Joseph Lease, Building Official
Public Utilities

From: Sherri Marineau, Executive Assistant

RE: Miscellaneous Permit # 6-MISC-18

I have attached a copy of a public notice concerning a land use request. The notice contains a brief explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any comments.

We must receive your comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a “no comment” will be assumed.**

sm

Attachment

NW Natural
ATTN: Alan Lee
1405 SW Highway 101
Lincoln City OR 97367

****EMAIL****
Email: Lisa Phillips
DLCD Coastal Services Center
lisa.phillips@state.or.us

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

CENTRAL LINCOLN PUD
ATTN: RANDY GROVE
PO BOX 1126
NEWPORT OR 97365

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

Joseph Lease
Building Official

Victor Mettle
Code Administrator/Planner

Jim Protiva
Parks & Rec

Rob Murphy
Fire Marshal

Ted Smith
Library

Jason Malloy
Police Chief

Spencer Nebel
CM

Tim Gross
Public Works

Derrick Tokos
CDD

Mike Murzynsky
Finance Director

EXHIBIT 'A'
(Affected Agencies)

(6-MISC-1864

Sherri Marineau

From: Tim Gross
Sent: Monday, August 27, 2018 5:00 PM
To: Sherri Marineau; Derrick Tokos; Spencer Nebel; Robert Murphy; Michael Murzynsky; Jim Protiva; Ted Smith; Victor Mettle; Joseph Lease; Jason Malloy
Subject: RE: Miscellaneous Permit # 6-MISC-18

The existing timber curb is failing at this address and is dry rotted almost through. I inspected it myself. Development standards require concrete curb and the new construction at this property triggers public improvements including concrete curb. The requirement for curb is consistent with how other development and redevelopment has been treated and is needed in this particular location because of the steep grade of the road, which is probably why the timber curb was installed in the first place.

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Sherri Marineau
Sent: Monday, August 27, 2018 4:07 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>; Spencer Nebel <S.Nebel@NewportOregon.gov>; Tim Gross <T.Gross@NewportOregon.gov>; Robert Murphy <R.Murphy@NewportOregon.gov>; Michael Murzynsky <M.Murzynsky@NewportOregon.gov>; Jim Protiva <J.Protiva@NewportOregon.gov>; Ted Smith <t.smith@newportlibrary.org>; Victor Mettle <V.Mettle@NewportOregon.gov>; Joseph Lease <J.Lease@NewportOregon.gov>; Jason Malloy <J.Malloy@newportpolice.net>
Subject: Miscellaneous Permit # 6-MISC-18

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0629 fax: 541.574.0644
s.marineau@newportoregon.gov

Date: September 10, 2018

TO: The Newport Community Development (Planning) Department
169 SW Coast Hwy, Newport, Oregon, 97365

From: Neal and Jana Rea
607 SE 5th Street, Newport, OR

RE: File No. 6-MISC-18

We own the property located at 607 SE 5th Street, Newport, Oregon.

We purchased this property in August 2013. In April of 2015 we demolished the existing home on the property and built our new house.

When we built our new house we completed and we paid for the improvement of all required public facilities to be in conformance with the provisions of the Building Code in place at that time.

We feel that all property in Newport, when developed, should be required to be in conformance with the Building Code and all required improvements to public facilities should be completed and paid for by the property owner. Concerning the File number reference above, if development approval requires concrete curbs then the property owner should be required to complete and pay for the required improvements.



Jana J. Rea

CITY OF NEWPORT

SEP 10 2018

RECEIVED

Derrick Tokos

From: Lynn Cole <lynncole824@gmail.com>
Sent: Friday, September 14, 2018 2:58 PM
To: Derrick Tokos
Subject: RE: Any news?

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for your reply. Regarding the letter from the owners of 607 SE 5th Street, which is on the corner of Fogarty and 5th Streets, they did put in a curb on the side of that property facing Fogarty, but not on the 5th street side. I don't know if that makes any difference, but it seems they are not in compliance with Newport codes as they claim. Keep me posted.



Lynn

Sent from [Mail](#) for Windows 10

Derrick Tokos

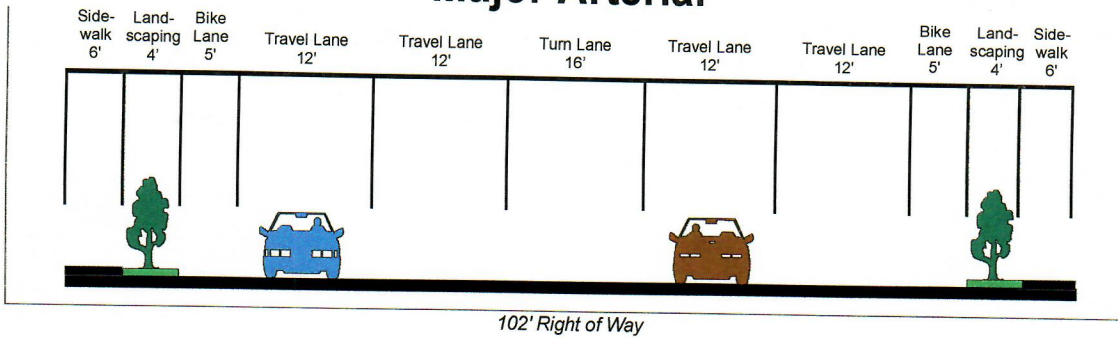
From: Lynn Cole <lynncole824@gmail.com>
Sent: Friday, September 14, 2018 4:10 PM
To: Derrick Tokos
Subject: correction

The new owners who built 607 SE 5th street did NOT put in the curb on Fogarty. The curb was already in place.

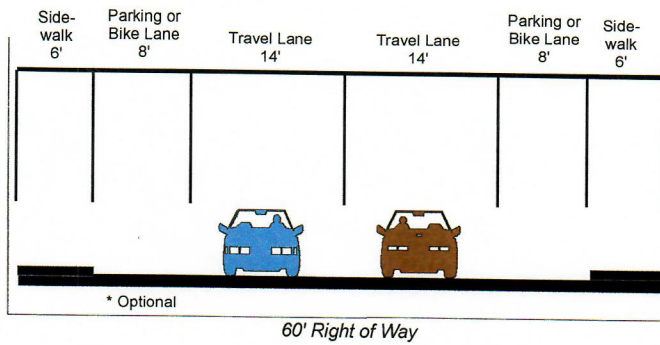


Sent from [Mail](#) for Windows 10

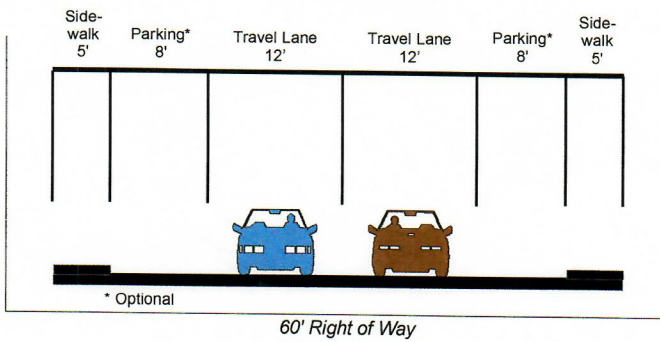
Major Arterial



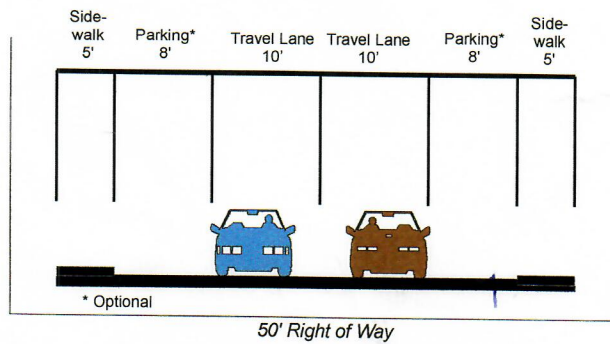
Minor Arterial



Collector



Local

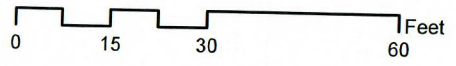




City of Newport
Community Development Department
169 SW Coast Highway Phone: 1.541.574.0629
Newport, OR 97365 Fax: 1.541.574.0644

640 SE 5th Street

Image Taken July 15, 2018
3-inch, 4-band Digital Orthophotos
Quantum Spatial, Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this



City of Newport Land Use Application



Applicant Name(s): PATRICIA COLE Property Owner Name(s) *if other than applicant*

Applicant Mailing Address: 640 SE 5TH ST NEWPORT, OR 97365 Property Owner Mailing Address:

Applicant Phone No. 541 270-0218 Property Owner Phone No.

Applicant Email LYNNCOLE824@GMAIL.COM Property Owner Email

Authorized Representative(s): NIA *Person authorized to submit and act on this application on applicant's behalf*

Authorized Representative Mailing Address:

Authorized Representative Telephone No.

Authorized Representative Email.

Project Information

Property Location *Street name if address # not assigned*
640 SE 5TH ST NEWPORT, OR 97365

Tax Assessor's Map No.: Tax Lot(s):

Zone Designation: Legal Description: *Use additional sheets if necessary*

Comp. Plan Designation:

Brief description of Land Use Request(s):
Examples:
1. *Move north property line 5 feet south*
2. SEE ATTACHED *Increase of 2 feet from the rear of 15-foot front yard setback*

Existing Structures: if any

Topography and Vegetation:

Application Type (please check all that apply)

<input type="checkbox"/> Annexation	<input type="checkbox"/> Interpretation	<input type="checkbox"/> UGB Amendment
<input checked="" type="checkbox"/> Appeal	<input type="checkbox"/> Minor Replat	<input type="checkbox"/> Vacation
<input type="checkbox"/> Comp Plan/Map Amendment	<input type="checkbox"/> Partition	<input type="checkbox"/> Variance/Adjustment
<input type="checkbox"/> Conditional Use Permit	<input type="checkbox"/> Planned Development	<input type="checkbox"/> PC
<input type="checkbox"/> PC	<input type="checkbox"/> Property Line Adjustment	<input type="checkbox"/> Staff
<input type="checkbox"/> Staff	<input type="checkbox"/> Shoreland Impact	<input type="checkbox"/> Zone Ord/Map
<input type="checkbox"/> Design Review	<input type="checkbox"/> Subdivision	<input type="checkbox"/> Amendment
<input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> Other

FOR OFFICE USE ONLY

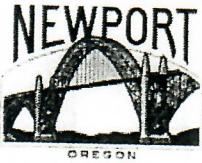
File No. Assigned: 6-MISC-18-A

Date Received: 10/23/18 Fee Amount: 250 Date Accepted as Complete:

Received By: SM Receipt No. 2667 Accepted By:

City Hall
169, SW Coast Hwy
Newport, OR 97365
541.574.0629

625-18-00097-PLNG



City of Newport Land Use Application

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Applicant Signature(s)

10-23-18

Date

Property Owner Signature(s) (if other than applicant)

Date

Authorized representative Signature(s) (if other than applicant)

Date

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

From: Lynn Cole
Sent: Monday, October 22, 2018 12:17 PM
To: Derrick Tokos
Subject: APPEAL

TO: NEWPORT COMMUNITY PLANNING DIRECTOR

RE: Appeal of decision dated October 12, 2018 denying my request for relief from public improvement order to install a concrete curb, on City property, at a cost to me of \$7,900, which I can't afford, at my property which I have owned and resided at for 18 years and paid property taxes located at 640 SE 5th Street, Newport, Oregon 97365 and in my neighborhood where there are no existing curbs.

Along with the above, my statement of standing to appeal is that this is not a new development and the first home was built on the property in 1950 when there was no curb requirement and therefore a subsequent home should be allowed to be "grandfathered" in as there has been absolutely no change in use of the property.

3) The specific grounds I rely on as the basis for my appeal are as follows:

a) NMC Section 14.44.050 requirement for property being developed be brought into conformance with city street standards, yet two new homes built within the last two years and one house away from mine do NOT have curbs and after pointing this out to the Public Works director, city manager, and city council and getting no responses, I finally got a feeble reply from the Planning Director which said "it is also possible that City staff neglected to identify the need for certain improvements...as they are human..."

b) NMC 13.05.015 is the **SUBDIVISION** ordinance (NOT EXISTING SINGLE FAMILY RESIDENCES) 13.05.001 Purpose

This chapter provides uniform standards for the division of land and the installation of related improvements within the corporate limits of the city for the purposes of protecting property values, and furthering the health, safety and general welfare of the citizens of Newport. The provisions of this chapter implement Statewide Planning Goals as addressed in the Newport Comprehensive Plan along with the applicable portions of Chapters 92 and 227 of the Oregon Revised Statutes.

This does NOT apply to my property as it is not a subdivision, or new property and **NOTHING** has changed in the use of the property since 1950.

c) 14.44.050 Transportation Standards

A. Development Standards. The following standards shall be met for all new uses and developments:

1. **All new lots created**, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.

MY PROPERTY IS NOT A NEW LOT. IT HAS EXISTED SINCE 1950.

2. Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;

The new curb WILL NOT provide increased street safety or capacity, or improve pedestrian circulation.

There are NO curbs on the north side of 5th street from cross street Fogarty to the apartments on the far end, a distance of approximately ½ mile so HOW will a \$7,900 curb at 640 SE 5th street increase

safety? What happens to rain water falling on the north side of the street? It is like asking me to put my finger in a tiny hole in a damn when there is water gushing through a fissure 10 feet away. EXACTLY what difference will that required curb make???

