

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
February 14, 2022

Planning Commissioners Present by Video Conference: Jim Patrick , Bob Berman, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

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

Public Present by Video Conference: Dan McCrae, Gina McCrae, Kristin Yuille, Tim Johnson, Curtis Landers, Russell Schutte, Ric Rabourn, John Rogers, and Greg Sutton.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:01 p.m. On roll call, Commissioners Patrick, Branigan, Berman, Hardy, Escobar, and East were present.

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to move the Public Comment agenda item after the Action Items section of the agenda. Hardy was a nay. The motion carried in a voice vote.

2. **Approval of Minutes.**

Berman reported one minor correction to the work session meeting minutes.

A. **Approval of the Planning Commission Work Session Meeting Minutes of January 24, 2022.**

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Work Session Meeting Minutes of January 24, 2022 with a minor correction. The motion carried unanimously in a voice vote.

B. **Approval of the Planning Commission Regular Session Meeting Minutes of January 24, 2022.**

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Regular Session Meeting Minutes of January 24, 2022 as written. The motion carried unanimously in a voice vote.

3. **Action Items.**

A. **File No. 7-CUP-21: Final Order and Findings for Conditional Use Permit to Allow the Construction and Operation of an Animal Shelter Facility and Storage at the Subject Property That is Located in a P-1/“Public Structures” Zone.**

Patrick asked if any Commissioners had ex parte contacts concerning the action item. Hardy reported she had been contacted by Gina McCrea who had concerns about the vote. Hardy

suggested going forward that McCrea either contact an attorney or talk to Tokos. Branigan reported he volunteered for Sheriff's Department. No other contacts were reported.

Patrick noted there had been a discussion on what constituted an emergency to hold large animals at the facility. Berman explained that when he made the motion it was simply that there be no large animals unless a governmental agency declared an emergency. He noted that Tokos expanded on this to include Federal, State or local authorities declaring an emergency, and also added that they not be located on the premises for more than a 24 hour period. Berman stated that this was not his intent when making the motion for the condition. His motion was that there be no large animals or livestock at the facility unless there had been a formally declared emergency. Berman's reasoning for this was that once you made an exception like this it became standard operating procedures, especially because there was no enforcement mechanism. He was concerned about the safety of the animals and handlers. Large animals didn't handle large noises well and could easily panic resulting in harm to the animal or handler. Berman thought this was inappropriate. He noted that for the last couple of years something was being done for these animals for short-term care and the County seems to be getting along just fine. Berman suggested they drop the phrase "for more than a 24 hour period" or use alternate wording that Tokos presented. Tokos noted the alternate said this. Berman didn't like the word "boarding" and didn't think they should be on location at all because it was a danger.

Patrick acknowledged that Hanselman had entered the meeting at 7:08 p.m. and asked him to declare any ex parte contacts. Hanselman reported he had a contact with Dan McCrea. He added that he agreed with what Berman had described at the last meeting. Hanselman's understanding was that there would be no large animals at all at the facility and thought this was the intent of the Commissioners.

Branigan submitted an alternative to Berman's alternative that said that there be no large animals unless there was a state of emergency, except in some unusual circumstances such as where there was a large animal that got loose and Animal Control captured the animal and needed a place to house the animal overnight until they could move the animal the next morning. Branigan wanted to add that under unique or unusual circumstances they be allowed to do this under the direction of the Sheriff of Lincoln County who controlled the animal shelter, and it would only be for the period of time where they could relocate the animal the following day.

Escobar supported Branigan's comments. In the past, when the Sheriff had to take control of a large animal, they would typically locate another farm to place them at, not the animal shelter. Escobar thought they should defer and trust the Sheriff's Department not to place animals at risk at the airport. He supported Branigan's alternative motion.

East thought in an extreme emergency, where they couldn't find optional facilities for large animals, he didn't see an issue with a very brief and temporary housing at the shelter. They would have to make sure to move the animals the following day.

Hardy suggested they find out how easy it had been to find alternative housing for those large animals before they jumped to the conclusion that it might be easy to keep them overnight and move them the next day. Patrick reminded that the hearing was not open and they couldn't ask this.

Tokos noted that there were two different versions of Condition 2. He cautioned against any condition that was discretionary or was left open where different people could have different

perspectives on what the language meant. This made it very difficult to enforce the terms of the conditional use permit. They wanted to make the conditions as clear and objective as possible so there was no confusion by anybody as to what the language means. Patrick saw there being three options: 1) no boarding of large animals at all; 2) boarding of large animals under emergency conditions; and 3) boarding large animals under emergency conditions and possibly overnight because of inability to place them elsewhere.

Branigan thought that anything overnight require the express approval of the Sherriff of Lincoln County as the senior officer and deferring to their expert judgement. Patrick asked if this made it discretionary or if it was reasonable. Tokos noted this would rely on a third party to make a decision and he questioned how they would enforce that particular provision. He thought it seemed a little loose. Berman noted this was part of his initial point because they didn't have an enforcement mechanism. As soon as you allowed a discretionary option it could become routine. Berman didn't think this was what they wanted to happen.

Hanselman asked what the Sherriff had been doing in the last two years for large animals. Berman reminded they couldn't ask this because the hearing was closed.

Tokos reviewed Condition 2 on the final order alternate which had the 24 hour language removed. He noted that for the emergency issue Branigan brought up, they had a loading area for when they needed to bring in a large animal for a brief period for either vet care or transition it elsewhere. This area was closed and within the building but it wasn't appropriate to board large animals there for a long time. Patrick liked this condition and wasn't worried about large animals in a livestock trailer overnight because this was only in a state of emergency. Berman still didn't agree and thought a livestock trailer could mean the animal could injure itself with loud noises. He thought from the testimony they had heard this could be a problem. Soundproofing would probably not block the sounds of large machines. Berman still thought they should get rid of the phrase "that cannot be boarded entirely within the animal shelter building" and say "livestock and other large animals should not be located on the premises unless a state of emergency had been declared by Federal, State or local authorities."

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman that they remove from Condition 2 of the alternate document the words "that cannot be boarded entirely within the animal shelter building,". East, Berman, and Hanselman were a yea. Branigan, Escobar, Hardy, and Patrick were a nay. The motion failed by voice vote.

MOTION was made by Commissioner Branigan, seconded by Commissioner Escobar to approve Condition 2 of the alternate document to say "livestock and other large animals that cannot be boarded entirely within the animal shelter building shall not be located on the premises unless a state of emergency had been declared by Federal, State or local authorities." Escobar, Hardy, Branigan, and Patrick were a yea. Hanselman, Berman, and East were a nay. The motion carried in a voice vote.

MOTION was made by Commissioner Branigan, seconded by Commissioner Escobar to approve the Final Order and Findings of Facts for File No. 7-CUP-21 with the correction to Condition 2 that states "livestock and other large animals that cannot be boarded entirely within the animal shelter building shall not be located on the premises unless a state of emergency had been declared by Federal, State or local authorities." Escobar, Branigan, Berman, Hanselman, and Patrick were a yea. Hardy, and East were a nay. The motion carried in a voice vote.

4. **Citizen/Public Comment.** Dan McCrea addressed the Commission. He reported that he had written a letter that he wanted to discuss about the animal shelter project, but it would have to wait until a later date. McCrea thought that having meetings through Zoom made it difficult for people to attend because they didn't understand how to do it. He was disappointed to have one session on a project like this. McCrea explained he had found out about the hearing by happenstance and that he wasn't prepared at the hearing. He felt the Commission was making decisions on the community based off of not having all the information. McCrea noted that a lot of the comments for other people at the hearing were inaccurate and he didn't get an opportunity for rebuttal. The comments he had would be saved for his appeal.

Gina McCrea noted she found out about the hearing the day after the meeting. She had been trying to find out background information for an appeal. McCrea wanted to know how this project came about and who she should talk to so she could get more information. Patrick suggested she talk to the County directly on their proposal and the people who presented it to the Commission. Berman thought the Sherriff would have background with the entire process. McCrea noted that she watched the video from the hearing and saw that Commission East stated he wanted to hear more input from pilots and also from the public. She asked if there was any option for this or if it was strictly for an appeal. Patrick reported it would have to be with an appeal with the City Council.

5. **Public Hearings.** At 7:36 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. None were heard. 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 1-NB-22.

Tokos reviewed his staff report and the modifications to the previously approved design review.

Applicant: Ric Rabourn with Hallmark Resorts addressed the Commission. He noted that all of the changes were architectural in nature and he was present to answer questions.

Berman pointed out that that the narrative said that the two crosswalks would be textured but on Attachment A5 and A6 it didn't show them. He questioned where the location of the second crosswalk was. Rabourn noted that there was a cross walk across Olive Street to Dolphin St. Russell Schutte noted the site plan presented only had the new items. Berman noted that A5 showed a crosswalk across Elizabeth Street but didn't show the other one. He thought the drawings didn't represent what was described in the text. Schutte noted the cutout was already there to have a crosswalk at Olive Street and it was more about getting safely across Dolphin Street. Berman recalled Dolphin Street wouldn't be a through street but would provide emergency access. He asked if this was still the case. Schutte confirmed it was and the more they looked at it with City staff they realized that a lot of repainting and other issues would happen. They were leaving it there for the future to take this on. It was obvious that emergency access was crucial for future use. They were designing what they could to have the northside pedestrian access, and there would be a new sidewalk leading out to the west to the ocean.

Opponents: John Rogers addressed the Commission. He reported that he was an adjacent property owner. Rogers asked if the 25 new units would be pet friendly and if there was an animal waste plan for animals to stay there. He also asked what the timeline from start to finish was going to be to get the project completed. Rogers also wanted to know what the parking impacts on Olive Street would be. He wondered if parking would be eliminated or the same amount on the north side of Olive Street. Rogers also asked about trash handling and how garbage trucks could get into the area next to the swimming pool.

Rabourn noted that Rogers' questions weren't about the amendments they submitted. He noted that some of the units would be pet friendly and there would be a designated pet area on the south side of the new building. Rabourn reported the project would start when the funding came through. They were moving forward with everything they could possibly do but they were waiting on financing to move forward. Rabourn thought that the parking questions could be answered by Tokos on how the parking regulations worked in Nye Beach.

Schutte noted that the timeline would be to the submittal for permits by April and start construction around June. They hoped that it would take around 14 months construction time. Schutte reported there was also a huge amount of lead time to obtain a number of items for construction. He noted that at that time they weren't asking for any additional parking. Tokos noted that in the Nye Beach District there was an allowance for new development to take advantage of adjacent parking spaces on a one to one ratio with what they were required to provide for off-street parking. At this point The Whaler had met their parking needs for off-street parking. Tokos reported they were putting in a below grade parking area and some additional surface parking spaces. They weren't relying upon available on street parking spaces adjacent to the property to meet their parking needs.

Schutte noted that having the trash in a parking garage created problems for trucks. Leaving it in the current location showed how the rerouting of the parking would be a loop. It meant the trucks would be able to go right next to the trash and then pull out the other side of the street. Rabourn noted that part of this required redevelopment of the south end of Dolphin Street, and having room for trash trucks to turn around there was a big part of the discussion.

Berman noted the dog area was next to two heavily used public areas. He asked if they could seriously encourage people to use bags for picking up after dogs so they didn't end up with the City responsible for taking care of it. Rabourn noted they already provided bags as part of the pet welcome for guests. They also had them for free at the front desk for pick up and had dispensers at the pet areas as well.

Chair Patrick closed the hearing at 7:58 p.m.

Branigan thought the revisions had been explained and he didn't have any issues. He would be in favor. Escobar agreed and thought they have been good citizens of Newport. He felt the plan was in fine form and he was in favor of approval. East liked the changes and agreed to approve. Berman agreed. Hardy agreed. Hanselman was good with the request. Patrick thought it met the standards.

MOTION was made by Commissioner Escobar, seconded by Commissioner Branigan to approve File 1-NB-22 with conditions. The motion carried unanimously in a voice vote.

Patrick requested that the Zoom script for public meetings be published on the Commission's packets so the public would know how the meetings would work. Tokos would include this in the packets.

Berman asked if it was okay for a few people to show up in person at the meetings. If that was still the case, they needed to make it clear to the public that they could attend in person. This needed to be added to the public notices. Tokos would review the notices to include the language. Berman thought this would eliminate confusion with Zoom meetings.

6. New Business.

A. Annual Statement of Economic Interest (SEI) Filing. Tokos noted this agenda item was a reminder to file the SEI forms. Generally around mid-March they would send out reminders with a link. Tokos noted this was included on the agenda to keep it in Commission's minds.

7. Unfinished Business. None were heard.

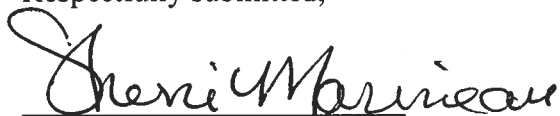
8. Director Comments. Tokos reported the City Council agreed to initiate the South Beach island annexation process. They would be engaging the County and going forward to get the process started. Tokos reported they would soon be firing up the housing study and had hired a consultant. The Council had also impaneled the Parking Advisory Committee. Branigan was one of the members and they had a few vacancies for Nye Beach and City Center. Tokos encourage the Commissioners to invite people to apply.

Tokos reported that the Council couldn't send the animal shelter decision back to the Commission because it was quasi-judicial, not legislative. They would have to decide the appeal and if either party didn't like it they could go to the Land Use Board of Appeals. Tokos reported that the Council would have to hold an on the record hearing unless they believed there was a significant procedural error, in which case they could bump it to a full evidentiary hearing. The chances were they would hold their hearing on the appeal and decide based on the same set of facts that the Commission made their decision.

Escobar asked if there would be an ordinance coming up concerning the parking lot on 9th and Hurbert Streets, and if it would come to the Commission or straight to the Council. Tokos noted it would most likely just go to Council because there wasn't a land use piece to the regulations. It was largely about how the City would enforce the parking rules relative to people who are homeless and living in vehicles, or for camping in public places. The League of Oregon Cities (LOC) was putting out some guidance on an ordinance. The City was working on language and waiting to see what came from the LOC before they decide on what to do with it. Patrick asked Tokos to keep the Commission up to date on this.

9. Adjournment. Having no further business, the meeting adjourned at 8:08 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant