

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
May 13, 2019

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

Planning Commissioners Absent: Mike Franklin (*excused*)

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

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

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of April 22, 2019.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hanselman to approve the Planning Commission work and regular session meeting minutes of April 22, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** Mona Linstromberg addressed the Commission. She referenced that at the February 19, 2019 Planning Commission work session meeting where there was a discussion on the draft revision to the Newport geologic hazard overlay. She asked for an update on when the issue would come back to the Commission. She noted there were two geologic permits that were either in process, or going to be, that the revisions could effect, and why this needed to be addressed.

Tokos said an update on this would be presented to the Commission at the next meeting. Croteau asked if they would be taking an action. Tokos said the update would be the date the amendment would be going to a public hearing.

4. **Action Items.**

A. **Motion to Initiate Flood Insurance Rate Map Amendments.**

Tokos reviewed the staff memo on the updated flood insurance rate maps and flood study. He noted the City received a final notice from FEMA that it was good to go. Tokos reported that if the City didn't initiate the legislative process and get the maps adopted within the designated timeframe, FEMA could make a determination that property owners would no longer be eligible for federally subsidized flood insurance.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to initiate the legislative process for the Flood Insurance Rate Map and Ordinance Amendments as indicated. The motion carried unanimously in a voice vote.

B. **Motion to Initiate Tree Manual Legislative Process.**

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman to initiate the legislative process on the Tree Manual and updated elements. The motion carried in a voice vote. Hardy abstained.

5. Public Hearings. At 7:08 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, Hanselman, 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-CUP-19.

Tokos reviewed his staff memo and gave an update that the Finance Department and Rogue confirmed that they were not able to identify that there were any receipts that room taxes had been paid for Rogue Bed 'n' Brew. He noted the city was working with Rogue to get things resolved. He explained that room taxes fell under the Newport Municipal Code Chapter 3.05 and was not a land use issue. Tokos reminded the Commission that for the Conditional Use permit, they were charged with determining if the application met the criteria for the land use standards, not other matters that weren't a part of the land use code. Berman asked if there would be penalties for unpaid room taxes. Tokos reported that the City would be determining this.

Proponents: Matthew Merritt and Jim Cline, from Rogue Ales, addressed the Commission. Merritt asked the Commission to look at the criteria for the approval and asked them to grant relief for the off-street parking spaces. He noted they were working with the City to remit room taxes.

Branigan asked if Rogue was willing to make parking spaces available in the delivery area on the property to mitigate the five parking spaces. Merritt said they didn't have a problem with this, but they had to speak to their landlord to see if they would work with the City, and if there were any kind of easement issues.

Berman asked the applicants if the Commission attached a condition of approval that Rogue get permission from the landlord to turn the area into parking spaces, would it be a hardship for them. Merritt said he would have to talk to the landlord first to answer this, but noted that the report said the rentals didn't add much to the parking impact in the area. Cline agreed that they would be willing to look into this but noted they didn't have the final say on the parking spaces, the landlord would.

Opponents: Mona Linstromberg addressed the Commission. She explained that she had a problem that Rogue had been operating without a license and not paying room taxes. She suggested a condition should be added that they pay back their room taxes. Linstromberg also suggested the applicant sign a time waiver on whether or not these parking spaces could be used.

Rebuttal: Merritt explained they weren't asking for five parking spaces, they were asking to continue operating their rentals. He noted they were happy to work on the room taxes but wanted this separate from the conditional use because it was a separate issue. Tokos noted, with respect to obtaining a business license, this was a land use requirement and appropriate as a part of this discussion.

Berman asked if the ground for the additional parking spaces wasn't in the right-of-way. Merritt wasn't sure about this and was why they needed to check with the landlord.

Hearing closed at 7:22 pm.

Branigan noted he was happy that Rouge was working to amend the lack of room tax payments. He would be inclined to grant the permit, but would add a provision that said within 90 days Rouge would consult

with the landlord to see if they could convert the spaces to parking and report back to the City. Branigan stated he would grant their request either way. Hanselman said it was difficult for him to grant approval at this time. He thought the applicant was poorly prepared from the onset with a lack of business license and payment of room taxes. Hanselman had issues with the staff report. The parking study indicated that people typically park between 2-4 hours at the Bayfront. He felt the five spaces the renters would use could be filled all day with the same five cars, and was a direct economic issue for other businesses on the Bayfront. Hanselman noted the letter from Janet Webster that gave her concerns on loss of parking in the Bayfront district. He wanted to wait until the new parking district rules came out to deal with this.

Croteau said this was a case of clear negligence and he would be abstaining. Berman said he had a problem with this but he had to consider the criteria. He noted that the parking would be on-street if it became available. Berman wanted to add a provision to see if spaces could be added. Hardy thought all the criteria had been met and the room taxes weren't relevant. Patrick agreed with the City missing out on room taxes but thought it was not a part of the criteria. He said the Commission couldn't wait for future rules to make a decision. Patrick thought it met the conditional use requirements.

Branigan wanted to add a condition to the motion that Rogue would make a good faith effort to obtain permission from the landlord and report back to the City in 90 days. Hardy asked how that pertained to the conditional use. Branigan felt it was just another piece. Tokos suggested the Commission do two motions. One to approve the conditional use and another for the 90 days to obtain permission from the landlord.

MOTION was made by Commissioner Hardy, seconded by Commissioner Branigan to approve File No. 2-CUP-19 as written with conditions in the staff report. The motion carried in a voice vote. Hanselman and Croteau abstained.

MOTION was made by Commissioner Branigan, seconded by Commissioner Berman to encourage Rogue Ales to work with the City and the landlord to obtain permission to strip up to four additional parking spaces along SW Bay Blvd for parking and do so in a reasonable time frame. The motion carried in a voice vote. Hardy was a nay. Hanselman and Croteau abstained.

Tokos asked for clarification on if the four additional parking spaces were angled parking at the driveway approach to the patio area currently. Branigan confirmed that it was.

B. File No. 2-NCU-19.

Tokos reviewed his staff report. Croteau asked if the buildings had been in continuous use without a 12 month hiatus. Tokos confirmed it had continued use for decades. Berman asked if the owners were contemplating an expansion or a remodel. Tokos said he understood they were not.

Proponents: Angie Richcreek addressed the Commission. She said they had owned the property for years. They found out their property needed nonconforming approval when they had recently rented the unit to someone who needed a business license. Richcreek said they submitted their request to make things right.

Opponents: Gary Laymon addressed the Commission. He stated he lived close to the property and wasn't opposed to the application. He noted that when the property was an insulation business, trucks would load early in the morning and the sound of the beeping when they backed up was intrusive. He asked the Commission to consider a noise requirement for the approval. Laymon also suggested the City add squiggly lines on Oceanview Drive to slow people down in the area.

Rebuttal: Richcreek agreed that the trucks were there but reminded the Commission that Pepsi bordered the property and they had trucks as well. She said the plan was to have the building as storage. Hanselman asked if their hours would be 9 am to 5 pm. Richcreek said as it would just be storage and there wouldn't be much comings and goings.

Hearing closed at 7:48pm.

Hardy didn't have any problems and felt it met the criteria. Berman appreciated the owners cleaning up and thought a vegetation requirement was a good thing, but thought they maintained the property well. Croteau liked the landscaping requirement but had no objection. Hanselman suggested softening the view with landscaping to 10 percent. Branigan didn't have any issues. Patrick thought they met the criteria.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman to approve File No. 2-NCU-19 as written with conditions and with landscape requirements. The motion carried unanimously in a voice vote.

Tokos noted that the portion of the noise code stated operations should be between 7 am to 10 pm. When noises exceeded the level permissible, public could voice their concerns and the city would follow up.

C. File No. 3-CUP-19.

Tokos reviewed his staff report and the reasoning that the applicant had for submitting revisions to the original conditional use permit.

Proponents: Dustin Capri and Darren Morrison addressed the Commission. Capri noted that after contacting contractors for bids on the original designs, they discovered it was too expensive and had to reduce the budget. This was why they were submitting for a modification to the conditional use permit.

Hanselman asked if there was anything on the Bayfront that resembled the octopus they were proposing. Capri said one building on the Bayfront had a big copper seal sculpture. Hanselman asked what the size of the octopus was. Capri said around 25 feet. Croteau noted there was an octopus at Undersea Gardens. Branigan asked what material the octopus would be made of. Morrison reported it would be fiberglass. Branigan asked if the top of the elevator would be lit 24 hours a day. Capri said there would be light elimination on it to dim the light and it would fit in with the community. Berman asked about the plans for the deck on the roof. Capri said it was an existing deck and would be ADA accessible. It was used currently as a picnic area and their intention was to utilize it more often. Branigan asked what the exterior "TBD" was. Capri said this would be various artifacts that Ripley's supplied and would be outside sculptures. Hanselman asked if the entire building would be Ripley's. Morrison said it would after the renovations were done and noted the food portion would be removed. Branigan asked when the building was built. Capri said Ripley's was built in two phases in 1983 and 1984.

Opponents: None heard.

Hearing closed at 8:02pm.

Branigan said he had no problems with the approval. Hanselman said he wasn't sure about the octopus but would accept it. Croteau, Berman, Hardy, and Patrick had no problems.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve File No. 3-CUP-19 as written with conditions. The motion carried unanimously in a voice vote.

D. File No. 1-SV-19.

Tokos reviewed his staff report and why there was an amendment to the previously proposed street vacation. Berman asked if this was approved, would the entire property be private. He was concerned about people being able to turn around when entering the property if it was private. Tokos said there would be a way to turnaround before they got to the gate. He said the issue was that Public Works didn't like the previous

design and felt it didn't meet the standards. This application was the applicant's work around. Croteau asked if there would be no further objection from Public Works. Tokos said they would not be objecting to this.

Proponents: Leo Dobitz addressed the Commission. He wanted to clarify that there was a suggestion by the Public Works that they had an alternative. When he went to see it, Public Works couldn't give it to him. Dobitz reported that both the State and local Fire Marshalls felt the turnaround exceeded the turnaround requirements.

Opponents: None were heard.

Hearing closed at 8:09 pm.

Hardy said she had no problems. Berman had no problems but wanted an assurance that this would never be closed off in the future. Croteau, Hanselman, Branigan had no issues. Patrick had no issues and didn't have a problem approving it.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve a positive recommendation to the City Council for File No. 1-SV-19. The motion carried unanimously in a voice vote.

6. **Unfinished Business.** None were heard.

7. **Director Comments.** Tokos noted that he would be putting together a work program for the Commission. The Park System Master Plan would be coming forward as a final document. Tokos reported that the Parking Study meeting was productive and thought a recommendation would be made at their next meeting. He noted that they most likely would have amendments to the Comprehensive Plan to meter in the Bayfront, and hold off on Nye Beach and come up with an alternative business license adjustment and permit fee there for the time being. Branigan asked if there would be any more outreach meetings in Nye Beach. Tokos said they would have to do a round of meetings because they would need an alternative approved. He didn't think it needed to happen before they did the Comprehensive Plan amendments. Tokos noted there had been a discussion that maybe Nye Beach wasn't right for metering at that time. Croteau asked what the timeframe was. Tokos said within a year and the Commission would have to make a recommendation to the City Council. In late fall they would answer if they needed to do meters. Berman noted that as far as the budget, he objected to the money being in the budget for the parking plan.

Tokos reported that the Regional Housing Plan would be coming to the Commission soon. He said the Tsunami Overlay is also moving forward and that a House Bill is likely to pass that would take the provisions in the Building codes that prohibits certain special facilities or special occupancy uses within tsunami inundation areas, and waters things down to make DOGAMI's role more advisory and less mandatory. This would also apply to nursing homes and large assembly facilities in tsunami zones.

Patrick asked about Linstromberg's comments on the geologic permit applications. Tokos said one application had been submitted in November 2018, put on hold, and supplemented in February 2019. It is presently incomplete.

8. **Adjournment.** Having no further business, the meeting adjourned at 8:18 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant