

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
January 8, 2019
6:00 p.m.

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

Planning Commission Citizens Advisory Committee Members Present: Dustin Capri

Public Members Present: Norm Ferber, Mona Linstromberg, Frank DeFilippis, Jamie Michel, Tracey McDowell, and Adam Springer.

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

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.**
- A. **Commission Deliberation on Short-Term Rental Ordinance No. 2144.** Patrick opened the discussions and informed the public who were present that there would not be any public testimony taken at the meeting because the hearing had been closed for public testimony at the December 10, 2018 meeting. Tokos reviewed his staff memo and noted the letter that was submitted by Croteau. Croteau asked if the Commission would be reviewing the late testimony that had been submitted. Tokos said the hearing had been closed and any further testimony would be directed to the City Council.

The Commission discussed how they would like to do deliberations and decided to discuss the topics section by section. Hardy said that the Purpose statement in Chapter 4.25.005 was flawed. She said she had issues with respect to character of neighborhood being subjective, and the types of things that were enforcement heavy were issues that weren't things the city could handle. Patrick agreed with Hardy and said what they were dealing with was behaviors and he wasn't sure if they could zone for behaviors. He noted there was a movement in Portland to remove restrictions on single family units because they were underusing properties. He felt the city would end up having the same problem when it came to VRDs. Patrick said they needed constraints around behaviors. Hardy noted that the behaviors were universal and shouldn't be differentiated in terms of enforcement treatment. Patrick stated he didn't think the changes to the ordinance were the best way to do it but was willing work on finding the best compromise. Branigan asked what an alternative would be. Patrick didn't know. Hardy said the alternative would be to enforce the rules in place currently and make sure the City Council budgeted for it. Croteau didn't have a problem with the Purpose statement as it was written because it wasn't supposed to be a constitutional document. Hardy said there was no definition of terms included for things such as character of neighborhood. Tokos said purpose statements weren't intended to be clear and objective, they were more to frame why the code was set a certain way. Hardy stated she had a problem with this.

Croteau was concerned about VRDs adding congestion and wanted "traffic" added. Branigan and Hanselman agreed. Franklin didn't think it was worth putting it in the code. Capri agreed that it wasn't really traffic. A discussion ensued regarding what the traffic problems were for VRDs. Tokos said parking regulations were part of both the current and new codes. Berman said the new code stated that renters were required to use off-street parking before the use on street parking. Hardy was concerned this would separate classes. Berman felt this was an argument about businesses. A discussion ensued regarding the amount of traffic of VRDs versus residents. Croteau and Hanselman wanted to see something added about traffic. The majority of the Commission were not inclined to add traffic.

Tokos opened the discussion on Definitions. Patrick asked how a building that was part long-term rental and part VRD would be defined. Tokos said it depended on if the VRD was a dwelling unit. If it was a dwelling unit, it would be a VRD. If it was just a room, it would be a home share and would be outside of the context of the requirements. Patrick wanted a definition of a single family home added. Tokos said a dwelling unit clearly defined this.

Berman wasn't sure that liability insurance should be included and thought the City didn't have a right to require someone to have liability insurance. Capri asked if any other businesses had to have liability insurance. Tokos said there were a few businesses, like taxi cabs, that were required to have it. Hardy said the benefit was for the citizens not the city. Croteau was fine with including it and felt it protected the people. Branigan, Franklin, Hanselman stated they were ok with this. The Commission was in general agreement to leave the language as is.

Berman thought that under Proof of Residency, they should add “a recent utility bill within 90 days, in the name of the primary resident”. Hanselman said the utility bills didn’t always have the address on it. Hanselman suggested adding a tax statement. The Commission was in general agreement to leave it as is.

Tokos opened the discussion on License Transferability. Franklin didn’t think it was fair for a group of people to have a license for life. He said he was in favor with Alternative B.3 for transferability because it was more about commercial zones and protected the culture of Nye Beach as a VRD area. Croteau felt that was a land use issue not a license transfer issue. He said it prevented people who had been waiting in line to get a license and he saw it as unfair. Croteau said this was why he came up with the compromise with caps. Berman suggested talking about caps and then coming back to the transferability discussion.

Croteau asked the Commissioners how they felt about caps. He said he was concerned about caps creating an influx of VRDs in neighborhoods. Croteau thought the problem wasn’t a proximity problem. Hardy said that actual occupancy rates needed to be looked at instead of just assuming people wanted to come to Newport. Hanselman stated he had asked for this information when he was a part of the Advisory Committee and the City said they couldn’t provide it. Hardy cautioned the Commission to be careful on making assumptions. Berman said he wanted to eliminate the caps and have spacing requirements in the permitted areas. He was in favor with Alternatives 3 or 4, but preferably wanted Alternative 3. Patrick thought that whether there was a cap or not, there would still be a transferability problem because when they reached saturation they would be right back to the same thing. Croteau said this would be the case for VRDs that were in restricted areas, and saturation kinetics would mean they would reach a spacing limit that was self-limiting. If citywide transferability was allowed, it would be open ended. Branigan said if they did spacing limits, this would mean licenses would be phased out. Tokos noted the spacing requirements for single family areas was more straight forward compared to mixed density.

Hardy asked Tokos to explain “investors as opposed to persons who purchase a dwelling” statement under transferability. Tokos said the language was intended to cover the concern about properties being bought up by investors if they had a special class of transferable licenses for VRDs. Hardy said it needed to be rewritten because it sounded like it was saying investors were different from people who invest.

Patrick questioned if transferability for LLCs would be a way to get around the rules. Tokos said there was language to handle this. Croteau liked moving forward that the recommendation was for Alternative 3 and then include a list of other alternatives that the Commission considered. Berman liked Alternative 3. Branigan liked Alternative 3. Franklin and Patrick stated they were for no map alternatives at all. Hanselman said he liked Alternative 3. He requested that better interpretation of the map be presented to show what was prohibited and allowed. Hardy stated she wasn’t for any of the map alternatives. Tokos said what he heard was the majority of the Commissioners were for Alternative 3.

Tokos asked the Commission for their thoughts on spacing and density. Croteau said density would work with Alternative 3 with a spacing alternative. Branigan asked for clarification on the phasing out of VRDs over five years. Tokos explained that the City Attorney determined a five year phase out would be optimum. Berman thought everyone needed to conform with the spacing standards and the mechanism written in the ordinance would decide who was phased out. Tokos asked Berman if what he was saying was that he liked Alternative 3 with a cap and spacing standards. Berman confirmed this was what he was saying.

Branigan stated that he wanted Alternative 3. In the permitted zones, he would go with transferability on a one time basis with spacing requirements applied to any new VRD. Berman thought if there was going to be a five year phase out in the permitted areas there needed to be a phase out in all areas to make all remaining VRDs left be in conformance. Franklin stated he wasn’t a fan of spacing requirements. This was a behavioral issue and the problem was a lack of enforcement. He feared the city was going too far on restrictions. If the city enforced the laws that were in place currently, they would see a change and he thought that should be given a shot. Franklin thought the license fee needed to be raised to get people to be more serious and to enforce the rules. A discussion ensued regarding how the Police Department prioritized VRD enforcement low on their list, and how a third party vendor could help with enforcement. Hanselman reminded the Commission that there were a lot of neighbors that didn’t currently have recourse with problem VRDs. Tokos said if the concern was enforcement and the lack of compatibility in residential zones, they could apply some of the license fees toward enforcement, which would be a reasonable argument to make. Tokos said the Police Department talked about adding an additional enforcement officer and utilizing a third party vendor. Berman said an enforcement officer wouldn’t be on duty at all times of the day. He said they needed a complaint and a violation definition, and they needed to determine when the violation section of the code kicked in. Capri said the alternative maps would take out VRDs in areas near loud noises and asked why they worried about this. Patrick said there was a concern about livability, and about adding VRDs to the Nye Beach areas. Capri questioned why spacing requirements

were needed in the areas where VRDs were permitted, especially when there would be a genuine thought to improve enforcement.

Patrick said he could see the reason to have spacing requirements, but thought the Commissioners weren't thinking about unintended consequences. Tokos explained the concept of the street face concept that allowed a number of townhouses and adjoining condos units to be counted as one unit, and then a single family home would be counted as one unit. He cautioned that this could lead to some unintended consequences. Tokos said the example of what Durango was doing for street faces was more for residential zones. A discussion ensued regarding how a one time transfer of a license would not benefit an owner because the next owner couldn't transfer the license. Patrick said there was a second home problem in Newport and didn't think units would become full time rentals or permanent residents if they weren't VRDs. He felt the city was bucking a trend and they could legislate against VRDs but they would still be around. Patrick cautioned the Commission to not make rules they couldn't enforce. Tokos asked Patrick for his feeling on Alternative 3 if it went thorough. Patrick said if they went this way, they should leave everything open. Tokos said there might be problems that arise and it got complicated for areas like South Beach that had properties clustered together that were designed specifically for transient use and more seasonal housing. Croteau agreed that it was an enforcement issue but said the only tool the city had was prohibition as a way of enforcement. Patrick reminded the Commission that people were complaining about the same things at the last ordinance update in 2012. Tokos noted that he had also heard from the public that there were concerns about enforcement and a compatibility issue. He said the public testimony wasn't exclusively about enforcement. Croteau said enforcement couldn't address compatibility. Franklin asked if spacing in the R-1 zones would help. Tokos said his staff recommendation was to put spacing requirements in R-1 and R-2 zones and try to manage growth with a cap. Franklin thought spacing would help in these zones. Croteau said spacing didn't help in his neighborhood and would only increase VRDs in his area.

Berman asked if the Commission would consider grandfathering in the existing VRDs, imposing spacing requirements on new VRDs, and making a real effort to try and enforce the provisions of the new ordinance in the permitted areas on Alternative 3. This meant not phasing out current VRDS because of spacing requirements. Hardy asked if they would have unlimited transferability of licenses. Tokos said they set it up as the ones that are existing would be nonconforming with the spacing standards applied. The ones that were nonconforming would be entitled to continue as long as the use was not discontinued for a 12 month period. Spacing requirements could be applied to any new VRDs for Alternative 3. Franklin said he could get behind this. Croteau and Hardy were also in agreement. Berman asked if it was a typical 12 months period or would it be tied to the 30 day requirement. Tokos said it was easier to do the 12 months because it would sync up with how the city did other nonconforming uses and it tied in with the license. Berman asked how this related to the provision that VRDs would lose their license if they didn't report 30 days of income. Tokos said the Commissioners could consider taking away this provision if they were doing a cap or keep it to ensure owners used their licenses. Croteau said it was worth it to insure some level of competition for people waiting for a license. He said this was good without a cap because spacing requirements would ultimately reach a limit making licenses limited. Franklin asked what the number of VRDs would be if the spacing requirements were in Nye Beach. Tokos said it was hard to factor this. He gave an example of when a condo unit had one VRD, the rest of the complex could be VRDs making it hard to count not knowing if others would want to be VRDs. Berman asked if there was a way to monitor nonconforming uses. Tokos said there was and the provision said they would have to use the unit. A general majority of the Commissioners felt that if Alternative 3 was used, transferability would be gone. There was a minority of the Commissioners who didn't want map alternatives.

Franklin asked if the Commission agreed with raising the cost of the license for enforcement. Tokos said the Commission would have a first motion to move an alternative forward and then a second motion to speak to if the Commissioners wanted to support a third party vendor. Croteau thought the City Council should be the one to weigh in on what the third party vendor cost would be. Tokos said what he was hearing was that there was general agreement by the Commissioners to have a third party vendor to do enforcement.

Croteau noted that in Chapter 4.25 Approval Standards, under Contact Information, "may" should be changed to "should" when talking about forwarding information to the owner or authorized agent. Croteau also noted that the word "small" be taken out in the context of posting a sign under Notice to Neighbors because the dimensions of a sign was already given. Croteau said that "Additional Operational Requirements" should be changed to "Ongoing Operational Requirements". Berman asked if violations could have minor violations and major violations. He was concerned about how it applied to violations such as when someone wasn't putting their trash away on multiple occasions. Tokos said there was a provision included that could be used as a tool to say that the city could require a valet service for trash.

Hanselman said on Chapter 4.25, under Violations, it stated that an owner whose endorsement has been revoked shall not be eligible to reapply for a new endorsement involving the same property for a period of two years. He remembered that the Advisory Committee discussion had been about these owners not being about to reapply for all properties, not just the one property. He felt that owners shouldn't be able to reapply for a license on a different property if they lost

your license for two years on another. Franklin thought this was over kill. Capri suggested taking out “involving the same property” in the statement. Patrick said to take out “suspended”.

Croteau said in Chapter 14.25, under the Home Share section, it should say the homeowner should be present “for the duration of the rental”. Berman said that the Vacation Rental section should say “or Home Share” in the statement. Croteau said under the Guestroom Limitations section they needed to include “B&Bs” on the list. Tokos said the limitations were more complicated for B&Bs and there hadn’t been any problems with B&Bs.

Berman wanted to leave the requirement in that stated that renters had to use off-street parking first. Franklin asked if they could look at the grandfathered VRDs who currently had conditional uses for parking, and reduce the number of parking spaces given to them. Tokos said they could and noted that if the Commissioners were looking to do nonconforming uses for VRDs, the current VRDs would be considered nonconforming as they were. Croteau thought there needed to be clarification on if VRDS would be allowed to have conditional uses outside of parking districts. Tokos said this would be solved by the parking district changes. He asked the Commission if a current VRD didn’t meet the parking standards under the new draft, were they saying the unit would be nonconforming on just the spacing or the parking. Franklin thought that if they were nonconforming for parking they would need to meet parking district rules.

Tokos said what he had heard was that a majority of the Commissioners supported the preferred alternative map concept and preferred Alternative 3. In the permissible areas, existing VRDs would be nonconforming relative to spacing standards moving forward. The cap concept would go away and transferability was permissible with the 12 month nonconforming provision. The Commission was in general agreement on this.

Hardy asked if the draft would be legally vetting before the final draft was given to the Commissioners. Tokos said the draft would include what the Commissioners recommendations were. He said if there was any legal reason the draft needed to be changed between the Planning Commission and City Council meetings, the City Attorney would articulate this in writing as to what the change would be. Tokos added that what he heard that outside of the permissible areas there would be a five year phase out. Patrick wanted language about enforcement and the third party vendor to pass along to the City Council. Tokos said he would mock up a motion for the Commissioners for the next meeting. Croteau wanted the complaint registry included as part of the enforcement issue. Tokos confirmed the registry was already included.

Tokos said the new draft would be given to the Commission at the January 14, 2019 hearing continuation.

3. **New Business.** No new business.
4. **Director’s Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 8:47 p.m.

Respectfully submitted,



Sherri Marineau,
Executive Assistant