



# Meeting Notice

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Please note that there will not be a 6:00 p.m. Newport Planning Commission work session meeting held prior to the regular 7:00 p.m. session on **Monday, October 13, 2014.**

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## **AGENDA & NOTICE OF PLANNING COMMISSION MEETING**

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The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, October 13, 2014**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, 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, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

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### **NEWPORT PLANNING COMMISSION**

**Monday, October 13, 2014, 7:00 p.m.**

#### **AGENDA**

**A. Roll Call.**

**B. Approval of Minutes.**

1. Approval of the Planning Commission regular meeting minutes of September 22, 2014.

**C. Citizens/Public Comment.**

1. 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.

**D. Consent Calendar.**

1. Final Order for File No. 4-CUP-14. Approval of a final order for a conditional use permit as submitted by Great American Yogurt & Food Co, dba Mt. Angel Sausage Co (Jim Hoke) (Chris Minor, authorized representative) (Jack's Seafood, Inc., property owner) for restaurant/retail use at 460 SW Bay Blvd. The Planning Commission held a public hearing on this matter on September 22, 2014.

**E. Action Items.**

**F. Public Hearings.**

1. File No. 5-CUP-14. Consideration of a request submitted by Wyles Sanders (Rebecca Lytwyn, Oregon Coast Bank, authorized representative) (Oregon Coast Bank, property owner) per Chapter 14.03.050(E)(7)/"Residential Uses" of the Newport Municipal Code (NMC) for a conditional use permit in order to operate a daycare facility in an R-3 zoning district on property located at 125 NE Lincoln St. Unit B (Assessor's Map 11-11-09-BA; Tax Lot 502).

**G. New Business.**

**H. Unfinished Business.**

**I. Director Comments.**

**J. Adjournment.**

**Draft Minutes**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**Monday, September 22, 2014**

**Commissioners Present:** Jim Patrick, Rod Croteau, Lee Hardy, Gary East, and Bill Branigan.

**Commissioners Absent:** Mike Franklin and Bob Berman (*excused*).

**City Staff Present:** Community Development Director Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, Hardy, Croteau, Patrick, East, and Branigan were present. Berman and Franklin were absent, but excused.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of July 28, 2014, and the work session minutes of September 8, 2014.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Hardy, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No comments on non-agenda items.

D. **Consent Calendar.** Nothing on the consent calendar.

E. **Action Items.** No items requiring action.

F. **Public Hearings.**

Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance applying to the hearing on tonight's agenda. He asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Croteau and East both declared site visits, and Hardy and Branigan both had driven by the site. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 4-CUP-14.** Consideration of a request submitted by Great American Yogurt & Food Co, dba Mt. Angel Sausage Co (Jim Hoke) (Chris Minor, authorized representative) (Jack's Seafood, Inc., property owner) per Chapter 14.03.080(18)/ "Water-dependent and Water-related Uses" of the Newport Municipal Code (NMC) for a conditional use permit in order to expand a 200 square-foot restaurant into a 325 square-foot storage area historically used as a smokehouse and for storage of seafood products; and also to expand 247 square feet into the public right-of-way for patio use. Since restaurant uses are permitted outright in a C-2 district, they are allowed in the W-2 district following issuance of a conditional use permit. The property is located at 460 SW Bay Blvd (Assessor's Map 11-11-08-DB; Tax Lot 1800).

Patrick opened the hearing for File No. 4-CUP-14 at 7:03 p.m. by reading the summary from the agenda. He called for the staff report. Tokos noted that in the Commissioners' packets the applicant has some information as well as the staff report outlining the approval criteria along with various other analyses. He noted that he also had the complete case file should anyone need to review it. Tokos noted that tonight the Commissioners received additional pieces of information; an email from Janet Webster and one from Cris Torp, both of whom serve on the Bay Front Parking District Committee. As noted, this request is for the authorization for a restaurant on the Bay Front at 460 SW Bay Blvd. There is approximately 527 square feet of total restaurant space on the property along with 247 square feet of outdoor patio space, which would be within the public right-of-way. There is a corresponding temporary encroachment permit that the applicant has applied for as well, which would be handled at the staff level. It is not something we would issue until after the Commission has made a decision on the conditional use permit. Tokos noted that the criteria are found in NMC Chapter 14.34; and he read those for the record. Tokos said the staff analysis provides a background and why this is before the Planning Commission. With conditional use permits, 50 vehicle trips per day automatically go before the Planning Commission. Our code calls for using the ITE manual, a transportation engineer manual with fixed ratios for uses to figure out how many trips are generated. This application clearly exceeded 50 trips per day; therefore, it is brought to the Planning Commission. There is also a site plan requirement. The applicant provided sufficient information for the Commission to evaluate; but one suggested condition to impose is that the applicant provide a scaled site plan that shows the specific area being used for restaurant use. We have it for the patio; but for the portion of the building that will be used, it is less clear. Having that helps for

recordkeeping and when questions come up in the future. Especially when there are mixed uses as with this building, it helps to understand which areas go with which conditional use approval.

Going through the criteria, first regarding the adequacy of the public facilities, Tokos noted that as outlined in the staff report, this is an existing developed area and building. We actually have some robust infrastructure in terms of water and sewer. It's designed to handle robust users like the fish plants; so a restaurant of this size is not an issue. There is good street access and sidewalks along Bay Boulevard and Fall Street. With the information included in the record and reflected in the staff report, there is more than adequate evidence for the Commission to find that the application meets this criterion. Next, regarding the request complies with the underlying zone or overlay zone, the applicant provided analysis in that regard. It is sufficient to find that this criterion has been met. Regarding the criterion that the use does not have an adverse impact greater than existing uses, the biggest thing that jumps out on the Bay Front is parking and its adequacy. He walked through that issue with this application by explaining how it satisfied the requirement in large part because of the Bay Front Parking District, which was formed to replace the payment-in-lieu-of program. As part of that parking district, those businesses are paying business license surcharges to be part of the district, which is used to make incremental improvements; small changes here and there. Those businesses get the benefit of five off-street spaces "gratis" for being in the district. This use falls within five spaces; so they are fine as proposed. They don't have to provide new off-street parking spaces; and they can't because there's not sufficient area on the property. The last criterion relates to building modifications; and there are none proposed. The applicant provided good photos of how the building looks now. The portion they are expanding into was originally a smokehouse for storage only. Some changes may be required to meet building code for changing it to a restaurant; and we don't know if that will require exterior modifications. If they need to modify the building to meet code for restaurant occupancy, the Commission may want to impose a condition that this comes back because you should see that because it should be evaluated as part of the conditional use process.

That gets to the conditions of approval. The first is one imposed as practice, which is that what is authorized is what is presented by the applicant. The second condition is for the applicant to provide a scaled site plan. The third condition is that the applicant complies with all applicable building codes, fire codes, and other public health and safety regulations. The applicant indicates that they intend to do that. But in addition, if it leads to modifications of size or height of the building, that a conditional use permit application be submitted to establish the changes are consistent with the character of the neighborhood. The last condition is that the applicant obtain an encroachment permit for that portion of the patio that extends in the public right-of-way. Tokos said if the Commission chooses to find this application satisfies the criteria and approves the request this evening with instructions to bring the final order back at the next meeting, we would sequence the encroachment permit so it's ready at the same time.

Croteau asked about the issue about garbage cans that was raised by Janet Webster. Tokos said with respect to Webster's comments regarding trash, he doesn't see linkage to conditional use permit criteria. Without criteria having a relationship with the condition, you really can't impose it. He doesn't believe the conditional use permit is the appropriate place to tackle that. It's typically handled through the nuisance code, and we do have code enforcement officials for that. We have a franchise agreement with Thompsons Sanitary, and that's how we manage common and shared trash receptacles in the public rights-of-way throughout the city. He doesn't see a good linkage with the conditional use permit criteria for addressing that issue. Patrick said Webster speaks about an overall plan for the Bay Front; and he asked if there's a plan he doesn't know about. Tokos thought that is something that has come up in discussions with the Bay Front Parking District. He did want to note that Webster's letter did say that she didn't see an issue with this request, as did the two other members of the Parking District. Tokos said that we are required to provide conditional use applications to the Parking District so they can speak to parking issues. The district is formed of citizens appointed by Newport City Council to basically work on parking issues on the Bay Front. What is available to them is the surcharge and also \$240 thousand from the old payment-in-lieu-of parking fund reserved for the Bay Front funds collected over the years. He said what Webster is referring to are discussions they've had about how basically this parking district can use the surcharge for an interim term. This was just a transition from the payment-in-lieu-of program. This is working better but doesn't lessen the need to address the parking issue. There needs to be a discussion long-term about where parking goes, whether it be more robust transit or a parking structure; but looking harder at the Bay Front area and how parking issues can be addressed. It can't be incrementally with each of these applications; it needs to be holistic. Tokos thinks that is what Webster is looking for.

**Proponents:** The applicant's representative, Chris Minor, PO Box 510, Newport (236 W. Olive St.), and the applicant, Jim Hoke, came forward. Minor first wanted to mention that he brought marked copies of a photo that was an exhibit in the application and had provided them to the Commission. He said that the reason for that was Tokos had mentioned determining the exact area for which the conditional use is sought. He provided this marked photo for the Commission's information to better visualize it. The storefront portion is marked in yellow where the restaurant will be. Above there, that is not used by or leased by the applicant. The area where you see the big butterfly above the yellow storefront and to the right is Jambo's Restaurant, which has no relationship to Mr. Hoke's operation. Minor noted that Tokos did a really thorough job in the staff report analysis; and he knows that this is a real investment of the Commissioners' time to come to these hearings. Minor also wanted to mention that Dave Gesik for Jack Gesik of Jack's Seafood, was in attendance as well and could answer questions. He said if you're interested in history, the property has been used by many, many different businesses over the years; Jack's Seafood, Deep Down Dave's, and he thinks some crab operation was there. Minor said that Mr. Hoke is trying to be a good citizen. Some of this building may be grandfathered in as nonconforming; but he wanted to do a straightforward approach and apply for a conditional use permit and not get into an argument with that sort of thing. Minor said they have no issues with the staff report; but he might clarify number 3 of the recommended conditions on the last page. That states that the applicant shall comply with all codes; and if the applicant must modify the size or height of the building,

a new conditional use permit could be required. He asked what if he puts in a skylight, a vent, or an exhaust fan. He's thinking that's not the sort of things that are meant. He wondered if we might say "if the applicant must materially modify the size or height" or "the slightest changes won't require a whole new hearing." Tokos said that he had no problem with that. Minor said on the first condition, it states no work unless what is specified in the documents. He wondered if when you say work, aren't we really basing this on the use of a restaurant, so do we mean conversion to a restaurant use. He doesn't know if the exact description of all work to accomplish that is described in the application. He's unsure what to say they are doing. He's a little uncomfortable with that. Tokos said, as discussed, the authorization would be for restaurant use within the designated area. This is getting at that you are bound by that. You may use it for storage for a period of time and then full out restaurant. Our view is that a restaurant is a restaurant. A restaurant has these different components, it doesn't matter how you use it in the future. Minor said what bothers him is the use of the word "work." Tokos said it could read, no "use" shall occur other than specified; that's fine. Minor thought that was good. He said that he looked at the material from Torp and Webster. He thought that Webster's comments are directed at general concerns for Bay Front development more than this project. He agrees with Tokos that probably those issues are irrelevant to conditional use permit standards. Just to set his mind at ease a bit, Minor had asked Mr. Hoke if he has adequate garbage disposal; and Mr. Hoke told him that Thompsons is doing fine. Also Mr. Hoke has no problem suggesting that employees don't park on the street; it's time-limited anyway. Minor said he could comment that this business doesn't generate any trips. Although some restaurants generate trips; for example he expects that the restaurant in the old city hall generates trips. He said that the people doing business at Mr. Hoke's establishment are wandering up and down the Bay Front anyway.

