

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
January 25, 2021
6:00 p.m.

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

Planning Commissioners Absent: Gary East (*excused*).

PC Citizens Advisory Committee Members Present by Video Conference: Dustin Capri, Braulio Escobar, and Greg Sutton.

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

Public Members Present by Video Conference: Kim Allen

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.**
- A. **Discuss Central Lincoln People's Utility District Comments on Draft Small Wireless (5G) Regulations and Design Standards for Public Rights-of-Way.** Tokos noted the draft regulations would be going to the City Council on February 1st. He reviewed the comments received by Central Lincoln PUD and acknowledged the comments received from Kim Allen from the Wireless Policy Group, LLC on behalf of Verizon. Tokos noted that CLPUD's Comment 4 talked about fully abandoned poles, not transitioning providers off of poles. If a pole was abandoned, the city's existing franchise code provided 30 days to pull.

Tokos noted that Comment 5 was a good idea and would be working with CLPUD because the decorative poles weren't designed for additional small wireless to be attached to them and their height wouldn't likely be desirable. Tokos wasn't sure if the City would want to delegate or relinquish the city's ability to ensure that the standards were met by pushing that off onto a utility provider like CLPUD. If they set it up this way, and there was an outcome the city didn't like, it basically delegated it to the utility provider. The city was then left to accept whatever they came up with. Branigan asked if they would assess a fee for a permit. Tokos thought the City Council would want to assess a fee. There were provisions in the League of Oregon Cities model code for what it would look like. There would be a fee for the city's review and the design standards. It was only appropriate to assess a fee because of the dedicated staff time for this purpose. Berman didn't think having to get a city permit would present an undue burden because providers would bundle these up in significant quantities. One run through the Planning Department wouldn't add a lot of stress or costs to their efforts to pursue small cell wireless. He wanted to see some paperwork filed with the city.

Hanselman noted there was mentioned of a \$250 fee per device. He asked if this was what they were looking at in addition to a permit application fee. Tokos reported he thought the fee should be \$100 per device on the permit fee. This lined up more with the model code. Berman asked Kim Allen for her thoughts on this. Allen noted that in terms of the permitting fees, the FCC set forth some safe harbor fees that were in that range that Tokos was talking about. They would be supportive of this. Allen reported that they had done outreach with CLPUD that day and they agreed that the FCC regulated the city's involvement in the permitting process. She noted that they supported the code as it was purposed. The changes that were presented here weren't something they would be seeking for decorative poles. Berman asked how they felt about the 50 foot issue. Allen explained that sometime the pole owners wished to add additional height to poles when they replaced them for a small

cell. They would reserve some space to attach some of their own things at a later date. If they wanted to drop and swap a pole with something with more structural integrity, sometimes they wanted the option to make it taller than what they needed to attach so they add extra space. Typically a small antenna would be placed between 35 and 50 feet. This was the sweet spot to make them operate at their optimum. Allen explained they probably wouldn't want to go much higher than that, but the pole owners might wish to have more height on the pole.

Tokos reviewed the maximum height limitation language on the draft code. He noted that if they were comfortable with this it would allow the poles to be 100 feet tall in the right-of-way (ROW) in the commercial and industrial zones. If the concern was for the heights of new poles independent of CLPUD, it could be changed to say new poles for communication purposes had a maximum height of 50 feet period. Tokos reminded that in the design standards they needed to come in under 40 feet unless they could show there was a technical reason why they can't.

Hanselman thought it was good to limit standalone poles and thought 50 feet would satisfy them. He wondered why it was 100 ft in commercial zones. Patrick explained that typically in the commercial areas they ran higher voltage lines that needed better separation. This was why the poles got taller and taller. Hanselman asked if the small wireless would be situated at 35-50 feet. Patrick confirmed this was correct. Tokos noted that the Chapter 9.25 provisions only applied to ROWs and would be handled under a ROW permit. He asked if the Commission was comfortable with this language to say if it went over 50 feet it was subject to the current zoning rules, or would they prefer to say if it was a new pole for wireless the maximum height limitation for new poles could be no more than 50 feet. Berman asked if this was the same thing. Tokos explained the language as is said if it was in commercial it could allow a new pole over 50 feet in height in the ROW under the land use rules. Hanselman wanted to see standalone small wireless poles not exceed 50 feet because it met their needs, it kept it to a much smaller pole, and it didn't seem to impede the wireless service people needed. Patrick asked if this still allowed them to collocate on existing poles that were 100 to 150 feet height. Tokos confirmed this was correct. If they did the change, the language would say maximum height limitation for new poles and any wireless providers installing a pole exclusively for communication purposes, shall not exceed 50 feet. Hanselman thought this worked. Tokos reminded this wouldn't preclude them collocating on taller poles that CLPUD had or other poles outside of the ROW permissible in a commercial or industrial zone over 50 feet high. Hanselman thought if they were using a pole that was already there it made sense. If they were putting up a new pole for the communications there was no reason for it to be 100 feet tall. Branigan thought because this only applied to the ROW he was fine with the suggestion. Berman asked what the CLPUD concerns were about. Tokos explained they were concerned that the language might preclude collocation on their poles taller than 50 feet in height and they were trying to clarify the particular Chapter 9.25.050 provision. Tokos wanted to bring this back to make sure what the Commissioners thoughts were before it went to the Council.

Tokos noted that what he had heard was the Commission would like him to modify this provision of the code so it was clear that the maximum height limitation applied to new poles placed for communication purposes only, and they were not to exceed 50 feet in height in a ROW. The Commission was in general agreement with this.

Tokos reviewed the permit fees section next. He would set up the fee as \$100 per small wireless facility in an application and not limit the number they could bundle. This fit in with the safe harbor provision. Branigan asked what other cities were doing for the fee range. Tokos explained that given the design standards they set up and the time it took, \$100 was reasonable. He didn't think they wanted to stray from the safe harbor provisions. Berman asked if franchise fees were paid annually in addition to this. Tokos confirmed there were annual fees for the franchise agreements. Patrick noted the safe harbor provisions said they could charge up to \$500 and thought the city was doing better than them. Hanselman thought this might help telecommunication providers keep their application to a minimum number and they wouldn't inundate the city with multiple applications. They should bundle applications so it eased the time for the city. Berman thought providers would want to bundle as many as they could, rather than come in at one time. He asked Kim Allen to comment on what the normal procedures were. Allen explained they would want to bundle as many of these facilities that

they had ready and available in a geologic proximity to make it easier for them and the city at the same time. Berman thought that based on this the changes were fine.

The Commission was in general agreement with a \$100 fee. Tokos reminded that this would be going to the Council on February 1st for potential adoption. He would be forwarding a copy of the minutes from this meeting and the Verizon and CLPUD comments as part of the packet.

B. Second Review of Adjustments to Large Wireless and Other Telecommunications Land Use Standards, and Provisions for Small Wireless Facilities Outside of the Right-of-Way. Tokos reviewed the updates on the Draft Wireless Facility Land Use Regulations, starting with the sign provisions first. Berman asked why Agate Beach had separate sign provisions. Tokos explained that the Agate Beach Neighborhood plan that was done in the late 1990's adopted a more stringent sign code than the rest of the city. Berman asked if was something they should look at. He thought it was weird and an artifact. Tokos could bring it back to the Commission if they wanted to. He explained he was working with the existing sign code structure on these provisions.

Tokos reviewed the changes to the Commercial and Industrial District chapter in the zoning code concerning communication facilities radio frequency transmission. He noted that these facilities would be a conditional use in the bayfront area. Tokos reviewed the request that communication facilities on historic buildings or sites be subject to a conditional review. Berman asked if this would create more conditional use reviews in general. Tokos didn't think it would because this was for historic buildings. He wanted to stay out of the water related zoning because that created additional issues with the State. Tokos hoped they wouldn't have a tremendous amount of deployments in water related zoning on the waterfront, and what they did have could be handled additionally in a batch arrangement for an entire deployment, not just one. Tokos didn't expect huge numbers of applications. Patrick asked if the 55 foot height requirement meant they couldn't attach a small cell wireless to the OSU MSI building because it was taller than 50 feet on private property. Tokos noted this wouldn't preclude it because the building was permitted under the height exception because it was a vertical evacuation center. He explained it wouldn't be a small wireless facility and would come in as a communications facility.

Tokos reviewed the height limits for standalone antennas in different zones. Escobar asked for an example of what a standalone tower was. Tokos reported that there was one at the High School, one at CLPUD which was a lattice tower, one next to the Wave building, and another in South Beach by the old CLPUD maintenance yard. There was also one on the jail building, which was an antenna on a building.

Tokos reviewed the addition of the Communication Facilities section next. Berman asked if this was small wireless. Tokos explained it wasn't. These were towers for communication facilities. Tokos reviewed the security fence height provisions and asked if the Commission thought it looked good. Berman thought it looked right.

Berman asked with respect the RF transmissions, did this protect the city from a lawsuit when a small wireless facility went up and medical issues were blamed on the facility. Escobar noted that this followed a national FCC mandate. Anybody can be sued but questioned how valid this type of action might be. Tokos thought this would be a tough road to go for someone when cities were preempted by Federal law from regulating RF emissions. He could talk to the City Attorney to have him put together a letter that said the city was preempted by these Federal laws by delving into RF emissions. Berman didn't think anything that formal was necessary but he was concerned because there were strong feeling in the community from people who didn't think their concerns were being listened to. Tokos thought they should try to emphasize to the public that we were listening to them and we hear what their concerns were, but we couldn't regulate it because we were preempted by Federal law. It wasn't that we weren't listening, it was just that we couldn't do it legally.

C. Updated Planning Commission Work Program. No discussion was heard.

3. New Business.

A. **City of Newport COVID-19 Virtual, Hybrid, and In-Person Meeting Policy.** Tokos reported that the Commission was back to hybrid meeting mode where we could accommodate up to four commissioners to attend in person, and no more than 15 people in the audience who were socially distanced. During the last discussion on this type of meetings, the Commissioners wanted to continue attending through video, and if someone was attending in the audience there would be a way for them to provide testimony with a screen and audio in the Council chambers. Tokos asked for the Commissioner's thoughts on if they wanted to attend meetings in person.

Capri was comfortable with wearing a mask and coming in. Tokos noted a work session could be set up in the Council chambers, but there might be challenges to have video and audio for everyone and keep to the occupancy limit for the public in attendance. Berman didn't want to attend meetings in person during the pandemic, except for small meetings. Patrick wanted to make sure the public had a chance to testify in person. Hanselman wanted to know what feedback the city was getting from the public for doing Zoom meetings. Tokos didn't see a particular trend on this. There were people frustrated with Zoom meetings and others who were comfortable with them. The people who were uncomfortable with the technology could now testify in person. Tokos was happy to give the Commission a heads up if it looked like an agenda item would have more people coming in to give testimony. The Commission could then decide if they wanted to come in to participate. Hanselman thought this solution would meet most people needs. He didn't want to come into City Hall during a large meeting because there were too many risks for the older Commissioners.

Tokos noted that what he heard was to keep to the status quo. He would notify the Commission if something would be heavily attended and they could make a choice on how they wanted to attend.

4. **Adjourn.** The meeting adjourned at 6:54 p.m.

Respectfully submitted,



Sherri Marineau,
Executive Assistant