



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, March 26, 2018 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES
 - 2.A Approval of the Planning Commission Work Session Meeting Minutes of February 26, 2018
[Draft PC Work Session 2-26-18.pdf](#)
 - 2.B Approval of the Planning Commission Regular Session Meeting Minutes of February 26, 2018
[Draft PC Minutes 2-26-18.pdf](#)
 - 2.C Approval of the Planning Commission Work Session Meeting Minutes of March 12, 2018
[Draft PC Work Session 3-12-18.pdf](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

- 4.A File No. 1-MRP-17-A: Final Order for the Appeal of the Community Development Director's January 18, 2017 Final Order approving a minor replat (File No. 1-MRP-17) to modify lot dimensions in a portion of a platted subdivision.**

[File 1-MRP-17-A.pdf](#)

- 4.B File No. 1-ADJ-18: Final Order for Adjustment to allow five buildings located in the proposed Wyndhaven Ridge Phase 1 Apartment complex to exceed the 35 foot maximum building height limit.**

[File 1-ADJ-18.pdf](#)

[File 1-ADJ-18-V Smith Email.pdf](#)

[File 1-ADJ-18-Hardy Email.pdf](#)

5. PUBLIC HEARINGS

- 5.A File No. 2-ADJ-17: Adjustment to allow construction of a garage with a setback of 15 feet rather than the required 20 feet.**

[File 2-ADJ-17.pdf](#)

6. NEW BUSINESS

- 6.A Nominate Member to Assist with Review and Scoring of the Transportation System Plan Update Consultant Proposals.**

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2296

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

Approval of the Planning Commission Work Session Meeting Minutes of February 26, 2018

Recommendation:

ATTACHMENTS

- [Draft PC Work Session 2-26-18.pdf](#)

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
February 26, 2018
6:00 p.m.

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

Planning Commissioners Absent: Bill Branigan (*excused*)

PC Citizens Advisory Committee Members Absent: Karmen Vanderbeck & Dustin Capri (*excused*).

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.** No unfinished business.
3. **New Business.**
- A. **Stormwater Master Plan Update.** Tokos reviewed his presentation on Updating of the Storm Drainage Element of the Newport Comprehensive Plan. He noted that the master plan was updated with staff and a consultant in 2016. Tokos said this discussion would be covered over a course of meetings.

Tokos covered the project areas X.1, X.2, U.4, and U.2. Franklin asked if these were projects that would be done. Tokos said they were top priority projects. Project T.2 and T.4 were covered next. Tokos noted the areas that were abandoned and where they would be realigned. Hardy asked when lines were abandoned what would be done if a building collapsed. Tokos wasn't certain what they would do. He reviewed project areas AL.1 and N.1 next. Berman asked why the areas were abandoned. Tokos explained it was assumed they were no longer needed. Croteau asked if any of the lines had been abandoned already. Tokos said yes, they usually abandoned them in place and don't tear them out. Berman asked if these would be added to the GIS system and have a permanent record. Tokos said yes, and said there were some that they didn't know where they were located.

Hanselman asked about the Basin I present problems on the recent highway overlay. He asked why the City signed off with the contractor who damaged additional infrastructure. Tokos said he wasn't sure it was the City and said it might have been the State. He said a challenge with Hwy 101 & Hwy 20 was the State didn't take jurisdiction over the drainage system and viewed it as the City's. Hardy asked how this addressed SDCs. Tokos explained there were a few of the projects eligible for SDC funding. Franklin asked what the scope of the master plan was to complete all the projects. Tokos said the Priority "A" projects should be targeted in the first five years and there was language in the report about this.

Tokos covered the Chapter 6: Regulatory Requirements. He noted that Newport was not an urban area subject to DEQ Phase II permitting. Croteau asked if the City was held to any other requirements Tokos said Newport was a low level priority. Patrick thought the City did a lot of these projects, such as catch basins on Hwy 101. Tokos said because we took federal money we had to meet certain Federal requirements. He noted this was why the City had to put in a water quality facility for the 35th Street and Hwy 101 project. Berman asked about the talk about an erosion control ordinance. Tokos said it was set aside until which time the City hired staff that could pick up some of the normal inspections from the Building Official. Hanselman referenced Dogami's Erosion Study and thought it was the time when addressing the Stormwater Plan to do erosion control. Tokos said the first step was to provide the policy direction to develop these things based on a master plan. Berman thought erosion problems could make some projects more of a priority. Tokos said as far as Agate Beach we would look at the TSP and what the priorities to pave were to see how much runoff it would create. Hardy noted she wasn't aware of any stormwater management in the 56th Street area. A discussion ensued regarding storm drainage infrastructure in the area. Tokos said that the Phase II regulatory requirements were required but the City needed to think in terms of them eventually being in place.

Patrick said he had a problem with encouraging the use of impervious surfaces. He said if the City didn't pay attention to where the water was being dumped, as to landslide conditions, it could be a bad thing. Tokos thought we need to do more work in this field to investigate areas we could infiltrate and areas we couldn't. He said the City couldn't require drainage analysis for all development that adds impervious surfaces and said the cost of requiring engineering reports

for smaller projects would kill them due to the costs. Tokos thought making a requirement for projects over a certain threshold made sense. Hardy thought the little projects that weren't being done correctly were making the problems. She felt there should be a list of the areas that could be safely infiltrated. Tokos agreed. He explained how to do systems in different types of areas. Croteau thought it was just the beginning of the process and the City just needed to start.

Tokos reviewed the additional policy considerations not included in the report. Patrick asked what TMDL was. Tokos explained it was Total Daily Maximum Load. Lee noted that the work "elicit" should not be used in conjunction with discharge detection and post-construction erosion. Tokos said it was his mistake and used the wrong word.

Tokos reviewed the Policies Part 1 and the ways to pursue diverse means of financing priority projects. He then covered Policies Part 2. Patrick asked if there should be a matrix for the maintenance. Tokos thought the City could identify the ones they can maintain. Patrick thought the other ones would be maintained by the private owners. Tokos suggested a public and private system matrix to provide options. Patrick asked about the swales by Wilder. Tokos said they hadn't been maintained well and were recently looked at to see why they were flooding. He explained what was happening and how it was flooding into a private pond. Tokos said the water coming down was more than the 24" lines could handle. He noted there would be conversations happening on how to add it to the public system. Franklin asked if it was an issue for the City or private. Tokos said both. Hardy asked if they had an HOA. Tokos said they did. He noted the OSU housing project would be restricting release rate and would have oversized pipes underneath to meter out the water.

Croteau asked if the priority list was developed in agreement with Public Works. Tokos said yes, they reviewed it and was a part of the plan.

4. **Director's Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 6:45 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2297

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

Approval of the Planning Commission Regular Session Meeting Minutes of February 26, 2018

Recommendation:

ATTACHMENTS

- [Draft PC Minutes 2-26-18.pdf](#)

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
February 26, 2018

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

Planning Commissioners Absent: Bill Branigan (*excused*).

City Staff Present: Community Development Director (CDD), Derrick Tokos; City Attorney, Steve Rich; 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 7:00 p.m. On roll call, Commissioners Hardy, Berman, Croteau, Patrick, Hanselman, Franklin, and Hanselman were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work and regular session meeting minutes of January 22, 2018.

Croteau noted minor corrections to the minutes.

MOTION was made by Commissioner Croteau seconded by Commissioner Franklin to approve the Planning Commission meeting minutes with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.** No Action Items.

5. **Unfinished Business.** No Unfinished Business.

6. **Public Notices.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Hardy and Franklin reported drive bys. Croteau and Hanselman reported site visits. 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 No. 1-MRP-17-A.** Patrick opened the Public Hearing Appeal for File No. 1-MRP-17-A. Tokos presented the staff report. He noted that the appellant was arguing that a non-remonstrance agreement was an exaction. The City did not believe it was an exaction because there wasn't a property interest in play. He noted that they had been working on the language of the non-remonstrance agreement and there was some flexibility in the document but no flexibility on requiring the document. Tokos said City Attorney, Steve Rich was present to ask questions.

OPPONENTS: Peter Ginter and Cam Passmore, attorneys for Central Lincoln PUD, addressed the PC. Ginter said they disagreed with the staff report and noted that Criteria 3 made it sound like there was no flexibility but thought there actually was. He said it wasn't uncommon to do a waiver of remonstrance and was usually a cooperative item with a developer and the quid pro quo was to approve. The waiver would be such that if a LID was formed it would happen. He said that CLPUD was just selling the property and they weren't the developer that would be impacting the surrounding area. Ginter and Passmore felt that the time that development happened would be when the waiver conditions should be applied. They felt it was impermissible and unconstitutional and disagreed that it was plainly required.

Patrick asked if they were aware that the City collected waivers of remonstrance all the time in just this way. Ginter said if they went to court and proved their position, it was possible the City might have to stop doing this. Passmore referenced what an exaction was and said that because there was a demand for money, it was not an exaction. He

noted that the Supreme Court overturned the Kuntz case and found they were functionally equivalent and the deciding authority could find a different path. He said the City could not have a rough proportionality against a development for which you couldn't speak to yet. Passmore said the Supreme Court decision was only three years old and things that Cities had been doing for years were no longer going to be constitutional under the fifth amendment of the US Constitution.

Berman asked what would be the detriment of a waiver of remonstrance and why they didn't want to sign it. Ginter said it affected the value and meant a lot of money. He stated that others had not seen a waiver required at this stage. Croteau asked for clarification on what the buyer was concerned about. Ginter said the cost benefit.

Berman asked Tokos if the PC could not waive the agreement because of the way the City code was written and if they could modify the agreement. Tokos said there was some flexibility on how the agreement could be written but he didn't believe it could be waived. He said the City was not asking for a money at that time and said agreement wasn't unconstitutional. It was a tool at the time of redevelopment to pay for frontage improvements of a LID. He said the owner would be able to contest that it was fairly proportioned.

Rich said he agreed with the appellant about the Kuntz case. He said it wasn't applicable because the City hadn't asked for money or any interest in the real property. Rich said the waiver didn't preclude the applicant from participating in voicing their objection at any time. He pointed out that the Larsen case was a non-remonstrance agreement that didn't survive and agreed with the staff report.

Ginter said that Tokos' comments that the City could not elect to apply a criterion in a municipal code that was plainly required were editorial. He noted another case in Utah from December 16, 2014 where he assumed the Director applied the same standard saying the criteria did not apply. Ginter felt just like in this case, it didn't apply to their client because they weren't doing anything with water, sewer, or streets. Passmore said in response to the City's Council comments, the reason the Oregon Supreme Court case wasn't heard was because they heard Schultz with a condition with an eye to a future development. He said the appeals held in 1994 and made law which said it had to tie into the application for which the impact of conditions were from. Passmore said the time of development would be the time to address the concerns. He noted that paragraph 4 on the non-remonstrance agreement said the client waived their ability to remonstrate. He felt the waiver of remonstrance was a demand for money even though there may not be an uncertain demand for money. Rich said what he referenced was the US Supreme Court case and said that Schultz did not involve a waiver of remonstrance. He felt it was a little overblown and it constituted an exaction, financial or otherwise, at that point and time. Passmore said he might have been confused on the waiver of non-remonstrance but Holden and Schultz was the same. He said you could not have a condition against an application when there was going to be a future application that actually created the impact.

Croteau asked if there was any way to have the agreement structured that would be acceptable for the buyer. Ginter said there would be a way to preserve their right to remonstrate. He said if the main concern was to have some criteria applied, that wouldn't normally be applied as a development, and might be the answer. He said maybe the limitation should be that it wouldn't allow any greater exposure to them if there was a development request. Croteau asked if the City didn't get an agreement, could they force the issue at a later date. Tokos said once it was developed the City would give up the ability to create a Local Improvement District as a way to fund public improvements. Rich noted that the buyer wasn't a certain and the decision shouldn't be based on a sale of the property. Hardy asked if Rich wanted CLPUD to form a LID. Rich said it was premature to say a LID needed to be formed. He said the waiver said they wouldn't remonstrate against the formation at a later date but they could object. He said the question would be whether or not they met the threshold for formation because the parcel would be counted in the threshold. He said the City Council at that time could listen to the objections and determine they could form an LID but decide not to. Ginter said if the City was saying they didn't care that there was a buyer, it is an exaction and felt it was odd. Berman asked if there wouldn't be a waiver if CLPUD was selling the whole lot. Tokos said yes. Patrick said the City had been collecting waivers and had yet to perform a single LID. He said they were working on how to do it.

Hearing closed at 7:41 pm

Hardy was inclined to agree with the appellant to a certain extent and wanted to look at the case law to make her own determination on what was constitutional or not. She felt there should be more consideration in the future to cleaning up the ordinance so they didn't run into this situation again. Berman said he was ambivalent and said the fact that there almost certainly would need to be a LID in the future, and the property would represent a significant block in the formation of the LID, it made him tend to think it should be done. He was torn and suggested the hearing be held

open to do more research at the next meeting. Croteau said he was ambivalent and had a hard time understanding why someone wouldn't want to agree to development in the future. He said the PC should look into the situation more and get more arguments from the City Attorney and appellant attorneys. Franklin said it needed to be looked into more. Hanselman said he would like to have a better handle on the constitutional rights. He said he needed more time to understand the input from the attorneys. Patrick thought the appellants were right about the constitutional rights but noted it wasn't current case law.

Tokos said in terms of the next steps, the PC had an option for the appellant and staff to provide reports. Croteau felt this would give the PC more time to consider things and allow some negotiation to find wording that was acceptable for all parties. Berman said there should be discussions with the buyers on what form of specific requirements in a non-remonstrance agreement they would agree to. He thought the PC couldn't make decisions on one potential buyer but thought it would be worth pursuing.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hanselman to request the City and appellant prepare documents for consideration of File No. 1-MRP-17-A at the next Planning Commission meeting. The motion carried unanimously in a voice vote. (49:18)

Berman asked that Tokos reference what the PC could and couldn't do in his staff report.

B. File No. 1-ADJ-18. Patrick opened the Public Hearing for File No. 1-ADJ-18. Tokos presented the staff report. Tokos wanted it clear that it was an adjustment not a variance. He explained why the PC was required to have a public hearing on the matter. Tokos noted that additional comments were received and printed copies were given to the PC at the meeting. Tokos noted that the applicant asked the PC to look at the typical setbacks and note that they were providing a 200 foot setback and why they felt the concern on the height adjustment wasn't a factor. He noted the applicant moved the fire hydrant due to the Fire Department's concerns. Tokos said because of the slope the only properties to the southeast affected were at a lower elevation. The properties at the northwest wouldn't have a direct impact on view. He noted that it was the pitch of the building not the full width mass of the building they were considering. He felt the setback of 200 feet provided mitigation for the height.

Tokos noted that the applicants would be creating a stub street that would eventually be connected to Lakewood Drive to provide secondary access and was something the City would like to see. He noted that the access wouldn't be completed with this project and traffic would be loaded onto Harney, 31st and 36th Streets. Tokos noted that traffic wasn't a part of the consideration. Berman asked if a Traffic Analysis was done. Tokos said it wasn't required under the ordinance. Franklin asked if it had triggered any other infrastructure. Tokos said the applicant would have to do public improvements including the stub to Lakeview Hills on the north end; a curb, gutter and sidewalk to the south end of the property; and extend the sewer line on the property up to Harney Street.

PROPONENTS: Todd Woodley and Mike Phillips, with Wyndhaven Ridge, LLC, addressed the PC. Woodley said that he felt the staff report summarized their position. He noted that Building 4 had taken measures to recess the building a full story below the current grades. He said the physical appearance would be four feet below what it could be.

Franklin asked if the tallest point on Building 4 was higher than the others. Woodley said Building 4 was lower than Buildings 1, 2 and 5. Franklin asked if Building 4 had six feet of underfloor because of the grade of the lot. Woodley said yes. He said some of the ways it was calculated didn't make sense and had a roof line that was sitting lower than the other buildings. Franklin asked how the build height was measured. Woodley said it was an average of the height on each corner of the elevations. Berman asked if they were aware of the height limitations before they designed the buildings. Woodley said the design was a dynamic process and they tried to fit things as best to the grades as possible. He said there had been different interpretations and the heights were different than what they were used to. Hanselman asked for the finished ceiling heights on each of the three floors. Woodley said the first and second floors on all three buildings were nine feet each. He said the top floors on all three buildings were eight feet to meet the variance. He talked about common standards for building apartments and how it applied to the project. Hanselman asked if they had built all floors to eight feet would they have designed within the height limit. Woodley said yes. Hanselman thought it was on the developer to design to the City's standards. Woodley said when they realized the restrictions they made grading adjustments.

OPPONENTS: Kelsey Ingalls addressed the PC. She said she recently bought a home to the southeast of the proposed buildings. Ingalls thought it was important to have new housing but she had an issue with the buildings being above

the height limit. She noted that all of the homes in the area met the height limits and asked that the project meet the standards. Ingalls felt it could set a precedence in the future and wanted the developer to build a two story apartment buildings instead of three stories.

Kristin Yuille addressed the PC. She said she was a resident of the Lakewood Hills subdivision. Yuille noted that the County building height was 42 feet and was a reference on how tall the buildings would be. She said the properties that would be affected weren't in the staff report and asked the PC to have the builder comply with the code.

Tania Goicuria addressed the PC. She said she lived at the bottom of Lakewood Drive and was in opposition because of privacy issues. Goicuria was concerned about the apartment buildings being in front of her home and that they allowed people to see into her residence. She said she had fire safety concerns as well and thought that if there was a flame from an apartment fire it would hit her home. Goicuria was also concerned about noise from the apartment buildings.

Walter Morrey addressed the PC. He said he lived at the bottom of Lakewood Drive and opposed the height adjustment. Morrey said that adding a height adjustment will increase vehicle traffic and impact the residential neighborhoods in the area. He noted that in the Municipal Code the Type III land use law stated that a traffic conditional use permit required 50 trips per day and Tokos mentioned in his staff report 100 trips per day. Morrey asked why there was no traffic impact analysis done. Tokos explained that if a conditional use permit was required, then there would be a threshold on whether or not he or the PC could handle the decision, which did have a 50 vehicle trip limit. He said that this was not a conditional use as apartments were permitted outright at this location, and why it didn't apply. Morrey thought it was odd that there was no traffic impact analysis done when the developer was doing three phases, and felt it should have been done. He was concerned about the speed limit in the area and noticed that people sped on the street a lot. Morrey said 31st Street was noted in the report as being engineer but he was told it was just an access road. He was concerned about the privacy for his family and said Building 4 would impede his privacy as it was adjacent to his property. Morrey was concerned about fire safety as well. He felt the height limit was there to protect compatibility and felt it set a precedence on the other two phases of development. Morrey thought that Building 4 wasn't going to be reached by the Fire Department if there was a fire. He presented a petition of disagreement to the PC that had 71 signatures from local residents.

Sharon Lihou addressed the PC. She felt the height limits were in place for a reason. She felt that allowing the height adjustment created strains on infrastructure and streets, limited views, changed typography and aesthetically compromised the small town feel of Newport. Lihou said that 31st Street was a substandard road without drainage culverts. She said that Tim Gross said there were no plans to improve 31st Street without signals to access Hwy 101. She asked the City to evaluate the traffic on 31st Street before any development was approved.

David Boys addressed the PC. He reviewed the plans and said it would obstruct their view. Boys said that everyone that built in the area had to meet the code. He felt the developer didn't do his homework on the codes and said everyone in their neighborhood had benefitted from the height restriction. Boys asked the PC to think about balance and the need for more housing. He was concerned that if an adjustment was allowed for this property, the developer would ask for adjustments to the other properties he owned. Boys stated he opposed the height adjustment.

Adam Stachan addressed the PC. He said he was in opposition to the height adjustment and didn't feel the applicant made a case for the adjustment. Stachan said if they were allowed to do the adjustment, what would prevent them from doing it with their other properties in the future. He had a hard time believing the developer didn't know about the restrictions and felt they intentionally ignored them. Stachan thought there was an opportunity to go back and rework the design to fit the height restrictions.

Ramune Arlauskas addressed the PC. She said she was upset that neighbors outside of the 200 feet notification area weren't notified. Arlauskas opposed the height adjustment and said there was no compelling reason for a height adjustment. She suggested different options for building materials to meet the code requirements.

Dave Larson addressed the PC. He pointed out that many of the houses in the community had to maintained the height code.

Holly Studley addressed the PC. She said when she was building her home they had to deal with the height code and designed to it. Studley noted that her neighbors had to make an adjustment to meet the height codes as well. She felt everyone in the neighborhood should meet the requirements and opposed the adjustment.

Rebuttal: Mike Phillips addressed the PC. He felt they made their best efforts to meet the requirements. He noted that two of the five building were below grade and said they could change some structural design to meet the code requirements.

Woodley said he couldn't address the traffic issue concerns. He restated that the purpose of the adjustment was for Building 4 as it exceeded the heights by an 18 percent variation. Woodley said the issue with fire had been addressed. He said the surface in front of the building was under 30 feet. Phillips reminded that all the buildings would be built with fire sprinklers. Woodley thought the concerns about traffic generation was about the buildings being three stories and reminded that the density requirements stayed the same. He said the overall density of the parcel was less than the site utilization for traffic.

Hearing closed at 8:56 pm

Hanselman asked Tokos if there were any current three story buildings in Newport that meet the height ordinance. Tokos said yes and they used a different form of construction. Hanselman asked if a three story building could be built within the height limit. Tokos said yes. Hanselman said there were compelling reasons to have more apartments. He said he had no concerns about apartments but had concerns on heights. Hanselman was surprised that the applicant's rebuttal was that it was only 17 percent higher. He felt they needed to rethink the plans and come closer to the height limit. He felt it was a solvable issue on the developer's end. Tokos asked the PC to state if they thought it met or didn't meet the criteria so he could put together a decision.

Franklin said he heard the concerns and felt the height of 41 feet was misleading on Building 4. He reminded the audience that views were not protected and change was hard to take sometimes. Franklin said he didn't like a design with a flat roof because it would end up looking like a Holiday Inn. Croteau said he understood the concerns. He said the property was zoned R-4 and the issue was the height adjustment. He said that even if the particular apartment was brought down to code the impact would be the same. Croteau felt it met the criteria requirement.

Berman was concerned that the developers weren't aware of the height limits and didn't design to it. He didn't see how the adjustment would meet the requirements. He felt the adjustment didn't have any impact on traffic or on utilities. Berman didn't like that the developer didn't meet the height requirements and couldn't see the justification for an adjustment. He felt a redesign was in order.

Hardy said it was a narrow issue and the height adjustment wouldn't be the cause of additional noise and lack of privacy. She said the amount of building above grade wouldn't be 35 feet because only 30 feet was at the grade. She thought there should be considerations on shielding lights and their impact. Hardy was inclined to favor the height adjustment.

Patrick thought that height adjustments were only done for commercial. Croteau reminded Patrick it had been approved for residential. Patrick didn't think the adjustment for height should be given because it could set a precedence. He thought the developers needed to design to the rules. Croteau said he didn't see an impact if the PC granted the adjustment. He had a hard time relating the denial of the adjustment based off of the issues brought forward. Hanselman said that it was an example of a camouflage and the fact that they were talking about one building that was exceeding more than the other made it more complicated. Croteau said if looking at all the roof heights, he would see the argument. Berman reminded that all five buildings are being adjusted. Tokos explained that the reason that the hearing was in front of the PC was because one of the five buildings exceeded the limits that allowed him to make an administrative decision, therefore all of the buildings had to come to the PC for consideration. Croteau said this changed his view.

MOTION was made by Commissioner Berman, seconded by Commissioner Croteau to decline the adjustment for File No. 1-ADJ-18. The motion carried in a voice vote. Commissioners Hardy and Franklin were a nay.

Tokos asked for guidance on how the PC felt the matter didn't meet the standards so he could create a decision. Berman said Criteria A didn't meet the requirements by not equally or better meeting the requirement to control building heights. He said there was plenty of opportunities to meet the ordinance from day one and it wasn't done. Patrick said there were not any existing conditions on the property to support a height adjustment. Hanselman thought that Wyndhaven didn't have a compelling reason why they didn't meet the height restrictions and said they were obligated to know the limitations.

Croteau asked if there were no consideration for elevations, would we there be a hearing. Tokos explained that it would have been an administrative decision. The City would have sent notification to adjacent property owners and it would have been subject to an appeal.

Larson asked why the PC had to justify why they denied. Tokos explained that if the applicant meet the criteria they would get the adjustment; if not, they wouldn't get the adjustment. He explained the PC's decision would have to show that the applicant did not meet the standards and was why they were denied. Tokos said they had to apply standards related to the approval criteria and one of the standards had to be a reason.

Patrick said he could think of many ways the impacts could be mitigated for Criteria 2. He said there were a lot of practical ways to get the same amount of units in the height limit. Franklin asked if there was a grade issue limiting this. Tokos asked Patrick if he was saying that under Criteria 2 he felt the distance wasn't enough to mitigate the impacts. Patrick agreed. Tokos said he would put together a decision based on the PC's input.

7. **New Business.** No New Business.
8. **Director Comments.** No Director comments.
9. **Adjournment.** Having no further business, the meeting adjourned at 9:29 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2298

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

Approval of the Planning Commission Work Session Meeting Minutes of March 12, 2018

Recommendation:

ATTACHMENTS

- [Draft PC Work Session 3-12-18.pdf](#)

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
March 12, 2018
6:00 p.m.

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

Planning Commissioners Absent: Bill Branigan, and Mike Franklin (*excused*)

PC Citizens Advisory Committee Members Present: Karmen Vanderbeck & Dustin Capri.

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.** No unfinished business.
3. **New Business.**
- A. **Review Draft Amendments to the Storm Drainage Element of the Newport Comprehensive Plan.** Tokos reviewed the prioritizing of Phase 3 projects and how the draft amendments were laid out. Berman noted that on Page three there was a paragraph return where it shouldn't be. Tokos would correct this. Berman also noted that on Page five the prioritization should have consistent bullets and questions that were appropriate. Tokos would correct this as well.

Hanselman said the prioritization section didn't appear to have areas without stormwater control and didn't see them in the Master Plan report. He wondered if they did this based purely on outfalls known and located. He didn't think there was any stormwater control on the west side so many properties had to deal with runoff from neighboring properties and all other surfaces. He thought any area that didn't have stormwater facilitates needed to be a part of the project. Berman thought the erosion potential at that location was huge. Hanselman thought neighborhoods without any stormwater control needed to be listed as a significant priority. He said because pump stations had problems and when they couldn't handle excess water, they flood out to the beach and onto people's properties. He didn't like that these areas were being overlooked. Tokos said he would talk to Tim Gross about it. He thought some of it would be picked up on the Transportation System Plan but didn't know if it would be a full analysis. Tokos said what they could do was identify where targeted additional improvements were needed. Hanselman described the areas that needed improvements. Patrick said the City needed to deal with ODOT not taking responsibility on runoff from the highway. A discussion ensued regarding areas that needed improvements. Tokos said we could put in a policy recommendation for some additional analysis to be done in the area. Capri asked who paid for these things. Tokos said the analysis would come out of Stormwater, and the construction costs would depend on the nature of the improvements. He said that the Agate Beach construction had some Urban Renewal funds potentially available and that analysis would come out of utility fees for storm drainage. Hanselman wanted see the lack of some the areas being covered added to the report.

Berman said the criteria didn't include projects to create infrastructure where there was none at that time. Tokos said there was a lacking capacity in the system. He said there was limited infrastructure, not no infrastructure, and it was more on the rural scale. Patrick said there needed to be a line in the report about onsite water disposal about where the City allowed and didn't allowed it. He was worried about projects being placed in areas that would create slides and thought it needed a mechanism. Patrick asked if they had identified most of the blocks yet. Tokos said under Goal 1 they could add a policy to recognize geo-technical limitations. Croteau asked if the DOGAMI maps were helpful in this regard. Tokos felt they were more generalized. Hardy said it was easy to research. Patrick said they could define areas. Tokos said there was limited information the further you were from the coast line. Berman asked if DOGAMI had done LIDAR. Tokos said they had and there was some terrain modeling that showed where there was ancient landslides. He said just because they had the information on ancient landslides, they would still need to do additional analysis of the area.

Tokos covered Goal 1 for Stormwater Drainage. Capri asked what happened when a project went over budget when building a street. Tokos said you wouldn't be able to not do it and would have time to assess when digging into the street. He said an existing deficient storm system would be factored into the budget. Patrick said Policy 4 should say "and to the underlying geology." Capri thought it would be interesting to have an option for a geologist to sign off on stormwater mitigation, but he didn't think any of them would do it. Tokos thought the policy was spot on but needed to

be cognoscente of approving and adding new development. He said this would be done by the developer and something to think about. Capri said he wasn't opposed to Policy 4. Tokos said to be clear it wouldn't be a geologist who would be doing the analysis, it would be a civil engineer. Berman noted that he didn't like the way the policies were listed on the report and thought revenue bonds should be put at the bottom.

Tokos covered Goal 2. Hanselman asked if the framework was hit at a population size. Tokos said the threshold was closer to the Corvallis size of 50,000. Berman noted that the comma close to the third line should be taken out. Tokos noted that small scale development was not in the Master Plan. Berman asked where the options came from. Tokos said the boilerplate was a lot of common options that came from what different jurisdictions were using. Capri thought there should be an option to waive the standards to hire an expert to prove what the site required. Tokos said they should always have the option. He said the City wasn't experts in geological permits but they could make sure that the project was proceeding according to the recommendations of the geologist or drainage analysis. Capri was concerned about having to stick to boilerplates. Tokos said it was more of an option rather than a mandate. He did say the 25 year was a mandate with a threshold. Berman suggested adding the word "optional" after "development" in Policy 2. Tokos said he would clarify that it would be optional.

Croteau said at some point they would have to determine what small scale was. Capri asked if it was square footage. Tokos said it was tricky. He said they were talking about development areas which meant they were talking about redevelopment. He said the City had a reasonably good handle on the conditions of the conveyance system. He said they would be tying into it and working on improving the condition of the system. Capri asked if this was what Tim Gross was already doing. Tokos said when Gross was making a decision, it was about adding a significant amount of impervious surface. He didn't know if a city with small incremental development would do much of anything to try to stay on top of incremental additions to the overall impervious surface and drainage. Capri said he thought that water and sewer bills didn't pay for infrastructure improvements. Tokos said the storm drainage infrastructure fee was intended to help the City chip away at the existing deficiency but didn't have the resources to pay for it all. He said the remainder would be paid for by revenue bonds.

Tokos reviewed Goal 2, Policy 3. Capri asked for an example. Tokos said it was things like silk fences, bio bags, and erosion control blankets. Tokos reviewed Policy 4 and impervious surfaces. Hanselman asked if they were including parking lots. Tokos said pervious payment or concrete could be done for a parking lot that was used on a continuous basis. The challenge was that it was a different mix and they would end up using different materials to patch. Patrick asked if Nye Beach was pervious. Tokos said the pavers weren't pervious. Berman asked if it was appropriate to have examples in the policy. Tokos said it wasn't uncommon to call them out. He said he would add "or similar measures" to the policy. Tokos reminded the PC that they could use, up to a point, the road to hold water.

Tokos reviewed Policy 5. Berman asked why it was limited to City properties. Tokos said the City had control over these properties and could readily ensure that they're followed. Hanselman asked if it covered schools because he didn't like the idea of pesticides near children. Tokos said the City would discourage this but there were areas they would still use it. Hanselman assumed City staff would be trained to apply pesticides. Capri asked if rainwater catchment was a possibility for irrigation. Tokos said it could be used to irrigate but it couldn't be run back into the house and flushed back into the public system.

Tokos reviewed Goal 3 Policies next. He asked the PC if there was anything missing or anything they wanted added. None were heard. He said he planned to bring the plan back to the PC on the March 26th meeting.

B. Discuss Draft Major Amendment 13 to the South Beach Urban Renewal Plan. Tokos reviewed his presentation on Draft Major Amendment 13 to the South Beach Urban Renewal Plan. He explained the process and noted that the City talked to the County to engage them. Tokos said the date was extended to 2025 to complete the final round of projects. Berman questioned how it would work if a new project could be initiated in 2025 but the district had to close in 2027. Tokos said it meant there would be an agreement that would shift the funding from the project back to the City as an intergovernmental agreement. Berman asked what would happen if there was money left over. Tokos said it would be kicked back to the taxing district. Croteau asked for the final date. Tokos said the last borrowing would be in 2019-2020 and debt retirement would accelerate over in the last few years. Berman asked what was the big contributors to the two million. Tokos said South Shore, the Rogue Brewery, and anything since the 1980's. He explained that real properties were taxed and Government properties weren't. Tokos noted that the Wilder development was outside of the Urban Renewal area.

Tokos asked for the PC's thoughts on prioritizing Phase 3 projects. He covered the priorities. Croteau asked for the location on the redundant bay under-crossing pipeline. Tokos explained where the location was. He noted that new projects couldn't be added to the plan. Berman asked if the intent was to get everything done by 2027. Tokos said no, the high priority projects were what they wanted to complete. Croteau asked if the 35th Street sidewalks were inevitable,

was it something the City could begin on now to prevent future encroachment in the area. Tokos said the City wanted to give people a heads up and it was most of the development was on the north side. Capri asked about the easements noted on page 41. Tokos said if it was needed it would be a targeted easement. Vanderbeck asked about outside funding options. Tokos said there would be funding for 40th Street and Highway 101 because there would be commercial partners to help fund it. He noted that the redundant bay under-crossing pipeline might have Federal dollars for resiliency there.

- C. **Updated Tentative Planning Commission Work Program.** Tokos reviewed the updated work schedule with the PC. Patrick asked to add a discussion on height adjustments to get some rules in place. Tokos said if the PC didn't like the current rules they could change them, say they couldn't be done, or change them to variances to show hardships. Hardy thought there should be some rational parameters that were clearly stated and accurate. She didn't think simplistic definitions were sufficient. Tokos reiterated that they could be changed and said he didn't know that the standards were problematic. Patrick said standards had worked for setbacks, but not for height. He wanted to know why there were height restrictions. Tokos said heights had to do with fire and safety for commercial structures. Hardy thought the way that heights were measured needed clarification. Tokos said there could be a conversation on this. He said to keep in mind that when dealing with height the existing residential neighborhoods had fixed development patterns. Tokos said when changing the height definition, it would apply across the board and to keep in mind the existing development pattern when doing it. A discussion ensued regarding the history of height adjustments in the City. Patrick wanted some rational presented to the PC to base things on. Croteau asked to see how other jurisdictions did their calculations. Tokos said he would add this to the work program.

Tokos reminded the PC that they would be having a discussion on the Nye Beach Design Review later in the year. He said they weren't addressing it at that time so it didn't get convoluted with the Vacation Rental process.

4. **Director's Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 7:22 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2300

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

File No. 1-MRP-17-A: Final Order for the Appeal of the Community Development Director's January 18, 2017 Final Order approving a minor replat (File No. 1-MRP-17) to modify lot dimensions in a portion of a platted subdivision.

Recommendation:

ATTACHMENTS

- [File 1-MRP-17-A.pdf](#)

Memorandum

To: Planning Commission

From: Derrick I. Tokos, AICP, Community Development Director 

Date: March 22, 2018

Re: Final Order and Findings for File No. 1-MRP-17-A

Per your request at the close of the February 26, 2018 hearing, attached are draft final orders and findings prepared by city staff and the appellant. I placed watermarks on the documents so that you can readily distinguish between them.

This is scheduled as an action item on the meeting agenda. The hearing is closed, and the Planning Commission is at a point where it can deliberate and decide which set of findings and final order to adopt. No new testimony may be taken unless the Commission reopens the hearing. Once a decision is made, then staff will remove the watermark from the approved documents and make any other changes requested by the Commission so that the final order may be signed by the Chair.

Attachments

Final Order and Findings – Appellant Version
Final Order and Findings – Staff Version

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION FILE NO.)
1-MRP-17-A, APPEAL OF COMMUNITY DEVELOPMENT)
DIRECTOR DECISION APPROVING A TENTATIVE PLAN) **FINAL**
FOR A MINOR REPLAT, AS SUBMITTED BY CENTRAL) **ORDER**
LINCOLN PEOPLE’S UTILITY DISTRICT (MARK)
FREEMAN, AUTHORIZED REPRESENTATIVE))**

ORDER AFFIRMING THE APPEAL AND APPROVING A TENTATIVE PLAN for a proposed minor replat per Section 13.05.095 of the Newport Municipal Code (NMC) to reconfigure Lot 3 and a portion of Lots 2 and 4, Block M, Harborton Subdivision, to separate an existing utility substation from the balance of the former Central Lincoln People’s Utility District Maintenance facility. The substation will be situated upon a 1.43 acre parcel and the balance of the property will be configured as an 8.29 acre parcel, as illustrated in Exhibit “B”.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application and appeal filed consistent with the Newport Subdivision Ordinance (No. 1990, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the application and appeal, with a public hearing a matter of record on February 26, 2018; and
- 3.) At the public hearing on said application and appeal, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, the Planning Commission requested the appellant and city provide draft findings of fact and final orders for consideration at its next regular meeting; and
- 5.) After considering and discussing the findings of fact and final orders, upon a motion duly seconded, the Planning Commission found the Appellant’s arguments to be persuasive and approved the application based upon the findings-of-fact and final order submitted by the Appellant.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit “A”) support the approval of the requested minor replat with the following condition(s):

1. The surveyor shall adjust the north line of proposed Parcel 1 such that it aligns with the legal description for that portion of Lot 2, Block M, Harborton listed in Book 180, at Page 440 of the Lincoln County Deed Records and illustrated with Survey Record No. 15071 or provide a narrative, in a format acceptable to the County Surveyor's Office, explaining why the discrepancy is appropriate. Such narrative shall be included on the final plat, if acceptable to the County Surveyor.
2. The northernmost utility easements should be consolidated, if possible, and language added identifying the beneficiaries of each of the proposed easements. Further, existing easements that encumber the property are to be depicted with reference to the recorded documents.

Accepted and approved this 26th day of March, 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director
Community Development Director

EXHIBIT "A"

Case File No. 1-MRP-17-A

FINDINGS OF FACT

1. Per Section 13.05.095 of the Newport Municipal Code (NMC), this application involves a minor replat of Lot 3 and a portion of Lots 2 and 4, Block M, Harborton, to separate an existing utility substation from the balance of the former Central Lincoln People's Utility District Maintenance facility. The substation will be situated upon a 1.43 acre parcel and the balance of the property will be configured as an 8.29 acre parcel (ref: tentative plan, dated January 16, 2018 (Exhibit "B")).

2. The applicant and owner is the Central Lincoln People's Utility District (PUD). The applicant's representative is Mark Freeman, Director of Employee, Customer and Community Services, Central Lincoln PUD, P.O. Box 1126 Newport, OR 97365. Applicant is represented by Pete Gintner and Cam Passmore of Macpherson, Gintner & Diaz of Newport Oregon.

3. The application for tentative plan approval of the proposed replat was submitted on December 8, 2017. A copy of the complete application is included in the file and is incorporated by reference into the findings. Director Tokos returned an initial Final Order of Approval with Conditions and Findings of Fact on January 17, 2018. That decision was timely appealed and a public hearing was held before the Planning Commission on February 27, 2018. During that hearing a motion was made to keep the record open, deferring the decision of the Planning Commission until the March 26, 2018 meeting.

4. The subject property is identified as Tax Lot 700 of Lincoln County Assessor's Tax Map 11-11-17-DC (Lot 3 and portions of Lots 2 and 4, Block M, Harborton Subdivision).

5. The Comprehensive Plan designation for the subject property is "Industrial" and the zoning designation is I-1 "Light Industrial."

6. Notice of the proposed replat was mailed on December 11, 2017 to property owners within 100 feet per Section 13.05.095(A) of the Municipal Code, and to various City departments, agencies, and public utilities. The notice contained the criteria by which the application was to be assessed. Affected parties were given until 5:00 p.m., December 26, 2017, in which to make comment on the application. Email correspondence was received from Olaf Sweetman, Assistance City Engineer, with the Newport Public Works Department related to the adequacy of utility easements. No other comments were provided on the application.

7. Section 13.05.095 of the Newport Municipal Code contains the criteria for approval of a tentative plan for a replat. Those criteria are as follows:

- (a) The tentative plan complies with the definition of a replat.
- (b) All lots within the tentative plan meet the requirements for configuring lots and or parcels listed under Section 13.05.030 or, if the original lots or parcels were

nonconforming, the resultant lots or parcels will be less nonconforming.

- (c) Approval of the tentative plan does not interfere with the provision of key public facilities.
- (d) The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots would be part of once those districts are formed. Said consent shall be a separate document recorded upon the lots subject to the partition. The document shall be recorded prior to final plat approval.
- (e) Public facilities serving the minor replat are adequate under Section 13.05.045. Proposed streets within the minor replat comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.
- (f) All required public improvements will be provided.
- (g) Any required geologic hazard report concludes that the property can be developed in the manner proposed.

CONCLUSIONS

1. With regard to the criteria in Section 13.05.095 of the Newport Municipal Code for approving a tentative plan for a replat, the following conclusions can be drawn:

- (a) *The tentative plan complies with the definition of a replat.*

Pursuant to Section 13.05.005 "Definitions" a replat is defined as: "The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate a public street or road."

The applicant's proposal complies with the definition of a replat in that it involves the reconfiguration of platted lots within a recorded subdivision identified as Tax Lot 700 of Lincoln County Assessor's Tax Map 11-11-17-DC (Lot 3 and portions of Lots 2 and 4, Block M, Harborton Subdivision). No streets or roads are being vacated by this application.

The angled, southeast corner of Lot 4, Block M, Harborton was placed into its present configuration following a property line adjustment with a parcel to the south. That adjustment was approved by the City of Newport (File No. 9-PLA-97).

A 13,547 square foot portion of Lot 2, Block M, Harborton was conveyed to Central Lincoln PUD at some point in the past. It is immediately adjacent to the north line of Lot 3, Block M, Harborton and is illustrated with Lincoln County Survey Record No. 15071. A legal description for this portion of Lot 2 is included in the deed for the property recorded in Book 180, at Page 440 of the Lincoln County Deed Records. The north line of proposed Parcel 1 has been drawn such that it appears to include this strip of land; however, the dimensions depicted on the tentative plan, prepared by Tom Hamilton Surveying, amended January 16, 2018, do not align with those included in the

legal description and shown on Survey Record No. 15071. If this is an error, then it needs to be corrected on the final plat. If, on the other hand, there are issues with monumentation or other reasons why the dimensions depicted on the proposed partition must deviate from those contained in the legal description, then the surveyor needs to prepare an explanation, preferably as a survey narrative, in a format acceptable to the County Surveyor's Office so that there is a record describing why the legal description in the deed and the boundary on the plat are different. The Planning Commission concludes that this condition adequately addresses the impact of the replat inasmuch as there are outstanding issues with the legal description.

This criterion is met with a condition of approval.

- (b) *All lots within the tentative plan meet the requirements for configuring lots and or parcels listed under Section 13.05.030 or, if the original lots or parcels were nonconforming, the resultant lots or parcels will be less nonconforming;*

Section 13.05.030 requires that the resulting lots satisfy, or be less nonconforming to, the minimum lot size of the zone district; possess at least 25 feet of street frontage other than an alley; will not become "through lots" (i.e. lots with frontage on two parallel streets); have side lines that run at right angles to the street upon which they face; are large enough to accommodate any required special setbacks; are no larger than 175% of the required minimum lot size of the zone (unless terrain or other conditions restrict further development potential); and do not contain wetlands or similar development constraints on more than 50% of the land area.

The zoning for the property is I-1/ "Light Industrial." The minimum lot size of the I-1 district is 5,000 square feet. According to the applicant's tentative plan, the replat will result in two parcels, one of which will be 8.29 acres in size and the other 1.43 acres in size. The applicant's tentative plan illustrates that the resulting lots will each possess more than 25-feet of street frontage along SE 40th Street and SE Ash Street, that neither is a through lot, and that the side lines run at right angles to the abutting streets. Typically, parcels are prohibited from being larger than 175% of the required minimum lot size of the zone. Exceptions are allowed if terrain or other conditions prohibit a further division of the property. In this case, there are other conditions that warrant the properties being sized as presented on the tentative plan. Parcels 1 and 2 have been sized to accommodate an existing substation and complex of industrial buildings that were formerly a part of Central Lincoln PUD's maintenance operations. A further division of the properties would be difficult to achieve short of requiring buildings to be removed, which would be expensive and impractical. Industrial properties are also needed in various sizes, and given that there are relatively few industrial sites in the City of Newport larger than 8 acres, it is likely to be desirable for certain end users. The City of Newport's Local Wetland Inventory does not identify wetlands on the property nor does there appear to be other development constraints that would encumber more than 50% of the lots.

Considering the above, this criterion has been satisfied.

- (c) *Approval of the tentative plan does not interfere with the provision of key public facilities.*

Key public facilities include public street, water, and sewer and storm drainage services. The rights-of-way for SE Ash Street and SE 40th Street contain paved public streets, public water mains and gravity sewer lines that are sized such that they are capable of serving the resulting lots. A storm drainage collection system extends through the north end of proposed Parcel 1 in an east/west alignment within what is shown on the tentative plan as a 20-foot storm drainage easement and a 30 foot-utility, drainage, and ingress egress easement. A storm drainage line also cuts across the southwest corner of proposed Parcel 1 within a proposed 20-foot storm drainage easement. The storm drainage system serves the proposed parcels and adjoining properties and the tentative plan illustrates that the applicant is prepared to contain them in appropriate easements so that they can be adequately maintained. The northernmost utility easements are configured such that they can be combined, and language is needed clarifying who the beneficiaries are of the proposed easements. Additionally, the applicant's title report indicates that there are existing easements that encumber the property, namely overhead utility lines to the benefit of Central Lincoln PUD (Book 307, Page 1483) and Verizon Wireless (Instrument #2014-11138). These should be depicted as existing with reference to the recorded documents (NMC 13.05.070(C)(6)). Changes needed to the easements, described herein, are largely for clarification and can be addressed with the final plat.

The public facilities are in place, and the replat will not necessitate that they be relocated or otherwise interfere with the provision of the services. The City's capital facility plans do not show any future services that would be adversely impacted by this replat. The Planning Commission concludes that this condition adequately addresses the impact of the replat inasmuch as there are outstanding issues with the applicant's easements. This criterion is met with a condition of approval.

- (d) *The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots would be part of once those districts are formed. Said consent shall be a separate document recorded upon the lots subject to the partition. The document shall be recorded prior to final plat approval.*

The Newport Transportation System Plan identifies SW Ash Street as a collector roadway, with a minimum right-of-way width of 60-feet. The existing right-of-way is substandard at 40-feet, and the road is narrower than the 40-feet of pavement width typical of a collector (i.e. two 12-ft travel lanes, with on-street parking). The roadway may need to be widened if proposed Parcel 1 is redeveloped. The replat, by itself, does not generate a need for the public improvement; therefore, this criterion does not apply.

- (e) *Public facilities serving the minor replat are adequate under Section 13.05.045. Proposed streets within the minor replat comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.*

Section 13.05.045 sets out that tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the new parcels. As noted, city street, water, sewer and storm drainage services are in place and available to the parcels. Letters from Central Lincoln PUD, Charter, and Pioneer Telephone Cooperative were provided indicating that they can provide service to the parcels. This standard has been met.

- (f) *All required public improvements will be provided.*

There are no public improvements needed to serve the proposed lots as they are currently developed. Future redevelopment of Parcel 1 may necessitate improvements to SW Ash Street, which will be addressed when an application for development of Parcel 1 is received.

- (g) *Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.*

The parcels are outside of a Geologic Hazards Area as defined in the Newport Zoning Ordinance (NMC Chapter 14.21). Therefore, no report is required.

OVERALL CONCLUSION

The request complies with the criteria established for the approval of a tentative plan for a minor replat and is hereby **APPROVED**, subject to the following conditions:

1. The surveyor shall adjust the north line of proposed Parcel 1 such that it aligns with the legal description for that portion of Lot 2, Block M, Harborton listed in Book 180, at Page 440 of the Lincoln County Deed Records and illustrated with Survey Record No. 15071 or provide a narrative, in a format acceptable to the County Surveyor's Office, explaining why the discrepancy is appropriate. Such narrative shall be included on the final plat, if acceptable to the County Surveyor.

2. The northernmost utility easements should be consolidated, if possible, and language added identifying the beneficiaries of each of the proposed easements. Further, existing easements that encumber the property are to be depicted with reference to the recorded documents.

PROPOSED MINOR PARTITION PLAT FOR
CENTRAL LINCOLN PEOPLES
UTILITY DISTRICT

LOT 3 AND A PORTION OF LOTS 2
AND 4, BLOCK "M" "HARBORTON" LOCATED
IN THE SW 1/4 - SE 1/4
SECTION 17, T11S R11W, W.M.
CITY OF NEWPORT,
LINCOLN COUNTY, OREGON
(11-11-17-DC TAX LOT 700)



LEGEND

- MONUMENT SET: 5/8" X 30" RE-BAR WITH ALUMINUM CAP MARKED, "TOM HAMILTON RLS 1816"
- MONUMENT FOUND: HELD FOR CONTROL
- ⊘ CALCULATED POSITION
- () RECORD INFORMATION AS NOTED
- [] PLAT RECORD BOOK 6, PAGE 19 PLAT OF "HARBORTON"
- (()) RECORD INFORMATION: C.S. 15,370

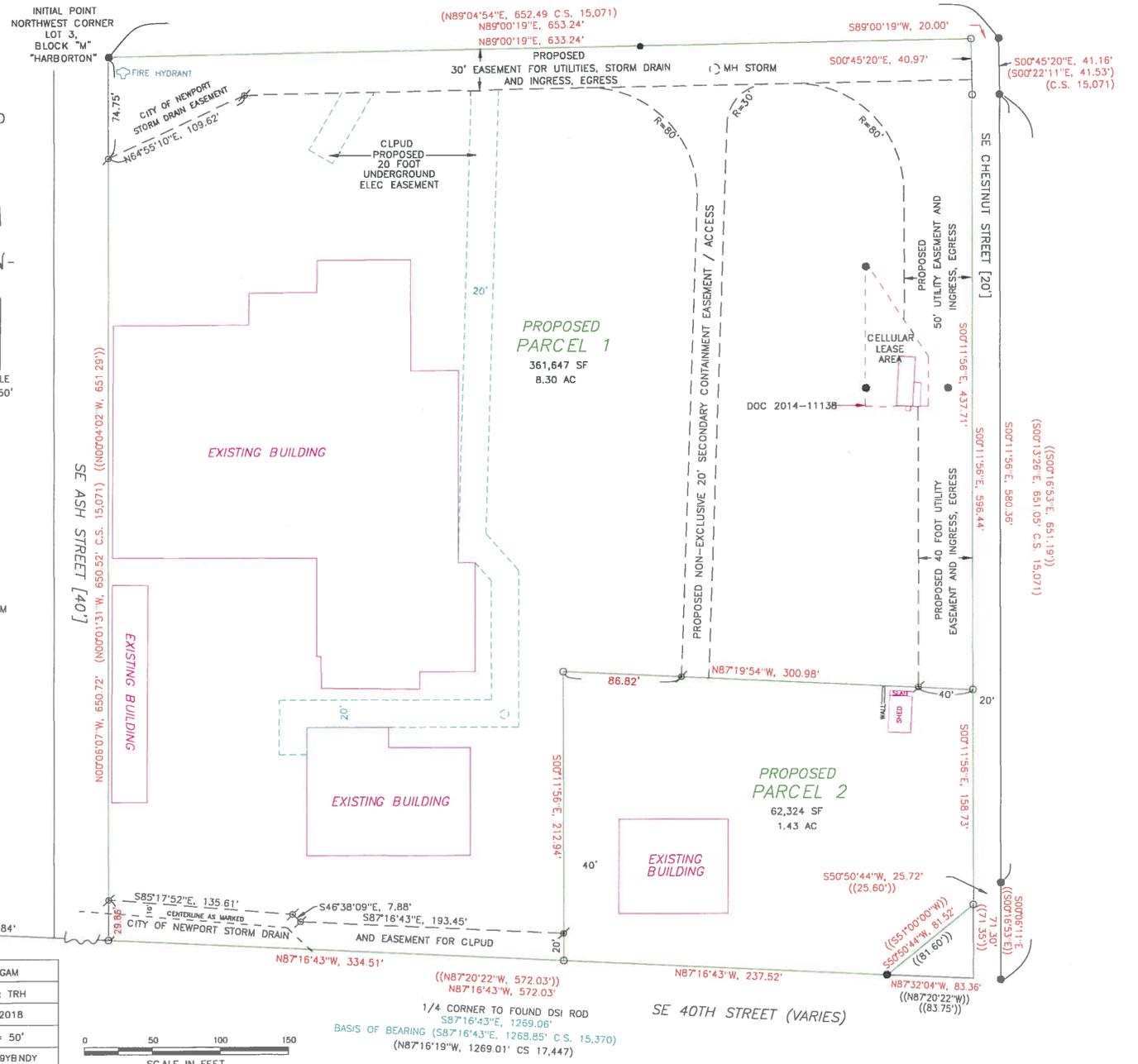
1/4 CORNER

SEC 17 S87°16'28"E, 227.19'
SEC 20 S87°16'51"E, 469.84'

REVISION 2-12-2018

TOM HAMILTON SURVEYING
-TOM HAMILTON-
PMB 08128
PO BOX 190
JEFFERSON, ORE 97352
CELLULAR (541) 270-5037

DRAWN BY: GAM
CHECKED BY: TRH
DATE: JAN 2018
SCALE: 1" = 50'
PROJECT: 79YBNDY



**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT, COUNTY
OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING FILE NO. 1-MRP-17-A,)
APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR)
DECISION APPROVING A TENTATIVE PLAN FOR A)
MINOR REPLAT, AS SUBMITTED BY CENTRAL LINCOLN)
PEOPLE’S UTILITY DISTRICT (MARK FREEMAN,)
AUTHORIZED REPRESENTATIVE))**

**FINAL
ORDER**

ORDER AFFIRMING COMMUNITY DEVELOPMENT DIRECTOR’S DECISION APPROVING A TENTATIVE PLAN for a proposed minor replat (partition) per Section 13.05.095 of the Newport Municipal Code (NMC) to reconfigure Lot 3 and a portion of Lots 2 and 4, Block M, Harborton Subdivision, to separate an existing utility substation from the balance of the former Central Lincoln People’s Utility District Maintenance facility. The substation will be situated upon a 1.43 acre parcel and the balance of the property will be configured as an 8.29 acre parcel, as illustrated in Exhibit “B”.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application and appeal filed consistent with the Newport Subdivision Ordinance (No. 1990, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the application and appeal, with a public hearing a matter of record on February 26, 2018; and
- 3.) At the public hearing on said application and appeal, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, the Planning Commission requested the appellant and city provide draft findings of fact and final orders for consideration at its next regular meeting; and
- 5.) After considering and discussing the findings of fact and final orders, upon a motion duly seconded, the Planning Commission found the City’s arguments to be persuasive and approved the application based upon the findings-of-fact and final order submitted by the City.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A," support approval of the request for the tentative plan for a proposed minor replat as illustrated in Exhibit "B."

BASED UPON THE ABOVE, the City of Newport Planning Commission determines that the request for the tentative plan for a minor replat is in conformance with the provisions of the Comprehensive Plan and

the Municipal Code of the City of Newport, subject to the following conditions:

1. The surveyor shall adjust the north line of proposed Parcel 1 such that it aligns with the legal description for that portion of Lot 2, Block M, Harborton listed in Book 180, at Page 440 of the Lincoln County Deed Records and illustrated with Survey Record No. 15071 or provide a narrative, in a format acceptable to the County Surveyor's Office, explaining why the discrepancy is appropriate. Such narrative shall be included on the final plat, if acceptable to the County Surveyor.
2. The northernmost utility easements should be consolidated, if possible, and language added identifying the beneficiaries of each of the proposed easements. Further, existing easements that encumber the property are to be depicted with reference to the recorded documents.
3. The property owner shall sign and record a Land Improvement Waiver of Remonstrance Agreement related to future widening and improvement of SW Ash Street frontage adjacent to owner's property, prior to approval of the final plat.

Accepted and approved this 26th day of March, 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-MRP-17-A

FINDINGS OF FACT

1. Per Section 13.05.095 of the Newport Municipal Code (NMC), this application involves a minor replat of Lot 3 and a portion of Lots 2 and 4, Block M, Harborton, to separate an existing utility substation from the balance of the former Central Lincoln People's Utility District Maintenance facility. The substation will be situated upon a 1.43 acre parcel and the balance of the property will be configured as an 8.29 acre parcel (ref: tentative plan, dated January 16, 2018 (Exhibit "B")).

2. The applicant and owner is the Central Lincoln People's Utility District (PUD). The applicant's representative is Mark Freeman, Director of Employee, Customer and Community Services, Central Lincoln PUD, P.O. Box 1126 Newport, OR 97365.

3. The application for tentative plan approval of the proposed replat was submitted on December 8, 2017. A copy of the complete application is included in the file and is incorporated by reference into the findings.

4. The subject property is identified as Tax Lot 700 of Lincoln County Assessor's Tax Map 11-11-17-DC (Lot 3 and portions of Lots 2 and 4, Block M, Harborton Subdivision).

5. The Comprehensive Plan designation for the subject property is "Industrial" and the zoning designation is I-1/"Light Industrial."

6. Notice of the proposed replat was mailed on December 11, 2017 to property owners within 100 feet per Section 13.05.095(A) of the Municipal Code, and to various City departments, agencies, and public utilities. The notice contained the criteria by which the application was to be assessed. Affected parties were given until 5:00 p.m., December 26, 2017, in which to make comment on the application. Email correspondence was received from Olaf Sweetman, Assistance City Engineer, with the Newport Public Works Department related to the adequacy of utility easements. No other comments were provided on the application.

7. Section 13.05.095 of the Newport Municipal Code contains the criteria for approval of a tentative plan for a replat. Those criteria are as follows:

- (a) The tentative plan complies with the definition of a replat.
- (b) All lots within the tentative plan meet the requirements for configuring lots and or parcels listed under Section 13.05.030 or, if the original lots or parcels were nonconforming, the resultant lots or parcels will be less nonconforming.
- (c) Approval of the tentative plan does not interfere with the provision of key public facilities.

- (d) The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots would be part of once those districts are formed. Said consent shall be a separate document recorded upon the lots subject to the partition. The document shall be recorded prior to final plat approval.
- (e) Public facilities serving the minor replat are adequate under Section 13.05.045. Proposed streets within the minor replat comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.
- (f) All required public improvements will be provided.
- (g) Any required geologic hazard report concludes that the property can be developed in the manner proposed.

8. City of Newport Community Development Director Derrick Tokos issued findings-of-fact and a final order approving applicant/owner's application for minor replat on January 17, 2018.

9. On January 31, 2018, the applicant and owner, through attorney Cam Passmore with Macpherson, Gintner and Diaz, submitted a letter appealing Condition No. 3 of the Community Development Director's approval. The appealed condition reads as follows:

"The property owner shall sign and record a Land Improvement Waiver of Remonstrance Agreement related to future widening and improvement of SW Ash Street prior to approval of the final plat."

10. In the January 31, 2018 letter, Mr. Passmore outlines the following arguments as the basis for the appeal:

- (a) There is no "essential nexus" between the replat and Condition 3. As admitted by the Director within the Final Order, the concerns to be addressed from Condition 3 have not arisen, and will not occur unless and until further and later developments occur. According to the department's own Findings of Fact "[t]he replat, by itself, does not generate a need for the public improvement..." Therefore, Condition 3 has not been demonstrated to be "roughly proportionate" and could never be thought to be roughly proportionate to the replat's impacts on public infrastructure. Condition 3 amounts to an unconstitutional taking of private property without just compensation under the Fifth Amendment of the US Constitution. Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586 (2013).
- (b) NMC 13.05.095 A4, as applied, exceeds the limitations of ORS 92.046(1). When a replat is considered, the Oregon Legislature has placed limitations on the ordinances a local authority may establish. As applied, this section of the Newport Municipal Code exceeds those limits.

- (c) The failure to demonstrate rough proportionality also violates NMC 14.44.040's requirement that conditions of approval be "roughly proportional to the impact of development on public facilities."
- (d) The Director has also failed to demonstrate that Condition 3 is "reasonable," as required by NMC 14.52.120.

11. The City of Newport Planning Commission held a duly noticed public hearing to consider applicant and owner's appeal on February 26, 2018. At the close of the hearing, the Commission requested that the appellant and city prepare findings and final orders for consideration and possible adoption at its next regular meeting.

12. On March 26, 2018 the Planning Commission, after considering and discussing the findings of fact and final orders, found the City's arguments to be persuasive and voted to adopt the findings-of-fact and final order submitted by the City.

CONCLUSIONS

1. With regard to the criteria in Section 13.05.095 of the Newport Municipal Code for approving a tentative plan for a replat, the following conclusions can be drawn:

- (a) *The tentative plan complies with the definition of a replat.*

Pursuant to Section 13.05.005/"Definitions" a replat is defined as: "The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate a public street or road."

The applicant's proposal complies with the definition of a replat in that it involves the reconfiguration of platted lots within a recorded subdivision identified as Tax Lot 700 of Lincoln County Assessor's Tax Map 11-11-17-DC (Lot 3 and portions of Lots 2 and 4, Block M, Harborton Subdivision). No streets or roads are being vacated by this application.

The angled, southeast corner of Lot 4, Block M, Harborton was placed into its present configuration following a property line adjustment with a parcel to the south. That adjustment was approved by the City of Newport (File No. 9-PLA-97).

A 13,547 square foot portion of Lot 2, Block M, Harborton was conveyed to Central Lincoln PUD at some point in the past. It is immediately adjacent to the north line of Lot 3, Block M, Harborton and is illustrated with Lincoln County Survey Record No. 15071. A legal description for this portion of Lot 2 is included in the deed for the property recorded in Book 180, at Page 440 of the Lincoln County Deed Records. The north line of proposed Parcel 1 has been drawn such that it appears to include this strip of land; however, the dimensions depicted on the tentative plan, prepared by Tom Hamilton Surveying, amended January 16, 2018, do not align with those included in the legal description and shown on Survey Record No. 15071. If this is an error, then it needs to be corrected on the final plat. If, on the other hand, there are issues with monumentation or other reasons why the dimensions depicted on the proposed partition must deviate from those contained in the legal description, then the surveyor needs to prepare an explanation, preferably as a survey

narrative, in a format acceptable to the County Surveyor's Office so that there is a record describing why the legal description in the deed and the boundary on the plat are different.

The appellant is not contesting whether or not the tentative plan complies with the definition of a replat, and the Commission accepts the analysis set forth above that this requirement is satisfied with the condition noted in the Community Development Director's January 17, 2018 final order.

- (b) *All lots within the tentative plan meet the requirements for configuring lots and or parcels listed under Section 13.05.030 or, if the original lots or parcels were nonconforming, the resultant lots or parcels will be less nonconforming;*

Section 13.05.030 requires that the resulting lots satisfy, or be less nonconforming to, the minimum lot size of the zone district; possess at least 25 feet of street frontage other than an alley; will not become "through lots" (i.e. lots with frontage on two parallel streets); have side lines that run at right angles to the street upon which they face; are large enough to accommodate any required special setbacks; are no larger than 175% of the required minimum lot size of the zone (unless terrain or other conditions restrict further development potential); and do not contain wetlands or similar development constraints on more than 50% of the land area.

The zoning for the property is I-1/ "Light Industrial." The minimum lot size of the I-1 district is 5,000 square feet. According to the applicant's tentative plan, the replat will result in two parcels, one of which will be 8.29 acres in size and the other 1.43 acres in size. The applicant's tentative plan illustrates that the resulting lots will each possess more than 25-feet of street frontage along SE 40th Street and SE Ash Street, that neither is a through lot, and that the side lines run at right angles to the abutting streets. Typically, parcels are prohibited from being larger than 175% of the required minimum lot size of the zone. Exceptions are allowed if terrain or other conditions prohibit a further division of the property. In this case, there are other conditions that warrant the properties being sized as presented on the tentative plan. Parcels 1 and 2 have been sized to accommodate an existing substation and complex of industrial buildings that were formerly a part of Central Lincoln PUD's maintenance operations. A further division of the properties would be difficult to achieve short of requiring buildings to be removed, which would be expensive and impractical. Industrial properties are also needed in various sizes, and given that there are relatively few industrial sites in the City of Newport larger than 8 acres, it is likely to be desirable for certain end users. The City of Newport's Local Wetland Inventory does not identify wetlands on the property nor does there appear to be other development constraints that would encumber more than 50% of the lots.

The appellant is not contesting whether or not the tentative plan complies with the standards listed under Section 13.05.030, and the Commission accepts the analysis set forth above that this requirement is satisfied.

- (c) *Approval of the tentative plan does not interfere with the provision of key public facilities.*

Key public facilities include public street, water, and sewer and storm drainage services. The rights-of-way for SE Ash Street and SE 40th Street contain paved public streets, public water mains and gravity sewer lines that are sized such that they are capable of serving the resulting lots. A storm drainage collection system extends through the north end of proposed Parcel 1 in an east/west

alignment within what is shown on the tentative plan as a 20-foot storm drainage easement and a 30 foot-utility, drainage, and ingress egress easement. A storm drainage line also cuts across the southwest corner of proposed Parcel 1 within a proposed 20-foot storm drainage easement. The storm drainage system serves the proposed parcels and adjoining properties and the tentative plan illustrates that the applicant is prepared to contain them in appropriate easements so that they can be adequately maintained. The northernmost utility easements are configured such that they can be combined, and language is needed clarifying who the beneficiaries are of the proposed easements. Additionally, the applicant's title report indicates that there are existing easements that encumber the property, namely overhead utility lines to the benefit of Central Lincoln PUD (Book 307, Page 1483) and Verizon Wireless (Instrument #2014-11138). These should be depicted as existing with reference to the recorded documents (NMC 13.05.070(C)(6)). Changes needed to the easements, described herein, are largely for clarification and can be addressed with the final plat.

The public facilities are in place, and the replat will not necessitate that they be relocated or otherwise interfere with the provision of the services. The City's capital facility plans do not show any future services that would be adversely impacted by this replat.

The appellant is not contesting the City's finding that the tentative plan does not interfere with the provision of key public facilities, and the Commission accepts the analysis set forth above that this requirement is satisfied.

- (d) *The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots would be part of once those districts are formed. Said consent shall be a separate document recorded upon the lots subject to the partition. The document shall be recorded prior to final plat approval.*

The Newport Transportation System Plan identifies SW Ash Street as a collector roadway, with a minimum right-of-way width of 60-feet. The existing right-of-way is substandard at 40-feet, and the road is narrower than the 40-feet of pavement width that the City of Newport Transportation System Plan requires for a collector roadway (i.e. two 12-ft travel lanes, with on-street parking and sidewalks). The roadway may need to be widened if proposed Parcel 1 is redeveloped. The replat, by itself, does not generate a need for the public improvement; therefore, a non-remonstrance agreement committing the owner to participate in future improvements, if and when they are needed, is adequate and consistent with this code requirement. This analysis supported Condition No. 3 of the Community Development Director's decision and that condition is the subject of the appeal.

Appellants have provided a series of arguments as to why they believe this approval criterion cannot be applied and Condition No. 3 should be lifted. Those arguments are addressed, as follows:

Appellant's allege that Condition No. 3 of the Community Development Director's decision should be set aside because the City failed to establish a nexus (i.e. relationship or connection) between the replatting of the property and imposition of the non-remonstrance agreement and did not show that requiring the agreement is roughly proportional to the impact of the replat. They assert that the nexus and rough proportionality findings are needed because a requirement that a non-remonstrance agreement be signed and recorded is a "monetary exaction" that the courts have concluded constitutes a taking of a real property interest Koontz v. St. Johns River Water Management District, 570 US 593 (2013).

The primary failing of Appellant's appeal is that *Koontz* does not apply to non-remonstrance agreements; such agreements effect neither standard nor "monetary" exactions. In *Koontz*, a permitting agency refused to grant a developer a building permit until the developer either reduced the size of the development and granted a conservation easement or funded off-site environmental impact mitigation work. The Court found that requiring either the grant of an easement or payment of a fee "in lieu of" granting an easement in exchange for a governmental permit merit the same constitutional analysis. Both constitute an exaction – one standard, one monetary.

In contrast, Appellant was never threatened with the possibility of having to give up any real property interest– nor does the non-remonstrance agreement require payment "in lieu of" any otherwise required dedication. The question of whether or not a non-remonstrance agreement is a "monetary exaction" was not before the court in *Koontz* and appellant has not submitted any case law showing that the courts have viewed non-remonstrance agreements as monetary exactions. Rather, appellant speculates that, were the Supreme Court to hear a case involving a non-remonstrance agreement, it would find such agreements to be a "monetary exaction." That is not a logical extension of the *Koontz* holding.

In testimony before the Commission, City Attorney Steve Rich and staff pointed out that a condition requiring an owner to sign and record an agreement waiving that owner's right to remonstrate against the formation of a Local Improvement District (LID) is not an exaction. In of itself, a non-remonstrance agreement does not take a real property interest. Nor does it require the payment of any funds. Rather, non-remonstrance agreements prevent a land owner's opposition to LID formation from counting towards the threshold needed to stop the formation of an LID. The agreement does not stipulate when or even if an LID will be formed, nor does it prevent a land owner from challenging the nexus or rough proportionality of an improvement that is proposed to be funded with an LID. Staff further pointed out that non-remonstrance agreements do not prevent an owner from testifying against the formation of an LID at a public hearing, nor does it limit the right of the owner to contest, in the manner provided by law, the formula or method by which costs are allocated to benefitted properties. Larsson v. City of Lake Oswego, 127 Or. App 647 (1994).

LIDs are infrastructure financing mechanisms, specifically not land use (or permitting) decisions, and thus cannot give rise to exactions. An exaction may be imposed as a condition of a later development application – at which time the City will conduct the requisite constitutional analysis. Only upon receipt of a future development application would the City be able to identify the scope and nature of any needed improvements. At that time, the applicant would be free to challenge the constitutionality of any required dedications.

Accepting Applicant's argument that Condition No. 3 in the Community Development Director's decision constitutes an unconstitutional taking because it is not supported by nexus and rough proportionality findings, when taken to its logical conclusion, effectively means that City could never require a non-remonstrance agreement. The scope and nature of a needed improvement must be known in order to prepare findings supporting any exaction. That information is not available when non-remonstrance agreements are recorded, since such agreements are inherently prospective (i.e. they relate to improvements that may be needed in the future). As a policy matter, the Commission simply cannot go down that path. As a legal matter, there is no support for that

approach, and the appellant failed to provide any case law establishing that the courts have found non-remonstrance agreements to be an exaction, likely for the very reasons that the City Attorney and staff have pointed out.

Staff noted that they met with the potential buyer and more narrowly tailored the language in the non-remonstrance agreement so that it is clear that it will only apply to street, sidewalk, and public utilities along the property's SW Ash Street frontage, in conjunction with development or redevelopment of the property. Appellant did not specifically address that change at the hearing, so we assume that the new language has not addressed their concerns. The Commission concludes that staff's revised language was an appropriate and necessary clarification that relates future improvements to changes that may occur on the subject property.

The purpose of this replat is to position the larger part of Central Lincoln PUD's former maintenance facility for resale and potential redevelopment. SE Ash Street, which borders the subject property, is a collector roadway that does not meet the City's standards for such roadways and the I-1/"Light Industrial" zoning that applies to the property allows commercial and industrial uses that would place significantly higher demands on the street than the prior use. The requirement that the owner sign and record a non-remonstrance agreement is appropriate and reasonable, as it is likely that SE Ash Street will need to be improved in the future to support development of nearby properties, including the subject site, and an LID is a tool for ensuring that benefitting property owners participate proportionally in those improvements.

Section 13.05.095 of the Newport Municipal Code, contains the approval criteria for replats and partitions, one of which states explicitly that an applicant must agree to sign consent to participate in sewer, water or street local improvement districts that the subject lots would be a part of once those districts are formed and that said consent must be a separate document recorded prior to final plat approval. Appellant argued that the Planning Commission has not required this standard to be met in other cases, citing a decision in File No 2-MRP-14. In that case, the Commission concluded that a non-remonstrance agreement is not needed where the abutting rights-of-way are fully developed to the City's street standards. That is not the case with respect to SE Ash Street. It is; however, the case with SE 40th Street and is presumably why the Community Development Director did not reference SE 40th Street in the non-remonstrance agreement even though the subject property abuts SE 40th Street. Further, it is relevant to note that the condition challenged in File No. 2-MRP-14 required the applicant make improvements to a driveway and sidewalks before the replat could be recorded. The City has not requested that Central Lincoln PUD or its buyer undertake public improvements before they can record the plat. Therefore, the Commission concludes that the facts and issues raised in the 2014 case are substantially different than what it is presented with in this appeal and is consequently of limited value.

Appellant's second argument relates to ORS 92.046(1), which outlines aspects of a local government's authority to regulate land divisions. Appellant did not provide evidence showing that the statute has been applied in a manner that supports their arguments, and the Planning Commission could find nothing in that provision of the statute that would indicate a local government cannot require a non-remonstrance agreement as a condition of approving a replat. Moreover, the City's replat criteria is acknowledged. The Commission is bound to apply it by state law, as the City's land use regulations implement the City Comprehensive Plan. See, ORS 227.173, discussed in more

detail, below. Collateral attack on this criteria could only have been brought within the applicable timeline after its adoption – which has long since passed.

Appellant's third argument relates to the fact that the City did not prepare "rough proportionality" findings. As noted above, a non-remonstrance agreement is not an exaction requiring these findings. Therefore, the City's decision is not deficient for lacking such findings.

Lastly, appellant argues that the Community Development Director failed to demonstrate that Condition No. 3 is reasonable, as required under NMC 14.52.120. That provision of the Municipal Code states "*All city decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be met.*" The City is also required by law to base its approval or denial of a discretionary permit, such as this, on the standards and criteria set forth in its development ordinance (ORS 227.173). The Community Development Director acted appropriately, and in a manner consistent with state law, when imposing Condition No. 3 and the Commission concludes that it is reasonable for the City to impose a condition of approval requiring a non-remonstrance agreement in the form provided to appellant, considering potential impacts to SE Ash Street attributed to redevelopment of the subject property.

- (e) *Public facilities serving the minor replat are adequate under Section 13.05.045. Proposed streets within the minor replat comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.*

Section 13.05.045 sets out that tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the new parcels. As noted, city street, water, sewer and storm drainage services are in place and available to the parcels. Letters from Central Lincoln PUD, Charter, and Pioneer Telephone Cooperative were provided indicating that they can provide service to the parcels. This standard has been met.

The appellant is not contesting the City's finding that this approval criterion has been met, and the Commission accepts the analysis set forth above that this requirement is satisfied.

- (f) *All required public improvements will be provided.*

There are no public improvements needed to serve the proposed lots as they are currently developed. Future redevelopment of Parcel 1 may necessitate improvements to SW Ash Street, which is addressed via the requirement that a non-remonstrance agreement be signed and recorded. In a prior finding, the Planning Commission established that it is appropriate and reasonable for the City to require a non-remonstrance agreement as a condition of approval, and the Planning Commission concludes that such a condition will ensure that this criterion is satisfied.

- (g) *Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.*

The parcels are outside of a Geologic Hazards Area as defined in the Newport Zoning Ordinance (NMC Chapter 14.21). Therefore, no report is required.

The appellant is not contesting the City's finding that this approval criterion has been met, and the Commission accepts the analysis set forth above that this requirement is satisfied.

OVERALL CONCLUSION

The Planning Commission affirms the Community Development Director's decision to approve the minor replat application with a minor change to Condition No. 3 so that it comports with the findings contained herein. The application complies with the criteria established for the approval of a tentative plan for a minor replat and is hereby **APPROVED**, subject to the following conditions:

1. The surveyor shall adjust the north line of proposed Parcel 1 such that it aligns with the legal description for that portion of Lot 2, Block M, Harborton listed in Book 180, at Page 440 of the Lincoln County Deed Records and illustrated with Survey Record No. 15071 or provide a narrative, in a format acceptable to the County Surveyor's Office, explaining why the discrepancy is appropriate. Such narrative shall be included on the final plat, if acceptable to the County Surveyor.
2. The northernmost utility easements should be consolidated, if possible, and language added identifying the beneficiaries of each of the proposed easements. Further, existing easements that encumber the property are to be depicted with reference to the recorded documents.
3. The property owner shall sign and record a Land Improvement Waiver of Remonstrance Agreement related to future widening and improvement of SW Ash Street frontage adjacent to owner's property, prior to approval of the final plat.

PROPOSED MINOR PARTITION PLAT FOR
CENTRAL LINCOLN PEOPLES
UTILITY DISTRICT

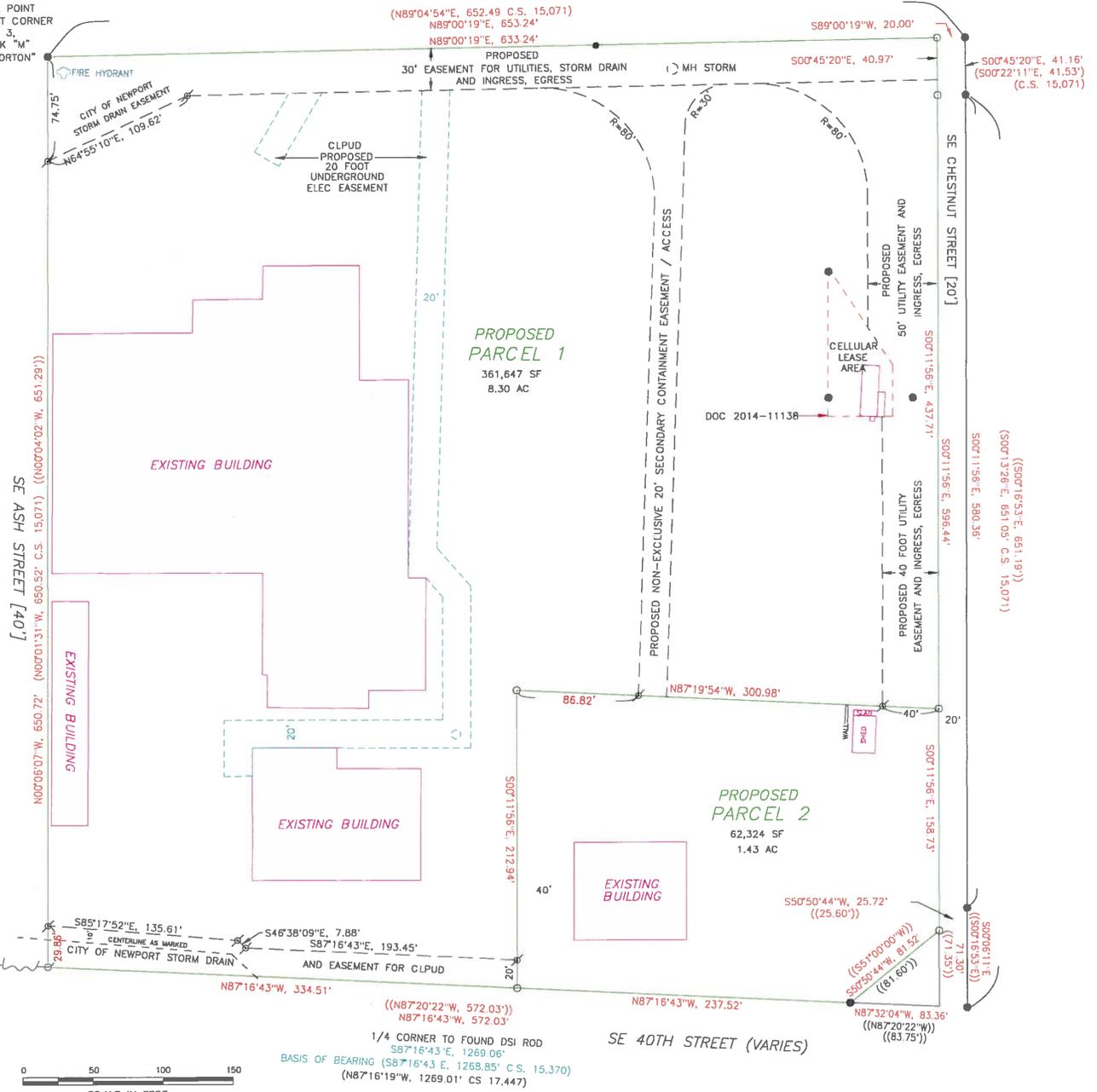
LOT 3 AND A PORTION OF LOTS 2
AND 4, BLOCK "M" "HARBORTON" LOCATED
IN THE SW 1/4 - SE 1/4
SECTION 17, T11S R11W, W.M.
CITY OF NEWPORT,
LINCOLN COUNTY, OREGON
(11-11-17-DC TAX LOT 700)



LEGEND

- MONUMENT SET: 5/8" X 30" RE-BAR WITH ALUMINUM CAP MARKED, "TOM HAMILTON RLS 1816"
- MONUMENT FOUND: HELD FOR CONTROL
- ⊙ CALCULATED POSITION
- () RECORD INFORMATION AS NOTED
- [] PLAT RECORD BOOK 6, PAGE 19 PLAT OF "HARBORTON"
- (()) RECORD INFORMATION: C.S. 15,370

INITIAL POINT
NORTHWEST CORNER
LOT 3
BLOCK "M"
"HARBORTON"



1/4 CORNER

SEC 17 S87°16'28"E, 227.19'
SEC 20 S87°16'51"E, 469.84'

REVISION 2-12-2018

TOM HAMILTON SURVEYING
-TOM HAMILTON-
PMB 08128
PO BOX 190
JEFFERSON, ORE 97352
CELLULAR (541) 270-5037

DRAWN BY:	GAM
CHECKED BY:	TRH
DATE:	JAN 2018
SCALE:	1" = 50'
PROJECT:	79BYNDY



1/4 CORNER TO FOUND DSI ROD
BASIS OF BEARING (S87°16'43" E, 1269.06'
(N87°16'19" W, 1269.01' CS 15,370)
(N87°16'19" W, 1269.01' CS 17,447)

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2301

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

File No. 1-ADJ-18: Final Order for Adjustment to allow five buildings located in the proposed Wyndhaven Ridge Phase 1 Apartment complex to exceed the 35 foot maximum building height limit.

Recommendation:

ATTACHMENTS

- [File 1-ADJ-18.pdf](#)
- [File 1-ADJ-18-V Smith Email.pdf](#)
- [File 1-ADJ-18-Hardy Email.pdf](#)

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING FILE NO. 1-ADJ-18,)
APPLICATION FOR ADJUSTMENT TO THE MAXIMUM)
BUILDING HEIGHT LIMITATION, AS SUBMITTED BY) **FINAL**
WYNDHAVEN RIDGE, LLC, PROPERTY OWNER (TODD) **ORDER**
WOODLEY, AUTHORIZED REPRESENTATIVE))**

ORDER DENYING A REQUEST for approval of an adjustment to Section 14.10.010 (Height Limitations) of the Newport Municipal Code (NMC) to allow five buildings located in the proposed Wyndhaven Ridge Phase 1 Apartment complex to exceed the 35 foot maximum building height limit. Building No. 1, 2, 3, and 5 of the applicant’s planned apartment project were to have a 10% adjustment that peaks out at 38.45 feet and Building No. 4 would have a 17.5% adjustment that peaks out at 41.13 feet. The property address is 1345 NE Lakewood Drive (Assessor's Map 10-11-32-00, Tax Lot 327).

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Planning Commission has duly reviewed the request and has given proper and timely notice to affected property owners; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Planning Commission denied the request for a building height adjustment.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A," support the denial of the height adjustment request involving the above referenced property.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a building height adjustment does not comply with applicable provisions of the City of Newport Municipal Code, and cannot be made to comply through the imposition of reasonable conditions.

Dated this 26th day of March 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-ADJ-18

FINDINGS OF FACT

1. Todd Woodley, on behalf of property owner Wyndhaven Ridge, LLC, submitted a request on January 31, 2018 for approval of an adjustment to Section 14.10.010 (Height Limitations) of the Newport Municipal Code (NMC) to allow five buildings located in the proposed Wyndhaven Ridge Phase 1 Apartment complex to exceed the 35 foot maximum building height limit. Building No. 1, 2, 3, and 5 will have a 10% adjustment that peaks out at 38.45 feet and Building No. 4 will have a 17.5% adjustment that peaks out at 41.13 feet. The request is an adjustment between 10-40% and requires a Planning Commission decision pursuant to NMC Section 14.33.030(B).
2. 1345 NE Lakewood Drive (Assessor's Map 10-11-32-00, Tax Lot 327). The site is roughly 4.66 acres per Assessor's records.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: High Density Residential.
 - b. Zone Designation: R-4/"High Density Multi-Family Residential".
 - c. Surrounding Land Uses and Zoning: Surrounding uses are undeveloped high density residential land to the west and south, forest land to the north and east, the Pacific Homes Beach Club manufactured home development to the northwest, and the Lakewood Hills single family residential subdivision to the southeast. Overhead utility lines extend along the east boundary of the property. See Planning Staff Report Attachment "B" (Zoning Map of Area).
 - d. Topography: A steeply sloped, vegetated drainage traverses the southern portion of the property. The northern two-thirds of the property is moderately sloped, increasing in elevation from the southwest to the northeast. This portion of the property was previously cleared and is the area where the apartments are to be constructed.
 - e. Existing Structures: None.
 - f. Utilities: All are either currently available or can be made available concurrent with the development of this project.
 - g. Past Land Use Actions: None known.
4. NMC Section 14.10.010 establishes maximum building height limitations. It stipulates that a building, structure, or portion thereof hereafter erected shall not exceed the height listed in Table A for the zone indicated. Table A lists a maximum building height of 35-feet in the R-4 zone district. Section 14.11.030 notes that any person seeking an exception to the building height limitations shall do so by applying for an adjustment or variance as described in Section 14.33.

5. Pursuant to NMC Section 14.33.030(B), a deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision making procedure.
6. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on February 2, 2018 to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., February 26, 2018. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on February 16, 2018.
7. A public hearing was held February 26, 2018. At the hearing, the Planning Commission received the staff report and the applicant, represented by Todd Woodley and Mike Phillips, presented the application and fielded questions from Commission members. Several members of the public were in attendance, all of whom testified in opposition to the application. That group of individuals included Kelsey Ingalls, Kristin Yuille, Tania Goicuria, Walter Morrey, Sharon Lihou, Leila Boys, David Boys, Adam Stachan, Ramune Arlauskas, Dave Larson, and Holly Studley. After the Commission accepted public testimony, the applicant provided rebuttal testimony. The Commission then closed the hearing, deliberated, and rendered an oral decision with direction to staff to prepare a final order and findings for consideration and possible adoption at the next regular meeting.
8. The minutes of the February 26, 2018 meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments, and materials submitted by opponents, are incorporated by reference into the findings. The Planning Staff Report Attachments and opposition testimony are identified as follows:

Attachment "A" – Application Form
Attachment "A-1" – Application (Including Findings and Elevation Drawings)
Attachment "A-2" – Site Plan from the Applicant’s Building Plan Submittal
Attachment "B" – Zoning Map of Area
Attachment "C" – Aerial Photograph with Contour Information
Attachment "D" – Letter from the Newport Fire Department, dated 2/14/18
Attachment "E" – Wyndhaven Response to Fire Dept Comments, dated 2/15/18
Attachment "F" – Email from Fire Chief Rob Murphy, dated 2/16/18
Attachment "G" – Email from Steve and Christie Walker, dated 2/19/18
Attachment "H" – Public Hearing Notice and Map

9. At the hearing, additional written testimony was submitted for the Planning Commission’s consideration. This included a petition signed by residents in the immediate area that were opposed to the application (10 pages), a letter from Wynn Merrill, an email from Carol Owens, and an email from Jurate Krosnius. All of the correspondence was in opposition to the application.

10. The applicable criteria for approval of an adjustment are found in NMC Section 14.33.050 as follows:

- i. That granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- ii. That any impacts resulting from the adjustment are mitigated to the extent practical; and
- iii. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and
- iv. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.

CONCLUSION

The applicant is requesting a 17.5% adjustment to the building height limit for Building No. 4, so Planning Commission approval is required for all of the height adjustment requests. In order to grant the adjustments, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the Commission, at the close of the hearing, concluded that Criterion No. 2 had not been met. That criterion states “*That any impacts resulting from the adjustment are mitigated to the extent practical.*” At the hearing, the Planning Commission heard testimony from property owners in the vicinity of the project expressing concerns regarding the impact the project will have on privacy, scenic views, and solar access. Information submitted by the applicant was insufficient to ascertain whether or not the offered mitigation, in the form of a supplemental building setback, or the orientation of the proposed apartment structures, was sufficient to address these concerns. The applicant could have asked to keep the record open to respond to the testimony, but elected not to do so. Because the application lacked information necessary for the Commission to find that impacts attributed to the adjustment had been mitigated to the extent practical, it has no choice but to deny the application. Since the applicant did not meet this approval criterion, it is not necessary for the Planning Commission to address the other approval standards because all of them must be met in order for the application to be approved.

Sherri Marineau

From: Derrick Tokos
Sent: Friday, March 02, 2018 10:32 AM
To: Sherri Marineau
Cc: 'Lee Hardy'
Subject: FW: Contact Us - Web Form

Hi Sherri... Please include this email, along with Lee's response (forwarded separately), in the regular agenda packet for the 3/26 meeting.

Derrick

-----Original Message-----

From: Derrick Tokos
Sent: Tuesday, February 27, 2018 3:04 PM
To: 'vhsmith@mindspring.com' <vhsmith@mindspring.com>
Subject: FW: Contact Us - Web Form

Thank you for sharing your concerns. I'll pass along your comments to the Commission members so they have the benefit of your feedback.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

-----Original Message-----

From: vhsmith@mindspring.com [mailto:vhsmith@mindspring.com]
Sent: Tuesday, February 27, 2018 12:51 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Contact Us - Web Form

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 2/27/2018 at 12:51:13 PM

To: Derrick Tokos
Name: V. Smith
Email: vhsmith@mindspring.com
Phone:

Subject: Feb.26 planning meeting session

Message: Last night I attended my first evening Planning Commission session. I was impressed by the consideration and deliberation of the committee with regards to the apartment complex adjustment request next to Lakewood Hills. The neighborhood speakers opposed to the adjustment were well prepared, professional, and very courteous in their speeches. The only offensive remark came from Lee Hardy who said, "They can paint a damn mural on the building." That remark was uncalled for, unprofessional, and cruel. She owes everyone, including the committee, an apology.

Sherri Marineau

From: Derrick Tokos
Sent: Friday, March 02, 2018 10:30 AM
To: 'Lee Hardy'
Cc: Sherri Marineau
Subject: RE: my response

Hi Lee... we will include your response with the email in the upcoming agenda packet.

Derrick

From: Lee Hardy [mailto:lee@yaquinabayproperties.com]
Sent: Friday, March 02, 2018 10:15 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: my response

Derrick,

I offer the following comments in response to the complaint lodged by V. Smith regarding my comment about “painting a mural on the damn building” at the Planning Commission hearing Monday night, Feb. 26, 2018.

I will admit I was a little impatient but did not intend to be offensive. One of the causes of my impatience was what I perceived to be overly emotional rather than objective comments regarding the requested height adjustment on a building in the proposed development that appeared to be based on fears regarding the adverse impact of any further development in the relatively semi-rural vicinity of Lakewood Hills subdivision even though the development would not be a part of the subdivision. Folks in that subdivision already have other buildings in their line of sight. I fail to see how adding buildings to an area adjacent to the subdivision would diminish personal privacy or the character of the neighborhood. Additionally I was impatient with the majority of the commission who voted against the height adjustment (while referring to it as a variance) but could not easily articulate a clear rationale for their opposition to the adjustment.

I would also like to point out that no reference is made in the email to the scolding one commissioner was giving the developer regarding attention to the height restriction in the ordinance. That seemed very harsh to me, but it was directed to the party to whom Smith was opposed, after all. I noted that the height adjustment on building 4 would still allow the roof line of that building to be less imposing than the other buildings in the end, and the increased setback plus vegetation screening certainly eases the impact of building 4; but that did not seem to matter. Whereas other commissioners felt there was no compelling reason to grant the height adjustment, I felt and still feel there was no compelling reason to deny it. A good reason to grant it would be because it would allow the developer to set the roof pitch to a degree that would make it more resistant to our very windy and rainy conditions, thus giving the roof and the building as a whole a longer life span which is more cost effective in the long run.

I apologize for any offense, but cruelty certainly was neither intended nor conveyed.

Lee Hardy

Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2302

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

File No. 2-ADJ-17: Adjustment to allow construction of a garage with a setback of 15 feet rather than the required 20 feet.

Recommendation:

ATTACHMENTS

- [File 2-ADJ-17.pdf](#)

Case File: 2-ADJ-17
 Date filed: October 20, 2017
 Date Application Complete: February 8, 2018
 Hearing Date: March 26, 2018/Planning Commission

PLANNING STAFF REPORT
File No. 2-ADJ-17

- A. **APPLICANT(S) & OWNER(S):** Jonathan Tesar.
- B. **REQUEST:** An adjustment to Section 14.11.030 (Garage Setback) of the Newport Municipal Code (NMC) to allow construction of a garage with a setback of 15-feet, rather than the required 20-feet. The request is a 25% adjustment and requires a Planning Commission decision pursuant to NMC Section 14.33.030(B).
- C. **LOCATION:** 1201 SW Case Street (Assessor's Map 11-11-08-CA, Tax Lots 7001 and 7002).
- D. **LOT SIZE:** Roughly 5,662.80 square feet (0.13 acre) per Assessor's records.
- E. **STAFF REPORT:**
1. **REPORT OF FACT:**
 - a. **Plan Designation:** High Density Residential.
 - b. **Zone Designation:** R-3/ "Medium Density Multi-Family Residential."
 - c. **Surrounding Land Uses and Zoning:** Surrounding uses are single and multi-family residences to the north, south and east. Assisted living, hospital, and medical office use exists to the west and southwest. See Planning Staff Report Attachment "B" (Zoning Map of Area).
 - d. **Topography:** The property slopes moderately away from SW Case Street for a short distance before dropping at a steep angle down to SW Harbor Drive.
 - e. **Existing Structures:** None.
 - f. **Utilities:** All are available to the subject property.
 - g. **Past Land Use Actions:**

File No. 2-SV-09. Vacated portions of SW 12th Street and SW Case Street (Ord #2003). A 10-foot easement was reserved over the northerly 10-feet of vacated SW 12th Street to preserve vegetation on the slope overlooking SW Harbor Drive.

File No. 1-ADJ-10. Approval of a 5-foot adjustment to the 15-foot front yard setback along SW Case Street and SW Harbor Drive for a townhome project that was not developed.
 - h. **Notification:** All affected property owners within 200 feet, applicable city departments, and other agencies were notified on March 12, 2018. See Planning Staff

Report Attachment "D" (Public Hearing Notice and Map). The public hearing notice was published in the Newport News-Times on March 16, 2018. The hearing was originally noticed for March 12, 2018 and that date was changed to March 26, 2018.

i. **Attachments:**

Attachment "A" – Application Form
 Attachment "A-1" – Legal Description of the Property
 Attachment "A-2" – Applicant's Written Narrative
 Attachment "A-3" – Applicant's Survey with Building Footprint
 Attachment "A-4" – Photographs of the Property
 Attachment "B" – Zoning Map of Area
 Attachment "C" – Aerial Photograph with Contour Information
 Attachment "D" – Public Hearing Notice and Map
 Attachment "E" – Letter from Bill and Cheryl Lalack, dated February 28, 2018
 Attachment "F" – Email from City Engineer Tim Gross, dated February 12, 2018

2. **Explanation of the Request:** NMC Chapter 14.11 establishes required yards and setbacks. Section 14.11.030 provides that the entrance to a garage or carport shall be setback at least 20 feet from the property boundary.

The applicant intends to construct a single family residence. The foundation has been completed, and Mr. Tesar notes that further work on the residence is on hold pending the outcome of this adjustment request and selection of a qualified contractor. A survey drawing submitted by the applicant shows that the footprint of the proposed home in relation to the property lines (Attachment "A-3"). The proposed garage is situated on the west side of the structure, facing SW Case Street. If this adjustment application is approved, the garage setback would be reduced from 20-feet to 15.2-feet.

3. **Evaluation of the Request:**

- a. **Written Comments:** As of March 22, 2018, the Community Development Department has received two written comments. Bill and Cheryl Lalack submitted a letter, dated February 28, 2018, indicating that they support the adjustment request (Attachment "E"). An email from City Engineer, Tim Gross, dated February 12, 2018, requested that the applicant show the extension of the curb line through the limits of the property frontage. This information is illustrated on the applicant's survey. Mr. Gross also inquired as to whether or not frontage improvements can be required with an adjustment approval. That is not an option because there is not a nexus between a request to reduce a setback and the demand for the improvements. Frontage improvements are required as part of the building permit process, as that will result in a new home that impacts public services (e.g. water, sewer, street). Street improvement requirements are addressed in NMC Chapter 14.44, which is independent of the adjustment criteria. Frontage improvements would have to be completed prior to a certificate of occupancy being issued.
- b. **Planning Commission Review Required (NMC Section 14.33.030(B); Approval Authority:** A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

- c. **Applicable Criteria (NMC Section 14.33.050); Criteria for Approval of an Adjustment:**
- i. That granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
 - ii. That any impacts resulting from the adjustment are mitigated to the extent practical; and
 - iii. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and
 - iv. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.

d. **History:**

Applicant submitted a written narrative identifying circumstances that led to this request. That narrative reads as follows:

This application is for a garage setback Adjustment for a building that will become my residence. A Newport Building Permit #625-16-000170-DWL was obtained on or about 8/24/16. After rough excavation and land clearing, the foundation contractor, John Norton, informed me the house foundation, as drawn, was too close to the back “cliff” and presented an unsafe condition. Apparently, topographic mapping did not clearly represent the actual conditions of the site with the abruptly sloping terrain. Joseph Lease, Newport Building Official, then inspected the site. In order to correct this unsafe condition, I consulted with the foundation contractor, John Norton; the excavator, George Dollowitch; the surveyor, Steve Swinehart, the Geotechnical Engineer, Jeremy Fissel with Earth Engineers, Inc.; and the Structural Engineer, Peter Bambe. I determined that the situation could be corrected by moving the house 5 feet forward (closer to Case Street).

On or about September 7, 2016, I met with Derrick Tokos, Community Development Director, to request a change in the property setbacks. The rear (north) setback was increased by 5 feet to 20 feet, and the front (south) setback was reduced by 5 feet to 10 feet. This allowed the foundation to remain compliant with the Newport setback requirements while the foundation moved forward 5 feet (or 5 feet further away from the “cliff”). However, this created a violation of the minimum garage setback (20 feet) from the garage entrance to the access street. The setback to the “would be garage” is now 15 feet. Therefore, to remain compliant with Newport setback requirements, the garage use is to be converted to a shop, with no garage door.

The City of Newport, by a letter from Olaf Sweetman, PE, provided conditions to obtaining a Certificate of Occupancy, including: stormwater grading, paving and runoff conveyance, curbing, water main replacement, and a new fire hydrant. I then executed a LAND IMPROVEMENT WAIVER OF REMONSTRANCE (filed 11/2/2016) for participation in construction of street, sidewalk, and storm water improvements.

The purpose of this application is to allow the use of the garage as originally planned.

e. **Staff Analysis:**

The requested adjustment is 25% of the setback requirements, so Planning Commission approval is required. In order to grant the adjustment, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis could be made:

Criterion #1. That granting the adjustment will equally or better meet the purpose of the regulation to be modified:

- (1) In regard to this criterion, the Planning Commission should consider whether the applicant has sufficiently demonstrated that granting the adjustments will equally or better meet the purpose of the regulation to be modified.
- (2) The purpose of the 20-foot garage setback is to ensure that the driveway is of sufficient length to accommodate a vehicle without that vehicle extending into the public road right-of-way.
- (3) The applicant notes that the property is an irregular shaped lot, at the outside curve of the intersection of SW Case Street and SW 12th Street, and bounded to the Northeast by SW Harbor Drive. He further indicates that the foundation is placed in such a manner that it sits approximately on the minimum front and back setbacks. The steeply sloping back side of the property (closest to SW Harbor Dr. and a proposed sidewalk), necessitated moving the location of the house to a position that is noncompliant with the 20 foot garage setback.
- (4) The applicant's survey shows the location of the garage relative to the property line and likely extension of the curb line of SW Case Street and SW 12th Street (Attachment "A-3"). Because the property is situated adjacent to a curve in the street, the curb line and future sidewalk behind that curb fall away from the applicant's property as SW Case Street transitions into SW 12th Street. SW Case Street is also a 70-foot right-of-way, which is larger than 50-feet required for a local, residential street and wide enough to accommodate full buildout of the street with room to spare. The survey shows that there will be at least 10-feet of separation between the property line and the extended curb line, which is sufficient separation to ensure that a vehicle could be parked on the residential driveway such that it would not obstruct a future sidewalk or vehicle traffic. Considering the above, it is reasonable for the Planning Commission to find that the adjustment will equally meet the purpose of the garage setback standard.

Criterion #2. That any impacts resulting from the adjustment are mitigated to the extent practical:

- (5) It would be reasonable for the Planning Commission to find that mitigation is not needed because the applicant's survey demonstrates that there is sufficient room to accommodate a full length driveway on portions of the right-of-way that will not be developed and the subject property.

Criterion #3. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access:

- (6) The survey shows that the garage will be located entirely on the applicant's property. There shouldn't be any impacts to utilities.
- (7) Fire access will not be hindered as a result of this adjustment. The applicant's survey demonstrates that the home meets the established front, side, and rear yard setback requirements. This ensures that fire personnel can access all sides of the residence.
- (8) Given the above, it is reasonable for the Planning Commission to conclude that granting the adjustment will not interfere with utility or fire access.

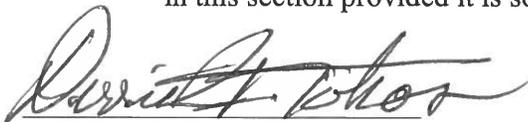
Criterion #4. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district:

- (9) The applicant is requesting an adjustment to the 20-foot garage setback. No other adjustments have been requested.

- 4. **Conclusion:** If the Planning Commission finds that the applicant has met the criteria established in the Zoning Ordinance for granting an adjustment, then the Commission should approve the request. The Commission may attach reasonable conditions of approval to carry out the purposes of the Ordinance if necessary to address the adjustment criteria. The conditions of approval would need to have a nexus with the request and must be roughly proportional to the impact of the request. If, on the other hand, the Commission finds that the request does not comply with the criteria, then the Commission should make findings for denial.

F. **STAFF RECOMMENDATION:** If the Planning Commission decides to approve the request, Staff would recommend the following condition(s) of approval:

- 1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant to comply with these documents and the limitations of approval described herein.
- 2. Pursuant to Section 14.52.140/"Expiration and Extension of Decision" of the Newport Zoning Ordinance, this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.



Derrick I. Tokos AICP
Community Development Director
City of Newport
March 22, 2018



City of Newport Land Use Application

Applicant Name(s):	Property Owner Name(s) if other than applicant SAME
JONATHAN E. TESAR	
Applicant Mailing Address:	Property Owner Mailing Address:
2902 S MORAIN PL ; KENNEWICK, WA 99337	
Applicant Phone No.	Property Owner Phone No.
(509) 440-2447	
Applicant Email	Property Owner Email
jontesar@msn.com	
Authorized Representative(s): Person authorized to submit and act on this application on applicant's behalf	
SAME	
Authorized Representative Mailing Address:	
Authorized Representative Telephone No.	
Authorized Representative Email.	

Project Information

Property Location: Street name if address # not assigned 1201 SW CASE ST ; NEWPORT, OR	
Tax Assessor's Map No.:	Tax Lot(s): 11-11-08-CA07001 807002
Zone Designation: R-3	Legal Description: Add additional sheets if necessary SEE ATTACHED EXHIBIT "A"
Comp. Plan Designation:	
Brief description of Land Use Request(s): Examples: ADJUSTMENT (VARIANCE) OF THE GARAGE SETBACK OF 5 FEET FROM 20 FEET TO 15 FEET	
Existing Structures: if any FOUNDATION AND SECURITY FENCING; UTILITY TRENCHING, CONDUIT, AND PIPING IS IN PLACE	
Topography and Vegetation: STEEPLY SLOPING LOT, REVEGETATION IN PROCESS	

Application Type (please check all that apply)

- | | | |
|--|---|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Interpretation | <input type="checkbox"/> UGB Amendment |
| <input type="checkbox"/> Appeal | <input type="checkbox"/> Minor Replat | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> Comp Plan/Map Amendment | <input type="checkbox"/> Partition | <input checked="" type="checkbox"/> Variance/Adjustment |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Planned Development | <input checked="" type="checkbox"/> PC |
| <input type="checkbox"/> PC | <input type="checkbox"/> Property Line Adjustment | <input type="checkbox"/> Staff |
| <input type="checkbox"/> Staff | <input type="checkbox"/> Shoreland Impact | <input type="checkbox"/> Zone Ord/Map |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Amendment |
| <input type="checkbox"/> Geologic Permit | <input type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Other |

FOR OFFICE USE ONLY

File No. Assigned:		
Date Received: 10/20/17	Fee Amount: \$1604-	Date Accepted as Complete:
Received By: sm	Receipt No. 11630	Accepted By:

City Hall
169, SW Coast Hwy
Newport, OR 97365
541.574.0629



City of Newport Land Use Application

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

James E. Jeser

Applicant Signature(s)

10/20/2017

Date

Property Owner Signature(s) (if other than applicant)

Date

Authorized representative Signature(s) (if other than applicant)

Date

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Exhibit "A"

Beginning at the Southwest corner of Lot 12, Block 16 of BAYLEY AND CASE'S ADDITION TO NEWPORT, in Lincoln County, Oregon;

Thence following the Southerly line of Block 16 South 63°54'19" East 110.19 feet to the Easterly line of a 10 foot alley;

Thence South 26°01'45" West 10.00 feet to the Southwesterly corner of vacated SW Case Street described as Parcel IIB in Newport Ordinance #2003,. Recorded in County Deed records as Document #2010-04765;

Thence following the Southerly line of vacated SW Case Street South 63°54'19" East 102.10 feet to an iron rod, and the true point of beginning of the herein described tract;

Thence North 26°04' East 78.19 feet to an iron rod on the Southerly line of the legalized right of way of Harbor Drive, as described in Document #2010-04619; County Deed records;

Thence following the right of way on a 236.36 foot curve to the right 75.77 feet (the chord bears South 32°36'08" East 75.44 feet);

Thence South 23°25'05" East 61.70 feet to the Easterly line of a portion of SW Case Street vacated by Newport Ordinance #1077 recorded July 13, 1977 in Microfilm Volume 77, Page 6, County Deed Records;

Thence following said Easterly line South 3°38' East 10.21 feet (the record bearing is South 2°45' East);

Thence North 63°56' West 56.41 feet to the Westerly line of vacated Case Street described in Ordinance #1077;

Thence North 26°04' East 9.97 feet to the South line of vacated Case Street described in Ordinance #2003;

Thence North 63°54'19" West 60.00 feet to the true point of beginning.

Adjustment of Garage Setback from 20 feet to 15 feet

Applicant: Jonathan E. Tesar

Address: 1201 SW Case Street

This attachment to the City of Newport Land Use Application is for an Adjustment for this property to the following provision in the City of Newport Municipal Code:

14.11.030 Garage Setback. The entrance to a garage or carport shall be set back at least 20 feet from the access street for all residential structures.

I am requesting a 25% reduction of the garage setback from 20 feet to 15 feet. This property is to become our residence, and it is currently only a completed foundation, with no framing. Further construction on this home is awaiting the outcome of this application and selection of a qualified contractor with availability of schedule.

History:

This application is for a garage setback Adjustment for a building that will become my residence. A Newport Building Permit #625-16-000170-DWL was obtained on or about 8/24/16. After rough excavation and land clearing, the foundation contractor, John Norton, informed me the house foundation, as drawn, was too close to the back "cliff" and presented an unsafe condition. Apparently, topographic mapping did not clearly represent the actual conditions of the site with the abruptly sloping terrain. Joseph Lease, Newport Building Official, then inspected the site. In order to correct this unsafe condition, I consulted with the foundation contractor, John Norton; the excavator, George Dollowitch; the surveyor, Steve Swinehart; the Geotechnical Engineer, Jeremy Fissel with Earth Engineers, Inc.; and the Structural Engineer, Peter Bambe. I determined that the situation could be corrected by moving the house 5 feet forward (closer to Case Street).

On or about September 7, 2016, I met with Derrick Tokos, Community Development Director, to request a change in the property setbacks. The rear (north) setback was increased by 5 feet to 20 feet, and the front (south) setback was reduced by 5 feet to 10 feet. This allowed the foundation to remain compliant with the Newport setback requirements while the foundation moved forward 5 feet (or 5 feet further away from the "cliff"). However, this created a violation of the minimum garage setback (20 feet) from the garage entrance to the access street. The setback to the "would be garage" is now 15 feet. Therefore, to remain compliant with Newport setback requirements, the garage use is to be converted to a shop, with no garage door.

The City of Newport, by a letter from Olaf Sweetman, PE, provided conditions to obtaining a Certificate of Occupancy, including: stormwater grading, paving and runoff conveyance, curbing, water main replacement, and a new fire hydrant. I then executed a LAND IMPROVEMENT WAIVER OF REMONSTRANCE (filed

11/2/2016) for participation in construction of street, sidewalk, and storm water improvements.

The purpose of this application is to allow the use of the garage as originally planned.

5. Findings of Fact:

(a) Criteria

(1) This is an irregular shaped lot, at the outside curve of the intersection of SW Case St. and SW 12th St., and bounded to the Northeast by SW Harbor Drive. The foundation is placed in such a manner that it sits approximately on the minimum front and back setbacks. The steeply sloping back side of the property (closest to SW Harbor Dr. and a proposed sidewalk), necessitated moving the location of the house to a position that is noncompliant with the 20 foot Newport garage setback.

(2) The poured concrete piers and foundation are in place (see attached photographs).

(3) This is a proposed single family residence. The neighboring properties on the block are as follows:

SW 12th St.: Northwest Natural Gas satellite relay shed directly adjacent, remainder of block includes 6 residences, including approximately 3 vacation rentals, and the back side of the Elder Care Facility.

SW Case St: unimproved lot directly adjacent (currently for sale), unimproved lot directly across the street (currently storage and temporary offices for hospital contractors) with an Elder Care Facility bordering it's back side, and Medical Professional Building at SW Case St. and SW 11th St.

SW Harbor Dr.: residences, but not in the sight line of the garage access.

(4) This property is located in R-3 Medium Density Multi-Family zoning, which does not restrict the proposed use of this property.

(b) The unsafe conditions that would have resulted from placing the house as originally drawn and permitted, were unforeseen based on the topographic map. It was not until the land was cleared and

excavated that it was apparent the house was too close to the crest of the steep slope. This necessitated moving the house forward 5 feet, placing the garage in violation of the garage setback requirement.

- (c) This Adjustment to the garage setback will allow the space to be used as a garage, as it was originally intended. The garage will allow for safer indoor parking and a more aesthetically pleasing condition than parking in front of the house. I am a senior citizen, and exterior parking increases our exposure to inclement weather and transients.
- (d) I believe there is not a substantial adverse impact to property in the vicinity. It appears that all 6 of the homes on the SW 12th St. block have garage access of less than 20 feet. These 6 homes appear to be built on the property line, with garage access being significantly less than 15 feet (see attached map). So a 15 foot garage setback is not inconsistent with the neighborhood.

The adjacent property of the Northwest Natural Gas satellite shed appears to be unaffected, as does the unimproved lot across the street. The owner of the adjacent unimproved property to the west (Mike Rickus) has expressed his non-opposition to this Setback Adjustment. Since this proposed garage is at the outside of a 90 degree curve in this wide road, the risk of blind spots to pedestrian and vehicular traffic is greatly reduced.

- (e) The utilities for this property have access in place, with trenching, conduit, and piping in place and inspected.



Attachment "B"

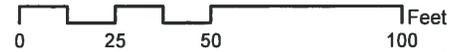
2-ADJ-17



City of Newport
Community Development Department
169 SW Coast Highway Phone: 1.541.574.0629
Newport, OR 97365 Fax: 1.541.574.0644

Zoning Map - Tesar Adjustment (File 2-ADJ-17)

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR



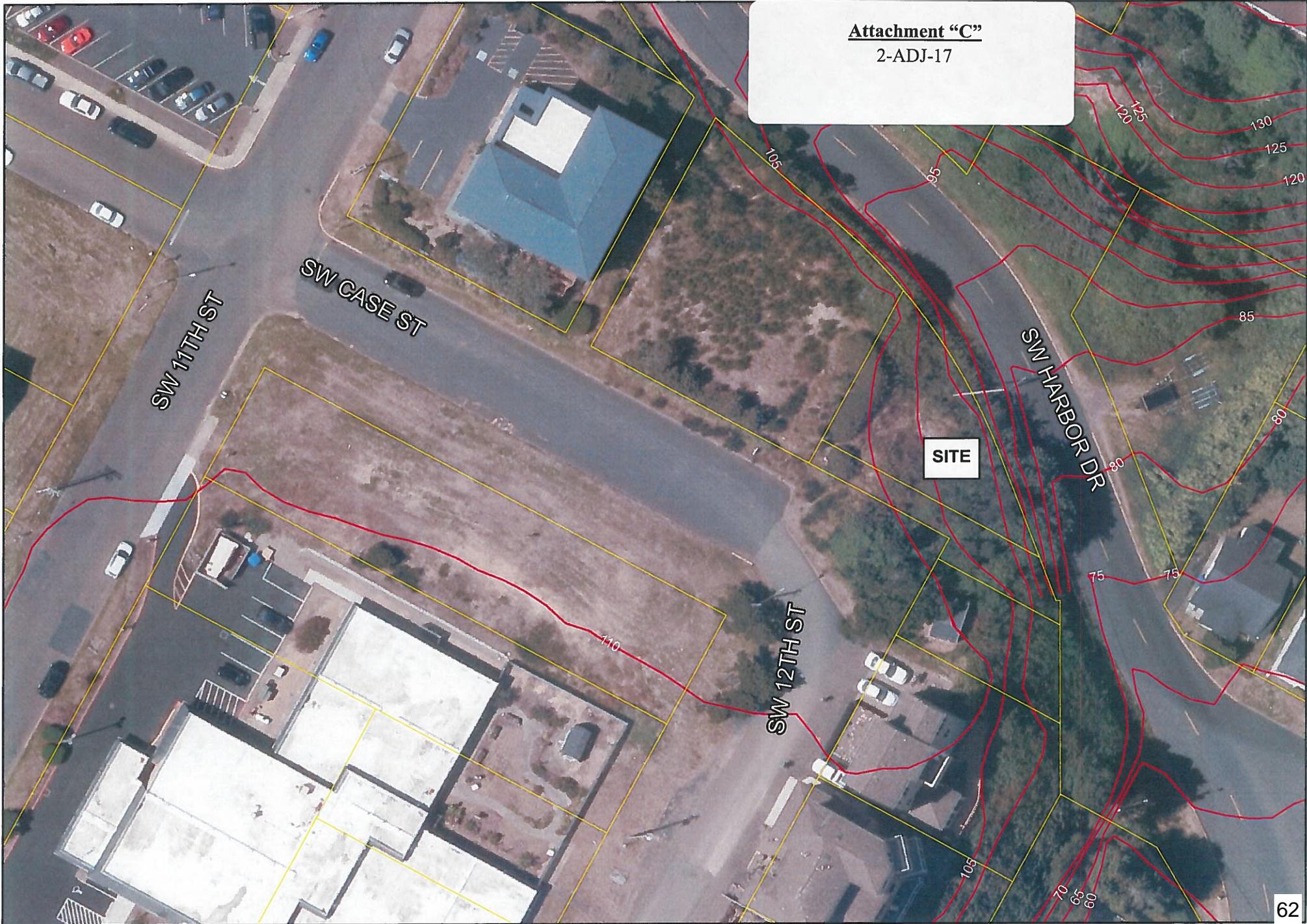
61

N



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this

Attachment "C"
2-ADJ-17



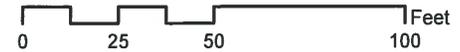
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City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone: 1.541.574.0629
Fax: 1.541.574.0644

Contour Map - Tesar Adjustment (File 2-ADJ-17)

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this

CITY OF NEWPORT
REVISED NOTICE OF A PUBLIC HEARING¹
HEARING DATE CHANGE FROM MARCH 12, 2018 TO MARCH 26, 2018

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, has rescheduled a public hearing to March 26, 2018, to consider approval of the following request. The change in date is the only modification that has been made to this notice:

File No. 2-ADJ-17

Applicant and Owner: Jonathan E Tesar.

Request: Approval of an adjustment to Section 14.11.030 (Garage Setback) of the Newport Municipal Code (NMC) to allow construction of a garage with a setback of 15 feet rather than the required 20 feet. The request is a 25% adjustment and requires a Planning Commission decision pursuant to NMC Section 14.33.030(B).

Location: 1201 NW Case Street (Assessor's Map 11-11-08-CA, Tax Lots 7001 & 7002).

Applicable Criteria: Newport Municipal Code (NMC) 14.33.050; **Criteria for Approval of an Adjustment:** (A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and (B) Any impacts resulting from the adjustment are mitigated to the extent practical; and (C) The adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and (D) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

Contact: Derrick Tokos, Community Development Director, (541) 574-0626 (address above in "Reports/Materials").

Time/Place of Hearing: Monday, March 26, 2018; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

MAILED: March 2, 2018.

PUBLISHED: March 16, 2018/News-Times.

¹This notice is being sent to affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public utilities within Lincoln County, and affected city departments.

N.E.1/4 S.W.1/4 SEC.8 T.11S. R.11W. W.M.
LINCOLN COUNTY
1" = 100'

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

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Subject Property
File 2-ADJ-17

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Revised: 03/17/20 64

NEWPORT
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MEMO

City of Newport
Community Development Department



(distributed via email**)**

Date: March 2, 2018

To: Spencer Nebel, City Manager
Tim Gross, Public Works
Rob Murphy, Fire
Jason Malloy, Police
Mike Murzynsky, Finance
Jim Protiva, Parks & Rec.
Ted Smith, Library
Victor Mettle, Planner/Code Administrator
Joseph Lease, Building Official
Public/Private Utilities

From: Sherri Marineau, Executive Assistant

RE: File # 2-ADJ-17 Adjustment Permit (Benefitted Property: 1201 SW Case St)

Please be advised that the Public Hearing date for the above land use request has been moved to the March 26, 2018 Planning Commission meeting. Please let me know if you have any further comments to be considered.

sm

Attachments

**NW Natural Gas Co
1405 SW Highway 101
Lincoln City OR 97367**

****EMAIL**
PATRICK WINGARD
DLCD NORTH COAST REGIONAL
SOLUTIONS CTR
*patrick.wingard@state.or.us***

**CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301**

**CENTRAL LINCOLN PUD
ATTN: RANDY GROVE
PO BOX 1126
NEWPORT OR 97365**

**Charter Communications
355 NE 1st St
Newport OR 97365**

**Ted Smith
Library**

**Tim Gross
Public Works**

**Rob Murphy
Fire Chief**

**Jason Malloy
Police Chief**

**Mike Murzynsky
Finance Director**

**Joseph Lease
Building Official**

**Spencer Nebel
City Manager**

**Victor Mettle
Code Administrator/Planner**

**EXHIBIT 'A'
Affected Agencies
File No. 2-ADJ-17**

**Jim Protiva
Parks & Rec.**

ABBEY RD LLC
1715 NW WOODLAND DR
CORVALLIS; OR 97330,

ADAMSON WHITE DEBORAH
707 SW 11TH ST
NEWPORT; OR 97365,

CCP NEWPORT 1528 LLC
ATTN ALTUS GROUP US #1528
21001 N TATUM BLVD
STE 1630-630
PHOENIX; AZ 85050,

CHENG HANN S &
FEY LILLIE C
818 SW 13TH ST
NEWPORT, OR 97365,

CITY OF NEWPORT
CITY MANAGER
169 SW COAST HWY
NEWPORT, OR 97365

ERICKSON PETER S
PO BOX 1657
NEWPORT, OR 97365

ERLANDER MILLER AURORA
1224 SW ABBEY ST
NEWPORT, OR 97365

HUFF KENNETH J TRUSTEE &
HUFF CHERYL A TRUSTEE
4646 NE 12TH AVE
PORTLAND, OR 97211

LALACK CHERYL J TRUSTEE &
WERDER JEFFREY S TRUSTEE &
LALACK BILL
811 SW 12TH ST
NEWPORT, OR 97365

LAWSON PETER W &
REID NANCY JANE
1206 SW ABBEY ST
NEWPORT, OR 97365

MCVEA EDWARD T &
MCVEA PEGGY L
732 SW 13TH ST
NEWPORT, OR 97365

NEWPORT BAY VENTURES LLC
ATTN MICHAEL RICKUS
156 NW 73RD CT
NEWPORT, OR 97365

NORTHWEST NATURAL GAS CO
123 NW FLANDERS ST
PORTLAND, OR 97209

OLIVER PAULA M TRUSTEE
1314 NW LAKE ST
NEWPORT, OR 97365

PACIFIC COMMUNITIES
HEALTH DISTRICT
% SAMARITAN PACIFIC HEALTH SVC
PO BOX 873
NEWPORT, OR 97365

REED CRAIG B &
REED LISA M
6363 ORANGEWOOD DR
ALTA LOMA, CA 91701

ROLES WILMA E (TOD)
834 SW 13TH ST
NEWPORT, OR 97365

STARK MARGO ELAINE &
BEST GERALD GENE
1221 SW HARBOR DR
NEWPORT, OR 97365

TESAR JONATHAN E &
TESAR LAURA L
2902 S MORAIN PL
KENNEWICK, WA 99337

WERDER ALBERTA TRUSTEE &
LALACK CHERYL J TRUSTEE &
WERDER JEFFREY S TRUSTEE
811 SW 12TH ST
NEWPORT, OR 97365

Property Owners Witin 200 Ft
1201 SW Case St

File No. 2-ADJ-17

CITY OF NEWPORT
REVISED NOTICE OF A PUBLIC HEARING
HEARING DATE CHANGE FROM MARCH 12, 2018 TO MARCH 26, 2018

The Planning Commission of the City of Newport, Oregon, has rescheduled a public hearing to Monday, March 26, 2018, at 7:00 p.m. in the City Hall Council Chambers to consider a request (File No. 2-ADJ-17) submitted by Jonathan E Tesar for approval of an adjustment to Section 14.11.30/"Garage Setback" of the Newport Municipal Code (NMC) to allow construction of a garage with a setback of 15 feet rather than the required 20 feet. The request is a 25% adjustment and requires a Planning Commission decision pursuant to NMC Section 14.33.030(B). The property is located at 1201 NW Case Street (Assessor's Map 11-11-08-CA, Tax Lots 7001 & 7002). Per Newport Municipal Code (NMC) 14.33.050, the criteria for approval of an adjustment are: That granting the adjustment will equally or better meet the purpose of the regulation to be modified; and that any impacts resulting from the adjustment are mitigated to the extent practical; and that the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and that if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above).

FOR PUBLICATION ONCE ON FRIDAY, MARCH 16, 2018

Townsend came back to Newport in March 2013. "I get back in March with

principal — just to try and get in the foot in the door for a potential job down the road.

bone at 541-265-8571 ext. 222 or brathbone@newportnewstimes.com



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YOUR ATTORNEY IMMEDIATELY UPON RECEIVING THIS NOTICE. Your previous attorney may not be representing you in this matter. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY and you meet the state's financial guidelines, you are entitled to have an attorney appointed for you at state expense. TO REQUEST APPOINTMENT OF AN ATTORNEY TO REPRESENT YOU AT STATE EXPENSE, YOU MUST IMMEDIATELY CONTACT the Lincoln County Circuit Court, Juvenile Department, at 225 West Olive Street, Newport, OR 97365, phone number (541) 285-4236, between the hours of 8:00 a.m. and 5:00 p.m. for further information. IF YOU WISH TO HIRE AN ATTORNEY, please retain one as soon as possible and have the attorney present at the above hearing. If you need help finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636. IF YOU ARE REPRESENTED BY AN ATTORNEY IT IS YOUR RESPONSIBILITY TO MAINTAIN CONTACT WITH YOUR ATTORNEY AND TO KEEP YOUR ATTORNEY ADVISED OF YOUR WHEREABOUTS. (2) If you contest the petition, the court will schedule a hearing on the allegations of the petition and order you to appear personally and may schedule other hearings related to the petition and order you to appear personally. IF YOU ARE ORDERED TO APPEAR, YOU MUST APPEAR PERSONALLY IN THE COURTROOM, UNLESS THE COURT HAS GRANTED YOU AN EXCEPTION IN ADVANCE UNDER ORS 419B.918 TO APPEAR BY OTHER MEANS INCLUDING, BUT NOT LIMITED TO, TELEPHONIC OR OTHER ELECTRONIC MEANS. AN ATTORNEY MAY NOT ATTEND THE HEARING(S) IN YOUR PLACE. PETITIONER'S ATTORNEY: Holly Ferrioli - Assistant Attorney General, Department of Justice 1162 Court Street NE, Salem, OR 97301-4096. Phone: (503) 934-4400. ISSUED this 5th day of March, 2018. Issued by Holly Ferrioli #096244, Assistant Attorney General. M-09, M-16, M-23 (80-23).

FORECLOSURE SALE
Saturday march 17, at noon. Depoe Bay Storage 440 E. Collins, Depoe Bay. On the following units: #95 Ronika Diaz, #96 Richard Shores, #63 Bruce DiCampi, #37 Gary Abel, #44 Wendy Tucker. 541-765-2353. M-09, M-14, M-16 (81-16).

IN THE CIRCUIT COURT OF THE STATE OF OREGON IN AND FOR THE COUNTY OF WASCO WELLS FARGO BANK,

N.A., PLAINTIFF VS. BRIAN HAMILTON; DEEANDRA HAMILTON; PNC BANK, N.A., SUCCESSOR IN INTEREST TO NATIONAL CITY BANK; PARTIES IN POSSESSION, DEFENDANTS. NO. 17CV37561 CIVIL SUMMONS TO THE DEFENDANTS: Deeandra Hamilton a/k/a Deeandra J. Hamilton a/k/a Deeandra Smith a/k/a Deeandra J. Smith. NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! A lawsuit has been started against you in the above-entitled Court by Wells Fargo Bank, N.A., Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is on file at the Wasco County Courthouse. You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. The object of the complaint is to foreclose a deed of trust dated April 16, 2008 and recorded as Instrument No. 2008-002583 given by Brian Hamilton and Deeandra Hamilton, Married, who acquired title as, Brian Hamilton and Deeandra Smith, not as tenants in common but with right of survivorship on property commonly known as 1103 - 4th Avenue, Mosier, OR 97040 and legally described as: Lot 1, Block D, MOSIER FIRST ADDITION, in the City of Mosier, County of Wasco and State of Oregon. The complaint seeks to foreclose and terminate all interest of Deeandra Hamilton a/k/a Deeandra J. Hamilton a/k/a Deeandra Smith a/k/a Deeandra J. Smith and all other interests in the property. The "motion" or "answer" (or "reply") must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee. The date of first publication of the summons is March 19, 2018. If you are in the active military service of the United States, or believe that you may be entitled to protection of the SCRA, please contact our office. If you do not contact us, we will report to the court that we do not believe that you are protected under the SCRA. If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763

(in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. Attorneys for Plaintiff, SHAPIRO & SUTHERLAND, LLC /s/ James A. Craft #090146 [jcraft@logs.com] [x] Kelly D. Sutherland #87357 [ksutherland@logs.com] [] Cara J. Richter #094855 [crichter@logs.com] [] Holger Uhl #950143 [huhl@logs.com]* 1499 SE Tech Center Place, Suite 255, Vancouver, WA 98683 7632 SW Durham Road, Suite 350, Tigard, OR 97224* (360)260-2253; Fax (360)260-2285 M-16, M-23, M-30, A-06 (88-06).

PUBLIC NOTICE
The Pacific Communities Health District Board of Directors will hold a Regular meeting on Monday, March 19, at 4:00 p.m. in the Education Conference Room at Samaritan Pacific Communities Hospital, 930 SW Abbey St., Newport, Oregon. The meeting agenda includes meeting minutes, financial reports and facility reports. Lisa Ely, Recorder, PACIFIC COMMUNITIES HEALTH DISTRICT. For additional information contact 541-574-1803 or www.pchd-district.org. M-16 (89-16).

NOTICE OF SHERIFF'S SALE #18-0347
On April 26, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 8803 NW Coast Road, Seal Rock, OR 97376. The court case number is 17CV17945, Liberty Home Equity Solutions, Inc. (FKA Genworth Financial Home Equity Access, Inc.), plaintiff(s) vs. Liane Hein, Court Appointed Guardian and Conservator for Mary E. Works aka Mary E. Uffelmann; and all other persons, parties, or occupants unknown claiming any legal or equitable right, title, estate, lien or interest in the real property described in the complaint herein, adverse to Plaintiff's title, or any cloud on Plaintiff's title to the Property, defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> M-16, 23, 30, A-06 (90-06).

NOTICE OF SHERIFF'S SALE #18-0317
On April 19, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 315 NE Vista

Terrace Ave, Depoe Bay, OR 97341. The court case number is 16CV14451, JPMorgan Chase Bank, N.A., plaintiff(s) vs. Jean-dre Atchley aka Jeandre Savy; Mark Atchley; The Unknown Heirs and Devises of M. Irene Reisinger aka Mabel I. Reisinger Booth; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> M-16, M-23, M-30, A-06 (91-06).

NOTICE OF SHERIFF'S SALE #18-0324
On April 24, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 824 E Olive St, Newport, OR 97365. The court case number is 17CV14933, U.S. Bank National Association, not in its individual capacity but solely as Trustee for NRZ Pass-Through Trust VIII, plaintiff(s) vs. William Stanley Ouder Kirk II, Unknown Heirs and Devises of Sheridel Ouder Kirk; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> M-16, M-23, M-30 A-06 (92-06).

NOTICE OF SHERIFF'S SALE #18-0343
On April 24, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 2752 NE Reef Ave, Lincoln City, OR 97367. The court case number is 17CV07261, Nationstar Mortgage LLC D/B/A Champion Mortgage Company, plaintiff(s) vs. The Dolores Shadro Revocable Trust Dated April 18, 1985; The Unknown Heirs, Devises, and Assignees of Dolores J. Shadro; Wilbur Shadro; Secretary of Housing and Urban Development; and All Other Persons or Parties Unknown Claiming any Right, Title, Lien, or Interest in the Real Property commonly known as 2752 NE Reef Ave, Lincoln City, OR 97367 defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> M-16, M-23, M-30, A-06 (93-06).

NOTICE OF SHERIFF'S SALE #18-0346
On April 26, 2018, at the

hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 3408 Harlan Burntwoods Rd, Blodgett, OR 97326. The court case number is 17CV08529, U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, plaintiff(s) vs. David W. Collett, an individual; Barbara Collett aka Barbara D. Collett, an individual; and all other persons, parties, or occupants unknown claiming any legal or equitable right, title, estate, lien, or interest in the real property described in the complaint herein, adverse to Plaintiff's title, or any cloud on Plaintiff's title to the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> M-16, M-23, M-30, A-06 (94-06).

CITY OF NEWPORT REVISED NOTICE OF A PUBLIC HEARING HEARING DATE CHANGE FROM MARCH 12, 2018 TO MARCH 26, 2018
The Planning Commission of the City of Newport, Oregon, has rescheduled a public hearing to Monday, March 26, 2018, at 7:00 p.m. in the City Hall Council Chambers to consider a request (File No. 2-ADJ-17) submitted by Jonathan E Tessa for approval of an adjustment to Section 14.11.30/"Garage Setback" of the Newport Municipal Code (NMC) to allow construction of a garage with a setback of 15 feet rather than the required 20 feet. The request is a 25% adjustment and requires a Planning Commission decision pursuant to NMC Section 14.33.03(B). The property is located at 1201 NW Case Street (Assessor's Map 11-11-08-CA, Tax Lots 7001 & 7002). Per Newport Municipal Code (NMC) 14.33.050, the criteria for approval of an adjustment are: That granting the adjustment will equally or better meet the purpose of the regulation and that any impacts resulting from the adjustment are mitigated to the extent practical; and that the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and that if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordi-

NOTICE
Celco Partnership and its controlled affiliates doing business as Verizon Wireless (Verizon) are proposing to build a New 1000 foot Monopole Communications Tower near 121 East Olive Street, Newport, Lincoln County, OR 97365. Public comments regarding potential effects from this site on historic properties may be submitted within 30 days from the date of this publication to: Danielle Ross McKissic, Wireless Projects, Environmental Resources Management, 3200 Windy Hill Road SE, Suite 1500W, Atlanta, GA 30339 email: zvwnepa@erm.com, Phone: 1-678-486-2700. M-16 (96-16).

NOTICE TO DEBTORS
Claire A. Wipperman of Newport, OR was deceased on December 20, 2017. Any debtors with valid claims should contact Wipperman Estate Executor, 1144 SW Mark Street, Newport, OR 97365, no later than April 15, 2018. M-16, M-23, M-30 (97-30). PUBLIC

nances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record is left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department seven days prior to the hearing. The application materials, the applicable criteria, and other file materials are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above). M-16 (95-16).

CITY OF NEWPORT

MAR 05 2018

RECEIVED

February 28, 2018

Planning Commission
City of Newport, Oregon

RE: Public Hearing

File No. 2-ADJ-17

Jonathon Tesar

Commission Members,

We are writing this letter due to our inability to attend the meeting on March 12th.

We own 2 properties in close proximity to the subject property. We have spoken to Mr. Tesar and are aware of the setback he is requesting. We see no problem with the proposed new setback and support your approving the request. The topography of the area frequently requires "adjustments" to properly adjust dwellings onto lots in this area. As there have been numerous adjustments to neighboring properties in the area in the past, we see no reason why this request should not be granted.

Respectfully,



Bill & Cheryl Lalack

801 & 811 SW 12th St.

Newport, Ore.

811 SW 12th St.
Newport, OR.
97365

PORTLAND OR 970

02 MAR 2018 PM 2 L



CITY OF NEWPORT
COMMUNITY DEVELOPMENT
PLANNING COMMISSION
NEWPORT CITY HALL
169 SW COAST HWY
NEWPORT, OR 97365

97365-380669



Sherri Marineau

From: Tim Gross
Sent: Monday, February 12, 2018 4:41 PM
To: Sherri Marineau; Derrick Tokos
Cc: Olaf Sweetman
Subject: RE: Adjustment Permit -2-ADJ-17

As you can see from the plot plan, the finished street does not extend through the proposed developed property. The property owner needs to extend the curb and pavement through the limits of the lot. We have discussed this in another context but I wonder if the street improvements do not also need to be a condition of approval for the setback adjustment? Also, with only a 15' setback, the owner should identify where the proposed completed curb will be located to show that they will not hang into the street with a car parked in the drive when the curb is completed.

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Sherri Marineau
Sent: Monday, February 12, 2018 2:54 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>; Spencer Nebel <S.Nebel@NewportOregon.gov>; Tim Gross <T.Gross@NewportOregon.gov>; Robert Murphy <R.Murphy@NewportOregon.gov>; Michael Murzynsky <M.Murzynsky@NewportOregon.gov>; Jim Protiva <J.Protiva@NewportOregon.gov>; Ted Smith <t.smith@newportlibrary.org>; Victor Mettle <V.Mettle@NewportOregon.gov>; Joseph Lease <J.Lease@NewportOregon.gov>; Olaf Sweetman <O.Sweetman@NewportOregon.gov>; Jason Malloy <J.Malloy@newportpolice.net>
Subject: Adjustment Permit -2-ADJ-17

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
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Community Development Department
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Newport, OR 97365
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Planning Commission Regular Session Agenda Item Report

Agenda Item No. 2016-2304

Submitted by: Sherri Marineau

Submitting Department: Community Development

Meeting Date: March 26, 2018

SUBJECT

Nominate Member to Assist with Review and Scoring of the Transportation System Plan Update Consultant Proposals.

Recommendation:

ATTACHMENTS

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