

**MINUTES**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**November 26, 2018**

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

**Planning Commissioners Absent:** Bill Branigan (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 7:05 p.m. On roll call, Commissioners Hardy, Berman, Croteau, Patrick, Franklin, and Hanselman were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission regular session meeting minutes of November 13, 2018.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Croteau to approve the Planning Commission regular session meeting minutes of November 13, 2018 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** Cheryl Connell addressed the PC. She spoke to the PC about the night's work session meeting concerning short-term rentals. She stated she was a member of the Ad-Hoc Workgroup and had concerns about allowing conditional uses for parking relief. She felt allowing a conditional use for parking wasn't in the best interest of the proposed ordinance. Connell said that for the first time, under the new ordinance, a parking space would be defined. She was concerned that since this was being defined, there might be more requests to vary from the requirement. She felt it was important to not include a conditional use for parking in the ordinance.

4. **Action Items.**

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

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Berman to approve the Final Order and Findings for File 2-SUB-18/4-GP-18 as presented with conditions. The motion carried unanimously in a voice vote.

5. **Public Hearings.** At 7:10 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, Franklin, Hanselman, and Patrick reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

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

Tokos gave his staff report. Hardy asked with respect to doing curbing in piece meal, would this look unfortunate if they were done over time. Tokos said the city had standards for curb work and this should be standard. Berman asked if a non-remonstrance agreement was signed for the sidewalks. Tokos said this was an option to the owner should they proceed. Berman asked if it was the city's intent to require a new sewer as a part of this appeal. Tokos said it wasn't a part of this appeal because it couldn't be appealed. The line would have to be slip lined or have a replacement of the sewer lateral. Croteau said there was new construction on 5th Street and asked if there were provisions made there for curbing. Tokos said the property immediately to the west was required to install a curb on the south side of 5th Street. Franklin asked why 607 SW 5th Street wasn't required to install curbs. Tokos said he wasn't involved with their assessment and it was done by the Public Works Department. All he could say was there was a determination they

didn't need the requirement as part of the plan review process. Hardy noted the comment about the lot being redeveloped, although it had existing infrastructure and they were replacing an existing structure. She asked to have "redeveloped" defined. Tokos said they had to look at this when doing permitted development and it had to be a rational nexus and proportional. In this case, a new manufactured home was being put in and was considered new development which caused the city to have to look at these standards. Hanselman asked if Cole was also appealing the sewer improvements. Tokos said no, she couldn't. The curb and apron fell into the right-of-way and were considered exactions and fell under the transportation standards. Since sewer fell under the health and safety standards, and city engineers determined that the line had root damage and couldn't be reattached to, it needed to be slip lined or replaced and not a part of this appeal. Berman asked if there were general guidelines for rough proportionality. Tokos said it was analyzed on a case by case basis.

**Proponents:** Patricia Lyn Cole gave a handout to the PC. She noted she had replaced the sewer line for \$10,000 and had to take out a loan to do this. Cole state she had lived there for 18 years and the city was now withholding an occupancy certificate until the curb was done. She was on a fixed income and was being made to put in a curb when there weren't any curbs within a 1,000 feet of her property.

Cole referenced Exhibit "A" in the handout she presented to the PC and said it wasn't consistent with the Newport Municipal Code and asked how it was roughly propositional as nothing had changed in 68 years. She referenced conclusion 6 of the staff report and stated that Standard of Chapter 13.05 did not apply to her lot because it was existing. She stated when she purchased the property, the previous owners had installed a timber boarder that wasn't intended to be a curb. Cole said the curb across from her property had not been done. She said there wasn't a storm drain system on 5th Street. Cole thought that if she put in a curb, this would create a trench and ruin the integrity of the street. She asked the PC to have some common sense in the matter and didn't know why she was being forced to put in an unneeded curb.

Croteau asked how much the new construction costs were. Cole said around \$130,000. Franklin asked what the square footage of the new home was compared to the old home. Cole said the new home was 1,336 square feet and the old home was 2,100 square feet. Berman asked if she considered the timber to be decorative. Cole said yes, it was part of the landscaping and was never meant to be a curb.

**Opponents:** None were heard.

Patrick closed the hearing at 7:32pm. Hanselman said this was a set of unfortunate circumstances yet the city code was specific on what the responsibilities were as a home owner. He did inspect the timber curb and saw why the city thought it was a curb. Hanselman noted he didn't look at all the homes along the street and wished he had. He said the municipal code stated it was something they could require and said he would have to go with the code.

Franklin understood why the city required the improvements. He was torn with the fact that down the street on Fogarty and 5th Street they had everything curbed and wondered why one new replacement hadn't been required. Franklin was in favor of not requiring the curb.

Croteau thought the decision was in sensible bounds and agreed that the curb be put in.

Berman asked Tim Gross to come forward and speak to the PC. He asked Gross how this curb and driveway would enhance public safety. Gross stated he was primarily concerned about the drainage on the street and noted that all of the properties to the east had curbs in some manner and there was a catch basin at the bottom of the street. He said the reason there wasn't a curb across the street was because it got missed as part of the review process. Whether or not the timber was put in as a curb, it was functioning as a curb. Curbs were needed for the drainage of the street. Berman said he was torn on the decision. He said he heard Cole's comments on asking the PC to have common sense and noted the PC was held to how the ordinance was applied. Berman said unfortunately, the city requirements were done properly and he couldn't uphold the appeal.

Hardy had a problem with a piecemeal approach for improvements. She thought whether it was intentional or not, the other property neglected was unfortunate. She was in favor of supporting the appeal and understood there was a rule of law which was scattershot at best some times.

Patrick said he was inclined to enforce the requirement because of the different properties he had to do these improvement on. He said he would like to be accommodating somehow but if they didn't enforce this, it would catch

up with the city. Patrick noted if there were things deteriorating in the right-of-way it was the property owner's response to take care of it. He said he wanted a compromise but didn't know that they could do anything.

Franklin asked what happened to the property on the corner that was missed for curbs. Tokos said in that case it was missed, the building permit was finalized, and there wasn't anything the city could do.

Patrick asked if they could give Cole some time to get the curbs done. Tokos said the occupancy certificate was the city's ability to make sure improvements would be made.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Berman to deny the appeal for File 6-MISC-18-A. The motion carried in a 3-2 voice vote. Franklin and Hardy were a nay. Patrick abstained.

**B. File No. 4-NCU-18.**

Tokos gave his staff report. Berman asked about the diagram of existing spaces and asked where space 32 would be located. Tokos said on "Attachment D" it showed spaces 29, 30 & 31 & 32. On "Attachment F" the park models at spaces 29, 30 & 31 would accommodate the four park models and their parking, by reconfiguring the spaces.

**Proponents:** Dennis Bartoldus and Doug Fitts addressed the PC. Bartoldus said this had been in front of the PC about five years before when they applied to gain approval for the park. He said they agreed with the staff analysis. Bartoldus stated that since there had been redesigns of park models since the last hearing, the applicant found they could get one additional space in the area. He noted this would be affordable housing for seniors.

Fitts said the park models didn't come out when they did their first non-conforming application and why there were reconfiguring to add a space. Berman said he did a site visit and noted that at the northeast corner there were RVs and creative sewer lines. He noted the one line supported by a 2x4 and asked if it could be a serious problem. Fitts said a month before a city water line burst, and water ran for a while and eroded the bank. They put in a 10 inch nylon line and added the timbers in to support it. The other line was for the RV lines that were supported by steel supports. Fitts noted the bad line was the city line.

Hanselman noted his concerns about the access road for the two units and asked if it had clearance for the Fire Department. Fitts said the Fire Department could reach everything from the street side and wouldn't take the truck into the park. Hanselman was concerned about the Fire Chief being okay with the access. Bartoldus said the other two units were the distance of a driveway from the house away from the main road. Tokos noted the notice was shared with the Fire Department and they didn't have any comments.

**Opponents:** Cristi Fritz addressed the PC and asked that the record be held open for seven days because of errors in the notice and the staff report. She said the notice that originally went out five years ago included that they applicant wanted to make their property on NW 5th Street a part of the park, which it wasn't, and the notice for this hearing still eluded to this. She wanted it removed to make it clear that NW 5th Street was not a part of the property. Patrick acknowledged that the record would be held open for seven days and asked for clarification on the errors. Tokos said the notice inadvertently referenced a tax lot not owned by the applicant, but the staff report was correct. He said he wasn't aware of the issues with NW 5th Street and said the part of the property near NW 5th Street wasn't a part of the park. Tokos asked if Fritz's concern was that this should be left out. Fritz said yes, but said when she spoke to him about his staff report he said NW 5th Street would not be a part of the staff report and would define the boundary of the subject park as defined in 2013, but wasn't in the staff report presented for the hearing. Tokos said the intent was to make sure this would include any expansion that was approved in 2013 other than this additional unit. Fritz wanted to make sure this was clarified. Tokos said the PC could clarify this by motion and he would prepare findings and a final order with this clarified. He said Fritz would get a copy of this in advance. Fritz asked if the initial application that included City of Newport land in it would be removed. Tokos said this was correct and noted it was taken out of the staff report.

Berman said "Attachment F" submitted by the applicant showed the property going up to NW 5th Street and asked if the diagram should be resubmitted because it was part of the application. Tokos said they could make the decision explicit, with respect to the property, what was part of the park. Berman was concerned that "Attachments F and G" weren't consistent with one another. Tokos said the final order would be explicit on what tax lots the decision applied to and that would be what the decision would be bound to by the final order. Berman had concerns about making a decision on something he hadn't seen. Tokos said what the park boundary was now was what the park would be.

“Attachment G” showed the perimeter of boundary of the park and “Attachment F” was prepared when they made the original application in 2013 and was why it was included in the materials.

**Rebuttal:** Bartoldus said on the application it didn't include up to NW 5th Street. The park started in the lower area even though Fitts owned the property. Fitts said when the city drew the map on the notice the red line drawings on the notice weren't correct. Tokos said this was not what they were looking at and was a different map. They were looking at the aerial maps as part of the staff report. Fitts then clarified what portion of the property was included in the park.

Tokos said the PC would have to leave the record open and not make a motion. Fritz said she was okay with extending the record and wanted to see the final order and findings before it was recorded. Franklin asked for the correct legal description of lots. Tokos said this was part of the staff report. Fritz said the application had inaccuracies and she was concerned there was ambiguity. If there was a way to see it and object to it, she was okay with this. Croteau asked if they included a motion with a need to correct the legal description, would that be okay with her. Fritz said she would want clarification between all four documents. Tokos said the perimeter of the park was as it was approved in 2013 with an additional space being added. The final order and findings would show the limitations of the boundary of the park. Fritz said it was okay as long as there was time to review this. Tokos said it would be available by Friday before hearing. Fritz said it would be hard to review but she would do her best to review.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Franklin to continue the public hearing for File 4-NCU-18 to the December 10, 2018 Planning Commission meeting. The motion carried unanimously in a voice vote.

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

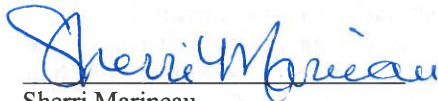
7. **Unfinished Business.** None were heard.

8. **Director Comments.** Tokos noted that the Bill Lund withdrew his geological permit and that was why it wasn't a part of the night's hearings. The city could expect a more robust study to come in from him in the coming months. Berman noted the County had posted a street vacation for the street at that location.

Tokos said in reference to Patricia Lyn Cole's appeal, the city had worked with her to connect her with Willamette Neighborhood Housing to get funds which would leverage the full value of her lot to get the sewer line installed. She could do this for the curb work as well. He said he didn't think this was appropriate to bring up at the hearing. Croteau asked about proportionality and if this was reasonable. Tokos said this would, in his opinion, be upheld if it ever went to court. Franklin asked if LIDs would be a good source to complete streets. Tokos said they could but the challenge was to get enough people to participate, getting the report prepared, and then having the city do the work. It would be a challenge to get organized.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:21 p.m.

Respectfully submitted,



Sherri Marineau  
Executive Assistant