

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
December 14, 2015
6:00 p.m.

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

Planning Commissioners Absent: Gary East, and Bill Branigan (*excused*).

PC Citizens Advisory Committee Members Present: Dustin Capri.

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the Planning Commission work session to order at 6:01 p.m. and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Continued review of the draft changes to the Local Improvement District (LID) Code. Tonight Tokos wanted to run through the code changes and come back to the policies if time permits. He noted that this is the draft code that Todd Chase and company put together on 10/21. He said previously the Commission had made it through the definitions, and he captured the one comment that was made at that time. Berman said the 10-year thing pops up later too. Tokos wondered if there was anything else that needs to be addressed in definitions. Berman said it should be broader. Can you pay earlier? Why is it fixed at 10 years? He said it would seem to make a little more sense to leave it up to your discretion. He said depending on the magnitude of the assessments, it may be impossible to pay back over 10 years; especially with a third of the assessed value being available for LID. Berman said he would like to see it be more flexible.

Tokos noted that under "initiation of LIDs" he has noted that the term "benefitted property" should be defined. Hardy said the term "benefit" should be defined. Tokos said he will take a look at that. It depends on how it plays with the Statutes. Hardy said a benefit is really subjective evaluation of impact. There should be a way to make it objective. Tokos said certainly with methodology. There would still be disagreements whether it constitutes a benefit or not. It can deal with impact and value of impact. Hardy said that's measurable. Tokos said the owner may still come in and remonstrate. Croteau wondered if "improved" would be any better. That implies something is better than what it was before. Hardy said you could establish a standard. Tokos will put in a comment, "spell out methodologies." Hardy said you could get rid of property benefit and say affected by. Tokos said he would like to look at the Statutes. If they use that term, we should use that term. That way if it's contested, we can stand behind it. Under number 5 was another comment the group talked about, "why should "broader public benefit" be a factor to allow an LID to be initiated?" If we're talking about public rights-of-way that everyone can use, wouldn't the degree of public benefit be a factor whether the LID is region-wide or local? Tokos said it absolutely will play into the number of properties. There could be less than 25% affected, but because it's a collector, it's spread across the region.

In answer to a question from Hardy, Tokos said since 2009 he thinks of only two or three initiated by owners. The City had a more aggressive use of this tool back in the 80s and actually financed infrastructure improvements for subdivisions like Shore Pine Hills and Lake wood Hills. Patrick recalled that one of those the City ended up getting back twice. Tokos said we have in Lakewood Hills. In Shore Pine Hills there was a large parcel never divided. Hardy asked if this was a developer asking the City to put in infrastructure and he will build a subdivision. Tokos said there were partnerships. Patrick said that was during the time of Bancroft bonds, and after that Bancroft bonds got nixed. Hardy asked how come there's a reference to Bancroft. Tokos said he thinks the rules just changed. Hardy asked, so it's still a tool; and Tokos confirmed that.

Capri asked why in 12.05.010 (B) (2) that last sentence is part of this paragraph. He said it's about health and safety and asked if that shouldn't be dropped. He said someone could argue that it doesn't enhance value. Tokos agreed it's not necessary. It's about health and safety; not value. Value is addressed separately. They're two different discussions and should be separate.

Hearing no other comments on section .010, Tokos moved on to 12.05.015 (Preliminary Engineer's Report). Berman questioned the process in (A) (3). Tokos said typically you think of that more in terms of a reimbursement district. He will ask Todd Chase about it. The City doesn't have history with reimbursement districts. Berman noted that number 4 doesn't seem that it should be in the engineer's report. He asked what it matters. Tokos said it shouldn't be merged into (4). He said that the first part talks about coming up with what should be assessed. There should be separate analysis of what is the capacity of each property to share this burden. It should be in a separate section. Patrick said probably after number 5. Capri said that he has no issue with the first part of (4), but wondered if there's a way to do that; allocate who pays what portion. Tokos said in some degree. It

depends on the nature of the project being formed by the LID. The cost of a street could be broken up by lineal feet of improvement. It could be different for a sewer that serves more. A traffic signal is not going to be a lineal thing; it's going to be more of a traffic generation thing where heavier users pay more, and those using it less pay less. There are standard trip generation ratios for different types of uses in the ITE manual, and that's how we would do that. Patrick asked how about for a flag lot if you're doing a street. Tokos said there are different ways to assess it; trip generation or frontage. Croteau said you have to have some way to weigh the benefit; improvement. Patrick asked if somewhere in assessments there's a method where you get credit for something that's already there, like sidewalk. Croteau said that's a level of detail that's impossible to specify. Patrick said just issue some methodology to reimburse for something that's already there. Berman said you could say this is how much it costs to put in sidewalk, and anybody who has one doesn't have to participate in that. Franklin said, and there could be a question of whether the existing sidewalk is up to code. Patrick asked and is there credit for curbs already set. Tokos said there's one more comment noted under number 6 that we talked about; "how are these costs accounted for if an LID doesn't get formed." There possibly could be some recommendation in terms of a deposit.

Under section 12.05.020 there weren't any other comments other than the one that was already noted.

Moving on to section 12.05.025 (Notice of Hearing on District Formation), Hardy asked a question just as a point of clarification. She noted that under (B) (6) it says you're not allowing remonstrance at the hearing itself; it has to be submitted prior? Berman said that remonstrance takes a letter. It would be difficult to try to pull it out of oral testimony. Hardy asked if there's a separate statement required. Patrick said it has to be in writing and ten days prior to the hearing. Croteau said what it does is separate testimony from a remonstrance. Patrick said somebody may come and submit testimony and not submit a remonstrance. Franklin said maybe that's so the Planning Commission has it before so we are aware of them. Tokos said it's supposed to be two steps; 2 hearings. The first is where you accept testimony and choose whether or not to proceed with it. At the first hearing you're not receiving remonstrances because you haven't decided whether to proceed with the district. He thinks that is what this is getting at. He said when we have the initial hearing on whether or not to form the district, we would determine things like should it be a full street or a narrow street, should we bury overhead utilities. What is our real public interest here, and do we agree with the concept that the engineers put together in terms of benefit? If it's decided to proceed, we will set a hearing with this specific proposal. That's when remonstrances will come in. At the end of the day, we may decide that we don't want to fund it with an LID. Patrick said that's not what this says here; this says the only way to remonstrate is against this hearing. Doesn't it say you have to do it here? Croteau said it probably should be moved and put in the context of the second hearing, Section 12.05.030 (Hearing on District Formation). Berman said it has a lot more than notice in there. He said maybe it needs organization. He asked Tokos about the non-remonstrance agreements he has in his office. He wondered if they are just that "I will participate in any LID that the City comes up with." Tokos said more often than not, it's that they will participate in a street or a sewer or a water and sewer LID. It's usually specific to the deficiencies at the time they are doing the development. Berman asked if you have a non-remonstrance agreement for street, and the engineer says street and bury utilities, does the agreement become void because you have a different scope of work. Tokos said you still have it, but it's not operable any more. Capri said for instance on his street where there's an old water line, in theory the City could say this should be an LID and we want all owners to pay for that. Tokos said potentially the City could initiate an LID to replace the water line and all homeowners get hit. Capri asked if there's a line when the City doesn't do that work and uses LIDs to replace infrastructure. If so, in a way a policy could be implemented that every single property owner could be replacing city infrastructure. Tokos thought that gets back to the policies; and we spent a fair amount of time talking about the policy level. Capri said, and this code is what you have to go by. Tokos said our elected officials have to follow policy; they are backed by that. They are going to be judicious in using an LID. They have clear policies. Croteau said that emergencies have to be real emergencies. Like a chronic failure that is really common. Then they are on solid ground to do it. Tokos said emergencies or Urban Renewal because they are trying to stretch resources. An area could be identified as LID eligible with Urban Renewal buy down. While Urban Renewal is alive, it can buy down what you would normally be paying. If you're paying half of what you normally would, then there's a record. It would be matching funds. If they choose not to do an LID, the Urban Renewal Agency can repurpose those funds for something else. Tokos said we're looking for policies to also include direction for staff. Otherwise, we're guessing what is or isn't appropriate. The policies provide direction for when to start an LID or not. The policies are the general framework. The code says this is the actual process. It was noted that in (C) (4) and elsewhere there's reference to 12.05.025 (C), which isn't accurate. Tokos made a note to clarify the procedural steps.

Under Section 12.05.030 (B) Berman noted that you have a 2/3 number. The policy says if it's 50% or more, they're not going to think about it. Tokos agreed we usually had a percentage in there. Berman said there should be some consistency. Capri asked why sidewalks and emergencies are separate. Berman said maybe sidewalks aren't as much cost. Tokos noted that, but said the Statute may make reference to sidewalks being slightly different. Hardy said maybe it's an accessibility issue. Tokos said, yes, like ADA guidelines.

Tokos asked for comments on Section 12.05.035 (Final Plan and Specifications). Patrick said on (B) he likes the part about the procedure for if the estimate is over 10%. Capri asked if on (A) the City could require easements for private residences. Tokos said the City could. Patrick said he thought it would be in case improvements run through private property. Capri asked if the City could write in the surveyor's cost if you're having to be responsible for it. Tokos said we certainly could do that. He said

we are always acquiring easements for the benefit of the City. It often has to be paid for; it's not always donated. Capri said what if you get an easement that doesn't benefit the City. Tokos said he didn't see us doing an LID where an easement didn't benefit the City. Even for a sewer line, the LID would fund the extension of a public sewer main, not a private lateral. Anything the City would be responsible for would be public. Tokos said the broader concern has to do with the fact that those are common costs. It's not something we really want to delegate after the Council decision. The consensus was that should be part of the engineer report; identify any required rights-of-way or easements with estimated costs. Tokos said that it will need to be in front of the Council for them to say that they agree to initiate with this estimated cost.

No one had any comments on Section 12.05.040 (Construction).

Section 12.05.045 (Cost Included in Assessment). Berman noted that both (B) and (E) mention engineering survey. It's repeated and should be in (B).

Going back to Section .040 (B), Capri asked if we should put a dollar amount, or more than 10% of the fee, or say something rather than just saying significantly.

On Section 12.05.050 (Method of Assessment) Berman said it's too hard to wrap your head around all of these scenarios. Hardy asked in (C) (1) if there isn't a word missing, like "shall." Berman noted that "shall" is above in the sentence. Capri said on (A) (2) as long as staff feels comfortable that they can come up with something to advise them on. Tokos said the Council will rely on them. He will ask Todd Chase to put samples in here. It's kind of worked in a little bit; but put in methods. Put something like, "common approaches include" or "acceptable approaches may include the following." Croteau agreed, put more specificity to the possibilities. Berman said that (D) in its entirety (numbers 1-4) talk about various improvements that can happen. There are lots of other kinds of improvements that could happen. He expected number 5 to talk about those; but it's "corner lots" and is not parallel. Tokos said that's code structure there. Berman noted that number 6 says no less than 60 feet, so that addresses flag lots. Franklin said and cul-de-sac lots.

Under Section 12.05.05, Berman wondered if Urban Renewal could be worked in where it lists the funding sources. Croteau noted that it says "may use other means." Berman said, but Urban Renewal is going to be a big one. Tokos said we can throw that in. He noted that it lists topographic concerns and other characteristics. If we get too specific, then there are a thousand other things that should be listed. But he thinks topography is a really good one for the development potential of properties. Berman said it really doesn't have anything to do with allocation. Capri said if the City uses it a lot or an unusual situation that puts the burden on the property owner. Tokos said if they determine that there's such potential that it has to be an excessively long sewer line or road, then they kick in some funds. Croteau said the way it's written provides a pretty large possibility. He thinks it should be left this way.

No comments were made on Sections 12.05.060 (Final Assessment) or .065 (Notice of Assessment).

On Section 12.05.070 (Financing of Program) Berman asked if a local improvements fund exists. Tokos said we may end up coming up with something else. The interest earnings were from enterprise funds; and those are required to be used for other purposes. You want it to be something you can use on general funds.

Regarding Section 12.0.075 (Payment), Berman gave an example that he's a property owner traveling for two months and an LID passes. Thirty days go by and now he's on the hook for the whole thing because he needed to make financing arrangements, but wasn't around within the 30-day time period. Tokos said he will compare this against other utilities' defaults. Berman said that could be large amounts of money to come up with within 30 days. Patrick said it allows you to defer payments. Berman said not if you don't request it in 30 days. Tokos said 30 days unless you go the installments route. Berman said he would like more time. In the final sentence it gives 90 days before foreclosure or collection. Tokos said is that for up-front costs. It has to be limited. Berman said how much up-front cost would there be in thirty days. Hardy asked how the City will foreclose on mortgaged properties. It was discussed that there's a hierarchy. Tokos said we also try to position this so the City is the most likely to receive payment. Berman said that (B) is worse. It says ten days from the date it was mailed to apply for installments. He noted that here you are looking at locking into ten years, too. Tokos said we talked about that. Croteau noted that (D) says if it's not paid, the City Council can declare it due and payable at once. Berman said it also would be nice to have it say that you can pay it off any time with no pre-payment penalty. Tokos said you're responsible for interest accrued up to the date you make the payment. Berman asked if there's a document signed if you make installments. Tokos said it's in the current title report to know you have the ability to lien the property. There are some things we have to do. Berman asked if (E) is typical, and Tokos confirmed it is; and Hardy agreed. Capri asked if people could pay the assessment right away, and that was confirmed. Tokos said he will take a look at the interest rates off (C). He said our Finance Director would like to see that as high as possible because they don't like financing. It should be not so onerous. They shouldn't be set at penalty rate. Patrick said it could be written so it's prime plus whatever, pick a rate; so if the rates start going up.

Tokos said the rest of the sections are pretty straightforward. Patrick asked if in (C) under 12.05.080 (Lien and Foreclosure) you can set it up so that the City shall be superior. Tokos said there is a legal structure where these types fall with other liens. He will take a look at it and how it fits with priority language. He will talk to the City Attorney. Berman asked if Tokos wasn't also going to re-work the local improvements fund in 12.05.070. Tokos will look into that.

B. Adjournment. Having no further time for discussion, the meeting adjourned at 7:01 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant