

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
November 28, 2022

Planning Commissioners Present: Jim Patrick, Bob Berman (*by video*), Braulio Escobar, Jim Hanselman, Gary East, Bill Branigan, and John Updike.

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 7:03 p.m. On roll call, Commissioners Patrick, Branigan, East, Hanselman, Berman, Escobar, and Updike were present.

2. **Approval of Minutes.**

Commissioners Branigan, Berman, Updike and Patrick noted minor changes to both sets of minutes.

A. **Approval of the Joint City Council and Planning Commission Work Session Meeting Minutes of November 14, 2022.**

MOTION was made by Commissioner Updike, seconded by Commissioner East to approve the Joint City Council and Planning Commission Work Session Meeting Minutes of November 14, 2022 with minor corrections. The motion carried unanimously in a voice vote.

A. **Approval of the Planning Commission Regular Session Meeting Minutes of November 14, 2022.**

MOTION was made by Commissioner Updike, seconded by Commissioner East to approve the Planning Commission Regular Session meeting minutes of November 14, 2022 with minor corrections. The motion carried unanimously in a voice vote.

3. **Action Items.**

A. **File 3-CUP-22: Final Order and Findings of Fact Approving a Conditional Use Permit to do an Interior Remodel of a Historic Building (Ernest Bloch Home).**

MOTION was made by Commissioner East, seconded by Commissioner Branigan to approve File 3-CUP-22 Final Order and Findings of Fact. The motion carried unanimously in a voice vote.

4. **Public Comment.** None were heard.

5. **Public Hearings.** At 7:06 p.m. Chair Patrick opened the public hearing portion of the meeting. 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 2-CUP-22-A (Continuation).**

Tokos reviewed the staff memorandum. He reminded that a decision had not been made at the last meeting. There had been a three to three tie vote and the Commission chose to leave the hearing open so the seventh Commissioner could review the application and vote. Tokos reported that Commissioner Hanselman had reviewed the report in order to vote. He also acknowledged the new testimony submitted by owner, Ty Hildebrand and attorney, Zachary Dablow which had been shared with the Commission prior to the hearing. Tokos requested the Commission be clear on the rationale they were using to make their decisions, and to be clear on the reason for their vote.

Tokos pointed out the question on if a condition could be added to require the applicant to hold ten events a year was enforceable and he didn't recommend it. He thought they should take the applicant at their word that they would be doing those because it would be difficult for enforcement to stay on top of it. Tokos explained that if an issue was ever raised the City could respond on a complaint basis.

Proponents: Zachary Dablow, attorney for the applicant addressed the Commission. He noted the previous approval for the other real estate office in Nye Beach had been approved using the concepts that a broader definition of tourist area encompassed the idea of exploring and investing in real estate and served tourists and residents. Part of their argument was that before they got to the specifics of entertainment, Realty One had reported they had the same business plan idea to target tourists and provide education in the area as the previous location. Dablow explained that Realty One wanted to move to the ideal location that the business plan conceptualized, and this shouldn't be a punishment. The idea they were offering tourist direct and real estate services the same way Sea Shore Realty was, showed that they met the specific conditional use factors. Dablow noted that zone restrictions and conditional uses were useful for Commissioners to craft what they wanted to see in Newport, but thought the concern for saturation of the market would take care of itself. They urged the Commission to approve the conditional use permit.

Owner, Ty Hildebrand addressed the Commission. He explained they wanted to be given the same opportunity as Sea Shore Realty and Guild Mortgage who had already been given the green light in the Nye Beach area. He thought Realty One could add a lot for Nye Beach and tourists. Hildebrand added that their current location wasn't ideal because they were dealing with homeless issues there, and the location wasn't where they wanted to be.

Escobar asked if there were other locations the business had been located at in Newport. Hildebrand reported they had been at the current location for three years and it wasn't ideal. Escobar asked if they looked at any other locations in Newport. Hildebrand reported they hadn't, their original goal was to be located in Nye Beach. He reported that they had written a letter of intent for the location on the other corner of the street where they were at currently, but it wasn't accepted. Nye Beach was the area they wanted to be in. Escobar asked how many community type activities they had sponsored at their current location since May of 2019. Hildebrand reported there had been around five to six events. They had been doing the Toy for Tots and Pizza parties for their clients. Their current office wasn't great for these things because of the homeless population there. Hildebrand asked when Guild Mortgage started business in Nye Beach. Tokos reported they started at the same time the other real estate office went in. A staff level conditional use approval was done at that time and they were approved.

CeCe Kelly addressed the Commission. She stated she was a licensed realtor and noted that their profession was one that people stopped in to offices without an appointments. Kelly had people stop in the office for other reasons than for real estate who then became clients. She explained how Realty One's dream had been squashed by Covid and their events had to be delayed because of it.

Kelly appreciated the opportunity to continue the hearing. They really wanted their office to be in Nye Beach. Kelly reported that at their current location they had to have the doors locked because of certain incidences that were continuing to happen. Escobar asked if they had looked for other locations for the office. Kelly reminded that Hildebrand had already answered this, and she wasn't a part of the staff that looked for locations. Kelly stated that Hildebrand had his heart set at the location in Nye Beach but it wasn't available at the time they started in Newport.

Opponents: None were heard.

Chair Patrick closed the hearing at 7:34 p.m.

Escobar thought when the applicant brought up the safety of staff and problems with the homeless at their current location, it cast a new light on this. He thought Nye Beach should be tourist related. Escobar didn't think there was any compelling argument that the business would fail if it wasn't in a tourist area. He also noted that he hadn't heard testimony that there had been an effort to look anywhere else. Escobar noted that he didn't hear anything that would cause him to change his vote.

Branigan thought this was a tough choice. He noted that when Newport Municipal Code Chapter 14.03.040 was adopted it was clear that personal service oriented meant things like tax preparers, accountants, architects, and animal grooming. It was pretty clear that real estate was also included in this. Branigan understood why a real estate firm would want to be located there, and questioned if they needed to change the language to take real estate offices out of the code. Branigan affirmed his decision would be to deny.

Berman felt even more strongly that the Commission should override the staff denial because of the testimony that had been presented by the attorney. He said for fairness and consistency, they already approved the other real estate office that presented nothing for attracting tourists to that location. Berman thought the outreach to the public with the art gallery, and the other activities made it a good fit. He would vote to overturn the director's decision.

East agreed with Berman. He pointed out the current location had safety issues. East would vote overturn the director's decision.

Urdike agreed and thought the information provided at the meeting had been compelling. He felt the difficulties at their current location was a non-starter. Urdike thought there was a consistency issue with real estate in the same category. He thought in this instance the applicant was adding what they were looking for.

Patrick was on the fence on his decision and thought the lawyer's latest statement included some good points. He pointed out that he didn't know about the Guild Mortgage approval until this evening. Patrick thought choosing to look for another location wasn't the Commission's decision, neither was the business model. He was leaning toward approving this and thought they should strike real estate offices from the code. They needed to make a nexus between tourism and the service providers to have some sort of tie to it. Patrick thought this would be better than deciding the number of same category of services that should be in the area.

Hanselman reported he missed attending the first hearing meeting but had watched the video of it and reviewed the record. He referenced a comment a Commissioner gave at the first hearing date concerning the concept of new business strategies. This was a concept where they had combinations of businesses at one location so they could try their hands out with doing business in zones they might not have been permitted in previously. Hanselman was stuck on what happened

in 2011 when policy makers decided to draw specific definitions on what should exist and not exist in Nye Beach. Hanselman understood why the one real estate office had been grandfathered in. He didn't understand how another had been allowed in Nye Beach in 2018. The business in question currently was a realty office, which was prohibited in the original 2011 reorganization. Hanselman felt having realty offices in Nye Beach made this decision difficult. If more realty offices were wanted in Nye Beach they needed to change the rules and make them acceptable. Hanselman thought it was better to change the rules and come back to this it another time. He also questioned if the applicant had done their due diligence. The location for a business correlated to the zoning, and when someone purchased an office without seeing if their business plan fit directly with the zoning, it was their mistake. Hanselman explained that he was being held to the standard established in 2011 and was inclined to support the staff decision. Patrick agreed with both sides and reminded they did decide to allow a conditional use for someone else. Hanselman noted that that the previous conditional use was about a tv screen, not operating a real estate office in Nye Beach. Patrick asked if they went back and fixed things, would that change anybody's vote. Branigan thought that if they looked at this again, they would need to look at all personal services and strike out real estate.

Berman thought the issue of looking back at the personal services category would be good but that was not what they were looking at with this hearing. This request was to open a real state office in a area where they had previously approved the opening of a real estate office. Berman noted that the applicant made an effort in the business plan to conform to the tourist commercial and entertainment values. Patrick thought there was a good argument to go back and look at tourist commercial. He didn't want to see any empty spots in Nye Beach. Escobar noted the original intent in 2011 was that the application had to demonstrate that their business model was reliant upon being located in a tourist commercial area. He didn't think this application showed they had to be located in Nye Beach to be successful.

MOTION was made by Commissioner Berman, seconded by Commissioner Updike to override the staff decision and approve the Conditional Use Permit for File 2-CUP-22. Commissioners Patrick, East, Berman and Updike were an aye. Commissioners Branigan, Hanselman and Escobar were a nay. The motion carried in a voice vote.

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

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

8. **Director Comments.** Tokos referenced to the updated Planning Commission Work Program that was included in the work session meeting agenda. He noted the annexation hearing for the South Beach Church would be held on the January 9th meeting. The conditional use permit hearing for Toyota of Newport might be on the January 23rd meeting.

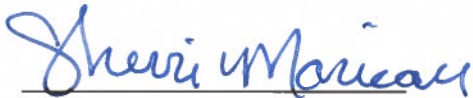
Tokos reported that he just had a meeting with the County, the DLCD and Boston Timber on the Urban Growth Boundary (UGB) land swap. The County wasn't satisfied with the land area that was being swapped out and how it was being handled. The swap had been retooled and was different than what the City Council had looked at. The County wanted it to come back to the City to review. Tokos told the County he would agree to this if they would go on the record before the Council ultimately approved anything that the Commission was comfortable with, if there were no new arguments that would come out, and if they would do it in a timely manner. Boston Timber was willing to continue to work on this. Tokos reported there was a new third party involved, Terry Litenmeier, who's property would be coming out of the UGB. He appeared to be on board with new concepts. This would come in as a new application and it would be scheduled once it was

submitted. Berman asked what the problems were that the Commission had concerning this. Tokos explained this had never been reviewed by to the Commission. The problem was the County said since it was coming out of the UGB they would force Litenmeier to change the zoning that they had applied, which was an RR-10 to a Commercial Forest or TCU timber conservation. This would have been highly restrictive on what Litenmeier could do. The accommodation was to change the 10 acre minimum size for timber conservation to a five acre minimum. This was because Litenmeier only wanted to do an equal land exchange which would give him the investment back expectation for developing the property. This was a prime example on why they needed to simplify the UGB amendment.

Escobar asked if there was a time sensitive reason to have the annexation hearing on January 9th. Tokos explained they were trying to get annexed in through a conditional use process, then have a building plan review, and then do the actual construction. They had to get off the property they were currently at in 2023. They wanted to move this quickly because they were afraid they wouldn't have a facility ready for occupancy by the time they had to vacate the current property. Tokos would talk to them to see if a two week delay would mean anything. He noted the annexation was not as big of an issue as the conditional use permit which would look at the proposed church use of the property consistent with the conditional use criteria. Hanselman asked if they had already purchased the property. Tokos confirmed they purchased it, and it was located near the Wilder subdivision on 40th Street. Escobar asked if this would be away from residences where noise would travel to. Tokos reported the church looked forward to not being that close to them and designing a building that would meet their needs.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:04 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant