

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
October 8, 2018

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

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, Franklin, Hanselman, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work session meeting minutes of September 24, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the Planning Commission work session meeting minutes of September 24, 2018 with minor corrections. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of September 24, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the Planning Commission regular session meeting minutes of September 24, 2018 as presented. 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-CUP-17.**

Tokos reviewed the applicant's request to add seven additional windows and four man doors to the original approved conditional use permit for the Sylvia Beach Hotel.

Hanselman asked if the four man doors would match the look of the existing historical design. Justin Luckini addressed the PC and said the additions would fit the form of the historical details. Branigan asked if there would be more doors added after this hearing. Luckini explained the first approval was for decks and windows. They completed the decks and had moved on to working on the windows when they discovered there were more windows that needed to be fixed. Luckini explained that the owner gave him a list of more minor repairs that would need permitting. Tokos said what was presented to the PC today was under consideration and encouraged the applicant to bundle the other improvements together and reapply for a conditional use permit for a broader range of improvements. Tokos noted with the PC's motion approval the city would be sending a notice out to neighbors stating the PC made an interpretation.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the interpretation of the scope of approval for File 1-CUP-17 modifications to the Historic Sylvia Beach Hotel. The motion carried unanimously in a voice vote.

Berman wanted to point out that the final paragraph from the final order stated that the PC determined that the request to a conditional use permit to remodel the exterior of the Sylvia Beach Hotel was in conformance with the provisions of the comprehensive plan. He said this implied to him that it wasn't just limited to the original five windows and he was in favor of the decision. Luckini said they weren't opposed to getting more permits but had missed adding the

permitting for the window on the deck permits. When they got the call that there was no permit for the windows, they came right into the city to get the permits.

B. File No. 1-SUB-18 / 2-VAR-18 / 3-GP-18.

Tokos gave his staff report. Branigan and Berman asked to recuse themselves from the decision due to them not being present at the previous hearing and not listening to the audio tape. Croteau stated he wasn't at the last meeting but had reviewed the materials, listened to the audio, and made a site visit so he would take part in the decision.

Hanselman noted that the applicants stated that work wouldn't happen within 10 feet from the heavily sloped eastern boundary, and wondered if it would be measured from the slope or horizontally because it would mean different measurements. He was also concerned about the appropriateness of the onsite back fill. Franklin said he didn't have questions or statements. Croteau felt there had been expert testimony given and said there was no contrary expert evidence given against the proposal. He noted the city Planning Department accepted the report with the updates and he didn't see any choice but to accept the findings presented in the technical report. Hardy said at the last hearing she recommended specific deed restrictions on future construction because ongoing monitoring was a vague term. This hearing was appropriate to the subdivisions, not individual construction. She felt deed restrictions would be very important. She wasn't inclined one way or the other in the validity of the opinions given. Hardy was familiar with the location and the Bayfront having frequent landslides. She was familiar with engineers who thought they could computer model everything, so she wanted to see proof of firsthand experience, more research and deed restrictions based on accurate physical reality. Patrick said that the 10 feet was plan feet and on a typical set of plans it was horizontal. He understood that the fill was done in a manner that met engineering standards and supported the loads that would be put on it. Tokos said this was correct and explained how the use of fill worked. Patrick said he was ok with the 2:1 slope. He thought the time to protect the slopes was when the individual units went in. Patrick was concerned that he didn't see a plan to take care of the water management for the lower lots. This could be done by covenants and deeds and he didn't know if it should be addressed at this level or the next.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve File 1-SUB-18 / 2-VAR-18 / 3-GP-18: Fisherman's Wharf Estates Tentative Subdivision with any conditions. The motion carried in a voice vote. Hardy was a nay. Branigan and Berman abstained.

5. **Unfinished Business.** No Unfinished Business.

6. **Public Notices.** At 7:24 p.m. Chair Patrick opened the public hearing portion of the meeting.

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

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. Franklin, Croteau, Patrick, Hardy, and Hanselman reported drive bys. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Branigan and Berman asked to recuse themselves due to them not being present at the previous hearing and not listening to the audio tape. Tokos said these two PC members would have an option to review audio before an action was taken and could participate in this hearing. Patrick gave a statement for public testimony and criteria for continuation of public hearing.

Tokos gave the staff report and reminded the PC the hearing had been carried over because of a flaw in the newspaper notice for the hearing. He noted that a letter from the Oregon Shores Conservation Coalition, an email from Bill Lund, an email from Mona Linstromberg, another email from Mona Linstromberg with attached letter, and an email from Elaine Karnes with attachments were handed out to the PC for the record. Tokos encouraged the PC to take additional testimony at the hearing and gave them criteria on how to consider approval.

Proponents: Bill Lund and Michael Rembolt addressed the PC. Lund wanted to make sure that the neighbors knew he was committing to putting in a new safe beach access. He noted the springs on the property that trickled from June until October. Lund said he had monitored the property since the previous year and took photographs periodically. He said in this timeframe he saw limited erosion happening. Lund said he had been told by the City that Spring Street had been built in the 1950's and there had been changes. Lund said the boring design had to be changed because of the discovery of the county street.

Rembolt addressed the PC and said he was there to answer any additional questions. Hardy asked since they said there needed to be further study, were they saying the application wasn't complete. Rembolt said they were saying it was complete but wanted the flexibility to make two more confirmation borings because of the road right of way that was found, and to have solid design parameters for the micro piles to support the structures. Hardy asked why a geological permit would be permitted when the investigation wasn't complete. Tokos said if they wanted to impose the requirement for them to do additional borings and have it was confirmed by K&A, it was in line with the expectations outlined in the geologic report they submitted to the city. Hardy thought it would be a good idea and asked if they looked up an up slope slippage and how it would impact construction. Rembolt said they did two borings on the west edge of Spring St. The engineering geologist, Gary Sandstrom, had done some reconnaissance and looked at aerial photography, consulted all the published geology in the area, and didn't see any direct evidence of current active landslides east of Spring Street. Rembolt noted their borings were limited to Lund's property.

Patrick said they called out the 20 degree slope on the mudstone. He asked if it was a cut surface bench into the mudstone. Rembolt said they didn't know when this had happened and Sandstrom had the best input on what happened. He said the overall topography was consistent with what you would typically expect to find on the eastern slope. There had been some confusion on terms between bedding and the condition of the slopes. Rembolt gave an explanation of the difference. He said what they were talking about was the surface of the slope, not the bedding and said that mudstone bedding varied. Franklin asked if Rembolt considered the ground from Spring Street up less stable than Lund's. Rembolt wouldn't say it was less stable and couldn't speculate on this. On Lund's property they didn't see any evidence of any slides prior to drilling the road. Rembolt said the natural species did a great job of stabilizing. He did say that this area was within a large landslide area that had experienced a lot of land sliding.

Opponents: Rob Earle addressed the PC. He read a letter into the record. Earle asked the PC to deny the request.

Teresa Amen addressed the PC. She read a letter for the record. She noted changes in the surrounding areas due to erosion and earth movement. Amen noted repairs to different dwelling foundations in the area in the previous years. She requested the PC reverse the Director's decision.

Sean Malone, attorney for the appellants, addressed the PC and passed out testimony and evidence. He said there was an issue on the erosion on Lund's property. Malone referenced HG Schlicker's report in 2016 and thought the PC should look at this report as unbiased because it was done before Lund owned the property. He noted this report was within 5 years and stated there had been critical erosion. Malone was confused on why the PC was entertaining a geological report that had borings in areas that wouldn't be used. He felt the report shouldn't be deemed complete. He also said that the issues raised by Tokos about imposing a reasonable condition by having future borings would be a reversible error by Land Use Board of Appeals because the geologic study was the criteria. The standard practices of a geologic report set forth the criteria for the guidelines for standard practices and was what was at issue here, and the notion that they could apply conditions was misplaced. Malone said the report was incomplete and was a work in progress. He was surprised that Rembolt stated that he didn't know why other properties in the area were moving. Malone felt they weren't at a stage to consider a land use hearing. He noted the both Ms. Wilmoth of Columbia Geotechnical, and Mr. Gless of HG Schlicker, had reported there were active landslides. Gless had also thought that building permits would be difficult to obtain for the property. He noted that NMC 14.21.060 stated it required a specific report be prepared for oceanfront property and said it hadn't been done. Malone also noted that Gless had disowned the 1991 report.

Malone stated that testimony from the last hearing showed that Rembolt didn't know what was going to happen on this property. This questioned the ability of the report to have a legitimate rationale on whether this property was developable or not. Malone said that Columbia Geotechnical thought that long term monitoring needed to be done on this site but Rembolt thought long term monitoring was ridiculous and not common practice. Also, Gless and Wilmoth said it was an active land slide area when Rembolt said it wasn't. Malone reported the report never said it "shall" do things, it only said they "should" and felt this was a basis for a denial. He thought the Director's decision should be reversed and Malone was happy to prepare the findings in support of a denial or reversal. He requested that the preliminary incomplete geo report be rejected.

Rebuttal: Bill Lund addressed the PC. He said the home north of Lund's property had no borings. He said if foundations were done with deep pilings, how could it be a bad thing. Lund explained that he had done two borings and information given to city staff showed no movement. He didn't think they would find any other information if they went another 50 feet. Lund noted that Rembolt did know about the duplexes being built. He said HG Schlicker always said there were issues at the coast and was why they did borings.

Patrick closed the hearing at 8:28 p.m. He asked the PC for their ideas on how to continued. Tokos recommended setting a seven day open record, with a seven day rebuttal, and another seven days for final arguments.

Malone said usually the record was only kept open if requested. He was concerned that the government had 120 days to complete the decision, including an appeal to the City Council. Typically the applicant signed a 120 day waiver so the local government met its statutory obligations to complete in 120 days. Malone noted there might be an appeal to the City Council and this would take time. Tokos said in this case Lund had been clear that he had more than one proceeding going through that would take time, such as the street vacation that needed to be done through the County. He wasn't concerned about the 120 days because he was trying to resolve three other issues. Malone said he was only concerned about this application and asked what the 120 days was for this application. Tokos said it would be in early November. Berman asked what were the implications on not meeting the early November timeline. Tokos explained that Lund may have cause to open this up in circuit court if he felt a jurisdiction was stonewalling him. Tokos didn't see it was relevant here because there were a number of things Lund needed to do before he went to development. Malone said the applicant could seek a circuit court mandamus and the city could be liable for attorney fees. Tokos wasn't certain the decision would be within 120 days and to the City Council before the 120 day, but it would be resolved before the right of way was resolved.

Patrick asked Lund to give comment on if he had concerns on leaving the record open another seven days. Lund said that was fine and he was there to do what was fair and right. He noted that the County wouldn't be starting the street vacation until December.

MOTION was made by Commissioner Hardy, seconded by Commissioner Branigan to keep the hearing open 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) for a seven day open record, with a seven day rebuttal period, and another seven days for final arguments. The motion carried unanimously in a voice vote.

Tokos said the record would be held open for the first seven days and would end at the close of business at 5 p.m. on October 15th, the rebuttal period would close on October 22nd at 5 p.m., and there would then be a one week final argument period that would end on October 29th at 5 p.m. The public hearing would be continued at the November 12th PC meeting.

7. **New Business.** None were heard.

8. **Unfinished Business.** None were heard.

9. **Director Comments.** Tokos asked if the PC wanted to have the next work session early or have a continuation after the regular session meeting for the vacation rental discussion. Branigan wanted to start at 5:30 p.m. then stay if they couldn't get it done they stay after the regular meeting. The PC was in agreement with starting at 5:30 p.m. and continuing the work session if needed.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to initiate the legislative process for the Vacation Rental Code Amendments. The motion carried unanimously in a voice vote.

10. **Adjournment.** Having no further business, the meeting adjourned at 8:42 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant