

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
November 26, 2018
5:00 p.m.

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

Planning Commissioners Present by Phone: Bill Branigan

PC Citizens Advisory Committee Members Absent: Dustin Capri (*excused*)

Public Members Present: Cathey Briggs, Cheryl Connell, Martha Winsor, Norm Ferber, Frank DeFilippis, Carla Perry, Jamie Michelle, Braulio Escobar, and Madeline Shannon.

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 5:00 p.m.
2. **Unfinished Business.**
- A. **Identify Preferred Alternatives Out of Newport Short-Term Rental Ordinance Amendments (Draft Ordinance No. 2144).** Patrick opened the meeting and asked for the PC's input on how to go through the review. Berman asked if the PC was in agreement to do a cap. Hardy thought the entire premise of caps was poor. She said they wouldn't improve the housing situation and they couldn't define the character of neighborhoods objectively. Until they got past those road blocks and they considered the entire city as a neighborhood, and that all the violations that were cited as big bad VRDs were happening all over Newport by long term citizens, they couldn't differentially enforce laws against citizens. Croteau stated he vehemently objected to Hardy's statement. Tokos suggested reviewing each issue one at a time.

Croteau stated he didn't think a cap addressed the present day problem and the PC needed to talk about where VRDs would be located before discussing a cap. He said there was rationale for eliminating VRDs in single family neighborhoods. Croteau felt that VRDs were intrusive commercial enterprises and were the same as hotels and motels. He stated he wasn't willing to talk about caps until there was a discussion on where they should be allowed. Franklin stated he had no problem a 5 percent cap because it helped people rest easy about the city turning into Cannon Beach or Lincoln City where there were 8-9 percent. It let them know what the max number of VRDs should be set at and allowed the city to manage inventory. Franklin felt the biggest issue they faced was enforcement and how to enforce problem VRDs. He wanted to see a program where if a property was rented out, the neighbors would have an email that they could send to, and then an email would go to the City for record, and then a text would go to the police department, the homeowner, and the person renting the property so everyone was on the same page right away. This would deter existing homeowners to confront bad renters and kept the conflict out of dealing with nuisances. Franklin felt renters who got a text would be more prone to fix the nuisance. Hardy said this often didn't work and reminded the PC that not everyone did texting. Croteau said enforcement was an issue but felt this was different from caps.

Hanselman said he was suspicious of caps. He noted that a large portion of the city was not attractive for VRDS. He noted there was a section in town that had 2,200 homes that only had five VRDs there and was clearly not a place for VRDs. Hanselman said five percent of the 5,500 homes in Newport would mean 250-300 homes. These would be located in neighborhoods attractive to VRDs owners and would put more pressure on residential neighborhoods to live with VRDs. He didn't think they could use five percent and they needed to decide where VRDs were appropriate and not. Hanselman said people bought in residential zones because of the lack of commercial, but now the city was allowing it in residential. He felt until they knew where VRDs belonged and not belonged, and how many VRDs the city could support, caps were difficult to determine.

Berman said the concern the public brought forth about adding a level of uncertainty for potential buyers was a disincentive for the housing market. He agreed that there needed to be an overlay of problem areas and they should set caps in those areas. There should be some way to slow down the growth of VRDs while supporting the tourist economy. Berman stated he didn't think VRDs should be allowed in R-1 and R-2 zones because they were commercial enterprises and incompatible with the nature of low density residential neighborhoods. He said the cap number should be left up to the Community Development Department and the City Council.

Branigan agreed with Hanselman and Berman. Before setting caps they needed to decide where to allow VRDs. He said the biggest influx of new residents in Newport were retirees and the city was becoming more of a retirement community. It was hard for retirees to settle in neighborhoods when there were a lot of VRDs in them.

Patrick said it looked like most of the PC was wanting to ban VRDs in R-1 and R-2 zones. He wanted to point out that there was a second home problem in Newport and every one of these VRDs would stay as second homes. He thought they would end up with a problem with empty neighborhoods and the areas where VRDs would be banned would become dead neighborhoods without anyone there. Patrick didn't think the City could enforce a ban in R-1 and R-2 zones. They could ban them, but there would still be VRDs in those zones. He noted he worked with VRD owners who only rented their units out to pay taxes. There would still be the same problems if they banned VRDs and would mean enforcement problems. If they took VRDs out of Nye Beach, they would end up with a dead neighborhood there. The area needed people in the neighborhood to survive. Patrick pointed out that this would affect property values and cause them to go down. He didn't want the PC to make a rule they wouldn't be able to enforce. Patrick stated he wasn't opposed to caps.

Croteau noted that prior to 2012 VRDs were allowed but greatly restricted. Now they were commercial enterprises that operated 24/7 in residential zones. He said they couldn't compare the two. Croteau didn't think any neighborhoods would become a ghost town. He stated the bulk of the citizens felt VRDs should be out of residential. Hanselman said second homes would become long term rentals and didn't take away from second homes. He said long term rentals would do well in Newport and thought they would be an option to help people to pay off their mortgages. There were ways to get people into second homes without creating vacation rentals. Hanselman said when homes weren't empty, there were neighbors there looking out for each other's homes. Patrick noted there wasn't a lot of neighbors in South Shore. Berman thought South Shore was different because the whole nature and feel of the place wasn't a neighborhood at all. He said the consideration of banning VRDs in Nye Beach had not been mentioned before. Patrick interjected that there were people who gave testimony that they were concerned about loading up Nye Beach with VRDs. Berman said spacing requirements would be done carefully enough so that this wouldn't happen. He didn't think there would be a whole lot of spaces opening up in Nye Beach for VRDs, and if someone wanted to do a VRD there and there was no spots, they would need to go somewhere else. Berman thought the whole argument that nobody wanted to build VRDs across the highway was true because all of the VRDs had been concentrated in areas that may or may not be appropriate, including R-1 and R-2 zones on the west side of the highway. If they made a conscious effort to spread them out, they would get takers east of the highway. Berman didn't see that the argument of 5 out of 2,200 housing units was relevant because when there was a choice of having an ocean view lot or a lot on such as San-Bay-O Drive, they would choose the ocean view first.

Tokos asked the PC how they wanted to work through the balance of policy options. Croteau asked if the public comment could happen now. Tokos said there wouldn't be enough time for the commission to complete its work if comment was taken on each issue. Branigan asked about the Nye Beach Overlay that Wendy Engler brought up. Tokos said the way it played in was if there were some legitimate concerns on where the VRDs would be concentrated if they limited VRDs in certain areas. If VRDs were prohibited in areas, they needed to think about what areas it pushed VRDs into. Patrick thought it looked like the PC would vote 4-3 to take VRDs out of R-1 zones. Tokos suggested the PC work through each option and see how far they got in the meeting.

Tokos opened the discussion on transferability provision alternatives. Berman agreed with the staff and said he would choose option B.3. Croteau said he didn't have a problem with a transfer of use but had a problem with transfer of a business license with a cap in place. It created problems and made things unfair. Croteau said the problem he had was if there was a cap and licenses transferred, it didn't allow for others on the waitlist to get a license. Hardy asked if a business license was currently automatically transferable or not. Tokos said they were not but there wasn't a cap. He said the question was whether or not the license under the cap was reserved for the new owner. A discussion ensued regarding the differences between businesses and VRDs. Franklin didn't like that on one hand they were saying to limit businesses and then on the other saying they could transfer a business license. He thought they would be encouraging the VRD homes to be bought by investors. Norm Ferber addressed the PC and said all of his VRD homes would need to be re-separated into three lots if this happened and he would incur costs. He noted his property was created as a motel. Hanselman said that B.1 was cut and dry and would make it easier for enforcement. He felt it was the best choice. Branigan agreed with Hardy in terms of business licenses not being automatically transferable and thought B.1 would be the best option. Patrick said it was safer with B.3 and thought B.1 would mean the city would run into issues when there was a cap. A discussion ensued regarding how Measure 49 applied. Tokos noted what he was hearing was the majority of the PC were leaning toward B.1.

Tokos opened the discussion on guest registry. The PC members were in general consensus with option 2.2.

Tokos opened the discussion on overlay zones. Hardy stated she objected to the staff recommendation because the character of neighborhoods had not been sufficiently and objectively defined, and didn't think the tie to needed housing had been proved because things were no different for over five decades. She didn't have a problem with putting commercial operations in commercial zones and restricting them in R-1 and R-2 zones, which should be residential. She said she favored Alternatives 3 or 4. Croteau said Alternatives 1 and 2 didn't address the problems. He opted for Alternative 3 and thought Alternative 4 should also be included because there was good rationale for this. He felt commercial operations were intrusive and shouldn't be in family neighborhoods. He wanted it noted that using median was a statistic that was meaningless without considering a mode and a range. Croteau said the median was the middle of a range of numbers and was being used to rationalize that houses were inappropriate for workforce housing because they cost too much. He noted how five of the houses in his neighborhood that were now VRDs were owned by people who were in the workforce before. Croteau didn't want to use median unless they knew what they were talking about. He noted he couldn't imagine the city paying someone \$100,000 a year to enforce VRDs in the overlay zones and felt it would be difficult to support. Croteau said he didn't support a cap alone and wanted Alternatives 3 and 4.

Franklin stated he wasn't happy with any of the maps. He felt certain neighborhoods needed VRDS because there was a certain desire for people to vacation there because there were views of the light house, bay, and ocean. He felt the maps put a blanket over Newport that didn't consider how the town looked and where the areas were. He felt the maps did an injustice to the great homes in Newport. Franklin felt there were some areas in residential zones that needed to restrict VRDS such as behind Fred Meyers. He felt the VRDs on Alternative 3 were a lot of units to lose and didn't like it. Hanselman asked what the problem was for losing VRDs. Franklin felt they were a huge part of the community for tourism and didn't like the idea of taking away from VRDs that were businesses that were operating without problems. He felt they should take away problem VRDs instead. Without having the license be transferable would mean their spot would open up for other VRDs. Alternative 3 meant VRDs would be pushed into the Bayfront and Nye Beach areas. Hanselman didn't agree with this and felt that residents needed to be able to say no to VRDs in their neighborhoods. Branigan said he liked Alternative 3 or 4. Branigan thought that if a lot of VRDs were removed and there was a demand for VRDs, maybe someone would build hotels instead. He didn't feel limiting VRDs would destroy the tourist industry. Berman said in 2012 he said that VRDs shouldn't be allowed in R-1 and R-2 zones but was outvoted. He strongly felt that R-1 and R-2 zones weren't appropriate for commercial ventures. He favored Alternative 4 but thought Alternative 3 would also be appropriate. Branigan reminded that the IRS designated VRDs as a business expense and since businesses weren't allowed in R-1 and R-2 zones this was another reason why they shouldn't be allowed. Patrick didn't like Alternatives 3 or 4 and thought both would open up a can of worms. He cautioned the PC to be wary of demonizing the out of towners who paid taxes in Newport who didn't use the services didn't live here. Hanselman said they used the services but maybe not the same as someone who lived here. Patrick noted that there were a lot of businesses run out of residences. He said enforcement was going to be a problem because VRDs would be run underground if they were restricted in residential. Hanselman didn't feel they were demonizing VRDs and said there was always going to be problems and work arounds. Tokos said that what he had heard was that a majority of the PC were in favor of Alternatives 3 or 4 and the minority view was to not have an Alternative map at all.

Tokos opened the discussion on the cap standards. Patrick felt before they started the discussion he wanted to know what they were taking a percentage of. Tokos said it was all dwelling units of public record in the city, which was about 5,500. Patrick stated that this didn't work if you took VRDs out of Alternatives 3 and 4, and if it wasn't proportional, it wasn't a workable concept. He said if they were going to do a percentage it had to be from the areas where VRDs were allowed. Hanselman agreed and felt 5,500 wasn't appropriated number to calculated from. He agreed that they needed to know where VRDs would be located first then thought it could be around 3 percent from there. Patrick felt if there was a percentage it would be from where they would be allowed, not the whole city. Tokos said if they were looking at limiting them to a small number of the housing units, then these percentages wouldn't make sense. Croteau said the problem with citywide percentages would be that they allowed more VRDs in different areas. Berman asked what the number of housing units were in Alternatives 3 and 4. Tokos said if the point was to have a cap wherever VRDs were permitted, then this was as far as the PC could go here. Patrick thought they should set the cap above where it was now because they would be adding houses and losing houses in different areas. A discussion ensued regarding how to set the cap numbers. Tokos said what he had heard was that there was a desire to set some form of a cap and would need to see the number of housing units for Alternatives 3 and 4. A discussion ensued regarding how caps would change the influx of VRDs in other areas, and discussed how caps would work with spacing and density restrictions in areas where they were allowed. Patrick felt Alternative 4 would be good with a straight cap and Alternative 3 would have caps for spacing/density. Tokos said for the PC members who favored Alternatives 3 and 4, what he heard was they wanted to know the number of housing units and were open to entertaining some sort of density limits.

Tokos opened the discussion on spacing standards next. He said if Alternative 4 was chosen, B.1 wasn't valid. Berman liked the street segment approach. Hanselman didn't like long street segments that allowed one every 5 and didn't think it was what the public was asking for. Tokos said most street segments were 5-7 homes and on a long street they would

be able to do a conditional use if there were over 10 on the street segment. Hardy was leaning towards B.1. Croteau was okay with B.1. Branigan, Berman and Franklin were also okay with B.1.

Tokos opened the discussion on occupancy next. Berman said C.2 was his preference and didn't see a justification for reducing what the city had now and asked what the rationale was. Tokos said there was a discussion about occupancy in terms of overnight and there was general agreement at the last ad-hoc meeting to peg maximum occupancy to occupancy of the unit at any time, not just overnight. There was a concern on overuse of VRDs and too many people showing up at the unit. There was also the party issue that came into play. Hardy said she limited the units she managed to two people per bedroom only. She was in favor of C.3. Franklin said he was leaning toward C.1. Berman reminded the PC that the ad-hoc work group eliminated the word "overnight" for occupancy. Hardy didn't think a total premise occupancy limit was reasonable otherwise they would have to put everyone with a back yard BBQ out of business. Croteau said the ad-hoc workgroup discussion came down to the point on whether they could prohibit things like weddings, reunions, and retreats. The discussion then came down to them not wanting to eliminate events but wanted to set a limit on occupancy on the premises. He wasn't willing to go against this judgement. Hanselman said the thought was they would look to find larger places to rent for these events and weren't looking to shut them out. Franklin suggested if someone wanted to have more people at one time, they could get a parking permit to allow more occupants. Tokos said that would need a whole different code structure. Franklin listed an example of how Sun River had the police drop off cones to designate the unit was having a special event and had permission. Hanselman said the Police Department couldn't do this and had a hard time covering enforcement. Branigan said he opted for overnight occupancy limited to two persons per bedroom, and limit during the day from 10 a.m.-5 p.m. and allow up to double the number of occupants on the property because people would be stopping by. Franklin thought the plus two argument would mean people would get pull out couches to sleep on. Croteau was fine with C.1 and thought anything else became cumbersome. He thought realistically neighbors were good about not calling in complaints unless they were real complaints. Patrick was fine with C.1. Tokos said what he heard was a majority favored C.1.

Tokos opened the discussion on parking standards. Berman didn't have a problem with E.2. Croteau was good with E.2. Hardy and Branigan agreed. Berman thought occupancy should say limited to two plus two or based on the parking standards. Tokos said both standards needed to be met before a VRD was licensed. Berman thought occupancy needed to say that lack of parking would reduce the occupancy. Hardy didn't think this was doable. Hanselman said it was doable because occupancy would be based on the lesser number of bedrooms or parking spaces. Tokos said there wasn't an explicit cross reference in the code, but VRDs needed to meet both standards.

Tokos opened the phase out standards next. Franklin was in favor of A.1. He felt they shouldn't take away from current VRDs and it was best to let them work their way out. Croteau opted for A.3. He wasn't sure with the five year phase out because of concerns with Measure 49. Croteau thought five years was excessive but thought if there was good evidence that five years was reasonable and defensible by documentation for other municipalities and case law, he was willing to listen. He was fine with A.3 but wasn't sure of the five years. Berman said the City Attorney said no less than five years. Croteau said he appreciated this but said it was a legal opinion without any documentation. Hanselman thought five years was too long and liked A.3. Berman liked A.3 and wanted it to be longer than five years. Tokos said the City Attorney said no less than five years and the ad-hoc workgroup suggested five years. Hanselman said other municipalities used three years and thought it was something to look further into and why the ad-hoc workgroup thought three years was fair. Franklin suggested that the five years could be given to certain areas like the C-2 and C-3 areas where VRDs would be continued to be allowed, and if in the R-1 and R-2 they went the direction of prohibiting VRDs, it would be immediately over for them. Tokos wanted to be clear that the five years came from ad-hoc workgroup and the City Attorney said no less than five years. The City Attorney didn't offer an opinion on what the number should be, just that it should be no less than five years. Hanselman said the ad-hoc workgroup didn't have consensus, and other municipalities did three years. He imagined these municipalities did their work on determining this and thought it needed to be looked into more. Franklin asked what kind of timeframe they gave in Bend. Tokos didn't know. Croteau thought it was three years and why he wanted documentation. Tokos said what he heard was a majority was in favor of A.3. Hardy said she was in favor of A.2. Berman wanted to know if there were any Measure 49 cases filed in the state based on this and if so, were they successful. Branigan stated he opted for A.3 and thought the five years the ad-hoc workgroup wanted was what they should follow.

Tokos said what he was hearing was that on the December 10th public hearing the PC would be focusing on Alternatives 3 and 4, were interested in entertaining density limits for the remaining areas where VRDs were permitted with a housing unit number in those areas, and then the rest of the items would map out explicitly. The PC was in general agreement on this. Tokos asked if there were any other provisions they wanted to discuss. Hanselman said when proximity rules were written there needed to be a rule on which VRD would be phased out. The PC reminded him that A.3 stated this. Berman said that under penalties, he would hate to see renters miss out on their reservations if on the second penalty the owner could not rent for 30 days. He didn't want to see renters lose deposits because of bad owners and felt this was problematic. Tokos said it was intended as a disincentive for someone not following the rules. Berman said there was

several comments on liability insurance requirements. He said the city didn't require liability insurance for someone to run businesses in general and there was comments about there needing to be a million dollar policy. Berman asked why there was an example listed on the sale and transfer and didn't think an example was needed because they didn't list an example anywhere else. Patrick said they needed to add something on the third party enforcement and thought it could be a line item for the next meeting. Franklin wanted to know what the third party would do for enforcement.

3. **Public Comment.**

Martha Windsor addressed the PC and pointed out that when looking at Alternative Maps 3 versus 4, currently in Nye Beach the C-2 zones had 21 percent VRDs and the R-4 zones were about 7 percent. She said there were serious issues with decreasing the availability in areas when removing VRDs. Nye Beach was already at maximum levels.

Carla Perry addressed the PC and asked what kind of enforcement the city would go through to ensure that the VRDs who were phased out were no longer operating. Berman said this would tie into enforcement and the third party vendors. Perry was concerned because there were already VRDs operating without licenses. Tokos said it would be done by code enforcement and there would be a notice in advance that they would be doing a phase out. If someone didn't stop renting, it would move to a civil infraction. Perry asked if it needed to be spelled out in the code. Tokos said it was in the code under civil infractions and how they would be dealt with. Franklin asked about people operating VRDs underground. Tokos said if they were advertising through an intermediary there would be room taxes to notify the city. In rare instances where they had a bartering system, these VRDs would be dealt with case by case.

Patrick said the five years phase out should also include change of ownership to be phased out immediately.

Wendy Engler addressed the PC and asked if the PC looked at the map for Nye Beach that Tokos gave her. She asked the PC to discuss this before the adoption of the ordinance. She didn't want the city to get into having to do another Measure 49 mailing because they accidentally had the density at 50 percent in Nye Beach. Tokos said the PC had a copy of the map in their packets. What they heard was that the interest was in some sort of cap within areas where VRDs were permissible and spacing would apply strictly in the R-1 and R-2 zones. Engler asked that the PC consider Nye Beach and felt the area was being ignored. She said the PC was deciding how they were shaping Newport and wanted thought to be taken on how Nye Beach needed a refinement plan. Engler wanted the PC to get more specific for Nye Beach before making a decision. Croteau thought this had to be done with consideration on how Nye Beach was going to look after all everything was done. Hanselman thought it needed to be revisited. He felt the parking in the area was an issue and noted VRDs in the area that received conditional use permits for relief of parking because of the parking district.

Pam McElroy addressed the PC and said she was in favor of the occupancy policy alternatives with C.1 being forwarded. She thought "at any time" needed to be added to the C.1 statement.

Jamie Michelle addressed the PC and said she pushed for the words "at all time" and if they restricted to the licensed occupancy, they would impact the quality of living. She said rather than restricting VRDs city wide, if there were regulations with teeth it would weed out the bad players over time. Michelle thought the PC should consider putting rules in place with strong teeth and then reevaluate in a couple of years. She reminded the PC that there were public members who said they had VRDs next to them who were delightful. She said if the affordable housing was a big deal, take a portion of license fees and taxes and put them toward a fund to deal with the housing issue.

4. **New Business.** No new business.

5. **Director's Comments.** No Director comments.

6. **Adjournment.** Having no further discussion, the meeting adjourned at 7:03 p.m.

Respectfully submitted,

Sherrri Marineau,
Executive Assistant