Newport has a housing shortage and I am trying to provide much needed housing but am being EXTORTED to put in an unnecessary curb BEFORE the PWD will grant me my occupancy permit. Someone, somewhere in all the City of Newport bureaucracy must have some common sense and approve my appeal.

Patricia Cole
640 SE 5th Street
Newport, OR 97365

A handwritten signature in blue ink, appearing to be 'Patricia Cole', with a long horizontal stroke extending to the right.

Sent from for Windows 10

Derrick Tokos

From: Lynn Cole <lynncole824@gmail.com>
Sent: Thursday, October 25, 2018 3:36 PM
To: Derrick Tokos
Subject: Road pictures

Derrick

Please add these pictures to my appeal.

Showing my south side of 640 SE 5th street property (with timber curb looking both west and east) and north side of 5th street (with No curb at all)



Sent from [Mail](#) for Windows 10

APPLICATION SUBMITTAL REQUIREMENTS

Appeal

The following information must be submitted with a City of Newport Land Use application:

- ✓ 1. An identification of the decision sought to be reviewed, including the date of the decision.
- ✓ 2. A statement demonstrating that the appellant has standing to appeal.
- ✓ 3. A statement of the specific grounds which the appellant relies on as the basis for the appeal. If the appellant contends that the findings of fact made by the approving authority are incorrect or incomplete, the applicant shall specify the factual matters omitted or disputed. If the appellant contends that the decision is contrary to an ordinance, statute, or other law, such errors shall be specifically identified in the application, along with specific grounds relied upon for review.
- ? 4. A statement of how the appellant wishes the appeal to be heard, either on record or *de novo*.
- ✓ 5. Fee of \$250.00 for first hearing.
Fee of \$312.00 for second hearing.

For appeals of a decision of the Planning Commission that are heard by the City Council on the record, an additional fee of up to \$500.00 based on actual cost may be assessed for the preparation of a verbatim written transcript.

PATRICIA COLE
640 SE 5TH ST
NEWPORT, OR 97365



CHAPTER 14.44 TRANSPORTATION STANDARDS

14.44.010 Purpose. The purpose of this Chapter is to provide planning and design standards for the implementation of public and private transportation facilities and city utilities and to indicate when and where they are required. Streets are the most common public spaces, touching virtually every parcel of land. Therefore, one of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth and provide a range of transportation options, including options for driving, walking, bus, and bicycling. This Chapter implements the city's Transportation System Plan.

14.44.020 When Standards Apply. The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities. Unless otherwise provided, all construction, reconstruction, or repair of transportation facilities, utilities, and other public improvements within the city shall comply with the standards of this Chapter.

14.44.030 Engineering Design Criteria, Standard Specifications and Details. The design criteria, standard construction specifications and details maintained by the City Engineer, or any other road authority within Newport, shall supplement the general design standards of this Chapter. The city's specifications, standards, and details are hereby incorporated into this code by reference.

14.44.040 Conditions of Development Approval. No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

14.44.050 Transportation Standards.

A. Development Standards. The following standards shall be met for all new uses and developments:

1. All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.
 2. Streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in Section 13.05.015.
 3. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance Chapter 13.05, and public streets shall be dedicated to the applicable road authority;
 4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.
- B. Guarantee. The city may accept a future improvement guarantee in the form of a surety bond, letter of credit or non-remonstrance agreement, in lieu of street improvements, if it determines that one or more of the following conditions exist:
1. A partial improvement may create a potential safety hazard to motorists or pedestrians;
 2. Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;
 3. The improvement would be in conflict with an adopted capital improvement plan; or
 4. The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets.

- C. Creation of Rights-of-Way for Streets and Related Purposes. Streets may be created through the approval and recording of a final subdivision or partition plat pursuant to Chapter 13.05; by acceptance of a deed, provided that the street is deemed in the public interest by the City Council for the purpose of implementing the Transportation System Plan and the deeded right-of-way conforms to the standards of this Code; or other means as provided by state law.
- D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code.
- E. Street Location, Width, and Grade. The location, width and grade of all streets shall conform to the Transportation System Plan, subdivision plat, or street plan, as applicable and are to be constructed in a manner consistent with adopted City of Newport Engineering Design Criteria, Standard Specifications and Details. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets, pursuant to the requirements in Chapter 13.05.

(Chapter 14.44 as adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")

CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING¹



NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing to consider an appeal of an administrative decision denying a Miscellaneous Permit Application (#6-MISC-18).

File No: # 6-MISC-18-A

Appellant & Property Owner: Patricia Lynn Cole.

Request: Appeal challenging the Planning Director's formal determination that the requirement to replace the curb and driveway apron adjacent to the parcel is roughly proportional to the impact of the replacement dwelling.

Location: 640 SE 5th Street (Lincoln County Assessor's Map 11-11-08-AD; Tax Lot 7800).

Applicable Criteria: NZO Section 14.44.040: No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision; failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to the issue precludes an appeal based on that issue; submit testimony in written or oral form; send letters to Planning Department (address under "Reports") by 5:00 p.m. the day of the hearing; oral testimony will be taken during the course of the public hearing.

Reports: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

Contact: Derrick Tokos, Planning Director, Community Development Department, (541-574-0629) (address above).

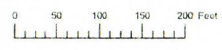
Time/Place of Hearing: Monday, November 26, 2018; 7:00 p.m.; City Hall Council Chambers (address above).

MAILED: October 29, 2018.

PUBLISH: November 16, 2018/News-Times.

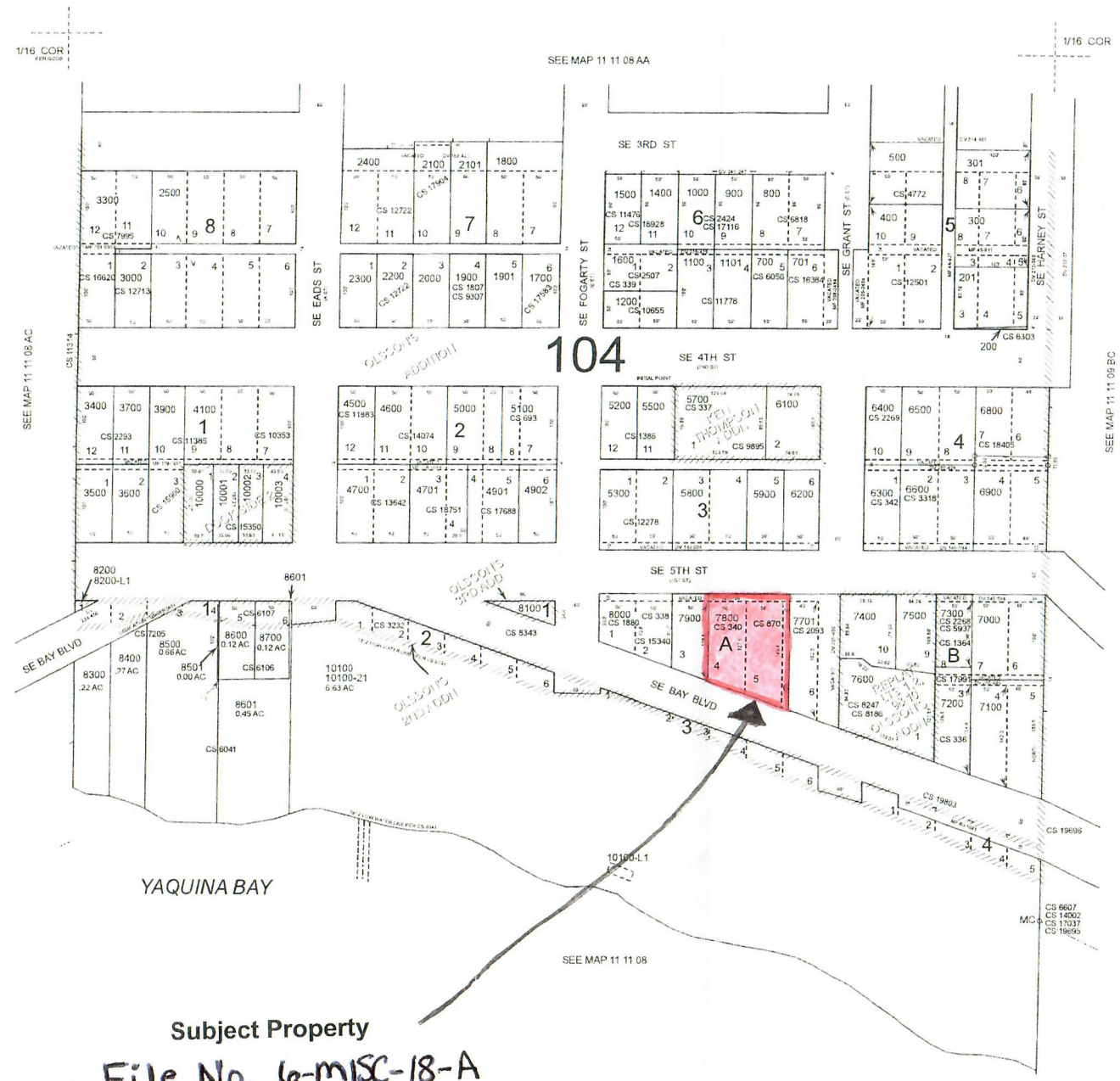
¹This notice is being sent to affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public utilities within Lincoln County, and affected city departments.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



S.E. 1/4 N.E. 1/4 SEC. 8 T.11S. R.11W. W.M.
LINCOLN COUNTY
1" = 100'

11 11 08 AD
NEWPORT



Subject Property
File No. 6-MISC-18-A

- Cancelled
- 100
- 401
- 602
- 601
- 1300
- 2600
- 2700
- 2800
- 2900
- 3000
- 3100
- 3200
- 3800
- 4000
- 4200
- 4300
- 4400
- 4601
- 4602
- 4800
- 4900
- 5400
- 5500
- 6000
- 6700
- 7700
- 8800
- 8800-21
- 8800-22
- 8900
- 9000
- 9100
- 9200
- 9300
- 9400
- 9500
- 9600
- 9700
- 9800
- 9900

Revised SAO
11/21/2017

NEWPORT
11 11 08 AD

MEMO

City of Newport
Community Development Department



****Distributed Via Email****

Date: October 29, 2018

To: Spencer Nebel, City Manager
Tim Gross, Public Works
Rob Murphy, Fire
Jason Malloy, Police
Mike Murzynsky, Finance
Jim Protiva, Parks & Rec.
Ted Smith, Library
Victor Mettle, Planner/Code Administrator
Joseph Lease, Building Official
Public Utilities

From: Sherri Marineau, Executive Assistant

RE: Miscellaneous Permit # 6-MISC-18-A

I have attached a copy of a public notice concerning an appeal to a land use request. The notice contains a brief explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any comments.

We must receive your comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a “no comment” will be assumed.**

sm

Attachment

NW Natural
ATTN: Alan Lee
1405 SW Highway 101
Lincoln City OR 97367

****EMAIL****
Email: *Lisa Phillips*
DLCD Coastal Services Center
lisa.phillips@state.or.us

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

CENTRAL LINCOLN PUD
ATTN: RANDY GROVE
PO BOX 1126
NEWPORT OR 97365

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

Joseph Lease
Building Official

Rachel Cotton
Planner

Jim Protiva
Parks & Rec

Rob Murphy
Fire Marshal

Ted Smith
Library

Jason Malloy
Police Chief

Spencer Nebel
CM

Tim Gross
Public Works

Derrick Tokos
CDD

Mike Murzynsky
Finance Director

EXHIBIT 'A'
(Affected Agencies)

(6-MISC-18-A)83

BAKER JOHN H; TOD &
BAKER SANDRA K; TOD
6300 SE ROETHE RD
MILWAUKIE, OR 97267

BARTOLDUS DENNIS L &
BARTOLDUS JANE S
PO BOX 925
NEWPORT, OR 97365

CHALUMEAU REMY
PO BOX 1957
NEWPORT, OR 97365

COLE PATRICIA LYNN
640 SE 5th ST
NEWPORT, OR 97365

FAIRMAN BRUCE L &
FAIRMAN MARCIA
PO BOX 1206
NEWPORT, OR 97365

FULLER JAMES K COTRUSTEE &
FULLER SHARON C COTRUSTEE
715 SE 5TH ST
NEWPORT, OR 97365

GRAY JOAN M TRUSTEE
411 SE FOGARTY ST
NEWPORT, OR 97365

JOHNSON RUTH A LIVING TRUST &
JOHNSON RUTH A TRUSTEE
PO BOX 149
SOUTH BEACH, OR 97366

KAY KENNETH E &
KAY DIANE S
612 SE 5TH ST
NEWPORT, OR 97365

KELLER RICHARD J
700 SE 5TH ST
NEWPORT, OR 97365

MURPHY THOMAS A TR &
MURPHY KAREL J H TR
35696 PHILLIPS LN
PHILOMATH, OR 97370

PENTER WARREN H TRUSTEE
434 SE GRANT ST
NEWPORT, OR 97365

PORT OF NEWPORT
600 SE BAY BLVD
NEWPORT, OR 97365

REA NEAL F &
REA JANA J
607 SE 5TH ST
NEWPORT, OR 97365

WROBEL CHARLES TRUSTEE &
AFFENTRANGER HELEN H TRUSTEE
16971 S CLACKAMAS RIVER DR
OREGON CITY, OR 97045

Exhibit "A"
Adjacent Property Owners Within 200 Ft

File No. 6-MISC-18-A

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, November 26, 2018 at 7:00 p.m. to consider File #6-MISC-18-A: an appeal of an administrative decision denying a Miscellaneous Permit Application (#6-MISC-18) submitted by Patricia Lynn Cole challenging the Planning Director's formal determination that the requirement to replace the curb and driveway apron adjacent to the parcel is roughly proportional to the impact of the replacement dwelling. The property is located at 640 SE 5th Street (Lincoln County Assessor's Map 11-11-08-AD; Tax Lot 7800). The applicable criteria per NZO Section 14.44.040 are that: No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above).

FOR PUBLICATION ONCE ON FRIDAY, November 16, 2018

planning commission member. "In the geological report in question, the citation of the 1991 report, instead of the 2016 report on the same property, appears to be purposefully deceptive." Branigan continued, "This is especially true given the disavowal of the 1991 report by Mr. Gless [the successor to H.G. Schlicker, the geotechnical engineer who wrote the 1991 report]." Branigan's concerns went beyond the

denigrating the community development director and peer reviewer, on one hand, and the appellant's lawyer, on the other hand, I found disturbing and inappropriate.

Bill Branigan, Planning Commission Member

planning commission agrees Lund's property is in a very high hazard active erosion zone as designated by the Oregon Department of Geology and Mineral Industries — and that erosion will only undercut the site more as climate change accelerates the process.

"I believe a more definitive geologic report is necessary and justified before Mr. Lund can go forward with his plans to build out on this project," Patrick read on Croteau's behalf.

AUCTION NOTICE SALE

Notice of sale of personal property under landlord's possessory lien. Personal property left in the following units have been seized for non-payment of rent and will be sold at The Storage Depot- 125 SW Kathleen St., Waldport, Oregon 97394 on November 29, 2018, at 3:00pm, Unit D0404, Jorgensen, Zane; Unit C0309, Johnson, Nancy; Unit A0105, Joy, Jennifer; Unit B0226, Olson, Ingrid. N-09, N-16 (77-16).

PUBLIC SALE PERSUANT TO ORS CHAPTER 98

Notice is hereby given that the following vehicle will be sold, for cash to the highest bidder on 11/20/18. The sale will be held at 10:00am by: CAR CARE TOW PRO INC. 2795 SE 23RD DR, LINCOLN CITY, OR 97367. 2014 KIA SOUL VIN: KNDJN2A2E7700331 Amount due on lien: \$2052.00 Reputed owner(s): AMERICAN NATIONAL P/C CO N-09, N-16 (78-16).

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT IN THE MATTER OF THE ESTATE OF ADAM REX KRABBE, DECEASED NO. 18PB08236 NOTICE TO INTERESTED PERSONS

Notice is hereby given pursuant to ORS 113.155 that the undersigned has been appointed and has qualified as the personal representative of the estate. All persons having claims against the estate are hereby required to present the same, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the personal representative at: Paul Krabbe c/o Jeffrey C. Pridgeon Attorney at Law 515 W. Olive Street Newport, OR 97365 (541) 265-2217 or they may be barred. All persons whose rights may be affected by the proceedings in this estate may obtain additional information from the records of the court, the

personal representative or the attorney for the personal representative. Date first published: November 9th, 2018. /s/Jeffrey C. Pridgeon JEFFREY C. PRIDGEON Attorney for Personal Representative PRIDGEON & MCCRUM, LLC ATTORNEYS AT LAW 515 W. Olive Street, Newport, Oregon 97365 TELEPHONE: (541) 265-2217 FAX: (541) 265-2699 N-09, N-16, N-23 (79-23).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, November 26, 2018 at 7:00 p.m. to consider File #6-MISC-18-A; an appeal of an administrative decision denying a Miscellaneous Permit Application (#6-MISC-18) submitted by Patricia Lynn Cole challenging the Planning Director's formal determination that the requirement to replace the curb and driveway apron adjacent to the parcel is roughly proportional to the impact of the replacement dwelling. The property is located at 640 SE 5th Street (Lincoln County Assessor's Map 11-11-08-AD; Tax Lot 7800). The applicable criteria per NZO Section 14.44.040 are that: No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal,

including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0826, d.tokos@newportoregon.gov (mailing address above). N-16 (80-16).

PUBLIC NOTICE

The Pacific Communities Health District Board of Directors will hold a Regular meeting on Monday, November 19, at 4:00 p.m. in the Education Conference Room at Samaritan Pacific Communities Hospital, 930 SW Abbey St., Newport, Oregon. The meeting agenda includes meeting minutes, financial reports and facility reports. Lisa Ely, Recorder PACIFIC COMMUNITIES HEALTH DISTRICT For additional information contact 541-574-1803 or www.pchdistrict.org. N-16 (81-16).

TRUSTEE'S NOTICE OF SALE

Reference is made to that

certain Deed of Trust made by TERESA J. BROWN as Grantor, to the Farmers Home Administration, United States Department of Agriculture, acting through the State Director of the Farmers Home Administration for the State of Oregon, as Trustee, in favor of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, as Beneficiary, dated February 15, 1996, recorded February 20, 1996, in Volume 313, Page 858, and Re-Recorded on March 5, 1996, in Volume 314, Page 344, and Re-Recorded on July 11, 1996 in Volume 321, Page 1435, Records of Lincoln County, Oregon, covering the following described real property situated in Lincoln County, OR, to-wit: Lot 2, Block 3, FIRST ADDITION TO OCEANSIDE PROPERTIES, County of Lincoln, State of Oregon. Commonly referred to as 55 Spruce Court, Depoe Bay, Oregon 97341. Alan N. Stewart of Merrill O'Sullivan LLP, 805 SW Industrial Way, Suite 5, Bend, OR 97702, was appointed Successor Trustee by the Beneficiary on June 12, 2018. Both the Beneficiary and Trustee have elected to sell the said real property to satisfy the obligations secured by said Deed of Trust and a Notice of Default has been recorded pursuant to Oregon Revised Statutes 86.752(3); the default for which the foreclosure is made is Grantor's failure to pay when due the following sums: As of June 15, 2018, pursuant to an Assumption Agreement dated February 15, 1996, and a Reamortization Agreement effective March 15, 2006 and November 15, 2013, the total amount of \$37,308.79, plus late charges in the amount of \$98.82, and fees due in the amount of \$11,504.13, for a total delinquency of \$48,911.74. Also as of June 15, 2018, pursuant to an Promissory Note dated February 15, 1996, the amount of \$8,758.64, plus late charges in the amount of \$37.84, for a total delinquency of \$8,796.48. By reason of the default, the Beneficiary has declared all sums owing

on the obligation secured by the Deed of Trust immediately due and payable, those sums being the following, to-wit: As of June 15, 2018, unpaid principal in the amount of \$88,247.01, accrued interest in the amount of \$18,392.27, subsidy recapture in the amount of \$15,990.93, assessed fees in the amount of \$11,439.78, and interest on fees in the amount of \$629.54, for a total amount of \$134,699.53, plus interest continuing to accrue at the rate of \$16.3197 per day, including daily interest on fees at the rate of \$2.1155, until paid, plus any unpaid property taxes, attorney's fees, foreclosure costs, and sums advanced by the beneficiary pursuant to the terms of said Deed of Trust. Also as of June 15, 2018, unpaid principal in the amount of \$25,404.04, accrued interest in the amount of \$5,294.68, and subsidy recapture in the amount of \$6,869.71, for a total amount of \$37,568.43, plus interest continuing to accrue at the rate of \$4.6980 per day, until paid, plus any unpaid property taxes, attorney's fees, foreclosure costs, and sums advanced by the beneficiary pursuant to the terms of said Deed of Trust. WHEREFORE, notice is hereby given that the undersigned Trustee will on March 27, 2019, at the hour of 11:00 o'clock, A.M., in accord with the standard of time established by ORS 187.110, at the following place: on the front steps of the Lincoln County Courthouse, located at 225 West Olive Street, in the City of Newport, County of Lincoln, State of Oregon, sell at public auction to the highest bidder for cash the interest in the said described real property which the Grantor has or had power to convey at the time of the execution by Grantor of the said Deed of Trust, together with any interest which the obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the Trustee. Notice is further given that any person named in ORS 86.778 has the right, at any time prior to five (5) days before the date last set for the sale, to have

this foreclosure proceeding dismissed and the Deed of Trust reinstated by payment to the Beneficiary of the entire amount then due (other than such portion of the principal and interest as would not then be due had no default occurred) and by curing any other default complained of herein that is capable of being cured by tendering the performance required under the obligation or Deed of Trust, and in addition to paying said sums or tendering the performance necessary to cure the default, by paying all costs and expenses actually incurred in enforcing the obligation and Deed of Trust, together with Trustee's and attorney's fees not exceeding the amounts provided by said ORS 86.778. In accordance with the Fair Debt Collection Practices Act, this is an attempt to collect a debt, and any information obtained will be used for that purpose. This communication is from a debt collector. In construing this Notice, the singular includes the plural, the word "Grantor" includes any successor in interest to the Grantor as well as any other person owing an obligation, the performance of which is secured by said Deed of Trust, and the words "Trustee" and "Beneficiary" include its respective successors in interest, if any. DATED: October 17, 2018. ALAN N. STEWART, Successor Trustee Merrill O'Sullivan LLP 805 SW Industrial Way, Suite 5 Bend, OR 97702 Telephone: 541-389-1770 N-16, N-23, N-30, D-07 (82-07).

PUBLIC SALE
On December 5th 2018 at 3:00 pm, a public sale will be held at Rosie's Storage Units by Oregon Coast Property Management at: 4030 N Highway 101, Depoe Bay, OR 97341, phone 541-764-2488, fax 541.636.0287. Contents of Unit # 45, Rented by Linda Fournier. The aforementioned party can contact us prior to sale. We reserve the right to reject any or all bids/sales. N-16, N-23 (83-23).

court case 18CV16159, Alan Services, et al vs. Alan Parties in Possession. This auction is for cash or check, in hand. Details go to: oregonsheriff.com/county/lincoln/, N-16, N-23

F SHERIFF'S #18-1800
ber 13, 2018, of 10:00 a.m., in Lincoln County Office, 225 W 3rd St, in Newport, Oregon, subject to the terms of the deed commonly known as 1021 SW Harwood City, OR e court case 17CV39819, to Bank, NA, vs. Priscilla M. Richard L Hawkstate of Lisa R Unknown Heirs es of Lisa R nd Persons or known Claimant. Title, Lien, in the Property in the Common defendant(s). public auction test bidder for ashier's check, or more details //www.oregonss.org/county/ 3, N-16, N-23

F SHERIFF'S #18-1820
ber 20, 2018, of 10:00 a.m., in Lincoln County Office, 225 W 3rd St, in Newport, Oregon, subject to the terms of the deed commonly known as 2254 SE Hwy in City, Oregon e court case 17CV16137, Eagle Mortgage plaintiff(s) vs. Meyer, Deborah I.D. Morris and s defendant(s). public auction test bidder for ashier's check, or more details //www.oregonss.org/county/ 6, N-23, N-30

11/16/18

PLANNING STAFF REPORT
Case File No. 4-NCU-18

- A. **APPLICANT:** Douglas & Verna Fitts, Trustees (Surfside Mobile Village) (Dennis L. Bartoldus, authorized representative).
-
- B. **REQUEST:** Approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to have 24 permanent spaces and 8 RV spaces. This is an increase of one RV space to accommodate an additional “park model” home on the property.
- C. **LOCATION:** 392 NW 3rd St.
- D. **LEGAL DESCRIPTION:** Lincoln County Assessor’s Tax Map 11-11-05-CD, Tax Lots 10500, 10501, 10600, 10700, and 10800 in the City of Newport, County of Lincoln, Oregon.
- E. **LOT SIZE:** Approximately 2.22 acres.
- F. **STAFF REPORT**
1. **REPORT OF FACT**
- a. **Plan Designation:** High Density Residential.
- b. **Zone Designation:** R-4/“High Density Multi-Family Residential”.
- c. **Surrounding Land Uses:** A mix of single- and multi-family residential, commercial, and public uses.
- d. **Topography and Vegetation:** The subject property is generally flat except on the north side where it slopes upward and is level again along NW 5th Street. There is also a slope along the west and north of Tax Lot 10700. There is some vegetation on the hillsides, but the property is primarily cleared and used for the mobile home park.
- e. **Existing Structures:** The property contains the Surfside Mobile Village consisting of 31 sites (24 permanent residences and 7 for recreational vehicles, including park models), a restroom/laundromat, and an office/storage facility.
- f. **Utilities:** All are available to the site.
- g. **Development Constraints:** None known.

- h. **Past Land Use Actions:** File No. 4-CUP-73 – authorized expansion of the Glenwood Cottages and Trailer Park to 18 trailer parking spaces. Approved February 12, 1973. File No. 2-NCU-13 authorized the mobile home park and expansion to 31 units on November 25, 2018.
 - i. **Notification:** Notification to surrounding property owners and to city departments/public agencies was mailed on November 2, 2018; and the notice of public hearing was published in the Newport News-Times on November 7, 2018.
 - j. **Attachments:**
 - Attachment "A" – Application form
 - Attachment "B" – Legal description of the property
 - Attachment "C" – Letter from Dennis Bartoldus, dated 10/4/18
 - Attachment "D" – Site plan labeled “Surfside Annex,” dated September 2018
 - Attachment "E" – Utility plan for Surfside Annex
 - Attachment "F" – Surfside Mobile Village approved spaces (from File 2-NCU-13)
 - Attachment "G" – 2018 aerial image of the park
 - Attachment "H" – List of photos with index
 - Attachment "I" – Public hearing notice
2. **Explanation of the Request:** Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.
- Dennis Bartoldus, attorney, indicates that the applicants are seeking to add one additional park model home to Surfside Mobile Village (Attachment "C"). The change impacts Tax Lots 10700 and 10501, or spaces 29 to 31 on the prior approval (Attachment "F"). Mr. Bartoldus notes that the city approved the park as a nonconforming use in 2013 (File No. 2-NCU-13). A modified site layout has been provided showing where the new park model is to be placed, increasing the number at that location from three to four (Attachment "D").
3. **Evaluation of the Request:**
- a. **Comments:** All surrounding property owners and affected city departments and public utilities were notified on November 2, 2018. The notice was published in the Newport News-Times on November 7, 2018. No comments were received in response to the notice.
 - b. **Application Submittal Requirements:** Pursuant to NMC 14.32.040, applications must include a completed application form, scaled site plan, names

and addresses of property owners within the notification area, survey work if structures will not satisfy setback requirements and exterior architectural elevations if structures will exceed building height limitations.

- c. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

- d. **Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority

may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, and alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

- (1) Surfacing or parking areas and landscaping;
- (2) Exterior design of structures;
- (3) Outdoor displays, storage, and signage.

e. **Staff Analysis:**

In order to grant the permit, the Planning Commission must find that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070. With that in mind, staff offers the following analysis:

- (1) The nature and extent of the existing non-conforming use was established in 2013 with the City's approval of the park on the subject property at 31 units (Attachment "F"). An aerial image from 2018 shows that the park is operating in a manner consistent with that approval (Attachment "G").

(2) The Planning Commission must find that alteration and expansion of the nonconforming trailer park will not result in a greater adverse impact on the neighborhood. Assuming the Commission can verify the nonconforming trailer park to be essentially what exists today, the applicants have provided findings addressing the criteria for a “no greater adverse impact” determination:

(a) The character and history of the use and of development in the surrounding area.

- (i) The applicant explains that the Surfside Mobile Village has been in existence since 1972. It is a 55 and older community where most all the residences are occupied on a full-time basis. The Planning Commission determination in File No. 2-NCU-13 confirmed that a valid nonconforming use had been established on the subject property. The applicant has provided photographs showing that the park has been maintained in good condition (Attachment "H"). The findings indicate that to the west of the park across Hurbert Street is a commercial office building, a vacant lot, a duplex, and a single-family residence. To the north, the terrain climbs steeply and then levels out adjacent to NW 5th Street. The applicants own the lots on the south side of NW 5th Street, which overlook the park. A portion of the property to the east of the park is city-owned open space. The areas to the south across 3rd Street are residential. However, the south side of 3rd Street is a large hill that slopes up, with residences that are set back a fair distance from NW 3rd Street. These homes are not readily visible from the park. Generally the area west of the property can be described as the Nye Beach Commercial area. The applicants own all the property within the boundary created by NW 3rd, NW Hurbert, NW 5th, and NW Lee Streets with the exception of four tax lots. The total area not owned by the applicants within those parameters is approximately 23,000 square feet, whereas the applicants own approximately 100,000 square feet. The property is about one and a half blocks west of Highway 101; and 3rd Street, which abuts the subject property to the south. To the east of the property is an apartment building, a commercial fueling station, and the former city sewer plant where the fire training tower is built.
- (ii) As noted in the application materials, the park is grade separated from adjoining residential areas. This includes the original park (Tax Lot 10500) and the expansion areas (Tax Lots 10501, 10600, 10700, and 10800). The tax lots orient to, and are accessible from roads internal to the park. Tax Lots 10501 and 10700 are accessed from NW 3rd Street, a collector roadway that serves the primary access to the Nye Beach Commercial area.

- (iii) Based on findings and testimony regarding the character and history of the use and of development in the surrounding area, the planning commission determines that the expansion of the use would not cause any greater adverse impact on the neighborhood.

(b) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

- (i) The applicant explains that the use of the property does not result in noise, vibration, dust, odor, fumes, glare, or smoke other than what would exist if the property were used as a residential use that is allowed outright in the zone. The roads in the park are paved so there is little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke.
- (ii) The park model units planned for this property will be placed on foundations and permanently connected to utilities.
- (iii) Based on findings and testimony regarding the comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(c) Adequacy of infrastructure to accommodate the use (including sewer, water, and streets).

- (i) The applicant states that all sewer and water services are in place at the park. The units on Tax Lot 10700 will be served by utilities already existing on the lot.
- (ii) The applicants provided a detail drawing (Attachment "D"), which is helpful in establishing that suitable vehicle access can be provided to four park model recreational vehicle units on Tax Lot 10700.
- (iii) NW 3rd Street provides access to the four units on Tax Lot 10700, the only area of the park impacted by adding one unit. This public street is improved with a paved surface and sidewalk.
- (iv) As documented in File 2-NCU-13, manufactured dwellings and appurtenant structures within the park appear to extend over public sewer and storm drain lines and associated easements. This makes it difficult for the City to exercise its easement rights to access the utilities for maintenance purposes or to address failures. This has a direct bearing on the near and long term adequacy of these

utilities to serve the subject development and surrounding areas. At that time, the applicant testified that a number of the units in the park were nearing the end of their useful life. The Commission elected to address the encroachments by requiring that, as units are replaced, they be situated in a manner that does not impair the City's ability to exercise its easement rights and access these utilities. A condition of approval was included in the 2013 approval addressing this issue, and it is appropriate that it be carried forward with this decision since circumstances on the ground have not changed.

- (v) Based on findings and testimony regarding the adequacy of infrastructure, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(d) The comparative numbers and kinds of vehicular trips to the site.

- (i) The applicant notes that the addition of one space on what is now Tax Lot 10700 will add only a minor amount of traffic. Any additional traffic will be on NW 3rd Street, which has been recently improved and is already a primary access to the Nye Beach Commercial area. Further, the trips to the site will be residential in nature. The placement of one additional park model on this tax lot will be still fewer units than could be allowed by an apartment building, which is an allowed use on the property.
- (ii) This park is a residential development, and the types and kind of trips associated with the park use are what would be expected in a residential area. Densities are slightly higher than what exists in nearby residential neighborhoods; however, this is offset somewhat by the fact that this is a park dedicated to senior living. Further, as previously noted, the park is isolated from adjoining residential neighborhoods by terrain, so none of the park elements will orient traffic onto local streets in these areas (i.e. all traffic flows to NW 3rd Street).
- (iii) Based on findings and testimony regarding the comparative numbers and kinds of vehicular trips to the site, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(e) The comparative amount and nature of outside storage, loading, and parking.

- (i) Parking is provided on site. There is virtually no loading or unloading given the primary residential nature and use of the additional unit.

- (ii) Based on findings and testimony regarding the comparative amount and nature of outside storage, loading, and parking, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(f) The comparative visual appearance.

- (i) The applicant states that there will be little change in the visual appearance from what currently exists. There will be one park unit added on what is now Tax Lot 10700. It will be a unit for a full-time resident.
- (ii) Based on the photographs (Attachment "H"), findings, and testimony regarding the comparative visual appearance, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(g) The comparative hours of operation.

- (i) The applicant notes that the hours of operation will not change. The one additional unit is a residential unit.
- (ii) Based on findings and testimony regarding the comparative hours of operation, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(h) The comparative effect on solar access and privacy.

- (i) Given that the park sits lower than adjoining property, and the addition unit that is proposed is a single-story unit, solar access to adjoining property will not be affected. Similarly, since the unit sits lower than the surrounding property, there will be no impact on privacy on adjoining property.
- (ii) Based on findings and testimony regarding the comparative effect on solar access and privacy, the expansion of the use would not cause any greater adverse impact on the neighborhood.

(i) Other factors which impact the character or needs of the neighborhood.

In their findings, the applicants list the following other factors to be considered:

- (i) The new park model will be an enhancement to the property.
- (ii) The geographical features of the area tend to separate the property from other residential uses in the area.

- (iii) That it satisfy fire and life safety standards of ORS 446.100. The approval of this proposal will assist in providing safe, clean, and affordable housing for those 55 and older.
 - (iv) Based on findings and testimony regarding other factors which impact the character or needs of the neighborhood, the expansion of the use would not cause any greater adverse impact on the neighborhood.
- (j) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.
- (i) A condition of approval is attached requiring that a new unit placed within the park, including those that are to be constructed on Tax Lot 10700, adhere to the provisions of the Oregon Manufactured Dwelling and Park Specialty Code, as amended and that it satisfy fire and life safety standards of ORS 446.100. This ensures that the degree to which park units do not conform to these standards will lessen over time.
 - (ii) Based on findings and testimony regarding the purpose of the current zoning provision that cannot be satisfied, the expansion of the use would not cause any greater adverse impact on the neighborhood.
- (k) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, and alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:
- (1) Surfacing or parking areas and landscaping;
 - (2) Exterior design of structures;
 - (3) Outdoor displays, storage, and signage.
- (i) There is no evidence that improvements are needed or justified for the expansion of the park by one additional RV space.
4. **Conclusion:** If the Planning Commission finds that the alteration/expansion of the nonconforming use will not result in a greater adverse impact on the neighborhood, and the applicant has met the criteria established in the Zoning Ordinance for authorizing alteration/expansion of a nonconforming use, then the Commission should approve the request. The Commission can attach reasonable conditions that are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If the Commission finds that the request does not comply with the criteria, then the Commission should deny the application.

- G. **STAFF RECOMMENDATION:** As outlined in this report, this application to expand the non-conforming mobile home park to include one additional RV space for a “park model” home can satisfy the approval criteria provided conditions are imposed as outlined below. Accordingly, the Commission should approve this request, subject to the following:
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 applicants shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
 3. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
 4. As units are replaced within the park, the new units shall be situated in such a manner that does not impair the City’s ability to exercise its easement rights and access its utilities.



Derrick I. Tokos AICP
Community Development Director
City of Newport

November 20, 2018



City of Newport Land Use Application

Applicant Name(s):	Property Owner Name(s) <i>if other than applicant</i>
Douglas E. Fitts and Verna L. Fitts, Trustees	
Applicant Mailing Address:	Property Owner Mailing Address:
PO Box 172, Tidewater, OR 97390	
Applicant Phone No.	Property Owner Phone No.
541-528-7445	
Applicant Email	Property Owner Email
fitts@actionnet.net	
Authorized Representative(s): <i>Person authorized to submit and act on this application on applicant's behalf</i>	
Dennis L. Bartoldus, Attorney at Law	
Authorized Representative Mailing Address:	
PO Box 1510, Newport, OR 97365	
Authorized Representative Telephone No.	
541-265-5400	
Authorized Representative Email. dennis@bartolduslaw.com	

Project Information

Property Location: <i>Street name if address # not assigned</i>	
392 NW 3rd St., Newport, OR	
Tax Assessor's Map No.: 11-11-5-CD	Tax Lot(s): 10500, 10501, 10600, 10700, 10800 & 10900
Zone Designation: R-4	Legal Description: <i>Add additional sheets if necessary</i>
Comp. Plan Designation: High density residential	
Brief description of Land Use Request(s): Alteration of a nonconforming use to add	
<i>Examples:</i>	
1. <i>Move north property line 5 feet south one space to mobile home park</i>	
2. <i>Variance of 2 feet from the required 15-foot front yard setback</i>	
Existing Structures: if any	
Restroom/laundromat and office/storage facility	
Topography and Vegetation:	
see attached	

Application Type (please check all that apply)

<input type="checkbox"/> Annexation	<input type="checkbox"/> Interpretation	<input type="checkbox"/> UGB Amendment
<input type="checkbox"/> Appeal	<input type="checkbox"/> Minor Replat	<input type="checkbox"/> Vacation
<input type="checkbox"/> Comp Plan/Map Amendment	<input type="checkbox"/> Partition	<input type="checkbox"/> Variance/Adjustment
<input type="checkbox"/> Conditional Use Permit	<input type="checkbox"/> Planned Development	<input type="checkbox"/> PC
<input type="checkbox"/> PC	<input type="checkbox"/> Property Line Adjustment	<input type="checkbox"/> Staff
<input type="checkbox"/> Staff	<input type="checkbox"/> Shoreland Impact	<input type="checkbox"/> Zone Ord/Map
<input type="checkbox"/> Design Review	<input type="checkbox"/> Subdivision	<input type="checkbox"/> Amendment
<input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Temporary Use Permit	<input checked="" type="checkbox"/> Other

FOR OFFICE USE ONLY

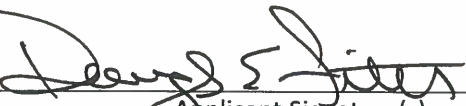

File No. Assigned: 4-NCU-18		
Date Received: 10/5/18	Fee Amount: 802.00	Date Accepted as Complete:
Received By: sm	Receipt No. 2607	Accepted By:
City Hall 169, SW Coast Hwy Newport, OR 97365 541.574.0629		
625-18-000910-PLNG		



City of Newport Land Use Application

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

 TTEE	9-26-18
Applicant Signature(s)	Date
 TTEE	9-26-18
Property Owner Signature(s) (if other than applicant)	Date
Authorized representative Signature(s) (if other than applicant)	Date

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

PARCEL 1

That portion of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT, in Lincoln County, Oregon, described as follows: BEGINNING at the southwest corner of said Lot 2, said point of beginning being the intersection of the north line of Agnes Street and the east line of Thompson Street; thence north along the east line of Thompson Street 85 feet to the southwest corner of the Seits tract described in deed recorded June 6, 1924 in Book 46, page 172, Deed Records; thence along the south line of the Seits tract, east 125 feet to the west line of the tract described in deed to Seits recorded in Book 46, page 338, Deed Records on August 11, 1924; thence south along the west line of the Seits tract hereinabove last referred to, 85 feet to the north line of Agnes Street; thence west 125 feet to the point of beginning in Lincoln County, Oregon.

PARCEL 2

Lot 14, Block 3, RHODODENDRON PARK, in Lincoln County, Oregon.

PARCEL 3

Lots 7 and 8, Block 2 of RHODODENDRON PARK in Lincoln County, Oregon. ALSO the following tract: BEGINNING at the northeast corner of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT; thence south along the east line of said Lot 2, 139 feet to a point 161 feet north of the southeast corner of said lot; thence west 65 feet; thence south 161 feet, more or less, to the north line of Northwest Third formerly Agnes Street; thence west 110 feet along the north line of said Agnes Street to the southeast corner of the tract sold to M. L. Seitz and spouse by deed recorded in Book 48, page 31, Deed Records; thence north along the east line of the said Seitz tract 85 feet to the northeast corner of the said Seitz tract; thence west 125 feet along the north line of the Seitz tract to the west line of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION; thence north along the west line of said Lot 2, 215 feet to the northwest corner of the said Lot 2; thence east along the north line of said Lot 2, 300 feet to the point of beginning, all in Lincoln County, Oregon.

Said real property being subject to the following:

1. Rights of the public in roads, streets and highways. (Affects portion in Lot 2, Block 10, Nye and Thompson's)
2. Easement for pipe line granted to City of Newport as set forth in the Contract from John Skoog to Herman Singer, recorded September 22, 1953 in Book 160, page 278, Deed Records.
3. Easements, including the terms and provisions thereof, granted the City of Newport, recorded June 26, 1963 in Book 235, page 557 and Book 235, page 593, Deed Records. (Affects portion in Lot 2, Block 10, Nye and Thompson's)
4. Easement, including the terms and provisions thereof, granted Dorlin P. Wilson and V. Fay Wilson, husband and wife, dated May 12, 1972, recorded May 30, 1972 in Volume 33, page 1309, Film Records.

PARCEL 4

Beginning at the Southeast corner of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT; thence North 165 feet; thence West 65 feet; thence South 165 feet; thence East 65 feet to the point of beginning, all being in Lot 2, Block 10, Nye and Thompson's Addition to Newport, in Lincoln County, Oregon; EXCEPTING THEREFROM the

North 4 feet as described in deed from Wilson et ux, to Hursh et ux, recorded May 30, 1972 in Book 33, page 1308, Film Records;

Together with an easement for a sewer line, including the terms and provisions thereof, recorded May 30, 1972 in Book 13, page 1309, Film Records.

LAW OFFICE OF DENNIS L. BARTOLDUS

380 SW 2nd Street/ PO Box 1510
Newport, OR 97365
Phone: (541)265-5400/ Fax (541)265-7633
www.bartolduslaw.com

Dennis L. Bartoldus
dennis@bartolduslaw.com

October 4, 2018

Derrick Tokos
Planning & Community Development Director
City of Newport
169 SW Coast Hwy.
Newport, OR 97365

RE: Application submitted on behalf of Doug & Verna Fitts, Trustees

Dear Derrick:

With this letter, I am enclosing an Application submitted on behalf of Doug and Verna Fitts, Trustees of the Fitts Family Trust.

The application is for alteration of a non-conforming use. The Fitts are seeking approval to add one additional park model home to Surfside Mobile Village. The change only impacts Tax Lot 10700 and Tax Lot 10501.

As you may recall, the Fitts were granted approval for alteration and expansion of a non-conforming use in 2013 under Case File 2-NCU-13. Rather than reinvent the wheel on this application, I am relying heavily on the Planning Commission Findings made in that approval. We are submitting a layout of the park based on the 2013 application and are also submitting a revision to Tax Lot 10700 and 10501 which shows the modification to the layout in that area to place for four park model homes rather than three. The dimensions of that area are shown on the drawings which Mr. Fitts has prepared.

Also submitted with this application are proposed findings, photographs, and a utility layout for the area being modified. The utility drawing was done with slightly different size park model homes, but the utility placement will be the same with the park model homes that are being installed.

Also enclosed is a check in the amount of \$802.00 which represents the application fee in this case.

If you have any questions or need any additional information, please let me know.

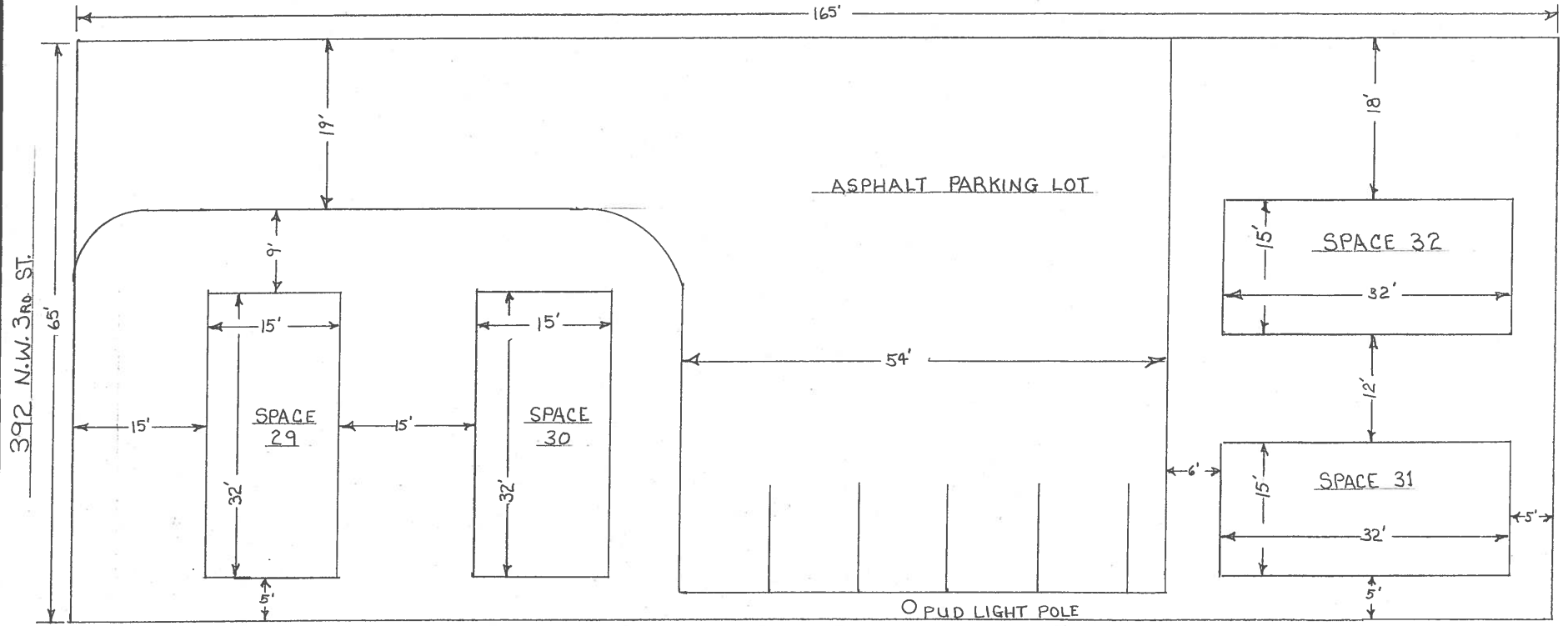
I would appreciate being notified of the date this application will be heard by the Planning Commission.

Very truly yours,

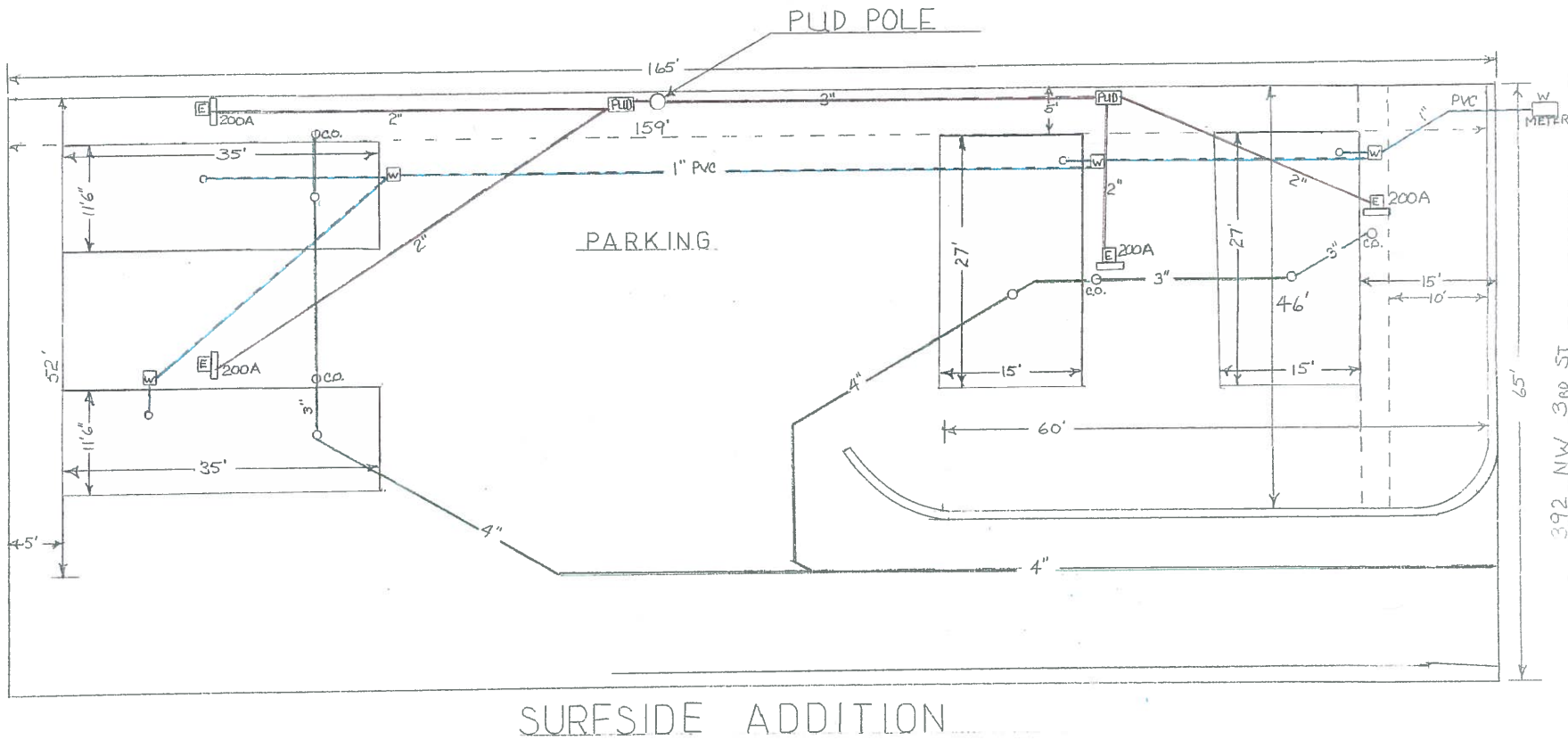


DENNIS L. BARTOLDUS

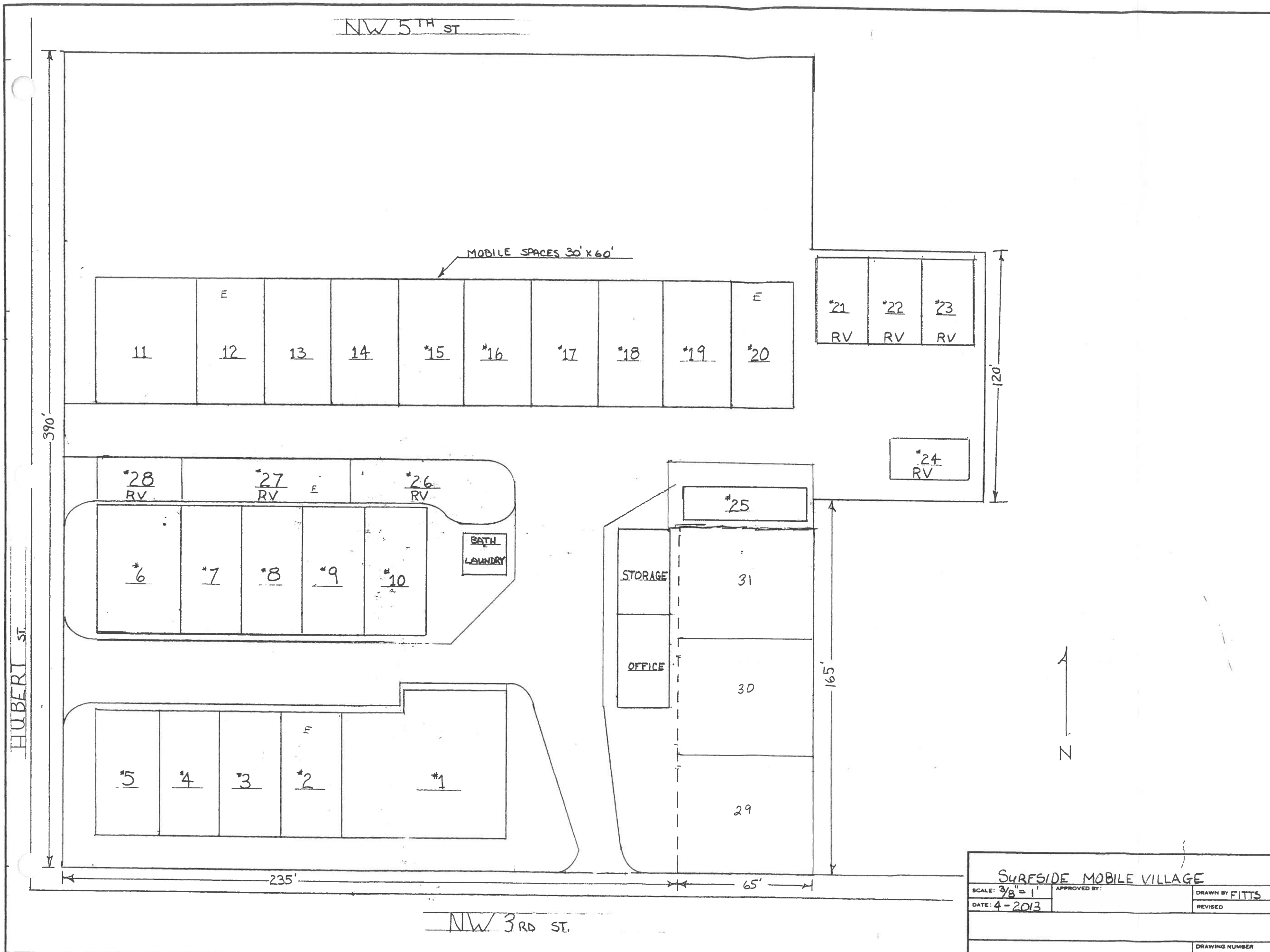
DLB/ms
Enclosure
cc: Client



SURFSIDE ANNEX	
SCALE: 1/8" = 1ft	APPROVED BY:
DATE: 9-2018	REVISION:
DRAWN BY: FITTS	
103	
DRAWING NUMBER	



ELECTRIC —————
 WATER - - - - -
 SEWER - - - - -
 SCALE 1/8 IN. = 1 FOOT.



SURFSIDE MOBILE VILLAGE		
SCALE: 3/8" = 1'	APPROVED BY:	DRAWN BY FITTS
DATE: 4-2013		REVISED
DRAWING NUMBER		



NW BROOK ST

NW 5TH ST

NW HURBERT ST

SITE

NW LEE ST

NW 3RD ST

This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this

PHOTO LIST

No.	Description
1	Photo at corner of SW 3 rd and Nye
2	Photo looking east on SW 3 rd
3	Photo looking north on Nye from 3 rd and Nye
4	Area where 4 park model homes are being installed. The two shown are the two most southerly units
5	Another photo of 2 park models recently installed
6	Photo from SW 3 rd showing new park model and topography of area
7	Third Street entrance to park
8	Street scene in park
9	Street scene in park
10	Street scene in park
11	Photo showing new park models taken from West side of park
12	Photo showing park models and relative elevations

SURFSIDE
MOBILE VILLAGE

PHOTO 1

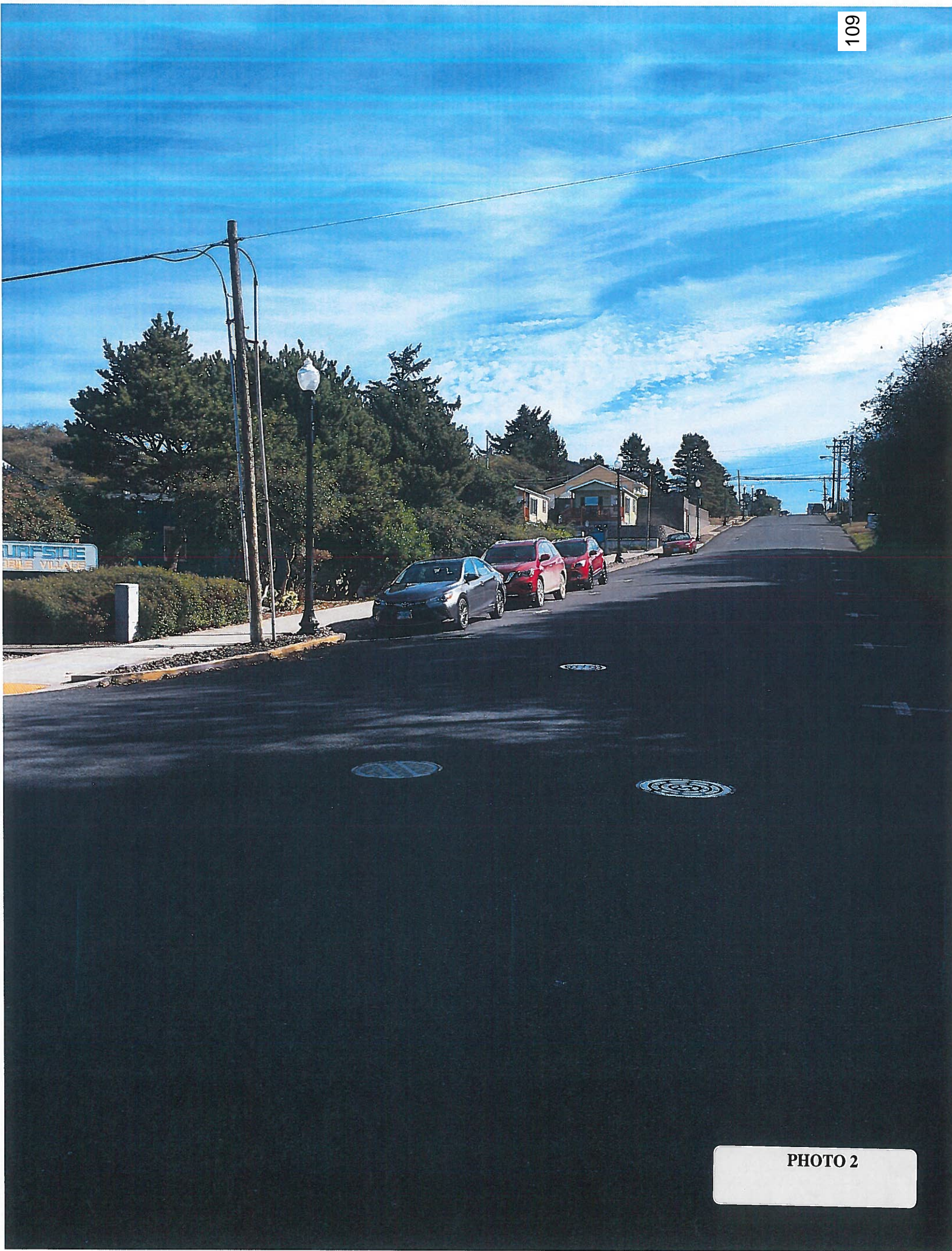


PHOTO 2

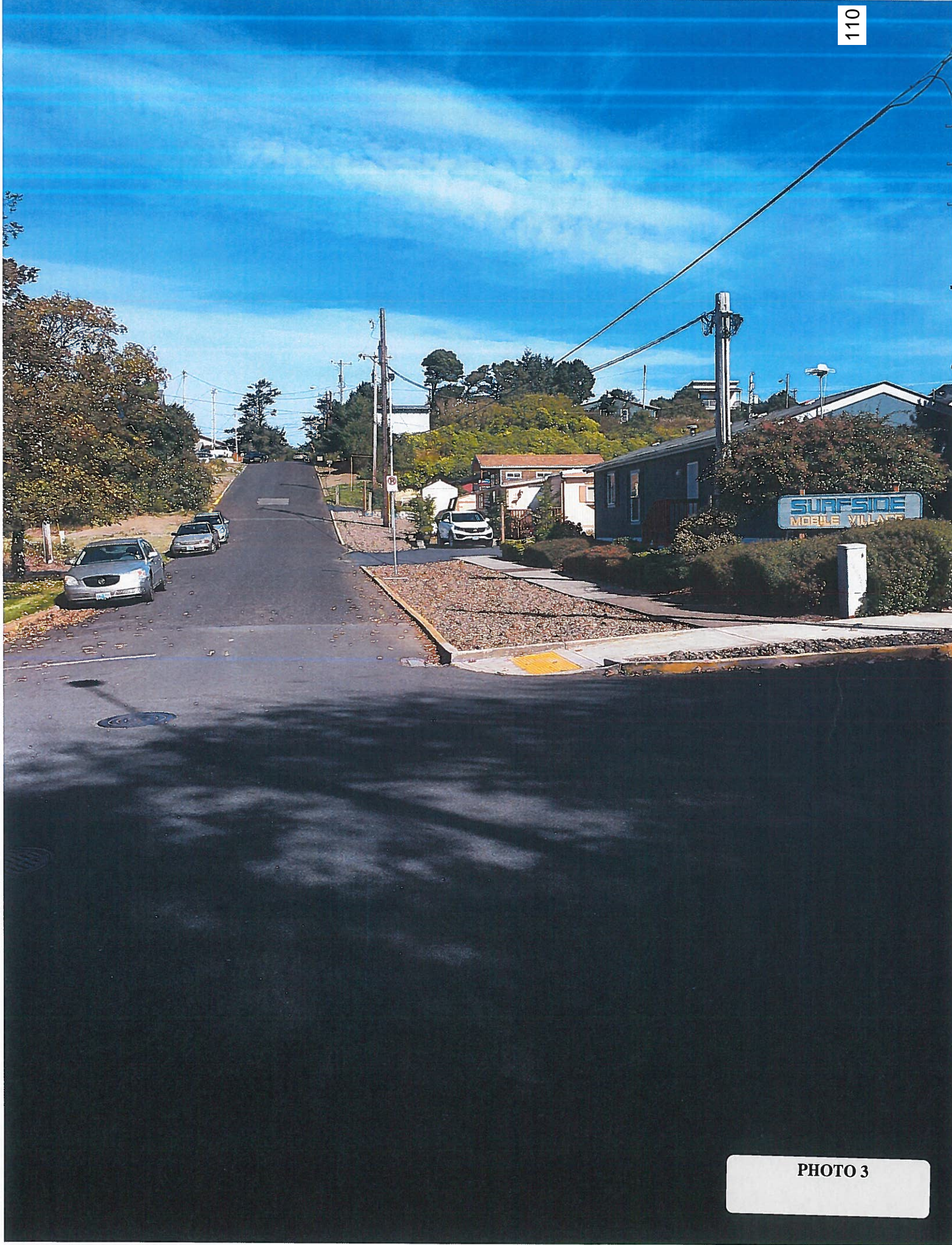


PHOTO 3



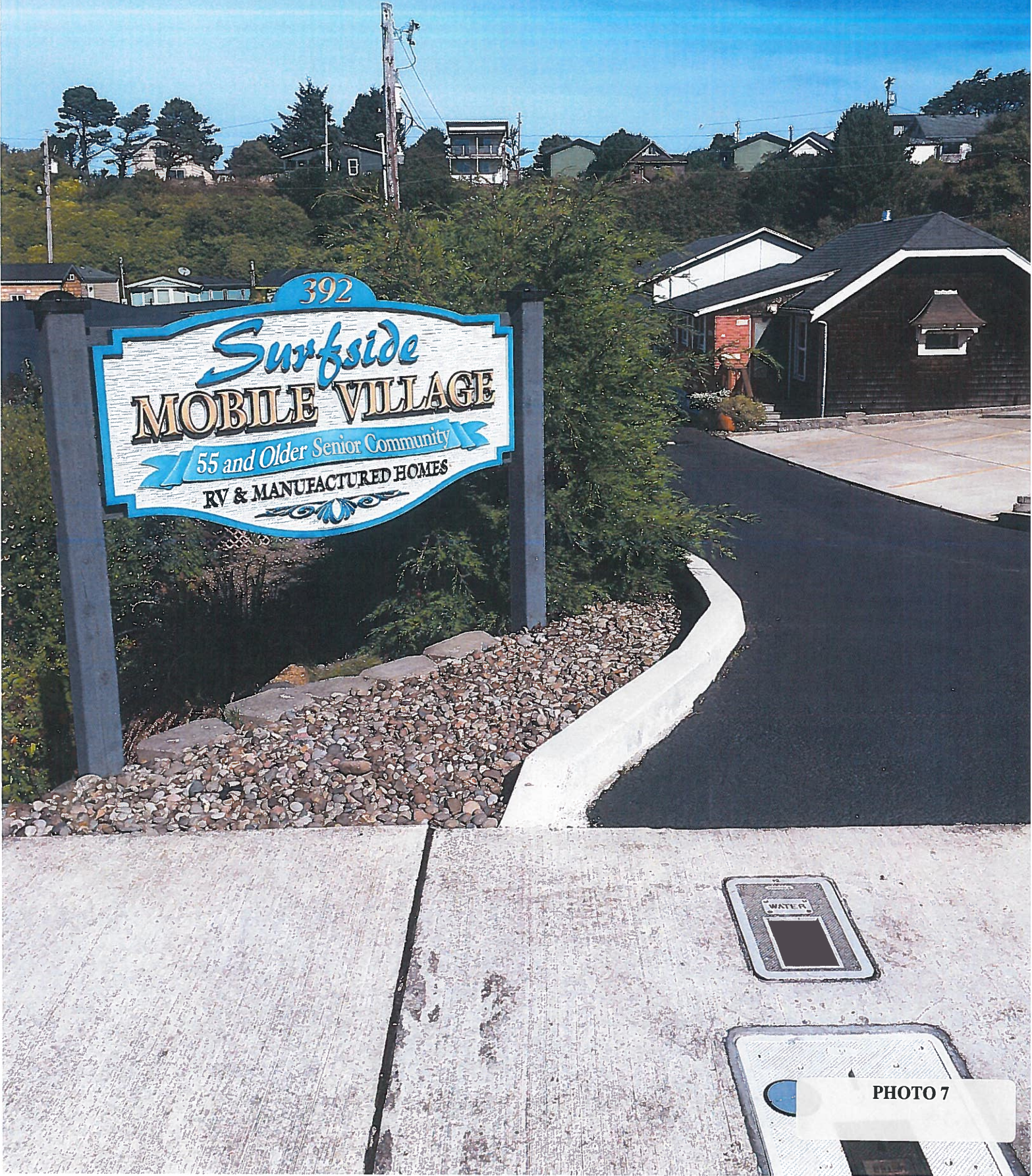
PHOTO 4



PHOTO 5



PHOTO 6



392
Surfside
MOBILE VILLAGE
55 and Older Senior Community
RV & MANUFACTURED HOMES

PHOTO 7



PHOTO 8



PHOTO 9

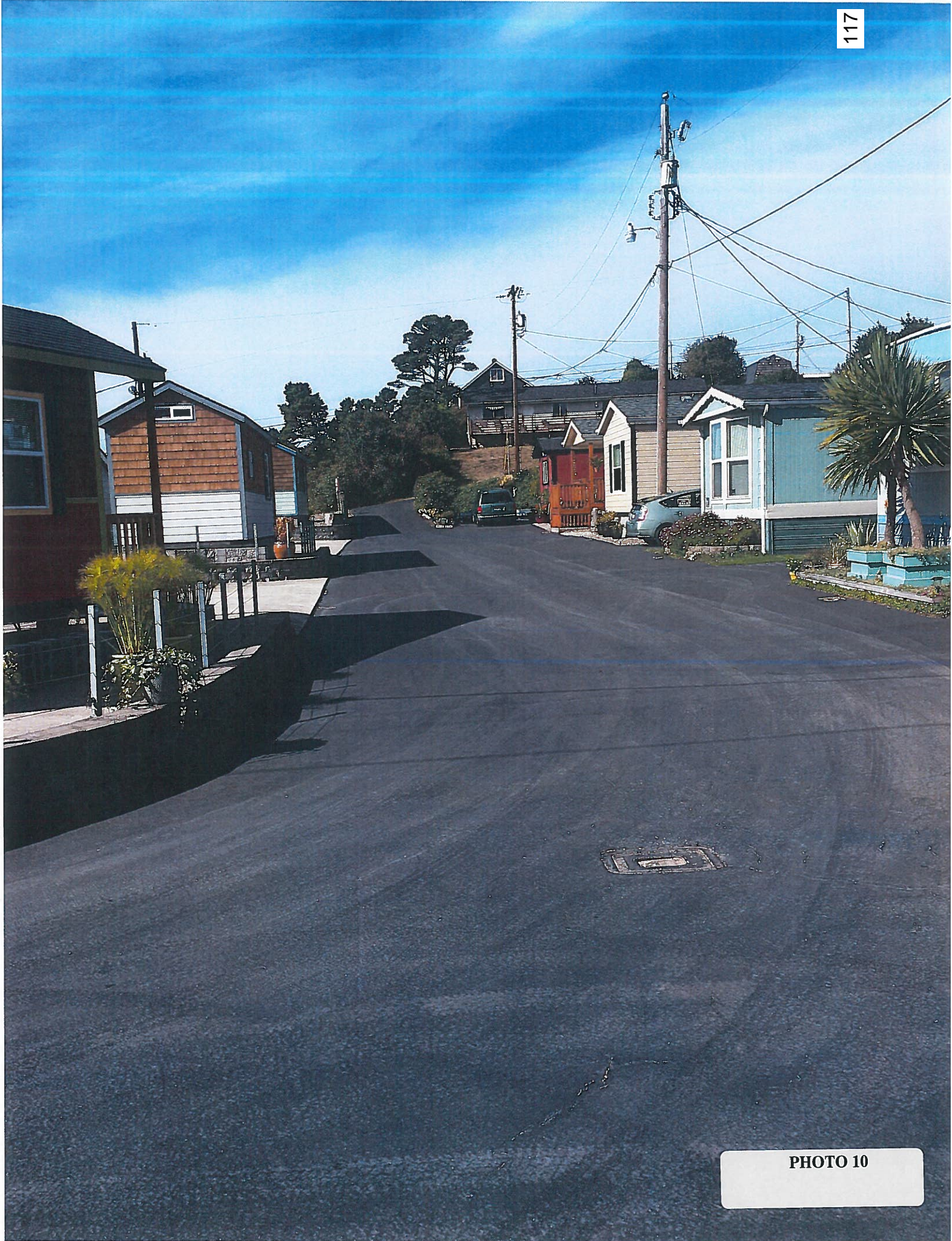


PHOTO 10

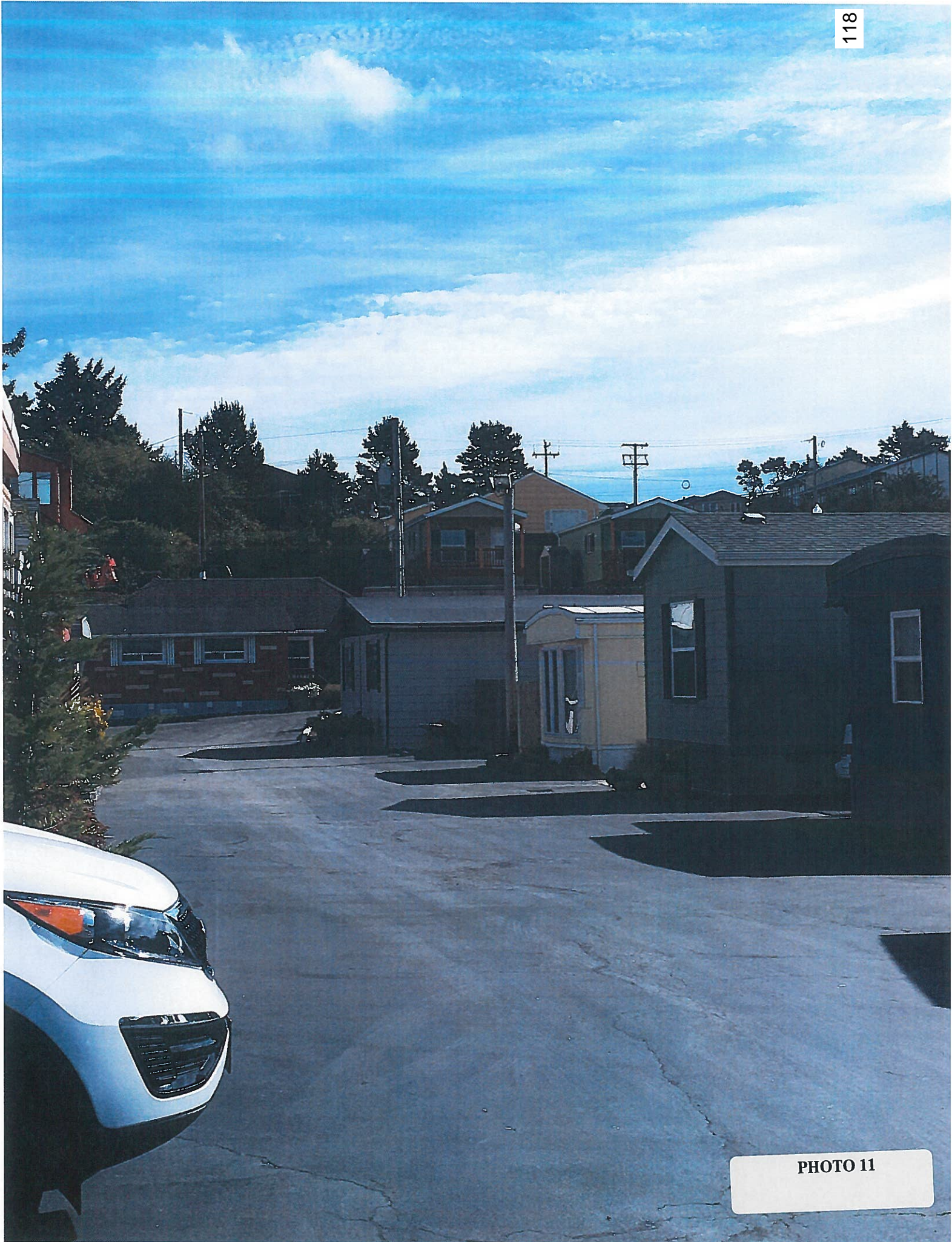


PHOTO 11

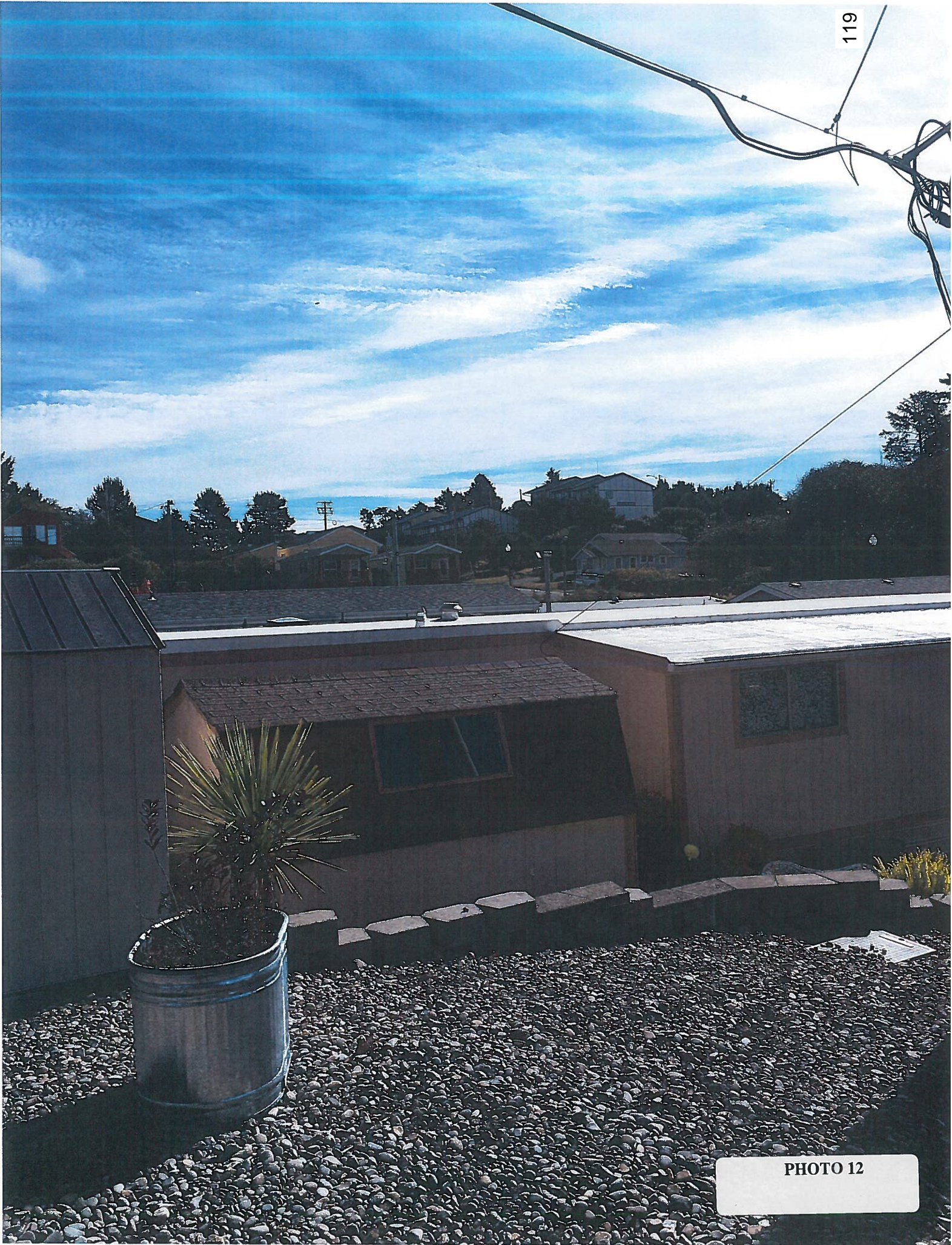


PHOTO 12

**CITY OF NEWPORT
PUBLIC NOTICE¹**

NOTICE OF A REVISED HEARING DATE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing to consider the following Nonconforming Use Permit request:

File No. 4-NCU-18:

Applicant: Douglas E & Verna L Fitts, Trustees, PO Box 172, Tidewater, OR 97390 (Dennis L. Bartoldus, Attorney at Law, PO Box 1510, Newport, OR 97365.

Request: Approval of a request per Section 14.32/"Nonconforming Uses, Lots, and Structures" of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to add one additional permanent space to the mobile home park.

Location: Lincoln County Assessor's Map 11-11-05-CD; Tax Lots 10500, 10600, 10501, 10700, 10800, 10300, 10200, 10100, 9900, 9800, 9700, and 9500 (392 NW 3rd St).

Applicable Criteria: Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. (B) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood. (C) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to: (1) Surfacing of parking areas and landscaping; (2) Exterior design of structures; and (3) Outdoor displays, storage, and signage.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Newport Community Development (Planning) Department (address below under "Reports/Application Material") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or

¹Notice of this action is being sent to the following: (1) Affected property owners within 200 feet of the subject property (according to Lincoln County tax records); (2) affected public/private utilities/agencies within Lincoln County; and (3) affected city departments.

NW Natural
ATTN: Dave Sanders
1405 SW Hwy 101
Lincoln City, OR 97367

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

Central Lincoln PUD
ATTN: Randy Grove
PO Box 1126
Newport OR 97365

EMAIL
PATRICK WINGARD
DLCD NORTH COAST REGIONAL
SOLUTIONS CTR

EMAIL
odotr2planmgr@odot.state.or.us

Joseph Lease
Building Official

Rob Murphy
Fire Chief

Tim Gross
Public Works

Rachel Cotton
Associate Planner

Jason Malloy
Interim Police Chief

Mike Murzynsky
Finance Director

Ted Smith
Library

Jim Protiva
Parks & Rec

Spencer Nebel
City Manager

ADAMS E CAROL &
ADAMS S BRIAN
427 NW 6TH ST
NEWPORT, OR 97365

BARNACLE INVESTMENTS LLC
2140 NORWOOD ST
EUGENE, OR 97401

BURCH PAUL &
BURCH ROBERTA
7055 NE AVERY ST
NEWPORT, OR 97365

BURKE KARA M
513 NW HURBERT ST
NEWPORT, OR 97365

CALKINS PAUL B &
MARTIN CALKINS MARILYN
4754 WEST MENLO AVE
FRESNO, CA 93722

CAPSHAW BRADLEY L &
CAPSHAW LINDA
353 NW 5TH ST
NEWPORT, OR 97365

CHAN KARL K &
CHAN LIN C
4062 NE FAIRVIEW LAKE WAY
FAIRVIEW, OR 97024

CHIPMAN ENTERPRISES
PO BOX 440
NEWPORT, OR 97365

CHRISTENSEN LUKE C
430 NW 5TH ST
NEWPORT, OR 97365

CITY OF NEWPORT
CITY MANAGER
169 SW COAST HWY
NEWPORT, OR 97365

COMMUNITY SERVICES CONSORTIUM
250 BROADALBIN ST SW
#2A
ALBANY, OR 97321

DRIEBERGEN ELIZABETH A &
DRIEBERGEN JEREMY A
PO BOX 275
NEWPORT, OR 97365

EDWARDS JACQUELYN L &
EDWARDS MICHAEL C
16413 S WINDY CITY
MULINO, OR 97042

FITTS DOUGLAS E TRUSTEE &
FITTS VERNA L TRUSTEE
392 NW 3RD ST SP #1
NEWPORT, OR 97365

FITTS DOUGLAS E TRUSTEE &
FITTS VERNA L TRUSTEE
PO BOX 172
TIDEWATER, OR 97390

FRITZ CRISTI
PO BOX 112
NEWPORT, OR 97365

FRY DENNIS W &
FRY RHONDA K
126 NW COTTAGE ST
NEWPORT, OR 97365

HEIMLICH SARA L
511 NW LEE ST
NEWPORT, OR 97365

HERNANDEZ GENARO SANTOS &
HERNANDEZ ROCIO SANTOS
PO BOX 312
NEWPORT, OR 97365

HOLEN H J TRUST THE &
HOLEN H J TRUSTEE
PO BOX 29
NEWPORT, OR 97365

HOWELL JONATHAN G &
HOWELL SUSAN B
13436 SW 62ND AVE
PORTLAND, OR 97219

HYDE JARED &
EAGER ELLEN
502 NW BROOK ST
NEWPORT, OR 97365

JONES DAVID M &
REDMOND MICHELE S
6825 BOLAND WAY
OTTER ROCK, OR 97369

KELLEY SUE ANN
PO BOX 1466
NEWPORT, OR 97365

KIEHLBAUCH ELLEN K (TOD)
504 NW BROOK ST
NEWPORT, OR 97365

KISS RICHARD J &
KISS MARICELA
3840 EVERGREEN AVE
DEPOE BAY, OR 97341

KISS RICHARD J &
KISS MARICELA
3840 EVERGREEN AVE
DEPOE BAY, OR 97341

KLEIMENHAGEN GAY
407 NW 6TH ST
NEWPORT, OR 97365

LAVIN MARK &
LAVIN SALLY
355 NW 3RD ST
NEWPORT, OR 97365

LAVOIE ROSE M
392 NW 3RD ST
SP 20
NEWPORT, OR 97365

LIEDTKE SUSAN E
433 NW HURBERT ST
NEWPORT, OR 97365

LYNCH JON
169 SE VIEW DR
NEWPORT, OR 97365

MCENTEE CINDY M
PO BOX 1172
NEWPORT, OR 97365

NOE MARLETTA N
531 NW HURBERT ST
NEWPORT, OR 97365

NYE VILLAGE ASSOCIATES
PO BOX 1930
NEWPORT, OR 97365

NYE VILLAGE OFFICE CONDO
ASSOCIATION OF UNIT OWNERS
530 NW 3RD ST
NEWPORT, OR 97365

PLETSCHET FRANCES B TSTEE
PO BOX 2220
NEWPORT, OR 97365

PRANGE MARGARET L &
TABER TIMOTHY J
3175 MULBERRY DR SOUTH
SALEM, OR 97302

RASKE JAMES
406 NW 5TH ST
NEWPORT, OR 97365

SAKHINA AWAL LLC
1982 KODIAK ST SW
ALBANY, OR 97321

TOFTEMARK JUDITH
331 NW 3RD ST
NEWPORT, OR 97365

WARREN JAMES RAYMOND &
WARREN DIANA CAROL
323 NW LEE ST
NEWPORT, OR 97365

WILSON RUTH E
521 NW HURBERT ST
NEWPORT, OR 97365

WORDEN MARK R
363 NW 3RD ST
NEWPORT, OR 97365

Cristi Fritz
PO Box 112
Newport

Exhibit "A"
Adjacent Property Owners Within 200 ft

File No. 4-NCU-18

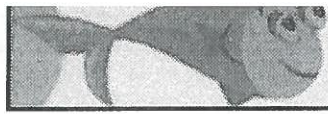
**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING**

REVISED HEARING DATE: The City of Newport Planning Commission will hold a public hearing on Monday, November 26, 2018, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 4-NCU-18 and will take place instead of the previously scheduled hearing date. The request submitted by Douglas E & Verna L Fitts, Trustees (Dennis L. Bartoldus, authorized representative) is for approval of a request per Section 14.32/"Nonconforming Uses, Lots, and Structures" of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to add one additional permanent space to the mobile home park. The subject property is located at 392 NW 3rd St (Lincoln County Assessor's Map 11-11-05-CD; Tax Lots 10500, 10600, 10501, 10700, 10800, 10300, 10200, 10100, 9900, 9800, 9700, and 9500). Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. 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Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials, the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address as well. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above).

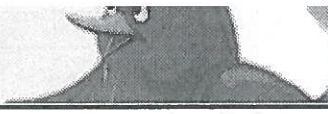
(FOR PUBLICATION ONCE ON WEDNESDAY, NOVEMBER 7, 2018)

ford said. "But me together for en it counts." in the top-five, is a racer," Swinford said. "I've never had a team that worked this hard to get to this level — to train during wrong.

"I've never had a team that worked this hard to get to this level," Swinford said.



541-265-8571



NOTICES

LEGAL ADLINES:

ESDAY EDITION: 3pm Thursday

WEDNESDAY EDITION: 1pm Tuesday

located South will hold sale member personal following: like 1 er r tin ll mentioned act us at (541) 1, N-14 RIFFS 02 2018, at a.m., at y Sher-ve Olive he City on, the t will be edemptio-roperty as: 177 Siletz, rt case 48391, k, NA, 3everly ate of 1 Pos-). This to the ash or i hand. go to sherif-ncoln/ N-28

NOTICE OF SHERIFF'S SALE #18-1806

On December 18, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 1053 Southwest 14th Street, Lincoln City, OR 97367. The court case number is 17CV17238, Specialized Loan Servicing, LLC, plaintiff(s) vs. The Unknown Heirs and Devises of Phillip I. Banner aka Phillip Ivan Banner; Lewis Keith Banner; Kenneth Lee Banner; Jennifer Nicole Banner; Linda Marie Banner; Bank of America, N.A.; Pacific West Ambulance; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> N-07, N-14, N-21, N-28 (68-28).

NOTICE OF SHERIFF'S SALE #18-1816

On December 18, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 691 E Barclay Meadows Road, Waldport, OR 97394.

The court case number is 15CV26378, Nationalstar Mortgage LLC D/B/A Champion Mortgage Company, plaintiff(s) vs. The Unknown Heirs and Devises of Anne L. Salmen; The Unknown Heirs and Devises of Robert S. Salmen; United States of America; State of Oregon; The Roban Trust Dated April 15, 1992; Kathleen Bagley; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> N-07, N-14, N-21, N-28 (69-28).

BOARD NOTICE

A regular meeting of the Board of Directors of Central Lincoln PUD will be held at 10:00 a.m. on Wednesday, November 14, 2018 at Central Lincoln's Northern Operations Center located at 7501 NE Avery St. Newport. The Board will begin its meeting with a public hearing on the standards, criteria and policy directives to be adopted as part of the hiring of a new General Manager. The Board will then hear a 30% design update on a possible new Headquarters building and hear a presentation on the utility's FY18 Audit. The Board will approve hiring criteria for General Manager Recruitment; consider a contract award for a three-year insurance agent of record contract, a contract award for two service trucks and a resolution to approve a procurement policy. The Board will also hear a status report on the utility's energy efficiency programs, review a report detailing Central Lincoln's property tax payments and discuss employee health care benefits & board compensation and conduct other business as it arises. To review the meeting agenda, please go to clpud.org. N-07 (70-07).

IN THE CIRCUIT COURT

OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT ESTATE OF ARTHUR JAMES LANGGUTH, DECEASED CASE NO. 18PB08191 NOTICE TO INTERESTED PERSONS

Notice is given pursuant to ORS 113.155 that Alfred Langguth has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: November 7th, 2018. Jeffrey C. Hollen, OSB #761757 Attorney for Personal Representative Ouderkirck & Hollen P.O. Box 1167 615 SW Hurbert Street, Suite A Newport, OR 97365 N-07, N-14, N-21 (71-21).

CITY OF TOLEDO OREGON REQUEST FOR PROPOSAL TOLEDO FIRE HALL CONSTRUCTION RENOVATIONS

The City of Toledo is interested in receiving written proposal estimates from local, qualified building contractors for desired "Construction Renovations" at the Toledo Fire Station located at 285 NE Burgess Road Toledo, OR 97391. If you are interested in learning more about this project and desire to submit a written proposal for

such, you are invited to attend a MANDATORY site visit and facility walk-through currently scheduled for Thursday November 8, 2018 beginning at 8:30 a.m. You, or an authorized representative of your firm, MUST BE in attendance of this onsite walk-through to be eligible to submit written proposal. For further information concerning the above project please contact Toledo Public Works Director via email only at pwdirector@cityoftoledo.org DATED this 1st day of November 2018 N-07 (72-07).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Tuesday, November 13, 2018, at 6:00 p.m. in the City Hall Council Chambers to consider File No. 5-Z-17, regarding the adoption of Ordinance Number 2144, land use regulations related to circumstances under which dwelling units may be used as vacation rentals. Newport Municipal Code Section 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community. These are the approval criteria for the proposed land use regulations, and testimony and evidence must be directed toward these criteria or other criteria, including criteria within the Newport Comprehensive Plan and its implementing ordinances, which persons believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to an issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral

form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Draft Ordinance Number 2144, and related materials may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). N-07 (73-07).

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subject property is located at 392 NW 3rd St (Lincoln County Assessor's Map 11-11-05-CD; Tax Lots 10500, 10600, 10501, 10700, 10800, 10300, 10200, 10100, 9900, 9800, 9700, and 9500). Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use. (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The

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PUBLIC NOTICE

N41. The Lincoln County Sheriff's Office has in its possession the unclaimed personal property described below. If you have ownership interest in any of this unclaimed property you must file a claim with the Lincoln County Sheriff's Office within 30 days from the date of the publication of this notice or you will lose interest in this property: Lamps, Schwinn bicycle, knives, keys, oxygen tank, tablets, Galaxy 6 phone, picnic set, iPhone 6, personal property to Devan LaFontaine, Devon Miller, Joseph DeRenzo, Concepcion Edelmira Resendez, Abraham Bonney, Justin Eppinghaus, Hayley Petts, Eric Messersmith, Daniel Morford, Sydney Fry, Caitlin Miskey, Daniel Murphy, Ki Schroeder, Nicholas Dued, and Richard Byrd. N-07 (75-07).

11/7/18