Branigan asked how many tables Mr. Hoke is talking about; what's the occupancy of the restaurant. Hoke said two tables on the patio to sit about twelve people; no tables in the building. It is take-out sales.

There were no other proponents present wishing to testify.

**Opponents or Interested Parties:** There were no opponents present wishing to testify; so the applicant waived rebuttal.

Patrick closed the public hearing at 7:25 for Commissioner deliberation. Branigan said that, having reviewed the materials and the graphics which really helped, it looks as though all of the bases are covered. He would recommend that the Commission go forward with the conditional use permit. East agreed; and he thought the Commission should approve it, following the staff recommendations. Croteau saw no problems; and he would also recommend approval including the modified wording of the conditions. Hardy thought it was fine, too. Patrick felt that the application meets the criteria. He said he would be looking for a motion for approval with the two changes: in the second sentence of the first paragraph, changing the word "work" to "use;" and in the third sentence of the third paragraph, adding the work must "materially" modify.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner East, to approve the conditional use permit application with the modified conditions indicated. The motion carried unanimously in a voice vote.

**G. New Business.** Patrick thought that the Commission may want to discuss the Bay Front plan. Tokos said that this is something that we will pick up with the Bay Front Parking District before it expires. The districts ran for five years. We'll look at it before it goes out for re-authorization and talk a bit about it. In the beginning, they were looking at transit; but they're unsure that is the solution. There is a desire to have some discussion about doing metered parking down there as a real revenue source for financing construction of a parking structure on maybe the Abbey Street lot. The carrot being able to lift off-street parking off the Bay Front because they wouldn't require it anymore. We can't really do it now; we would send the congestion off the deep-end if we removed it without a solution. That group wants to talk about it and maybe forward a recommendation to the City Council and the Planning Commission. He said it sounds like what Webster was talking about is what Nye Beach did. Webster is not sure parking is the only issue, and we shouldn't limit it to that. With a parking district, that is usually what you limit all discussion to. Tokos said with that group, it's hard to get a quorum. With their different schedules and commitments, it is hard to get those folks together. Tokos knows that Webster doesn't want to limit it to parking; but he doesn't know the full extent. There are no design standards on the Bay Front; it's not like Nye Beach. Branigan asked how the Port authority fits into this. Tokos said the Port fits in under the district requirements. We have an IGA with the Port regarding the parking district. They contribute \$6 thousand annually. For one thing, the Port has added the most meaningful spaces at Port Dock 7. With Local Ocean Seafood, Laura Anderson purchased the lots next to her building. They expanded the restaurant to the second floor, and where the fishermen used to park is now used for the restaurant. Tokos said also, there is a fair amount of development potential that can't be realized without a solution to the parking. There are small buildings that could be upsized and probably would. People have come in and talked to Tokos; but there's no way. There no place to put cars. The City owns property on some of those steep slopes. We looked at pushing the Abbey Street lot back into the hill; but it requires retaining walls and is not cost-effective. The City owns part of the Lee Street parking lots and looked at public and private partnering on those, too, but couldn't squeeze out more spaces. We've made a better experience with sidewalks, striping, improving the cross walks and handicapped locations. Those are small things. Patrick asked if the districts are coming up on five years, isn't Nye Beach first? Tokos said yes, they are first; and that should be soon. He noted that staffing with three districts is difficult; at the time they were formed, we had a Senior Planner.

**H. Unfinished Business.** Tokos wanted to update the Commissioners on the Nye Beach Design Review progress. The ad hoc work group met last week and had a healthy discussion. SERA Architects came in and made recommendations on what could be done with the design guidelines and had tiered them 1, 2 or 3; 1 taking the least amount of effort and resources, and 3 the most. The

group had a healthy discussion about that. They worked through that. There are differing opinions. There is not consensus on some items. There was consensus to engage SERA to do a refreshment of the guidelines, update the illustrations, and clarify the language. They will also take a look and make a recommendation for the triggering thresholds for the Planning Commission. They will be refining the criteria so the end result is more in line with what the Plan calls for in terms of architectural development. He has talked to SERA, and it will be 2-3 months for SERA to get this in their queue. Tokos will update the zoning code to cross-reference to the new refreshed guidelines. That is what will come back to the group in 2-3 months; then they will provide feedback, and it will be brought back to the Planning Commission. The group was disappointed it would take 2-3 months; but it takes a little bit of time. If it's sooner, we'll move it along; but we want to be realistic. Patrick thought that is what we actually need. Tokos said some of them were looking at solar access guidelines, view corridor, view shed studies; but that's not going to happen. Those were outside the scope and would require substantial effort. There wasn't consensus that that should be tackled. There was some discussion of why consensus is important. We want to move forward on the general work that there was mutual agreement on. We don't want things that there isn't consensus on to hijack things where there is agreement. That's not to say that shouldn't be brought back to the Planning Commission. It would just be handled in a different way. We'd come back and say here are the issues that weren't resolved through consensus and here is why. The Commission will have to think about that to see if there is anything in that basket that really should be considered now or at a later date after we see how the near-term things go. Trying to get your arms around the concerns that buildings are too big or too tall is hard. You can adjust the tolerances; so instead of 35 feet it is 30 feet for the trigger, or instead of 100 feet in length it's 75 feet. You can play around with different tolerances. People will put more into the design because they don't want to go to the Planning Commission where there is a certain amount of uncertainty. Tokos said we will see how it goes. His hope is that by having the refreshed guidelines and the changes on the zoning end to cross-reference, those targets will get a little bit clearer and points of disagreement will get clearer. Then you are dealing with specifics; not just general. Then the Planning Commission will have to take that and run with it. Patrick agreed there are a lot of differing opinions on that committee. Tokos said it's a good time to tackle this. There hasn't been a big project in Nye Beach for several years. It's better to fine-tune it now than trying to have this conversation when a large, contentious project is moving through.

#### **I. Director's Comments.**

1. Tokos noted that Elwin Hargis is officially retiring for the second time as of October 1<sup>st</sup>. He will stay on through the recruitment as our official Building Official and will provide transition for the new Building Official. We will be hiring a full-time official. The position is open until filled. The initial screening was September 15<sup>th</sup>. Interviews will be on October 1<sup>st</sup>. Patrick, as a contractor representative, will be involved in that along with Public Works Director Tim Gross, Fire Chief Rob Murphy, and Hargis. It will be a full day of interviews of eight candidates. They are charged with recommending two to three for final interviews the next week with Tokos and Michael Morter from the State Building Codes Division. The new human resources person will be getting packets, schedules, questions, and the rating system to those doing the interviews. In the end the interview team will be putting collective heads together to come up with two or three for final interviews. This possibly means we will scale back on our contract services. It will allow us to provide more robust building services. Instead of just Tuesday and Thursday inspections we may be able to add a third day. We will be working on a schedule. He could certainly see office hours every day of the week. East asked if that makes more sense than contract. Tokos said that contract services have been great. There can be some issues with quality all the way through. Having it in house, you can address things that you can't with contract services. You can get out with contractors; deal with unsafe buildings, which haven't been dealt with; and take advantage of "e" permitting. There are definite advantages there. We don't want to think about it, but if we have damaged structures in a disaster, it's good to have a local to do structural assessments. It's good having local expertise. Tokos added that we had a great candidate pool.

2. Croteau asked if Tokos has heard anything on the electronic sign issue. He keeps getting questions about Nye Beach becoming the new Las Vegas. Tokos said he has had some of the same emails. He got back to them. He can give language to the Commission to get around not allowing them on public-zoned property if that is something they really want to take on.

3. Tokos said October should be pretty light for the Planning Commission. The legislative items won't hit. November and December is looking to build up. Urban renewal will be coming back at that time. There are two or three code revisions. He is anticipating that the Commission is having only one December meeting; not one around the holiday. Patrick reminded everyone that he won't be at the second meeting in October.

4. Tokos informed the Commissioners that there will be a going away get-together for Elwin Hargis and Chuck Crawford, our electrical inspector, on September 30<sup>th</sup> from 8:30 a.m. to 10:00 a.m. The Commissioners are welcomed to attend.

**K. Adjournment.** Having no further business to discuss, the meeting adjourned at 7:48 p.m.

Respectfully submitted,

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Wanda Haney  
Executive Assistant

## Derrick Tokos

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**From:** Jim Hoke <jim@ropesausage.com>  
**Sent:** Monday, September 29, 2014 12:17 PM  
**To:** Derrick Tokos  
**Subject:** FW: MAS Newport  
**Attachments:** Newport MAS Floor Plan.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Derek

Will this satisfy the Site Plan request?

Thanks

Jim Hoke

Mount Angel Sausage Company

105 S Garfield

Mount Angel, Oregon 97362

503-845-2322

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WWW.Ropesausage.com

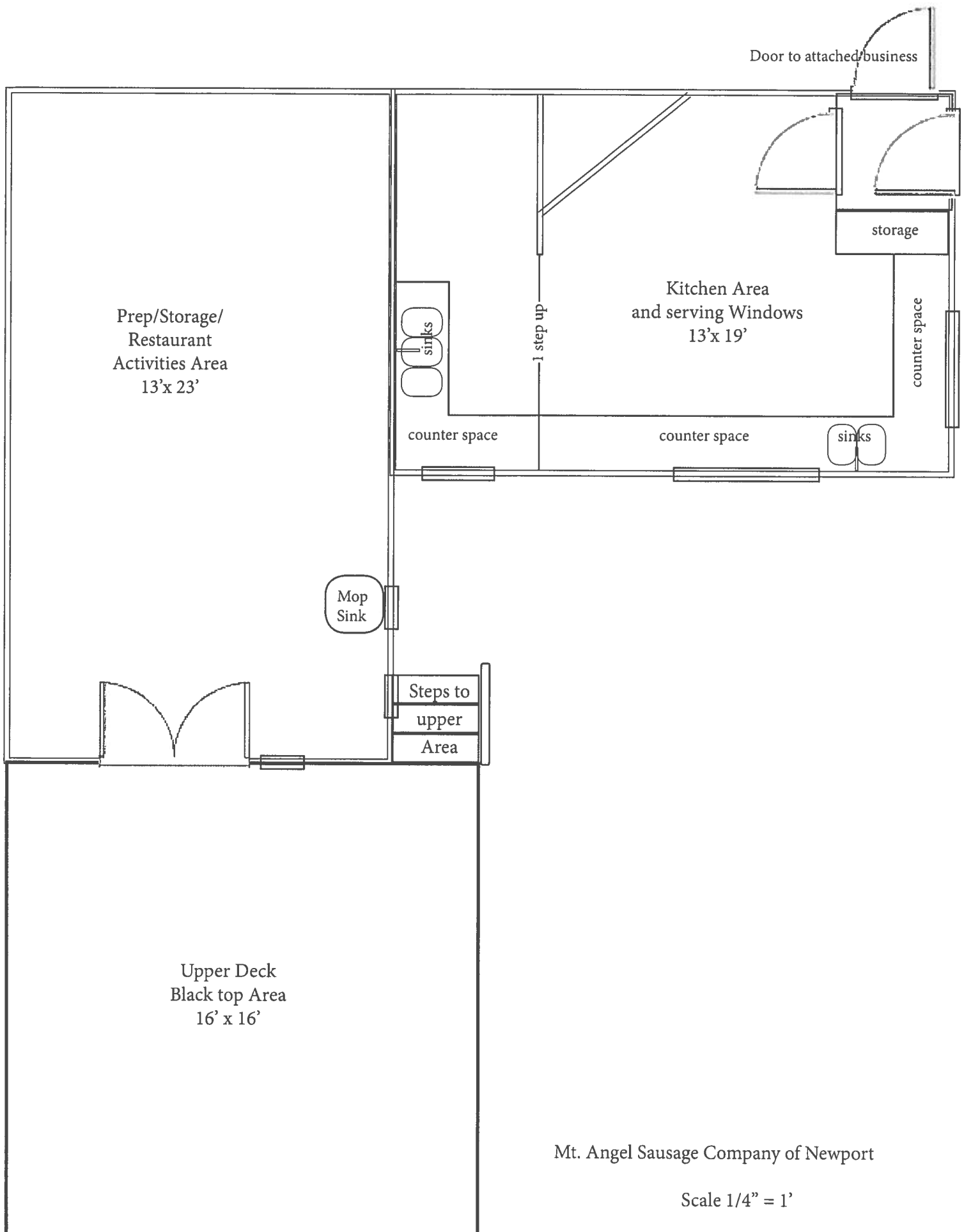
On 9/29/14 11:44 AM, "Nick" <nick@loblue.com> wrote:

>Here you go!

>Do you need and wall lengths I.D.ed? like

>this?<-----16'-----> I can add that in for you

>too...everything is to size and scale...but



Mt. Angel Sausage Company of Newport

Scale 1/4" = 1'



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

<b>IN THE MATTER OF PLANNING COMMISSION</b>	)	
<b>FILE NO. 4-CUP-14, APPLICATION FOR A</b>	)	
<b>CONDITIONAL USE PERMIT AS SUBMITTED BY</b>	)	<b>FINAL</b>
<b>GREAT AMERICAN YOGURT &amp; FOOD CO., DBA MT.</b>	)	<b>ORDER</b>
<b>ANGEL SAUSAGE CO. (JIM HOKE) (CHRIS MINOR,</b>	)	
<b>AUTHORIZED REPRESENTATIVE) (JACK'S SEAFOOD,</b>	)	
<b>PROPERTY OWNER)</b>	)	

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**ORDER APPROVING A CONDITIONAL USE PERMIT** per Section 14.03.080(18)/ "Water-dependent and Water-related Uses" of the Newport Municipal Code (NMC), in order to operate a 546 sq. ft. restaurant, with an additional 256 sq. ft. of outdoor patio space in the W-2 zoning district at 460 SW Bay Blvd.

**WHEREAS:**

- 1) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on September 22, 2014.
- 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, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

**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 conditional use permit with the following condition(s):

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.

2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, then a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

3. The property owner shall obtain an encroachment permit pursuant to Chapter 9.15 of the Newport Municipal Code prior to utilizing the patio area for restaurant use.

**BASED UPON THE ABOVE**, The Planning Commission determines that the request for a Conditional Use Permit for the restaurant/retail use is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 13<sup>th</sup> day of October, 2014.

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James Patrick, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director

## **EXHIBIT "A"**

Case File No. 4-CUP-14

### **FINDINGS OF FACT**

1. Great American Yogurt & Food Co, dba Mt. Angel Sausage Co. (Jim Hoke) (Chris Minor, authorized representative) (Jack's Seafood, Inc., property owner) submitted an application on August 12, 2014, for approval of a Conditional Use Permit, per Chapter 14.03.080(18)/"Water-dependent and Water-related Uses" of the Newport Municipal Code, in order to operate a 526 sq. ft. restaurant, with an additional 247 sq. ft. of outdoor patio space in the W-2 zoning district. Since a restaurant use is a use that is permitted outright in a C-2 district, it is allowed in the W-2 district following issuance of a conditional use permit.
2. The subject property is located at 460 SW Bay Blvd. (Lincoln County Assessor's Map 11-11-08-DB, Tax Lot 1800). The parcel is approximately 3,484.8 sq. ft. per Lincoln County Tax Assessor records.
3. Staff reports the following facts in connection with the application:
  - a. Plan Designation: Yaquina Bay Shoreland.
  - b. Zone Designation: W-2/"Water-Related".
  - c. Surrounding Land Uses: A mix of commercial, tourist-oriented uses including eating and drinking places and retail shops, seafood processing related businesses, Port facilities, US Coast Guard facilities, and residential uses.
  - d. Topography and Vegetation: The property is developed, with site grades that are relatively level where construction has occurred. The hillside slopes upward steeply to the west.
  - e. Existing Structures: A building containing a commercial restaurant, storage area, and patio. The building was originally constructed in 1912.
  - f. Utilities: All are available to the site.
  - g. Development Constraints: None known.
  - h. Past Land Use Actions: None specific to the subject property.
4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on August 26, 2014; and the notice of public hearing was published in the Newport News-Times on September 12, 2014. The Bay Front Parking District received notice of the application on September 17, 2014, consistent with Newport Ordinance No. 2020, and comments received from the Parking District were distributed to the Commission members at the hearing. Comments were received from members Kevin Greenwood, Janet Webster, and Cris Torp, having no issue with the application itself.
5. A public hearing was held on September 22, 2014. At the hearing, the Planning Commission received the staff report and heard testimony from the applicant's agent. The minutes of the September 22, 2014, hearing are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report

Attachments included the following:

- Attachment "A" – Applicant's Written Statement in Support of Application
- Attachment "A-1" – Site Plan
- Attachment "A-2" – Uses in the W-2 Zoning District
- Attachment "A-3" – Uses in the C-2 Zoning District
- Attachment "B" – Photographs of the Property
- Attachment "C" – Zoning Map of the Area
- Attachment "D" – Aerial Image of the Property
- Attachment "E" – Copy of Ordinance No. 2020 – Bayfront Parking District
- Attachment "F" – Public Hearing Notice

6. Pursuant to Chapter 14.03.080(18)/“Water-dependent and Water-related Uses” of the Newport Municipal Code (NMC), a retail/restaurant use that is permitted outright in a C-2/“Tourist Commercial” zoning district requires a conditional use permit to be located in a W-2/“Water-related zoning district.

7. The applicant, Great American Yogurt & Food Co, dba Mt. Angel Sausage Co (“Mt Angel”), leased the premises on June 1, 2014. The applicant’s business falls under the City’s sales-oriented, general retail and entertainment-oriented retail sales and service categories. It’s their intent to use the subject property as part of their operation for restaurant/retail. Mt. Angel will sell sausages and other food products it produces. The patio area will be used as a place for customers to eat the food. The storage area will be used for cold storage of food products, a dry storage area, and for night storage of patio furniture. The applicant further states that this proposed use is highly consistent with the overall tourist nature of the area, is consistent with the size and past use of the leased premises, and is similar in nature with the other businesses in the area.

8. NMC 14.34.040(A) requires that applications include a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development on the lot. The site plan submitted with the application, prepared by Pariani Land Surveying, showed the patio area; however, it did not show the other areas that will be part of the restaurant use. Since this is an existing building, photographs of the property (Staff Report Attachment “B”) provide the Commission with enough information to evaluate the application. However, the Commission determined that a scaled site plan is needed showing all areas dedicated to restaurant use so there is a clear record of what is or is not addressed by this application. The applicant provided a scaled site plan on September 29<sup>th</sup> addressing this concern. It does; however, adjust the square footages for the restaurant space slightly, with the existing restaurant space being 247 sq. ft., the restaurant storage area being 299 sq. ft., and the patio area being 256 sq. ft. These new figures do not materially change the request.

9. NMC 14.34.030 indicates that a Type III decision-making procedure, with review and approval by the Planning Commission, is required for any use that generates more than 50 additional vehicle trips per day, as determined in the document entitled “Trip Generation,” an informational report prepared by the Institute of Traffic Engineers (ITE). For fast food restaurants without a drive through, (ITE Code 933), a restaurant that is 773 sq. ft. in size will generate 553 daily trips. Using the number of proposed patio seats, twelve (12), is an alternate method of calculating the number of daily trips. Under that method, an additional 505 trips will be created. In either case, the number of new daily trips exceeds 50; therefore, this application must be approved by the Planning

Commission. A copy of the notice for this hearing (Staff Report Attachment “F”) establishes that notice was provided to property owners within 200-feet of the property and that it was published in a newspaper of general circulation at least five (5) and not more than fourteen (14) days prior to the hearing, as required (NMC 14.52.060).

10. The applicant notes that Mt. Angel began leasing the subject property on June 1, 2014. Since then, they have been operating out of a 247 sq. ft. retail space addressed at 460 SW Bay Boulevard where the City has a record of prior retail use. Previous tenants include Jeff’s Place and Sandra Palmer’s Products. The applicant indicates that the landlord purchased the property, which includes the leased premises, in 1978. The applicant further indicates that the leased premises consist of three separate areas, a general retail/restaurant sales area (i.e. the 247 sq. ft. area noted above), a 299 sq. ft. storage area, and a 256 sq. ft. open patio. The applicant’s site plan, prepared by Pariani Land Surveying, shows that the open patio area is within the public road right-of-way. That site plan is dated July 16, 2014, after the applicant entered into the lease, so presumably at the time the lease was drafted the owner did not know that the patio was not on their property.

11. All three of the use areas are involved in this application for a conditional use permit. As noted, the City has business license records showing that the retail/restaurant sales area has been historically used for retail purposes. It may be non-conforming; however, the applicant has elected to include it in this application. By doing so, they will resolve any question as to whether or not retail uses are permitted at this location.

12. The applicant wants to use the storage area for the foreseeable future as a product storage area (both freezer and dry storage) and night storage for the furniture it uses on the patio. This area was originally permitted in 1975 as a seafood smokehouse and has been used more recently by the owner for personal storage. The applicant notes that they are prepared to work with the City Building Official after approval of this application to determine the changes that need to be made to the storage area to allow for these activities, and that the storage area would not be used until the building code requirements have been satisfied. In the future, the applicant may wish to expand its use of the storage area to include other normal restaurant activities. If and when that occurs, the applicant will contact the City and obtain the permits required for the proposed expanded use.

13. The applicant asserts that the cement patio area has been used for the consumption of food purchased from previous tenants of the leased premises for over 20 years; however, evidence backing up the assertion was not included with the application. Because the patio is within the public right-of-way an encroachment agreement will be needed. Those agreements ensure that, as a matter of record, the owner acknowledges that they may have to remove all or a portion of the improvements upon notice from the City. Requirements for an encroachment permit are outlined in Newport Municipal Code (NMC) Chapter 9.15. The Planning Commission is not an approval authority for encroachment permits.

14. There does not appear to be any record of a land use approval for the areas subject to this application. A Conditional Use Permit was granted in 1994 for a portion of the second story of the building (File No. 1-CUP-94). The permit authorized retail use of the space. A photograph of the property (Staff Report Attachment “B”) illustrates the boundary of that approval. Jambo World Craft leases space at this location.

15. The applicable criteria for the conditional use request are found in NMC Section 14.34.050:

- a. The public facilities can adequately accommodate the proposed use.
- b. The request complies with the requirements of the underlying zone or overlay zone.
- c. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.
- d. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

## CONCLUSIONS

Regarding the applicable criteria for the conditional use request, the following conclusions can be made:

A. *Criterion #1. The public facilities can adequately accommodate the proposed use.*

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets, and electricity. All public facilities are available and serve the property.

2. The applicant's findings indicate that the public facilities can adequately accommodate the proposed use. The applicant's note that the proposed business uses are consistent with the W-2 and C-2 zoning designations that apply to the property and assert that they are consistent with the past use of the leased premises. The applicant proposes to put approximately two picnic tables seating a total of approximately 12 people on the patio area. They further assert that the patio area can more than accommodate this number of people.

3. The applicant's findings state that the patio area has existed for at least 30 years and has been used as a space with tables for serving fast food for at least 20 years. The applicant believes that use of the patio is necessary for them to conduct the business at the leased premises. Because the existing patio encroaches upon the public right-of-way, the applicant has submitted an application to the Community Development Department for a temporary encroachment permit (File No. 1-TEP-14).

4. The question before the Commission was whether or not the public facilities consisting of sanitary sewer, water, streets and electricity are adequate to serve the proposed restaurant use. The period of time that a patio has or has not existed at this location need not be addressed. As depicted with the photographs of the property (Staff Report Attachment "B") and aerial image of the site (Staff Report Attachment "D"), street and sidewalk access to this developed site is available off of SW Bay Boulevard and SW Fall Street. SW Bay Boulevard is designed as a collector roadway, and SW Fall Street is a local road. Both are fully improved and paved. The Commission accepts this as sufficient evidence to establish that street access to the property is adequate. The City provides water service to the site via 6-inch and 12-inch water mains in SW Fall Street and SW Bay Blvd,

respectively. Sewer service is provided via an 18-inch main in SW Fall Street and a 12-inch line in SW Bay Boulevard. Storm drainage is handled via a 24-inch line along SW Fall Street. The existing development is connected to these services. The services have been sized to accommodate regional development in the area, including industrial users such as the fish plants along SW Bay Boulevard. The specific location of the services is depicted on City as-built drawings for the SW Bay Boulevard sidewalk, lighting, and paving project completed in 2009 and can be relied upon by the Commission to establish that the services are adequate to accommodate this restaurant use. The as-built utility drawings show that there are no City maintained utilities near the patio. Electric service is available to the existing building. City as-built utility drawings do not show the location of the power lines; however, the encroachment permit process is structured to ensure that utility providers will have adequate access to maintain any services they have in the vicinity of the patio area.

5. Given the above, the Planning Commission concludes that the public facilities can adequately accommodate the restaurant/retail use provided a condition is imposed requiring that the owner obtain an encroachment permit for the patio.

B. Criterion #2. *The request complies with the requirements of the underlying zone or overlay zone.*

1. This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. The Zoning Ordinance requires that in all areas that are considered to be historic, unique, or scenic waterfront communities, proposed conditional uses shall be designed to maintain or enhance the historic, unique, or scenic quality of the area. The Bay Front, in which the proposed use will be located, is considered a historic and unique waterfront community by the adopted Bay Front Plan, thereby, requiring the preservation and enhancement of its characteristics.

2. The applicant notes that there will not be any change to the size or shape of the leased premises (ref: Photographs, Staff Report Attachment “B”), and the overall development character of the area will not be changed. Lincoln County Assessment records indicate that the structure was originally built in 1912.

3. The applicant’s findings indicate that their request complies with the requirements of the underlying zone or overlay zone. The leased premises are zoned W-2 with uses permitted in C-2 being conditional. Those zoning regulations allow sales-oriented general retail businesses, including businesses selling food, and entertainment businesses, including restaurants. The applicant’s business is a restaurant/retail business that complies with these zoning requirements. The applicant’s use of the storage area for the storage of patio furniture and freezer storage for food products is consistent with the zoning regulations. The use of the cement patio as a place for outdoor eating is also consistent with the zoning regulations. Any expanded use to include other normal restaurant activities will also be consistent with zoning regulations.

4. Given the above, the Planning Commission concludes that this criterion is satisfied.

C. Criterion #3. *The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.*

1. This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered by the Commission under this criterion.

2. The applicant indicates that the proposed use does not have an adverse impact greater than the existing uses on nearby properties. The area around the leased premises is zoned for "Tourist Commercial" uses. The businesses around the leased premises are varied, but include retail sales businesses and restaurants. The applicant further notes that the businesses that are next door and upstairs to the leased premises are Bowwow meow (retail), Jamba (retail), and Rae Rae's (restaurant). Additionally, the applicant asserts that the proposed business uses will not adversely impact the amount of vehicle or pedestrian traffic that use the area's streets and sidewalks or increase the noise levels that are consistent with a tourist use that already exists.

3. This property is within the Bay Front Commercial Parking District (ref: Ordinance No. 2020, Staff Report Attachment "E"). Chapter 14.14 of the Newport Municipal Code sets out the City of Newport's parking requirements. NMC 14.14.030 notes that off-street parking must be provided in conjunction with new and/or expanded uses in a manner consistent with the provisions of the chapter. Later on, NMC 14.14.100 indicates that the off-street parking requirements of the chapter may be superseded in the Bay Front area if a parking district is formed. That is the case here, as Ordinance No. 2020 contains provisions addressing when new off-street spaces must be constructed. Specifically, Section 8(E) of that ordinance indicates that new development, redevelopment or building expansions that generate a demand for more than five (5) new off-street parking spaces must provide additional off-street spaces in accordance with the Newport Zoning Ordinance (i.e. NMC Chapter 14.14). City business license records show that the 247 sq. ft. retail space currently being utilized by Mt. Angel has been used as restaurant/retail space by prior uses (e.g. Jeff's Place and Sandra Palmer's Products). Occupancy of this space for this purpose predates the adoption of Ordinance No. 2020 and, for this reason, it is reasonable for the Commission to find that the current use of this space does not constitute "new development, redevelopment, or a building expansion"<sup>1</sup>. Converting the storage area into restaurant space will require a change of occupancy that will potentially trigger the need for structural changes to meet building code. It is reasonable for the Commission to view this as a building expansion. Similarly, it is appropriate for the Commission to view the patio as an expansion given that the owner (i.e. the City of Newport) has never authorized use of the public right-of-way for this purpose. Combined, the storage area and patio amount to 555 sq. ft. of restaurant space. The Newport Municipal Code requires one off-street parking space for every 150 sq. ft. of gross floor area resulting in a demand for 3.7 or effectively 4 spaces ((NMC 14.14.030(7)). This is less than the five (5) off-street spaces Mt. Angel receives as "gratis" for the annual business license surcharge that they pay under Ordinance No. 2020; therefore, the Commission can reasonably conclude that no new off-street parking spaces are needed in conjunction with the expanded restaurant use.

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<sup>1</sup> There was no business at the 460 SW Bay Blvd address at the time Ordinance No. 2020 was adopted and the address is not listed on the business license surcharge "Revenue Estimate" developed at that time. However, City business license records show retail businesses at this address prior to the November 3, 2011 effective date of the ordinance and Mt. Angel has paid the business license surcharge.



4. Given the above, the Planning Commission concludes that this criterion has been satisfied.

*D. Criterion #4. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.*

1. The applicant asserts that any required modifications are consistent with the overall development character of the area. The applicant will inquire with the City Building Official once this application is approved to determine if any changes are required to be made to the existing improvements. Any changes that are necessary will be made. The applicant believes that none of these alterations will change the size or shape of the leased premises, and the overall development character of the area will not be changed.

2. While it is unlikely that conversion of the storage area will require modifications to the height or size of the building, it is a possibility. With that in mind, it is prudent for the Commission to impose a condition of approval requiring a new conditional use permit be submitted to address this criterion in the event that exterior modifications of this nature are needed.

3. Given the above, the Planning Commission concludes that the use will be consistent with the overall development character of the neighborhood with the condition noted.

### **OVERALL CONCLUSION**

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Section 14.34.050 of the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit for the restaurant/retail use can satisfy the approval criteria for a conditional use and is hereby approved with the imposition of the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, then a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.
3. The property owner shall obtain an encroachment permit pursuant to Chapter 9.15 of the Newport Municipal Code prior to utilizing the patio area for restaurant use.

## Derrick Tokos

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**From:** James Hodge <jhodge@co.lincoln.or.us>  
**Sent:** Wednesday, October 08, 2014 4:46 PM  
**To:** Derrick Tokos  
**Subject:** Day Care at the corner of NE Lincoln and Yaquina Heights.

I looked at this intersection earlier today and I do not think that a small day care will negatively impact the level of service of this intersection or to NE Lincoln.

Thanks for the inquiry.,

**Steve Hodge, P.E.**  
County Engineer  
Lincoln County Public Works  
880 NE 7th Street  
Newport, OR 97365  
541-574-1212  
[JHodge@co.lincoln.or.us](mailto:JHodge@co.lincoln.or.us)

## PLANNING STAFF REPORT

### Case File No. 5-CUP-14

- A. **APPLICANT:** Wyles Sanders (Rebecca Lytwyn, Oregon Coast Bank, authorized representative) (Oregon Coast Bank, property owner).
- B. **REQUEST:** Approval per Chapter 14.03.050(E)(7)/“Residential Uses” of the Newport Municipal Code (NMC) for a conditional use permit in order to operate a daycare facility in an R-3 zoning district where the subject property is located.
- C. **LOCATION:** 125 NE Lincoln St.
- D. **LEGAL DESCRIPTION:** Lincoln County Assessor’s Tax Map 11-11-09-BA, Tax Lot 502.
- E. **LOT SIZE:** Approximately 0.27 acres per Lincoln County Tax Assessor records.
- F. **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:** Uses include other single-family residential uses, vacant (partially developed) residential property, and the Eureka Cemeteries.
- d. **Topography and Vegetation:** The site is landscaped and slopes to the west. The backyard if fully fenced.
- e. **Existing Structures:** A duplex built in 2007.
- f. **Utilities:** All are available to the site.
- g. **Development Constraints:** None known.
- h. **Past Land Use Actions:**
  - 1-PAR-07 – partitioned Tax Lot 500 into two parcels; approved by final order 2/20/07 (Partition Plat 2007-09).
  - 1-PLA-11 – adjusted common boundary line between Tax Lots 500 and 502 around existing building and fence on Tax Lot 502 in order to meet rear

yard setback standards; approved by final order 7/25/11.

1-PLA-12 – relocated common boundary line between Tax Lots 500 and 502 around the existing building on Tax Lot 502 in order to meet setbacks and provide for development on the undeveloped tract; approved by final order 5/7/12.

- i. **Notification:** Notification to surrounding property owners and to city departments/public agencies was mailed on September 17, 2014; and the notice of public hearing was published in the Newport News-Times on October 3, 2014.

- j. **Attachments:**

Attachment "A" – Oregon Coast Bank letter dated September 11, 2014, regarding the application

Attachment "A-1" – State of Oregon Certificate of Approval for operation of the daycare

Attachment "A-2" – Sample day's schedule for the daycare

Attachment "A-3" – Letter to the Editor, June 17, 2011, regarding the daycare

Attachment "A-4" – remodel work done prior to opening the daycare

Attachment "A-5" – Photographs of the facility

Attachment "B" – Public Hearing Notice

Attachment "C" – Aerial Photo

Attachment "D" – Assessment Map of the Property

Attachment "E" – Zoning Map of the Area

Attachment "F" – Survey for "The Heights Condominiums" prepared by Russell Johnson, recorded 10/16/07 (Sheet 1 of 2)

Attachment "G" – Portion of site plan prepared by William Barlow, P.E. dated 9/19/11

- 2. **Explanation of the Request:** Pursuant to Chapter 14.03.050(E)(7)/"Residential Uses" of the Newport Municipal Code (NMC), a daycare facility requires a conditional use permit to be located in an R-3/"Medium Density Multi-Family Residential" zoning district.

The applicant explains that when Oregon Coast Child Care opened its door in April of 2011, there was a miscommunication and it was thought that a conditional use permit was not needed. Now that this has been brought to their attention, the applicant is trying to rectify this situation as quickly as possible to be in compliance with the City of Newport codes. Oregon Coast Childcare is currently operated by Wyles Sanders but subsidized by Oregon Coast Bank, and the employees of the daycare are paid employees of the Bank. Daycare service is provided to Oregon Coast Bank's employees as well as other community members.

The daycare is licensed by the State of Oregon to serve up to 16 children, ages 1.5 months to 12 years. Hours of operation are 7:30 am to 5:30 pm Monday through Thursday and 7:30 am to 6:15 pm on Friday.

3. **Evaluation of the Request:**

a. **Comments:** All surrounding property owners and affected city departments and public utilities were notified on September 17, 2014. The notice was published in the Newport News-Times on October 3, 2014. No comments have been received in response to these notices.

b. **Approval Authority (NMC Chapter 14.34.030):**

(1) Application for approval of a Conditional Use shall be processed and authorized using a Type II decision-making procedure where specifically identified as eligible for Type II review elsewhere in this Code or when characterized by the following:

- i. The proposed use generates less than 50 additional trips per day as determined in the document entitled Trip Generation, an informational report prepared by the Institute of Traffic Engineers; and
- ii. Involves a piece(s) of property that is less than one (1) acre in size. For an application involving a condominium unit, the determination of the size of the property is based on the condominium common property and not the individual unit.

(2) All other applications for Conditional Uses shall be processed and authorized as a Type III decision-making procedure.

c. **Conditional Use Criteria (NMC Chapter 14.34.050):**

(1) The public facilities can adequately accommodate the proposed use.

(2) The request complies with the requirements of the underlying zone or overlay zone.

(3) The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

(4) A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

d. **Staff Analysis:**

In order to grant the permit, the Planning Commission must find that the applicant's proposal meets the following criteria.

(1) NMC 14.34.030 indicates that a Type III decision-making procedure, with review and approval by the Planning Commission, is required for any use that generates more than 50 additional vehicle trips per day, as determined in the document entitled "Trip Generation," an informational report prepared by the Institute of Traffic Engineers (ITE). For day care facilities, (ITE Code 565), a business serving 16 children generate up to 72 daily trips. The existing duplex (ITE Code 230) generates 6 daily trips, meaning that the number of new daily trips exceeds 50; therefore, this application must be approved by the Planning Commission. A copy of the notice for this hearing (Attachment "B") is enclosed establishing that notice was provided to property owners within 200-feet of the property and that it was published in a newspaper of general circulation at least five (5) and not more than fourteen (14) days prior to the hearing, as required (NMC 14.52.060).

(2) The public facilities can adequately accommodate the proposed use.

Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All public facilities are available and serve the site and existing residence.

Photographs provided by the applicant and an aerial image of the property illustrate that the daycare obtains access off of NE Lincoln Street. That street is located outside the city limits and is under the jurisdiction of Lincoln County. Steve Hodge, Lincoln County Assistant Public Works Director, is evaluating the access but has not yet confirmed that it is adequate as constructed. The street is paved to a width of 24-feet with curb and gutter. It is reasonable for the Commission to conclude that it is feasible that the County will concur that the road is adequate "as is" or can be made to be without materially impacting the footprint of the proposed use. A condition can then be imposed requiring written confirmation from the County that the street is adequate.

A survey prepared by Russ Johnson in 2007, shows that the street is not entirely within a public road right-of-way (Attachment "F"). A portion of NE Lincoln Street, between NE Yaquina Heights Drive and the south line of the duplex parcel is on property that is owned by the bank. This appears to have occurred when the street was widened as part of the prior owner's effort to establish a condominium development. Having the street entirely within a right-of-way ensures that the public entity responsible for that street

has the authority to maintain it on an ongoing basis at a level necessary to support the proposed use. Therefore, it would be reasonable for the Commission to require the owner grant a public access and utility easement over the portion of the road that is outside of the right-of-way. Water, sewer, and electricity are available and currently serve the subject structure; however, some portion of those lines appear to be located on the applicant's property, outside of the right-of-way (Attachment "G"). Dedication by the owner of a public access and utility easement, as discussed above, would ensure that the service providers can maintain the utilities to ensure that they are adequate to support the use moving forward.

Given the above, it is reasonable for the Planning Commission to find that the public facilities can adequately accommodate the use of the residence as a daycare facility provided Lincoln County confirms that the street access is adequate for the proposed use and the owner dedicates a public access and utility easement over the portion of NE Lincoln Street that is not within the right-of-way adjacent to this parcel.

(2) The request complies with the requirements of the underlying zone or overlay zone.

This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. The subject property is located in an R-3 zoning district and plans on record with the City of Newport show that the existing duplex conforms to the dimensional requirements of the zone.

Chapter 14.14 of the Newport Municipal Code (NMC) lists the City's parking, loading and access requirements. NMC 14.14.030(37) notes that off-street parking for daycare uses must be provided at a ratio of 1 space for every 4 persons of license occupancy. The certificate of approval from the State of Oregon authorizes the facility for up to 16 children (Attachment "A-1"); therefore, four off-street parking spaces are required. One of the off-street parking spaces must be an ADA van accessible space (NMC 14.14.050). Since the property owner controls the large parcel surrounding the duplex, the Commission can find that it is feasible for the property owner to install the 2 additional off-street spaces in conformance with the City's off-street parking requirements. A condition can then be imposed requiring that the spaces be constructed. There appear to be no other relevant requirements of the underlying zone or overlay zone.

Given the above, it is reasonable for the Planning Commission to find that this criterion has been satisfied as conditioned.

- (3) The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood.

The applicant explains that the daycare facility has been operating in the residence since 2011. The facility provides four jobs and service to eight families fulltime and four on a drop-in basis. Sixteen working families are connected to and rely heavily on this facility. Currently, Oregon Coast Bank owns the building that the daycare is housed in as well as the adjacent land except for one lot that was recently purchased, and a single-family residence is being constructed on that lot. There are only two other homeowners and the Eureka Cemeteries within the notification area. There are two parking spaces in the driveway and parking space available on the street. There is a fully fenced yard with play structures. The center currently operates 7:30 a.m. - 5:30 p.m., Monday through Thursday; and 7:30 a.m. - 6:00 p.m. on Friday. They offer childcare as well as a preschool-based program for children ages 8 weeks through school age.

Given the above, it is reasonable for the Planning Commission to find that this criterion has been satisfied.

- (4) A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

The applicant notes that the site has been remodeled to meet the required guidelines of the State of Oregon with regards to exits and safety features. The applicant provided a list of the remodel work performed prior to opening the daycare facility. The facility is currently licensed with the State of Oregon Child Care Division, and features the upstairs as an infant area, and the downstairs catering to the 2-year-olds and up. The applicant provided photographs of the building. The appearance is that of a conventional residence. With this application, the applicant indicated no plans for any further remodeling at this time.

With respect to the building code, it is unclear at this time whether or not the daycare can continue under the same R-3 residential occupancy as the duplex. This hinges in part on whether or not the facility qualifies as a "family child



care home” as defined in the 2010 Oregon Structural Specialty Code. That definition may require that there be someone living on the premises, even if they are not the primary care giver. No one is presently living at this residence. If an R-3 occupancy is not an option, then the space would be classified as an E (Educational) or I-4 (Institutional) occupancy. This hinges upon whether or not the facility provides care to more than 5 children under 2 ½ years of age. The application is unclear on this point. In either case, with an E or I-4 occupancy the existing structure would need to be assessed for building code compliance as there are different construction standards that apply under these occupancy classifications then those that applied when the duplex was constructed. This would include a review of the adequacy of the firewall between the duplex units and of the fire suppression sprinkler system.

Modifications can be made to a structure to bring it into conformance with building codes, so it is reasonable for the Commission to defer compliance to a condition of approval. While it is unlikely that any required modifications would alter the size or height of the building, it would be prudent for the Commission to indicate that a subsequent conditional use application would need to be submitted if such is the case, since the Commission cannot find “as yet to be determined” changes to be in compliance with this criterion.

Lastly, considering that the daycare is currently operating it would be appropriate for the Commission to establish a deadline by which all of the conditions are to be met. Six months would be a reasonable timeframe.

Given the above, it is plausible for the Planning Commission to find that the use of the dwelling as a daycare facility will be consistent with the overall development character of the neighborhood with the condition noted.

4. **Conclusion:** If the Planning Commission finds that the applicant has met the criteria established in the Zoning Ordinance for granting a conditional use permit, then the Commission should approve the request. The Commission can attach reasonable conditions that are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If the Commission finds that the request does not comply with the criteria, then the Commission should deny the application.

G. **STAFF RECOMMENDATION:** As outlined in this report, this application to operate a daycare facility in an existing residence can satisfy the approval criteria for a conditional use subject to the following conditions:

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 property owner to comply with these documents and the limitations of approval described herein.

2. The property owner shall obtain an occupancy permit and make any changes to the structure needed in order to comply with the 2010 Oregon Structural Specialty Code. If the applicant must modify the size or height of the building in a material way in order to comply with the structural specialty code standards, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.
3. Written confirmation from the Lincoln County Public Works Department shall be obtained establishing that NE Lincoln Street is adequate to serve the daycare facility.
4. The property owner shall dedicate a public access and utility easement at a width acceptable to the City Engineer, covering that portion of NE Lincoln Street that is not within the public right-of-way.
5. The property owner shall provide four off-street parking spaces to serve the daycare use. One of the parking stalls must be an ADA van accessible space, and all of the spaces are to meet specifications for the construction of off-street parking and associated drive isles outlined in the Newport Municipal Code.
6. All conditions of approval shall be satisfied within six months of the effective date of the final order approving the daycare facility.



Derrick I. Tokos AICP  
Community Development Director  
City of Newport

October 8, 2014



909 SE Bay Blvd. Newport Oregon 97365-PO Box 2280, Newport Oregon 97365  
541-265-9000 telephone 541-265-4800 fax

Community Development and Planning Department  
169 SW Coast Hwy  
Newport OR 97365

Attention Derrick Tokos

September 11, 2014

When Oregon Coast Child Care opened its door in April of 2011, there was a miscommunication and it was thought that a conditional use permit was not needed. It has been brought to our attention that it is. We are trying to rectify this situation as quickly as possible to be in compliance with the City of Newport. Oregon Coast Childcare is currently operated by Wyles Sanders but subsidized by Oregon Coast Bank and the employees of the daycare are paid employees of Oregon Coast Bank.

It provides a daycare service to Oregon Coast Bank's employees as well as other community members. This facility provides 4 jobs and service to 8 families fulltime and 4 on a drop in basis. 16 working families are connected and rely heavily on this facility.

The site has been remodeled to meet the required guidelines of the State Of Oregon with regards to exits and safety features. We are currently licensed with the State of Oregon Child Care Division which includes an inspection and certification from the Health Department and Fire Department. This home features the upstairs as an infant area and the downstairs, catering to the 2 year olds and up. There is a fully fenced back yard with play structures.

Currently, Oregon Coast Bank owns the building that the daycare is housed in as well as the adjacent land except for a lot that was recently purchased. The only other homeowners within the 200 ft. are Ron and Diane McClellan, Richard and Rebekah Belloni and the Eureka Cemeteries. There are 2 parking spots in the driveway and space available on the street.

The center currently operates 7:30am-5:30pm, Monday thru Thursday and 7:30am-6:00pm on Fridays. We offer childcare as well as a preschool based program for children ages 8weeks thru school age.

We ask that we get the conditional use permit to allow for us to offer the care and jobs for people in our community.

With Regards

A handwritten signature in black ink, appearing to read "Rebecca S. Hwang", is written over the "With Regards" text.



## Certificate of Approval

Be it known that:

**Debbie Provancher**

is hereby granted a Certificate of Approval to operate:

Oregon Coast Child Care Center  
125 NE Lincoln Ct Unit B  
Newport, OR 97365

The Office of Child Care has conducted a review and found this facility and its operation to be in compliance with the laws of the State of Oregon and applicable administrative rules.

Hours of Operation: 7:30 AM-5:30 PM Mon-Th;  
7:30 AM-6:15 PM Fri

Provider Number: CF501610

Maximum Number: 16

Age Range: 1.5 Months through 12 Years

Ratio Group:

Monday: X	Days of Operation:	Saturday:
Tuesday: X	Thursday: X	Sunday:
Wednesday: X	Friday: X	

This certificate is effective:

March 30, 2014 through March 30, 2015

Exceptions:

Conditions:

Special Conditions:

Questions or complaints regarding this facility should be directed to:

Office of Child Care  
Mary McCord  
875 Union St NE, Room 208  
Salem, OR 97311  
(503)947 - 1879

## Sample Day at Oregon Coast Childcare Center

7:45-OPEN

7:45-8:30-Breakfast Time

8:30-9:00-Free Play (Settle in)

9:00-9:15-Circle/Group Time (Singing, Calendar, Weather, Days of the week)

9:15-9:30-Project Time (Table time)

9:30-9:45-Morning Snack

9:45-11:00-Second Project/Free Play (Garage, Outside, Artwork, etc.)

11:00-11:45-Lunch Time

12:00-12:30-Clean up, get ready for nap and movie

12:30-1:30-Movie Time

1:30-3:00-Rest/Nap Time

3:00-3:30-Afternoon Snack

3:30-4:45-Free Play (Outside, Garage Time)

4:45-5:00-Clean Up

5:15-Parent Pick Up

5:30-Close

This is an example of what our everyday looks like. For infants 12 months and under, all feeding and napping will be done on each child's own schedule.

# LETTERS TO THE EDITOR Friday June 17, 2011

## Letters policy

The News-Times welcomes letters to the editor concerning issues affecting Lincoln County.

All letters must be signed with the full name of the writer, and must be accompanied by a telephone number and address.

We request that letters be limited to 300 words, and that writers limit their letters and viewpoints to one every four weeks. Letters may be edited for length and clarity. Letters sent via e-mail should clearly state that they are for publication.

WRITE:

editor@newportnewstimes.com

## Applauds child care at local bank

I am writing to applaud Oregon Coast Bank's initiative, foresight, and creativity in opening a daycare facility for their Newport employees, which may even have slots open for children in local families not connected to the bank ("Bank opens daycare center," June 8 edition). Lack of child care in this community is a serious problem for many working families, but it is also a

work force issue that affects businesses countywide.

With the arrival of NOAA's new home port in Newport and the investment of several million dollars by the National Science Foundation in an ocean monitoring array off of our coast, Newport is poised to become a hub for ocean observing activities in the Pacific Northwest. With these investments could come significant economic development opportunities if we, as a community, pursue them. We need to be sure that we can provide a capable, educated and flexible work force in order to take advantage of these opportunities. One obstacle to development of that work force is availability of child care.

A 2005 study undertaken by the Child Care Division of the Oregon Department of Employment emphasized this need. The report states, "Investment in human capital is critical to a healthy economy. While child care enables Oregon parents to work and contribute directly to economic stability, quality child care helps prepare the future workforce. High quality child care must be part of a world-class education system that economic development experts be-

lieve will attract businesses to the state."

Oregon Coast Bank seems to understand this challenge and should serve as a model to other local businesses. Thank you, Oregon Coast Bank, and congratulations on your new facility.

Nancy Steinberg  
Newport

## Thoughts on unrest in Israel and Palestine

This is response to Christy Peterson's letter in the June 10 edition ("Stand up for what is right").

In President Obama's recent statement calling for resumption of Israeli negotiations based on the 1967 line, he said, "...it is important that we tell the truth: the status quo is unsustainable, and Israel too must act boldly to advance a lasting peace." He also stated that peace will not be achieved if Hamas insists on a path of terror and rejection. Both statements are true. The moderate majority of Palestinians do not condone the violent actions of Hamas.

Contrary to what Ms. Peterson states, the Palestinians

Construction to be completed on 125 NE Lincoln Street, Unit B in Newport, OR

1. Fence yard/play area with gate:
  - Fence should be made of wood suitable for outdoor fencing, be approximately 5 feet tall and painted or stained to protect against weather and according to bank specifications.
  - Fence should be of similar type & quality as other material used for this construction
  - Fencing should edge the property for that unit enclosing the large grassy area on the North side of the building, grass in front of back porch and continue to the middle of the building to separate it from the other unit and to create one large fenced yard.
  - On North facing exterior wall of unit B the fence should close off the meters, pipes, etc. on that wall so that they are not accessible from inside the fence.
  - Finish should be similar to the rest of the project and should seamlessly integrate with the building.
2. Steps with a hand railing from back porch to ground with a gate.
  - Steps should be made of wood and stained to protect it from the weather and at the same time look similar to the deck.
  - Steps should have "no slip" strips or an equivalent of similar cost to minimize slipping
  - Material should be of similar type and quality as other material used for this construction
  - Finish should be similar to the rest of the project and should seamlessly integrate with the building.
3. Safety railing for back deck
  - Railing should be of similar type of wood as the fencing and should enclose the porch.
  - The railing should include one gate with a latch to block stairs to the ground.
  - Railing will be built to code for a child care facility.
  - Finish should be similar to the rest of the project and should seamlessly integrate with the building.
4. Create a second floor exit
  - Replace NW window in master suite with standard exterior door.
  - Build a 4 foot by 4 foot landing outside of door with railings and stairs with railing to the ground.
  - Landing and stairs should be made of wood of a similar type and quality as other material used for this construction.
  - Finish should be similar to the rest of the project and should seamlessly integrate with the building.

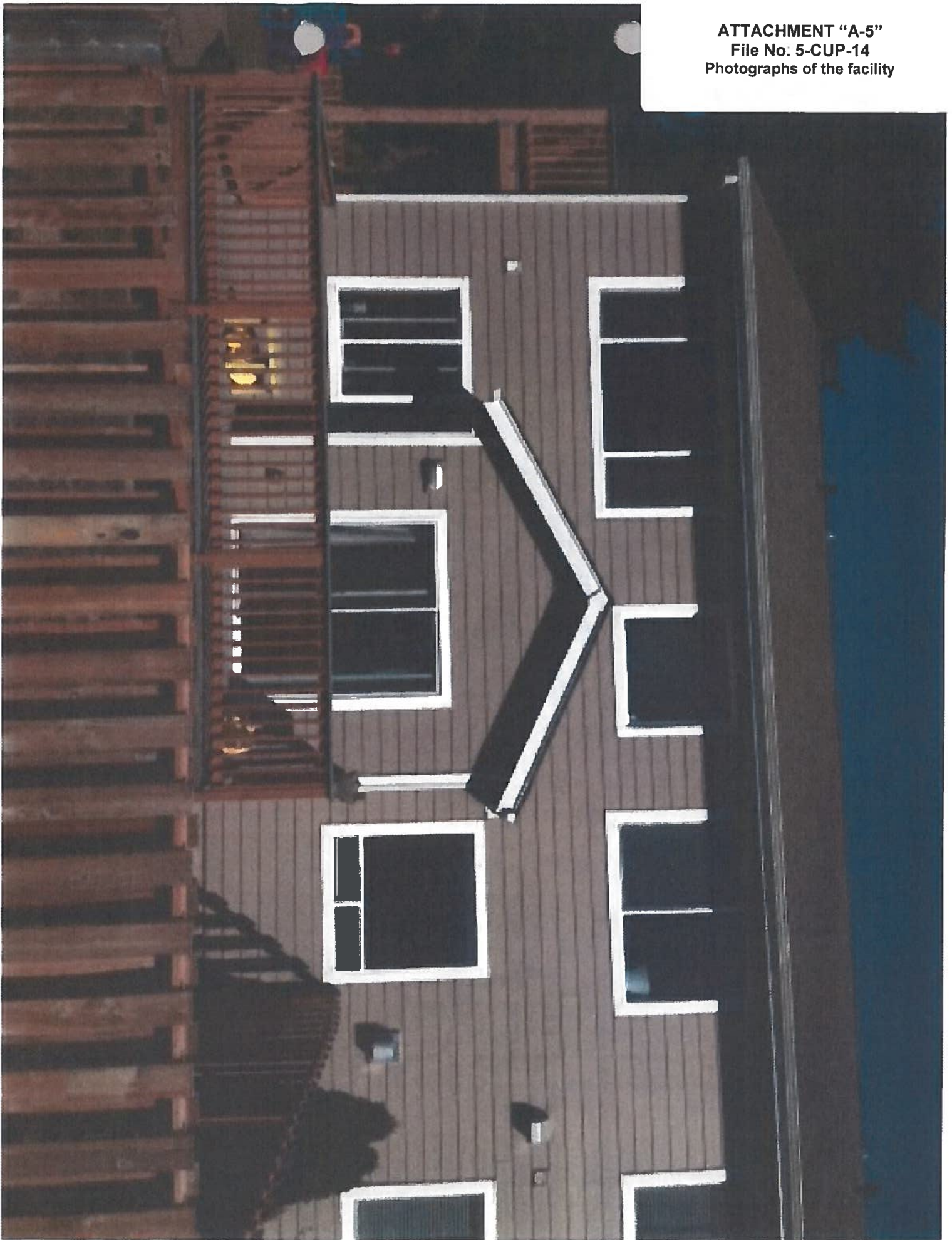
Please provide a bid for the above work in total.

Time is of the essence; please include a specific timeline for completion of the above with your bid.

Bids may be submitted to:

Oregon Coast Bank  
Attn: Jill Meengs  
909 SE Bay Blvd or  
PO Box 2280  
Newport, OR 97365

ATTACHMENT "A-5"  
File No: 5-CUP-14  
Photographs of the facility









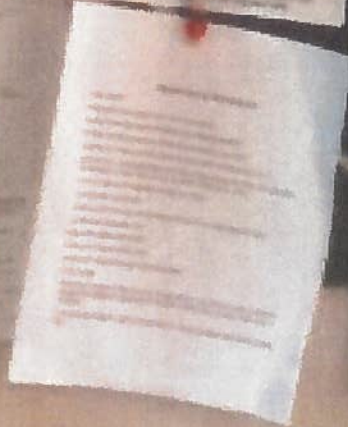
















CITY OF NEWPORT  
PUBLIC NOTICE<sup>1</sup>

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing to consider the following Conditional Use Permit request:

**File No. 5-CUP-14:**

**Applicants & Owners:** Wyles Sanders, 6225 C Ave, Otter Rock, OR 97369 (Rebecca Lytwyn, Oregon Coast Bank, 909 SE Bay Blvd, Newport, OR 97365, authorized representative) (Oregon Coast Bank, property owner).

**Request:** Approval of a request per Chapter 14.03.050(E)(7)/"Residential Uses" of the Newport Municipal Code (NMC), for a conditional use permit in order to operate a daycare facility in an R-3 zoning district where the subject property is located.

**Location/Subject Property:** 125 NE Lincoln St. Unit B (Assessor's Map 11-11-09-BA; Tax Lot 502).

**Applicable Criteria:** NMC Chapter 14.34.050: (1) The public facilities can adequately accommodate the proposed use; 2) the request complies with the requirements of the underlying zone or overlay zone; 3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; and 4) a proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

**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. Submit testimony in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Community Development (Planning) Department (address below under "Reports/Application Material") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and 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 be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

**Reports/Application Material:** The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365, seven days prior to the hearing. The application materials (including the application and all documents and evidence submitted in support of the application), the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address.

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

**Time/Place of Hearing:** Monday, October 13, 2014; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Application Material").

**MAILED:** September 17, 2014.

**PUBLISHED:** October 3, 2014/News-Times.

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<sup>1</sup> Notice of this action is being sent to the following: (1) Affected property owners within 200 feet of the subject property according to Lincoln County tax records; (2) affected public utilities within Lincoln County; and (3) affected city departments.

**Wanda Haney**

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**From:** Sara Wedel <sarawedel@newportnewstimes.com>  
**Sent:** Wednesday, September 17, 2014 11:01 AM  
**To:** Wanda Haney  
**Subject:** RE: City of Newport Legal Notice - File 5-CUP-14

This notice will publish as requested. Thank you!

Sara

**Sara Wedel**  
News Times  
Office Manager  
541-265-8571 ext. 215  
[www.newportnewstimes.com](http://www.newportnewstimes.com)

**PCI POLICY:** For the security of our customers we do not take credit card payments by e-mail. Please call 541-265-6080 or fax 541-265-3862 for all credit card transactions.

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**From:** Wanda Haney [mailto:W.Haney@NewportOregon.gov]  
**Sent:** Wednesday, September 17, 2014 9:31 AM  
**To:** 'Sara Wedel'  
**Subject:** City of Newport Legal Notice - File 5-CUP-14

Good morning Sara,

Attached is a notice of a public hearing for our File No. 5-CUP-14 for publication once on Friday, October 3, 2014, please. Please confirm receipt of this notice & if it will publish on that day.

Thanks as always,

*Wanda Haney*  
Executive Assistant  
City of Newport  
Community Development Department  
541-574-0629  
FAX 541-574-0644  
[w.haney@newportoregon.gov](mailto:w.haney@newportoregon.gov)



## NOTICE OF PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, October 13, 2014, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 5-CUP-14, a request submitted by Wyles Sanders (Rebecca Lytwyn, Oregon Coast Bank, authorized representative) (Oregon Coast Bank, property owner) per Chapter 14.03.050(E)(7) "Residential Uses" of the Newport Municipal Code (NMC), for a conditional use permit in order to operate a daycare facility in an R-3 zoning district where the property is located. The property is addressed as 125 NE Lincoln St Unit B (Assessor's Map 11-11-09-BA; Tax Lot 502). The applicable criteria per NMC Chapter 14.34.050 are: (1) The public facilities can adequately accommodate the proposed use; 2) the request complies with the requirements of the underlying zone or overlay zone; 3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; and 4) a proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright. 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. Submit testimony in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent 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 to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and 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 be 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 for reasonable cost at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials (including the application and all documents and evidence submitted in support of the application), the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626; [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov) (mailing address above).

***(FOR PUBLICATION ONCE ON Friday, October 3, 2014)***

## MID COAST LAKES

Trout fishing tends to be low during the summer months as warm water temperatures can put trout off its bite. Look to fish early in the morning or near cooler water zones until water temperatures start to cool off in the fall.

This time of year can offer anglers a variety of warm water species to go after. There are numerous lakes in the Florence area that have warm water fish species such as bass, blue gill, perch and brown bullhead. Anglers to consider are Siltcoos, Ahkenitch, Sutton, Mercer, Gunsell and Washink lakes. Angling out of a boat is typically the most productive in these lakes but there is some bank/dock access to consider.

Anglers, as well as anglers, good riverside camping options.

## SILETZ, STEELHEAD, CUTTHROAT TROUT, CHINOOK

Fall chinook fishing is producing good numbers of fish with anglers having good results in the lower to mid sections of tidewater. Trolling spinners or herring is producing well during the incoming tide through the high slack, and productive bobber fishing in mid to upper tidewater has kicked in recently.

The wild coho fishery opened on Sept. 15, and anglers are having the best results trolling cut plug herring or casting spinners from the bank in the lower river and around the mouth of the bay. Steelhead fishing has been

fishery has started to kick in with coho being caught from around Sawyers Landing up to the airport boat ramp. Trolling herring or spinners faster than for chinook seems to work the best.

Cutthroat trout fishing is fair with sea run cutthroat found in upper tidewater and in the lower portions of the Yaquina and Big Elk above the head of tide. Using small lures or fly-fishing can be very productive, as well as trolling near the head of tide.

## COLUMBIA RIVER BUOY 10

Weekend checking showed 530 adipose fin-clipped coho and one adipose fin-clipped steelhead kept, plus 261 unclipped coho and 20 chinook released for 204 boats (589 anglers).

Mason Aguirre (7) dribbles the ball around a Delphin defender in Taft's 4-1 loss on Tuesday. The Tigers are 4-4 on the season. (Courtesy photo by Lon French)

## TAFT SOCCER

Continued from page 1

the way his team can compete headed toward the postseason. "After playing everybody in our league, I know we can beat any of them. Our team will make a few adjustments going into the second half of the season and correct a few issues," he said. "We will be better than our 3-3 record

in league play, and may surprise a few teams along the way. Our team is playing very well, and we just need to fine tune a few things, and tighten down more on defense."

Taft will have a chance to snap its two-game skid when it hosts a very beatable Dayton (0-6) squad today (Friday) at 4 p.m.

The Tigers defeated Dayton handily 7-0 in their first

matchup on Sept. 9.

Heading into the latter part of their schedule, James said the Tigers are capable of taking the next steps as a team.

"Defensively and goal-keeping will need to step up a notch, and offensively we need to put more balls in the back of the net," he said. "We are a good team, but these next six games we need to become great."

# ADVERTISEMENT 265-8571 In the news-times

## PUBLIC NOTICES

### THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN U.S. BANK NATIONAL ASSOCIATION

PLAINTIFF V. ROGER L. FLEISCHER, JESSICA STEENKOLK FKA ESSEX KITTEN, DENNA M. FLEISCHER, OCCUPANTS.

DEFENDANTS, CASE NO. 142697 SUMMONS BY PUBLICATION

NOTICE TO DEFENDANTS READ THESE PAPERS CAREFULLY YOU must appear in this case or the other party will win automatically.

To appear you must be with the court a legal agent called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days of the date of first publication.

On 8/22/2014, along with required filing fee, you must be in person and have proof of service on the Plaintiff's attorney.

If the Plaintiff does not have an attorney, proof of service on the Plaintiff is required.

The subject of this judicial foreclosure of real property commonly known as 340 SW Range Drive, Newport, OR 97131, is for non-payment of mortgage debt. If you have questions, you should contact an attorney immediately. If you need help in finding an attorney, you may call Oregon State Bar's Lawyer Referral Service at 800-443-7363 or toll-free at 800-443-7363. DATED: September 1, 2014, by Katrina E. Ilogovska, OSB #0035356, Plaintiff Law Group, 500 N. Ave 5th 2600, Seattle, WA 98104 (206) 453-9966. U.S. 26, O-3 (03-03)

NOTICE OF SHERIFF'S SALE #14-1038

On October 21, 2014, at the hour of 10:00 a.m., in the County of Lincoln, Oregon, the Sheriff's Office, 225 W. Olive St., Room 203, in the City of Newport, Oregon, 97131, will sell, subject to redemption, the real property commonly known as: 1177 Northeast Old River Road, Siletz, Oregon 97138. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregonsheriff.com/sales-lincoln.htm>. S-16, 26, O-3, 10 (43-10)

NOTICE OF SHERIFF'S SALE #14-1060

On October 21, 2014, at the hour of 10:00 a.m., in the County of Lincoln, Oregon, the Sheriff's Office, 225 W. Olive St., Room 203, in the City of Newport, Oregon, 97131, will sell, subject to redemption, the real property commonly known as: 1177 Northeast Old River Road, Siletz, Oregon 97138. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregonsheriff.com/sales-lincoln.htm>. S-16, 26, O-3, 10 (43-10)

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### THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN U.S. BANK NATIONAL ASSOCIATION

PLAINTIFF V. ROGER L. FLEISCHER, JESSICA STEENKOLK FKA ESSEX KITTEN, DENNA M. FLEISCHER, OCCUPANTS.

DEFENDANTS, CASE NO. 142697 SUMMONS BY PUBLICATION

NOTICE TO DEFENDANTS READ THESE PAPERS CAREFULLY YOU must appear in this case or the other party will win automatically.

To appear you must be with the court a legal agent called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days of the date of first publication.

On 8/22/2014, along with required filing fee, you must be in person and have proof of service on the Plaintiff's attorney.

If the Plaintiff does not have an attorney, proof of service on the Plaintiff is required.

The subject of this judicial foreclosure of real property commonly known as 340 SW Range Drive, Newport, OR 97131, is for non-payment of mortgage debt. If you have questions, you should contact an attorney immediately. If you need help in finding an attorney, you may call Oregon State Bar's Lawyer Referral Service at 800-443-7363 or toll-free at 800-443-7363. DATED: September 1, 2014, by Katrina E. Ilogovska, OSB #0035356, Plaintiff Law Group, 500 N. Ave 5th 2600, Seattle, WA 98104 (206) 453-9966. U.S. 26, O-3 (03-03)

NOTICE OF SHERIFF'S SALE #14-1038

On October 21, 2014, at the hour of 10:00 a.m., in the County of Lincoln, Oregon, the Sheriff's Office, 225 W. Olive St., Room 203, in the City of Newport, Oregon, 97131, will sell, subject to redemption, the real property commonly known as: 1177 Northeast Old River Road, Siletz, Oregon 97138. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregonsheriff.com/sales-lincoln.htm>. S-16, 26, O-3, 10 (43-10)

NOTICE OF SHERIFF'S SALE #14-1060

On October 21, 2014, at the hour of 10:00 a.m., in the County of Lincoln, Oregon, the Sheriff's Office, 225 W. Olive St., Room 203, in the City of Newport, Oregon, 97131, will sell, subject to redemption, the real property commonly known as: 1177 Northeast Old River Road, Siletz, Oregon 97138. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregonsheriff.com/sales-lincoln.htm>. S-16, 26, O-3, 10 (43-10)

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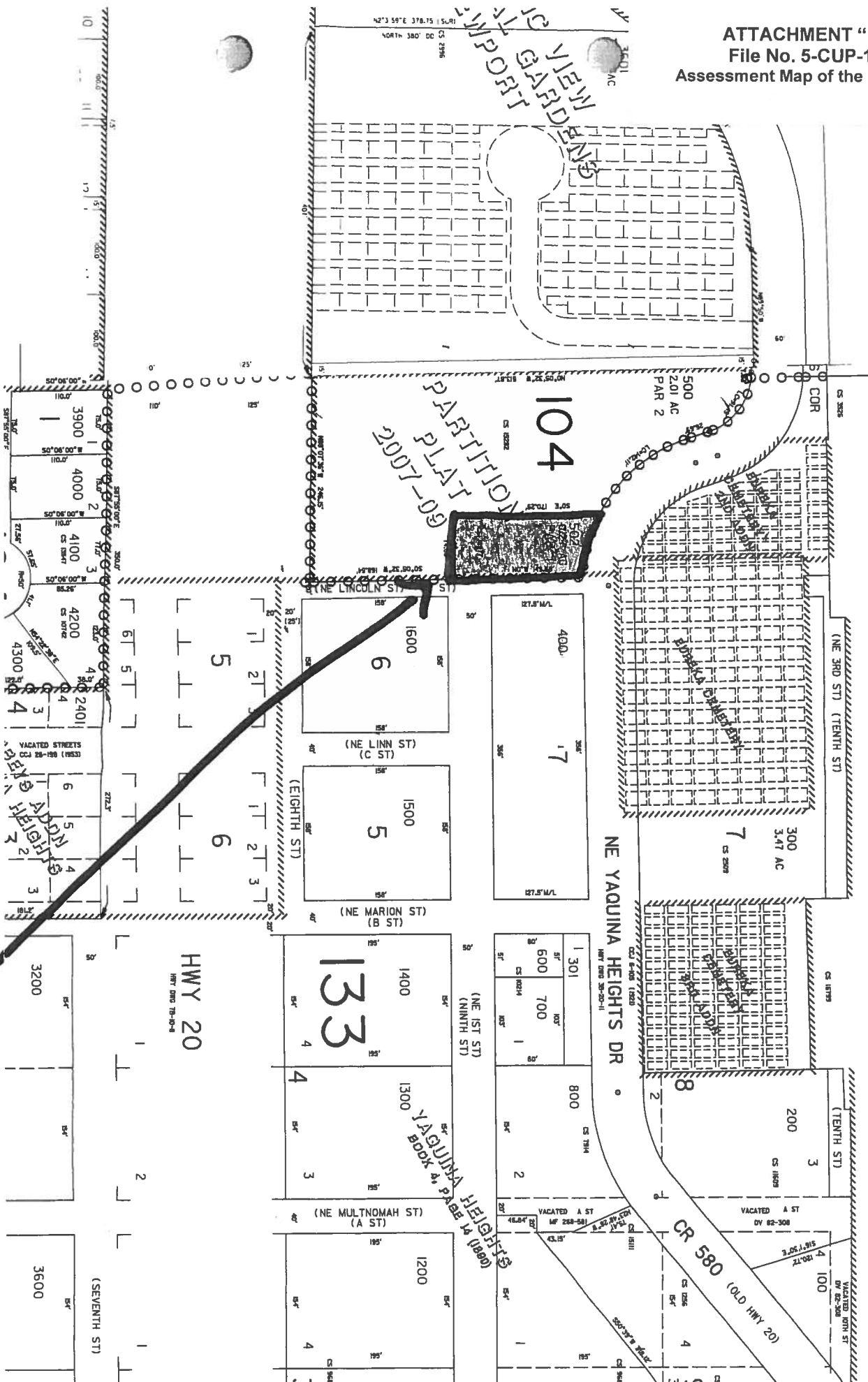
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On October 21, 2014, at the hour of 10:00 a.m., in the County of Lincoln, Oregon, the Sheriff's Office, 225 W. Olive St., Room 203,



ATTACHMENT "D"  
File No. 5-CUP-14  
Assessment Map of the Property

SEE MAP 11 11 04 CD





**ATTACHMENT "E"**  
**File No. 5-CUP-14**  
**Zoning Map of the Area**

EUREKA CEMETERY 5TH ADDN  
 CS 3526  
 1/16 COR  
 N89°50'W 60'  
 R=358.1'  
 C-3  
 PACIFIC VIEW  
 MEMORIAL GARDENS  
 500  
 2.01 AC  
 PAR 2  
 7.03' LC=91.49'  
 26.69'  
 LC=142.11'  
 NE YAQUINA HEIGHTS DR  
 YAQUINA DR  
 NE YAQUINA HEIGHTS DR  
 90000  
 170.29' S0°E  
 CS 15282  
 R-3  
 PARTITION  
 PLAT  
 2007-09  
 UNIT 1  
 UNIT 2  
 74.60'  
 168.54'  
 246.15'  
 15'  
 513.87' N0°05'32"W  
 (NE LINCOLN ST) (D ST)  
 127.5 M/L  
 356'  
 400  
 356'  
 50'  
 158'  
 1600  
 6  
 158'  
 40'  
 158'  
 (NE LINN ST) (C ST)  
 158'  
 20'  
 20' (25')  
 1  
 2  
 3  
 5  
 R-1  
 HIGHWAY 20  
 HWY 20  
 7.5'

PLAT OF:

SHEET 1 OF 2

**THE HEIGHTS CONDOMINIUMS**  
A REPLAT OF PARCEL 1, PARTITION PLAT NO. 2007-09  
LOCATED IN THE NW 1/4 OF SECTION 9, T11S, R11W, W.M.  
LINCOLN COUNTY AND CITY OF NEWPORT, OREGON  
ASSESSOR'S MAP 11-11-09 BA  
PARCEL 1, PARTITION PLAT NO. 2007-09  
SCALE: 1" = 20' DST-3621 JULY 2007  
LIMITED COMMON ELEMENT = LCE  
GENERAL COMMON ELEMENT = GCE

STATE OF OREGON S.S.  
COUNTY OF LINCOLN

I, HEREBY CERTIFY THAT THIS CONDOMINIUM PLAT WAS RECEIVED FOR RECORD ON THE 16th DAY OF October, 2007 AT 12:52 O'CLOCK P.M. AND RECORDED AS CONDOMINIUM PLAT NO. PK.1-29-1971-1878 LINCOLN COUNTY RECORDS.

BY: [Signature] 10/16/2007  
COUNTY CLERK/DE

**ATTACHMENT "F"**  
**File No. 5-CUP-14**  
**Survey for "The Heights Condominiums"**  
**prepared by Russell Johnson, recorded**  
**10/16/07 (Sheet 1 of 2)**

Book 1 PAGE 187

PARCEL 2  
PP #2007-09



I, RUSSELL JOHNSON, CERTIFY THAT THIS IS  
A TRUE & EXACT COPY OF THE ORIGINAL  
CONDOMINIUM PLAT OF "THE HEIGHTS CONDOMINIUMS"

**SURVEYOR'S NARRATIVE:**

THE PURPOSE OF THIS SURVEY IS TO CREATE A CONDOMINIUM PLAT ON THAT TRACT OF LAND DESCRIBED AS PARCEL 1, PARTITION PLAT 2007-09 LINCOLN COUNTY RECORDS, INTO TWO (2) UNITS, AS INDICATED ON THE ACCOMPANYING CONDOMINIUM PLAT. THIS SURVEY FOUND AND HELD THE MONUMENTS AT THE NORTHWEST AND SOUTHWEST CORNERS, AS ESTABLISHED IN PARTITION PLAT NO. 2007-09 (JOHNSON), FOR THE BASIS OF BEARING (N 00°00'00" W, 170.29'). THIS SURVEY ALSO FOUND AND HELD THE MONUMENTS AT THE NORTHEAST AND SOUTHEAST CORNERS, AS ESTABLISHED IN SAID PARTITION PLAT. THE RIGHTS OF WAY OF YAQUINA HEIGHTS DRIVE WERE DETERMINED FROM THE METHOD HELD IN SAID PARTITION PLAT. NO MONUMENTS WERE SET DURING THE COURSE OF THIS SURVEY.

**LEGEND:**

- ⊙ MONUMENTS FOUND - HELD FOR CONTROL  
3/8" x 30" IRON RODS & YELLOW PLASTIC CAPS  
AS INDICATED IN PARTITION PLAT NO. 2007-09
- MONUMENTS FOUND AS SHOWN

RECORD DATA SHOWN IN PARENTHESES.  
EQUIPMENT USED WILD T1610 TOTAL STATION.

SURVEY BY:  
DENISON SURVEYING, INC.  
720 SW ANGLE ST.  
NEWPORT, OREGON 97365  
(541) 265-9308

LINE	BEARING	DISTANCE
L1	S 89°43'38" E	18.73
L2	S 65°14'44" W	18.89
L3	N 89°59'14" W	6.00
L4	S 00°00'46" W	9.85
L5	S 89°59'14" E	6.00
L6	N 89°59'14" W	6.00
L7	S 00°00'46" W	18.18
L8	N 00°00'46" E	18.00
L9	N 89°59'14" W	2.00
L10	N 00°00'46" E	11.30
L11	S 89°59'14" E	2.00
L12	N 89°59'14" W	2.00
L13	N 00°00'46" E	11.30
L14	S 89°59'14" E	1.97
L15	N 00°00'46" E	9.25

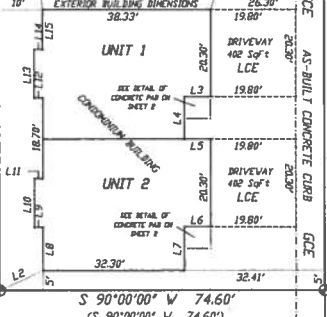
CURVE	ARC	BELTA	RADIUS	CHORD LENGTH	CHORD BEARING
CI	9.12	02°53'25"	180.80	9.12	S 88°16'55" E

NE YAQUINA HEIGHTS DRIVE (60')

INITIAL POINT

GENERAL COMMON ELEMENT

N 00°00'00" W 170.29'  
HELD FOR CONTROL  
BASIS OF BEARING  
PARTITION PLAT 2007-09



(S 00°05'32" E 149.69')  
S 00°05'32" E 149.69'

NE LINCOLN ST. (20')

**SURVEYOR'S CERTIFICATE:**

I, RUSSELL JOHNSON, A REGISTERED LAND SURVEYOR IN THE STATE OF OREGON, DO HEREBY SAY THAT I HAVE ACCURATELY SURVEYED AND MARKED WITH PROPER MONUMENTS, AS PROVIDED IN O.R.S. 92.060 & 92.070 THE LANDS REPRESENTED ON THE ACCOMPANYING PLAT OF "THE HEIGHTS CONDOMINIUMS", LOCATED IN THE NORTHWEST 1/4 OF SECTION 9, T11S, R11W, W.M. IN LINCOLN COUNTY, OREGON SAID CONDOMINIUM PLAT BOUNDARIES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INITIAL POINT, SAID POINT BEING A 5/8 INCH IRON ROD AT THE NORTHEAST CORNER OF PARCEL 1, PARTITION PLAT NO. 2007-09, WHICH IS ON THE SOUTHERLY RIGHT OF WAY OF YAQUINA HEIGHTS DRIVE; THENCE SOUTH 00°05'32" EAST, ALONG THE EASTERLY BOUNDARY OF PARCEL 1 TO THE SOUTHEAST CORNER THEREOF, A DISTANCE OF 149.69 FEET; THENCE SOUTH 90°00'00" WEST, ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL 1 TO THE SOUTHWEST CORNER THEREOF, A DISTANCE OF 74.60 FEET; THENCE NORTH 00°00'00" WEST, ALONG THE WESTERLY BOUNDARY TO THE SOUTHERLY RIGHT OF WAY OF YAQUINA HEIGHTS DRIVE, A DISTANCE OF 170.29 FEET; THENCE ALONG THE ARC OF A 180.80 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS S 74°30'55" E, 77.16'), A DISTANCE OF 77.76 FEET TO THE INITIAL POINT.

I HEREBY CERTIFY THAT THE PLAT OF "THE HEIGHTS CONDOMINIUMS" FULLY AND ACCURATELY DEPICTS THE BOUNDARIES OF THE UNITS OF THE BUILDING, AND THAT CONSTRUCTION OF THE UNITS OF THE BUILDING, AS DEPICTED ON THE PLAT, HAVE BEEN COMPLETED.

**NOTES:**

BOOK 151, PAGE 652 RELINGUESHES TO THE STATE OF OREGON,  
ANY EASEMENT OF ACCESS AND ALL RIGHTS OF INGRESS, EGRESS  
AND REGRESS TO THIS PROPERTY, FROM HIGHWAY 20.

NE 1st ST. (50')

**DECLARATION:**

STATE OF OREGON S.S.  
COUNTY OF LINCOLN

KNOW ALL PEOPLE BY THESE PRESENTS, THAT YBAY DEVELOPMENT, INC., AN OREGON CORPORATION, OWNER OF THE ABOVE DESCRIBED TRACT, DOES HEREBY MAKE, ESTABLISH AND DECLARE THE AMENDED MAP OF "THE HEIGHTS CONDOMINIUMS", TO BE A TRUE AND CORRECT MAP THEREOF, AND DOES HEREBY COMMIT THIS PROPERTY TO THE OPERATION OF THE STATE OF OREGON CONDOMINIUM LAW AND ARE SUBJECT TO THE PROVISIONS OF ORS 100.005 TO 100.625.  
IN WITNESS WHEREOF I THE UNDERSIGNED HAVING EXECUTED THIS INSTRUMENT THIS 11th DAY OF OCTOBER, 2007.

[Signature]  
ROGER HAHN  
PRESIDENT

**ACKNOWLEDGMENT:**

STATE OF OREGON S.S.  
COUNTY OF LINCOLN

ON THIS 11th DAY OF OCTOBER, IN THE YEAR 2007, BEFORE ME, ANN DENISON, THE SIGNED NOTARY PUBLIC, PERSONALLY APPEARED, ROGER HAHN, PRESIDENT OF "YBAY DEVELOPMENT, INC.", PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED THAT HE EXECUTED IT. WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]  
NOTARY SIGNATURE  
Ann M. Denison  
NOTARY PUBLIC - OREGON

410658  
COMMISSION NUMBER  
Dec. 10, 2010  
MY COMMISSION EXPIRES:



