



PLANNING COMMISSION WORK SESSION AGENDA

Monday, January 13, 2020 - 6:00 PM

City Hall, Conference Room A, 169 SW Coast Hwy, Newport, OR 97365

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

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

1. CALL TO ORDER

2. UNFINISHED BUSINESS

2.A Updated Planning Commission Work Program.

[Memorandum](#)

[Updated Work Program](#)

3. NEW BUSINESS

3.A Review of Goal Setting Process.

[Memorandum](#)

[Goal Setting Schedule](#)

[Community Development Dept Fact Sheet](#)

[Excerpt of 1-6-2020 City Council Mtg Minutes](#)

[Email and Draft Letter - DLCD](#)

[PC Goals FY 19-20](#)

Vision 2040 Brochure

3.B Discussion on "Ex Parte Contact" Disclosure Requirements.

Memorandum

Email Bob Berman and Ross Williamson

ORS 227.180

NMC 14.52.080(B)(3)

Horizon Construction v. City of Newberg

Opp v. City of Portland

4. ADJOURNMENT

Memorandum

To: Planning Commission/Commission Advisory Committee
From: Derrick I. Tokos, AICP, Community Development Director 
Date: January 9, 2020
Re: Updated Planning Commission Work Program

Enclosed is an updated tentative Planning Commission Work Program. As you know, this is a working document that is revised and adjusted regularly. There are five quasi-judicial land use actions listed, including the setback variance scheduled for a hearing before the Commission this evening. Applications for Newport Basics and the Whaler expansion are likely to come in over the next 1-2 weeks based upon discussions we have had with the project consultants. The Hancock UGB swap, which is a complex proposal, is expected by the end of the month. OSU has issued a press release that they are moving forward with the student housing project. It will necessitate an amendment to the Planned Development, the application for which will likely be submitted in late February or early March. Their plan is to begin construction this summer. Other quasi-judicial applications, that we are not yet aware of, will undoubtedly be submitted as well.

All other items listed are legislative in nature or relate to the City's urban renewal program. Some implement existing committed projects, such as the TSP update, while others follow up on anticipated/adopted City policy (e.g. parking code revisions) or state mandates (e.g. HB 2001). All are informed by or align with strategies listed in the Greater Newport Vision 2040 Plan.

This work session provides Commission members an opportunity to review the items listed and make adjustments where appropriate.

Attachments
Updated work program

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



January 13, 2020 Work Session

- Review FY 20/2021 goal setting schedule and updated work program
- Review “ex parte” disclosure requirements

January 13, 2020 Regular Session

- Appointment of officers
- File No. 1-V-19 front yard setback variance request at 1515 – 1535 NW Spring Street

January 27, 2020 Work Session

- FY 2020/2021 goal setting discussion
- Placeholder for review of potential amendments related to car camping (Homelessness Taskforce recommendation)
- Final review of draft amendments to the Sewer Facilities Element of the Comprehensive Plan

January 27, 2020 Regular Session

- Formal action on Commission goals

February 10, 2020 Work Session

- Review updated set of Tsunami Hazard Overlay Zone Amendments / Hazard Mitigation Plan
- Updated amendments to the Stormwater Facilities Element of the Comprehensive Plan

February 10, 2020 Regular Session

- Hearing on amendments to the Sewer Facilities Element of the Comprehensive Plan

February 24, 2020 Work Session

- Review updated draft amendments related to tiny homes and MFDs on individual lots
- Placeholder to discuss Transportation System Plan (TSP) materials & spring outreach

February 24, 2020 Regular Session

- Placeholder for Nye Beach Design Review hearing on Whaler Motel expansion
- Hearing on amendments to the Stormwater Facilities Element of the Comprehensive Plan

March 9, 2020 Work Session

- Scope and parameters for any needed updates to the Nye Beach Overlay (report to Council)
- Review Oregon Administrative Rules for UGB amendments

March 9, 2020 Regular Session

- Placeholder for Conditional Use Permit hearing for Newport Basics (former Apollos Site)
- Public hearing on amendments related to car camping

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



March 23, 2020 Work Session

- Reserve for TSP spring workshops

March 23, 2020 Regular Session

- Reserve for TSP spring workshops

April 13, 2020 Work Session

- Review draft amendments to NMC Chapter 14.14, Parking, Loading, Access Requirements (implementing Parking Management Plan recommendations)

Review scope of work for South Beach US 101 Corridor Refinement Plan

April 13, 2020 Regular Session

- Placeholder for hearing on tsunami hazard overlay zone amendments
- Placeholder for hearing on amendments related to tiny homes and MFDs

April 27, 2020 Work Session

- Review for implementing HB 2001 provisions related to additional density in R-1/R-2 zones
- Recommendations for distribution of Affordable Housing CET funds (from committee)

April 27, 2020 Regular Session

- Placeholder for hearing on Hancock UGB land swap, zone change, and annexation

May 11, 2020 Work Session

- Initial review of any amendments to the Nye Beach Design Review Overlay
- Discuss framework for US 101/20 commercial core area land use changes (informed by March 2020 TSP workshops)

May 11, 2020 Regular Session

- Placeholder for hearing on Wilder PD amendment for OSU student housing

May 26, 2020 No Meeting

June 8, 2020 Work Session

- Placeholder for initial review of framework for low interest business facade improvement loan/grant program for commercial core areas
- Placeholder for review of refined draft of any agreed upon amendments to Nye Beach Design Review Overlay

June 8, 2020 Regular Session

- Placeholder for hearing implementing HB 2001 provisions in R-1/R-2 zones

June 22, 2020 Work Session

- Placeholder for refined review of framework for low interest business facade improvement loan/grant program for commercial core areas
- Review draft land use changes for US 101/20 commercial core areas

June 22, 2020 Regular Session

- Hearing on amendments to NMC Chapter 14.14, Parking, Loading, Access Requirements

Memorandum

To: Planning Commission/Commission Advisory Committee
From: Derrick I. Tokos, AICP, Community Development Director 
Date: January 9, 2020
Re: FY 2020-21 Goal Setting Schedule and Materials to Inform Discussion

Enclosed is the goal setting schedule for FY 2020-21, along with a fact sheet outlining major initiatives the Community Development Department is likely to be engaged in in the coming year. At its meeting on Monday, the City Council adopted the targeted amendments the Commission recommended they make to the C-2 zoning standards in the Nye Beach Design Review Overlay. At Wendy Engler's request, the Council also adopted a motion directing the Commission evaluate whether or not additional changes are needed. The City Manager would like to report the Commission's recommendations back to the City Council (i.e. whether or not changes are needed and the scope of such changes) sometime in the spring. A draft of the minutes from the Council meeting are enclosed.

Additionally, the Department of Land Conservation and Development (DLCD) is interested in engaging with the City, and other area stakeholders, to update the Yaquina Bay Estuary Management Plan. The State would take the lead, and hire a consultant to assist with the project. The City of Newport would play a support role. Attached is an email from our DLCD Regional Representative, Lisa Phipps, asking if the City would be willing to participate, along with a draft template for a support letter. I anticipate that Lisa or Heather Wade with DLCD will attend the work session to provide further context.

Lastly, enclosed are the Planning Commission's goals from last year and the Vision 2040 strategies. These are being provided for reference. This work session is an opportunity for the Commission to begin to frame its goals for the coming year, with January 27th being the date they would be formalized and forwarded to the City Council.

Attachments

Goal setting schedule
Community Development Department fact sheet
Excerpt of minutes from the 1-6-20 City Council meeting
Email and draft support letter from Lisa Phipps, DLCD
Planning Commission Goals for FY 19-20
Vision 2040 Brochure

2020
Annual Goal Setting Schedule

- 12/12 2040 Advisory Committee to meet to develop Annual Report for the Council.
- 12/13 Request for information is released to Department Heads.
- Department fact sheet
 - Current budget
 - Staff full time/part time/contractual
 - Ongoing issues
- 12/13 Goal Notice sent to Advisory Committees.
- 12/13 Request for status of 2019-2020 Council Goals sent to Department Heads for narratives of those goals.
- 1/7 Department Fact Sheets due.
Status of Council 2019-2020 goals due.
Report from 2040 Advisory Committee due.
- 1/13 Council Goal-Setting Session 9 AM-3PM.
- Review 2040 Vision and Key Strategies Annual Report
 - Review Department Reports
 - Identify 1-5 year goals
 - Prioritize Council Goals for 2020-2021 fiscal year
- 1/21 Present draft report to Council on Council Goals.
- 1/22 Notice to Department Heads to update Status of 2019-2020 Goals and submission of goals for 2020-2021. This will incorporate response to Council goals.
- 2/17 Departmental and Advisory Committee Goals (including responses to Council Goals) are due. Update of 2019-2020 goals are due.
- 2/24 2040 Vision Advisory Committee reviews preliminary reports and provides comments to the Council.
- 3/2 Work session to reconcile the goals.
- 3/3 Preliminary Budget work session.
- 3/16 Public hearing and approval of the 2020-2021 goals.

City of Newport
2020 Departmental Fact Sheet

Department: Community Development

Department Operating Budget(s):

GL Account #	Name	Total Dollar Amount
101-1400	Community Development	\$258,945
240-4410	Building Inspection Fund	\$516,070
270-9120	Urban Renewal - South Beach	\$102,069
271-9210	Urban Renewal - North Side	\$35,615

Department Full-time Job Titles:

Job Title	# of Employee(s)
Community Development Director	1
Building Official	1
Senior/Associate Planner	1
Permit Technician	1
Executive Assistant	1

Major Initiatives for 2020-21

Facilitate updates to the Newport Transportation System Plan (TSP), with an emphasis on revitalizing the City Center area and identifying infrastructure improvement priorities for Agate Beach. This is a 2-3 year planning project being undertaken in partnership with ODOT.

Initiate work to modernize land use/development standards, and put in place a framework for a business facade low interest loan/grant program for US 101/20 commercial core areas. These would be developed in concert with the TSP update, building upon the recommendations that come out of that process.

Prepare a refinement plan for South Beach commercial/industrial areas, including how the Urban Renewal Agency can best position the 2.3 acres it owns at the northeast corner of US 101/35th for redevelopment. This should be timed such that it is complete when the signal relocation project is finished (end of 2021).

Begin implementation of South Beach Urban Renewal Plan Phase III projects. This includes preliminary work with ODOT on the feasibility of a traffic signal or possibly a roundabout at SE 40th and US 101.

Implement remaining housing elements of HB 2001 (2019). This is a state mandate that requires the City to adopt standards to allow duplexes on each lot or parcel that allows a detached single family home. It is also an opportunity to engage the community on whether or not additional density is desired in existing low-density areas (e.g. cottage clusters, triplexes, fourplexes, etc.). Must be completed by June 2021.

Work with the Urban Renewal Agency on Newport North Side Phase I projects that might be candidates for being advanced (i.e. they aren't reliant upon the TSP Update). This could relate to infrastructure at the Commons property or the installation of EV charging stations at strategic locations within the plan area.

Coordinate with Lincoln County and other regional partners to implement recommendations from the Lincoln County Housing Strategy Plan (2019). The big item is to get the low income housing rehabilitation loan program reconstituted. May require an infusion of CDBG grant funds.

Engage with DLCD, Port, County and other partners in updating the management plan for the Yaquina Bay Estuary. DLCD to take the lead and consultant will prepare the plan. City to support local committee work and adopt. Could improve effectiveness and streamline environmental permitting for in-water work.

Pursue amendments to land use regulations within the Historic Nye Beach Design Review Overlay in line with priorities established by the Planning Commission or City Council.

Initiate phased implementation of the parking study recommendations for the Bayfront, Nye Beach, and City Center commercial districts.

Work with the Fire and Public Works Departments on the viability of instituting electronic sign-off of building permit applications through the ePermitting system to streamline the process.

Assist with implementation of the Homelessness Taskforce recommendations, particularly as it relates to local land use and related requirements associated with car camping, transitional housing, and the establishment of a permanent overnight shelter.

Partner with the Parks and Recreation Department, Oregon Parks and Recreation, and/or BLM to begin implementation of the recently adopted Parks System Master Plan. Candidate projects could include new multi-use fields at Agate Beach State Park (where there is currently excess paved parking) or installation of bike/ped facilities along Lighthouse Drive. Will require a combination of state, local (i.e. Parks SDC) and possibly federal funds.

Public Hearing and Potential Adoption of Ordinance No. 2160, an Ordinance Related to Residential Use at Street Grade in C-2 Zone Portions of the Historic Nye Beach Design Review District. Hawker introduced the agenda item. Nebel reported on December 9, 2019, the Planning Commission held a public hearing on a request to consider amending the Historic Nye Beach Design Review District regulations expanding the area for new residential development which can occur at street level at the C-2 zone. He noted at the October 21 work session, the commission targeted a set of draft amendments to NMC 14.30.080 and 14.30.100 that would allow new residential use at street grade on all C-2 zoned property in the district situated south of NW 2nd Street and north of NW 6th Street. He stated written and public comments were received and have been relayed in the attached materials from Community Development Director Derrick Tokos. He indicated the Planning Commission voted unanimously to forward a favorable recommendation of these changes to Council. He recommended the Mayor conduct a public hearing on ordinance No. 2160, an ordinance related to residential use at street grade in C-2 zone portions of the Historic Nye Beach Design Review District.

Sawyer opened the public hearing, on Ordinance No. 2160, at 6:25 P.M. He called for public comment.

Wendy Engler, a Newport resident, stated she is in favor of the concept of the proposed ordinance, especially for the two specific properties who petitioned the city for the change. She added, however, that her support is tempered by concern over the current development standards that will apply to these properties and other streets. She noted some of the building standards are not consistent with the comprehensive plan polices related to Nye Beach, most notably, standards that allow multiple lots to be combined into a single tract for a single-family home in a C-2 area are not conducive to the pedestrian friendly, small scale mixed use neighborhood envisioned in the peninsula urban design plan of the comprehensive plan. She indicated this is notable on Cliff Street, where millions of dollars were spent for a walkable street and some commercial activity, not private homes. She urged the Council to direct the Planning Commission to follow through on their motion that passed unanimously at the August 28, 2017, meeting. She stated the motion was to review the core zone proposal and to include review of other aspects of the Nye Beach overlay as needed such as modification of loud uses in C-2.

Planning Commissioner Bob Berman reported he fully supports the ordinance being reviewed tonight. He indicated the ordinance was developed as a targeted modification, small in scope, and only applied to six or eight potential properties that are undeveloped. He stated the ordinance does not affect the entire overlay or the entire area. He urged Council to support the ordinance. He added Engler made some excellent points about unintended consequences of past actions, and that it's time to review the development standards of the Nye Beach overlay. He emphasized it's time to see what other things can be done to enhance purposes of the Nye Beach overlay, in particular the problem of multiple lots being combined for large single-family residences.

Jan Kaplan, a Newport resident, stated he is in support of Engler's comments. He noted Nye Beach is known throughout the state, and the city needs to be careful about making changes to code that would change the nature of the area. He suggested before Council goes forward making changes, that the overall review be carried out.

Sawyer closed the public hearing at 6:33 P.M. for Council deliberation. Goebel stated he agrees with the concept, and he is concerned that there are bigger structures going in and combining lots, which may not be the real desire of the neighborhood. He indicated

he would like the Planning Commission to look at that issue. Jacobi suggested Council direct the Planning Commission to review standards in Nye Beach.

MOTION was made by Goebel, seconded by Allen, to read Ordinance No. 2160, an Ordinance related to residential use at street grade in C-2 zone portions of the Historic Nye Beach Design Review District, by title only, and place for final passage. The motion carried unanimously in a voice vote. Hawker read the title of Ordinance No. 2160. Voting aye on the adoption of Ordinance No. 2160 were Allen, Parker, Jacobi, Hall, Botello, Sawyer, and Goebel.

MOTION was made by Jacobi, seconded by Hall, to direct the Planning Commission to review the Nye Beach overlay specifications. The motion carried unanimously in a voice vote.

Nebel explained in 2017, Council had to review and renew the overlay zone, and the Planning Commission recommended reviewing this on a broader basis. He noted since then time was consumed by the vacation rental issue. Goebel asked if the Nye Beach Neighborhood Association would be involved. Nebel replied the Planning Commission will have an initial discussion and then present a report to Council for further direction. Hall recommended the Planning Commission take a physical walkthrough of the area affected by the proposal.

Derrick Tokos

From: Phipps, Lisa <lisa.phipps@state.or.us>
Sent: Wednesday, January 08, 2020 3:05 PM
To: Derrick Tokos
Cc: Wade, Heather
Subject: Pilot project - Yaquina Bay

Hi, Derrick,

I reached out yesterday to Matt Spangler about a project that DLCD is considering. Since he had always talked about Yaquina Bay as being a good candidate for an estuary management plan update, I wanted to check in to see if he still felt that way. And he did. So, now I am reaching out to you to see if you feel the same way

We are looking to use Yaquina Bay as a pilot project where we could go through the whole process and then develop a guidance to move other planning efforts forward. We would hire a contractor who would do the facilitation, writing the draft management plan, and preparing the guidance. We would partner with the County and Cities establishing a steering committee (which would also participate in the contractor selection) and an advisory committee to help guide the process. The steering committees would be intimately engaged in the full process.

Would you be willing to support this project with a letter of support? I can provide you with a template for a letter particularly given the quick turnaround. We have a deadline of January 15th (everything is always urgent, isn't it?).

This is intended to be a very open and transparent process and we know that at the end of the project, it may look very different than how it starts it out. But, I think this is a really good opportunity to see what all of the issues are and how updating the plan can address them.

I am happy to talk to you about it more unless you are comfortable supporting it knowing that once the steering committee comes together, there may be some changes/additions to the SOW.

Thanks,
Lisa



Lisa M. Phipps

North Coast Regional Representative | Ocean/Coastal Services Division
Oregon Department of Land Conservation and Development
4301 Third Street, Room 206 | Tillamook, OR 97141
Cell: 503-812-5448 | Main: 503-842-8222 ext 4004
lisa.phipps@state.or.us | www.oregon.gov/LCD

[Contact Information]

January 10, 2020

Dear Elizabeth Mountz,

On behalf of [Your Organization Name], we are pleased to send this letter of support for the Oregon 2020 CZMA §309 Project of Special Merit (PSM) grant application, being submitted to your office by Patty Snow of the Oregon Coastal Management Program.

The Yaquina Bay is a unique and valuable resource for our region. The bay plays a major role in the economic, social, and environmental health of our communities. We support using an update to the Yaquina Bay Estuary Management Plan as a pilot project to inform the development and implementation of a practical strategy for Oregon Estuary Management Plan Updates with a climate change and coastal hazards context across the coast. A successful project will not only benefit managers and users of Yaquina Bay, but will also inform the guidance document that can be utilized by other communities.

Local governments and OCMP lack the personnel and funding necessary to efficiently complete this project without additional financial and technical support from CZMA §309 grant. This project requires a high level of technical expertise in GIS and technical reporting. Additional understanding in estuarine environments and natural resource science will be critical in best incorporating the best-available-science into updated EMP's. This high level of technical expertise and fiscal need lends itself to a team-based approach which neither OCMP nor local governments currently have the capacity to achieve.

The [Your Organization Name], has a vested interest in this project. We are committed to participating on the Steering Committee to help guide this project. We feel that the proposed Oregon PSM is technically sound and has great potential to assist our community in updating estuary management plan to plan for the future with the best available data and to better understand the impacts of hazards and climate change on Oregon's estuaries and coastal communities.

In summary, we strongly support the Oregon 2020 CZMA §309 PSM grant application and hope you will provide funding to complete it.

Sincerely,

[Name]

[Position]

[Your Organization Name]

City of Newport, OR :: Goals

Goal Num	Goal Type	Goal Progress	Goal Title	Goal Text	Status Updates	Goal Linked Strategies
5	Current FY	In Progress	Assist DOGAMI and DLCD to develop tsunami resiliency "Beat the Wave" maps, development of a tsunami evacuation facilities capital improvement plan, and zoning overlay with design standards and possible use limitations.		2018-19: DOGAMI "Beat the Waves" mapping is substantially complete and should be released in finished form by the end of the fiscal year. This will inform development of the zoning overlay and design standards, work that will carry-over to next fiscal year. Development of a tsunami inundation area overlay and design standards to be focus for FY 19/20.	A1. Infrastructure Investments A13. Strategic Investments and Partnerships E5. Disaster Preparedness
6	Current FY	Not Started	Complete a refinement plan for South Beach commercial/industrial areas.		2018-19: Plan will likely be started this fiscal year but will not be completed until 2019/2020. Plan should be complete in FY 2019/2020. To inform land use rules and facilitate annexation of property in South Beach.	A1. Infrastructure Investments A3. Transportation Corridors A4. City Wide Beautification A10. Street, Highway and Bridge Improvements A14. Developable Land A15. Complete Streets F4. Community Engagement
8	Current FY	In Progress	Initiate implementation of the parking study recommendations for the Bayfront, Nye Beach, and City Center commercial districts, including changes to the City's off-street parking standards.		2018-19: Parking Study Advisory Committee has finished refinements to the March 2018 study by Lancaster Engineering and the study is to be adopted into the Comprehensive Plan by end of fiscal year. Implementation to extend into next fiscal year. Complete parking study demand management (metering/permitting) in the Bayfront and Nye Beach, paired with elimination of off-street parking standards that limit development.	A1. Infrastructure Investments A16. Public Transit Improvements and Expansion C8. Local Businesses Support
9	2-5 Years	Not Started	Initiate updates to Newport's residential, commercial and industrial			A2. Housing Supply A7. Housing Development Incentives A9. Understanding Impacts of Seasonal Housing A14. Developable

Goal Num	Goal Type	Goal Progress	Goal Title	Goal Text	Status Updates	Goal Linked Strategies
			buildable lands inventories.			Land F4. Community Engagement
10	2-5 Years	Not Started	Implement, monitor, and periodically reassess Newport's vacation rental regulations.			A8. Vacation Rentals A9. Understanding Impacts of Seasonal Housing F4. Community Engagement
11	2-5 Years	In Progress	Complete the Transportation System Plan update and revise the projects in the Northside Urban Renewal District to align with the plan.		2018-19: Planning work to include community charrettes to re-envision public spaces and urban design options for the city center area and design solutions for Agate Beach. Plan to also lock in location of future replacement bridge. 2019-20:	A1. Infrastructure Investments A3. Transportation Corridors A4. City Wide Beautification A5. City Center Revitalization A6. Mixed-Use Development A10. Street, Highway and Bridge Improvements A11. Bicycle and Pedestrian Safety and Amenities A12. Multiuse Paths and Trails A15. Complete Streets A16. Public Transit Improvements and Expansion B2. Integrated Shared-Use Trail System E5. Disaster Preparedness F4. Community Engagement
12	2-5 Years	Not Started	Adopt storm drainage and erosion control standards for new development in line with the recently adopted storm drainage master plan.			B1. Sewer and Stormwater Management B5. Green Building and Development B6. Environmental Conservation Partnerships F4. Community Engagement
13	2-5 Years	Not Started	Assess opportunities to adjust plans and development regulations to increase the amount of development ready land within the Newport Urban Growth Boundary.			A2. Housing Supply A13. Strategic Investments and Partnerships A14. Developable Land F4. Community Engagement
14	2-5 Years	Not Started	Complete implementation of the parking study recommendations for the Bayfront, Nye Beach, and City Center commercial districts.			A1. Infrastructure Investments A16. Public Transit Improvements and Expansion C8. Local Businesses Support
15	2-5 Years	Not Started	Coordinate with the County on an Urban Growth Management Area Agreement to encourage		2018-19: Updates to urban growth management agreements to be completed with the County led regional housing implementation	A13. Strategic Investments and Partnerships A14. Developable Land F4. Community Engagement

Goal Num	Goal Type	Goal Progress	Goal Title	Goal Text	Status Updates	Goal Linked Strategies
			the orderly urbanization and annexation of South Beach industrial areas.		strategy.	
16	5+ Years	Not Started	Complete updates to Newport's residential, commercial and industrial buildable lands inventories and initiate priority planning projects.			A2. Housing Supply A7. Housing Development Incentives A9. Understanding Impacts of Seasonal Housing A14. Developable Land F4. Community Engagement
17	5+ Years	Not Started	Undertake planning initiatives where needed to fully implement TSP recommendations, and facilitate revitalization of commercial core areas in and around US 101 and US 20.			A1. Infrastructure Investments A3. Transportation Corridors A4. City Wide Beautification A5. City Center Revitalization A6. Mixed-Use Development A10. Street, Highway and Bridge Improvements A11. Bicycle and Pedestrian Safety and Amenities A12. Multiuse Paths and Trails A14. Developable Land A15. Complete Streets A16. Public Transit Improvements and Expansion B2. Integrated Shared-Use Trail System E5. Disaster Preparedness F4. Community Engagement
18	Current FY	In Progress	Complete and Initiate Implementation of Park System Master Plan	Plan adoption may extend into FY 19/20. Implementation to include refinement of plan elements such as trails specifications/ wayfinding, parks SDC updates, and financing strategies.		B2. Integrated Shared-Use Trail System B3. Parks and Recreation Needs and Upgrades B4. Trail-Building Program
19	Current FY		Revisit Nye Beach Land Use Regulations	Commission to evaluate whether or not changes are needed to land use regulations within the Nye Beach Design Review overlay.		A6. Mixed-Use Development F4. Community Engagement
20	Current FY		Implement Additional Round of Housing Affordability Measures	Work to include skinny street review (TSP), tiny home/MFD update, and recommendations from		A2. Housing Supply A7. Housing Development Incentives A14. Developable Land

Goal Num	Goal Type	Goal Progress	Goal Title	Goal Text	Status Updates	Goal Linked Strategies
				the Regional Housing Implementation Plan. State legislative mandates would be addressed as well.		

In 2040, the Greater Newport Area is an enterprising, livable community that feels like home to residents and visitors alike. We have carefully planned for growth with well-maintained infrastructure, affordable housing for all income levels, robust public transportation, diverse shopping opportunities, and distinct, walkable districts and neighborhoods.

ENHANCING A LIVABLE REGION



ACKNOWLEDGEMENTS

The Greater Newport Area Vision 2040 was developed with the guidance and collaboration of The Greater Newport Area Vision 2040 Advisory Committee, the Newport City Council, and City of Newport staff, based on thousands of comments and suggestions received from Greater Newport Area community members and visitors.

A special thank you to the entire community, but especially to all those who helped guide the process.

GREATER NEWPORT AREA VISION 2040 ADVISORY COMMITTEE

Wayne Belmont
Bob Berman
Beatriz Botello
Steve Boynton
Bill Branigan
Cathay Briggs
Lorna Davis
Lisa Ely
Wendy Engler
Matt Harner
Kaety Jacobson

Jessica Linnell
Patricia Patrick-Joling
Carla Perry
Bonnie Petersen
Robert Porch
Sandra Roumagoux
Laura Swanson
Gil Sylvia
Lucinda Taylor
Tom Webb
Jon Zagel

CITY COUNCIL

Sandra Roumagoux, Mayor
Wendy Engler,
Council President
David Allen
Dietmar Goebel
Mark Saelens
Dean Sawyer
Laura Swanson

CONSULTING TEAM HDR

Katney Bair
Cassie Davis
Lindsay McWilliams
Doug Zenn

Steven Ames Planning

Steven Ames

CITY OF NEWPORT STAFF

Rachel Cotton
Peggy Hawker
Sherri Marineau
Spencer Nebel
Derrick Tokos



GREATER NEWPORT AREA VISION 2040 OUR COMMUNITY VISION

In 2040, Greater Newport is the heart of the Oregon Coast, an enterprising, livable community that feels like home to residents and visitors alike. We live in harmony with our coastal environment – the ocean, beaches and bay, natural areas, rivers, and forests that sustain and renew us with their exceptional beauty, bounty, and outdoor recreation. Our community collaborates to create economic opportunities and living-wage jobs that help keep the Greater Newport Area dynamic, diverse, and affordable. We take pride in our community’s education, innovation, and creativity, helping all our residents learn, grow, and thrive. Our community is safe and healthy, equitable and inclusive, resilient and always prepared. We volunteer, help our neighbors, support those in need, and work together as true partners in our shared future.

KEY STRATEGIES - Indicates priority for * Latino Communities † Senior Communities

TIER I Infrastructure Investments. Maintain and upgrade local infrastructure within available funding.

Housing Supply. *†
Increase supplies of affordable and workforce housing, including rentals and for sale units at prices that are accessible to a broad range of the general public.

Transportation Corridors. Revitalize Highway 101 and Highway 20 in and around Newport to serve as attractive gateways to the community.

Vacation Rentals. Assess the growth and distribution of vacation rentals and take longer-term actions that may be required to address impacts on neighborhoods and the community.

Understanding Impacts of Seasonal Housing. Gain a better understanding of the impacts that seasonal housing, including second homes and vacation rentals, has on the availability and affordability of housing and the provision of public services within the community.

Street, Highway and Bridge Improvements. Engage the State of Oregon and community partners to identify bridge alternatives and future street and highway improvements that meet local needs while mitigating congestion and accommodating future growth and increased traffic.

Developable Land. Ensure an adequate supply of buildable land by first encouraging redevelopment of underutilized and redevelopable properties. Extend infrastructure to undeveloped land that is zoned for development-related uses.

Complete Streets. *†
Design neighborhoods around streets that are well integrated with local transit, are ADA accessible, and accommodate “active transportation” such as cycling, walking, and wheelchair moving.

Public Transit Improvements and Expansion. *†
Develop targeted improvements to the local transit system, including better scheduling, signage, and plans for system expansion. Work with Lincoln County to upgrade bus service in Newport and surrounding areas, with improved routes and more frequent service.

TIER II City-Wide Beautification. *
Promote city-wide beautification, generating a fresh yet familiar look for Newport through streetscaping, improvements to building façades, and ocean-friendly landscaping.

City Center Revitalization. †
Develop a City Center improvement strategy that expands options for living, shopping, working, and dining in the area by promoting walkability, mixed-use development, and refurbishment of historic buildings.

Bicycle and Pedestrian Safety and Amenities. *†
Work to improve the safety of bicyclists and pedestrians throughout Newport. Plan, fund, and develop improvements to bicycle and pedestrian amenities in strategic areas of the city, including sidewalks, crosswalks, overpasses, “traffic calming,” bike racks, and planned bicycle and pedestrian routes.

Multiuse Paths and Trails. Maintain and expand the multiuse path and trail system.

Transit Reliability and Promotion. *†
Develop and promote transit as a robust and reliable alternative to driving within the Greater Newport Area.

Mixed-Use Development.
Promote mixed-use neighborhoods in appropriate areas of the city, incorporating a blend of commercial uses, employment, and residential development that creates a distinct sense of place.

Housing Development Incentives. *†
Implement incentives to lower development costs and encourage construction and renovation of an array of housing types to augment the supply of affordable, quality, energy-efficient units.

Strategic Investments and Partnerships. Pursue strategic investments and partnerships to adequately meet the needs of the community as it grows and develops.

TIER III Telecommunication Technology. Promote universal, high-speed internet access throughout the city. Expand community and business access to new telecommunication technologies.



LEARN MORE

www.newportoregon.gov/vision2040 541-574-0603

Look Inside to Explore Our Vision Focus Areas and Strategies to Achieve Our Vision

CREATING NEW BUSINESSES & JOBS

In 2040, the Greater Newport Area collaborates to create economic opportunities and living-wage jobs that help keep Newport dynamic, diverse, and affordable. Our economy is balanced and sustainable, producing living wage jobs in the trades and professions, while supporting new start-up companies and small businesses based on local talent, entrepreneurship, ideas, and resources.



KEY STRATEGIES

TIER I Expanded Working Waterfront.* Leverage our maritime industries and marine-related assets to expand and diversify the capacity of marine businesses, including full utilization of the International Terminal.

Science Economy Expansion. Expand Newport's science and marine economy, promoting it nationally and internationally as a hub for scientific research, ocean observation, education, and utilization and conservation activities.

Living Wage Jobs.* Partner with new and existing businesses to retain, expand, and create jobs that pay living wages, providing at least a minimum income necessary so that workers can meet their basic needs.

TIER II Airport Improvements. Maintain and enhance the Newport Municipal Airport as a viable community asset that can support business growth and development and improve access to and from the community.

Local Businesses Support. Support and retain existing local businesses.

Marine Economy and Economic Development. Link OSU's Marine Studies Initiative and the area's marine economy into economic development planning.

Tourism Diversification. Diversify Newport's tourist industry by promoting expansion of ecotourism as well as interpretive programs based on Newport's maritime industries.

Arts and Cultural Destination. Promote the Greater Newport Area as a major arts and cultural destination.

Small Business Development. Expand training and education for small business development and entrepreneurial skills, including resources for artists, craftspeople, trades, and technology start-ups.

Green and Sustainable Business. Promote and support businesses in the Greater Newport Area that use and market green and sustainable technologies, materials, and products.

Sustainable Fisheries. Support innovation and new markets in sustainable fisheries by leveraging new technologies and partnering with the science community.

Diversified Agricultural Economy. Promote the production, marketing, and direct sales of seafood, value added wood products, and local agricultural products.

"Shoulder Season" Attractions and Festivals. Develop new attractions, festivals, and marketing to sustain tourism through the shoulder season.

TIER III Viable and Sustainable Commercial Air Service. Work with local, state, and federal partners to develop a model for sustainable commercial air service.

Permanent Farmers Market.* Create a permanent home for a year-round farmers market with expanded hours and business acceleration opportunities for food, beverage, and agriculture related start-ups.



LEARNING, EXPLORING, & CREATING NEW HORIZONS

In 2040, the Greater Newport Area takes pride in our community's education, innovation, and creativity, helping all our residents learn, grow, and thrive. Our schools are appropriately funded through diverse means of support to meet the highest standards of educational achievement. Our college and university prepare students for rewarding lives and productive careers. The arts and opportunities for creative expression and learning are high quality, diverse, and available and accessible to everyone.



KEY STRATEGIES

TIER I Funding for Schools. Develop creative, diverse, and alternative sources of funding for educational facilities, classes, programs, and extracurricular activities in the Greater Newport Area schools, including consideration for pre-K and early childhood education.

Vocational Technology and STEM Programs. Expand vocational tech and Science, Technology, Engineering and Mathematics (STEM) education, including K-12, OCCC, and OSU, and offer classes, training, and certification for marine sector and other jobs.

TIER II Art in Public Spaces. Integrate the arts as a key element of the city's identity, including expanding the presence of public art throughout the community.

Expanded and Upgraded Arts Footprint. Invest in improvements to performing and visual arts venues, including the Performing Arts Center and Visual Arts Center, to increase their capacity to accommodate arts and cultural events.

Summer Arts Offerings. Expand outdoor summer arts events and offerings, such as music and theater.

Schools and Local Talent. Promote increased partnerships between schools and local talent, including scientists, artists, craftspeople, and tradespeople who share their knowledge with area classes and students.

Teacher and Administrator Diversity.* Increase the diversity of teachers and administrators to be more representative of student demographics.

Bilingual and Cross-Cultural Education.* Establish comprehensive bilingual and cross-cultural educational programs throughout the community, including English for Speakers of Other Languages (ESOL) instruction, to promote better integration and improved achievement of residents of all ages.

Expanded and Integrated Higher Education.† Support Oregon Coast Community College (OCCC) in gaining accreditation and expanding its offerings, including workforce education and the trades.

Education Partnerships.† Encourage K-12, community college, professional, and noncredit education partnerships that promote pathways to marine educational programs at Oregon State University (OSU)'s Newport campus.

School-to-Work Programs.* Work with local schools, OCCC, OSU, and employers to develop a school-to-work program for students, training and certifying them to fill the needs of local employers and the job market.

TIER III Access to the Arts.*† Increase the availability of, and access to, lower cost arts venues and performances while supporting new, innovative opportunities, including workshops, film, and student work.



PRESERVING & ENJOYING OUR ENVIRONMENT

In 2040, the Greater Newport Area lives in harmony with its coastal environment. Our ocean, beaches and bay, natural areas, rivers, and forests sustain and renew us with their exceptional beauty, bounty, and outdoor recreation. We retain our connection to nature, protecting our land, air, water, natural habitats, and biodiversity, and promoting more sustainable ways of living.

TIER I Sewer and Stormwater Management. Maintain, upgrade, and modernize stormwater and sewer infrastructure to reduce overflows, keep our waterways and beaches clean, and minimize flooding in a manner that is both fiscally responsible and environmentally friendly.

Integrated Shared-Use Trail System.*† Develop an integrated trail system, accommodating multiple uses, that connects neighborhoods, visitor destinations, open spaces, and natural areas.

TIER II Parks and Recreation Needs and Upgrades.* Engage the community in identifying priorities and future needs related to open space, trail, and park and recreation assets. Make recommendations for future park upgrades, planning, and development, paying particular attention to funding maintenance.

Trail-Building Program. Establish a City trail-building program that provides opportunities for volunteer involvement.

Green Building and Development. Promote and incentivize environmentally responsible, resource-efficient building and development techniques, including onsite stormwater management, permeable pavement, energy-efficient buildings, ecological landscaping, and native plantings.

Environmental Conservation Partnerships. Prioritize conservation of significant open spaces and natural resource areas, including beaches and headlands, midcoast watersheds, the Yaquina Bay Estuary, rivers, streams, forests, and fish and wildlife habitat. Partner with local environmental organizations and agencies to expand and strengthen programs to protect and restore natural areas and resources and preserve environmental quality.

Comprehensive Recycling and Reduced Waste. Target the Greater Newport Area to achieve the highest rate of recycling of any city in Oregon through source reduction, reuse, recycling, composting of food waste, and curbside glass recycling.

Renewable Energy. Increase the use of renewable energy to achieve energy independence in the Greater Newport Area, harnessing a combination of renewable energy sources and technologies.

TIER III Climate Action Plan. Develop a comprehensive public-private climate action plan to lessen the Greater Newport Area's contribution to climate change, as well as to mitigate the impacts of climate change on the community itself.

KEY STRATEGIES



TIER I Transparency and Communication. Encourage and support continued open communication, transparency, and accountability on the part of City leaders and staff.

Vision as Foundational Document. Ensure Greater Newport's 2040 Vision serves as the foundation for ongoing public processes, planning, and decision-making.

TIER II Vision-Focused Council and Community. Promote key elements of Greater Newport's 2040 Vision through the Newport City Council, City staff, Greater Newport Area partners, and Vision advocates who engage with community partners.

Community Engagement.*† Develop new avenues for Greater Newport Area residents and businesses to engage and participate in the development of plans and policies, and to contribute to the decision-making process.

Culturally Competent and Inclusive Outreach.* Develop new forms of culturally competent outreach, such as Spanish-language publications and public service announcements, to reach out to and involve the entire community.

Model Communities. Research the best practices of other communities that have been successful in implementing vision plans and strategic community objectives, and learn from their successes.

Collaboration and Partnerships. Sustain positive relationships and high levels of civic collaboration between public, private, faith-based, civic, neighborhood, and community-based organizations and the community at large.

Community Forums.* Develop community forums that bring people of different backgrounds and cultures together to discuss issues and share solutions.

Youth Involvement. Work through the schools, Oregon Coast Community College, and Oregon State University to increase involvement of younger generations in current affairs and community issues, local government, volunteerism, long-range planning, and decision-making.

Retiree Involvement.† Encourage area retirees to become more active in civic life, contributing their skills, time, energy, and resources to address community needs, mentor young people, and promote their own health and engagement.

Volunteerism.† Cultivate the community's spirit of collaboration and engagement to create meaningful opportunities for public involvement and volunteerism for all ages.



FOSTERING COLLABORATION & ENGAGEMENT

In 2040, the Greater Newport Area's local governments and public agencies, schools and higher educational institutions, businesses, local employers, nonprofits, community groups, faith based institutions, and residents work together as true partners in our shared future. Governments reach out to engage and listen to residents, involve them in important plans and decisions, and collaborate for a better community in a rapidly changing world.

IMPROVING COMMUNITY HEALTH & SAFETY

In 2040, the Greater Newport Area is safe and healthy, equitable and inclusive, resilient and always prepared. We volunteer, help our neighbors, and support those in need. Our community's physical, environmental, social, and economic assets allow all of our residents, including families and children, young people, and seniors, to live healthy lives and find the support and services they require, including excellent, affordable, and accessible healthcare and childcare.

KEY STRATEGIES

TIER I Affordable and Accessible Healthcare.*† Work to improve access to and affordability of healthcare for all in the community through improved healthcare facilities, education, and preventive services.

Medical Professionals and Specialists.*† Recruit and retain more healthcare providers and medical professionals in the community, including medical specialists in pediatrics, geriatrics, mental health, chronic diseases, services for veterans, and the prevention and treatment of addiction.

Expanded Mental Healthcare.*† Expand mental health services in the area, including improved community education, prevention, and counseling services, as well as trauma-informed care that diagnoses and treats the mental health impacts of adverse life experiences.

Improved Service Coordination. Enhance coordination among social services, non-profits, and faith-based institutions to provide integrated, comprehensive support to residents of our community experiencing poverty, hunger, social isolation, homelessness, addiction, domestic violence, and related issues.

TIER II Disaster Preparedness. Expand disaster preparedness and self-reliance programs and activities, focusing on neighborhood level organizing, and including multilingual information, training, and assistance.

Proactive Police and Fire Services.* Support police and fire services in meeting and addressing growth and changing community needs. Support improved community policing practices that promote positive interactions between public safety officers and the public.

Access to Healthy Food. Improve community "food security" by addressing issues of availability, accessibility, and affordability of healthy food.

Homelessness Solutions. Implement proactive solutions to expand services and resources for people who are homeless, including homelessness prevention and other programs and partnerships to help the area's homeless population obtain stable housing.

Translation and Multilingual Services.* Increase and support existing local capacity to provide translation and multilingual services, including assistance with employment, physical health, mental health, rehabilitation, education, nutrition, legal, immigration, and financial education needs.

Accessible and Affordable Childcare. Increase the number and capacity of quality accredited childcare facilities and staff in the region and make childcare more accessible and affordable for all families.

Foster Care Improvements. Study and make recommendations to address the area's child foster care challenges, including causes, solutions, and prevention. Increase the number and quality of foster homes, while implementing preventive approaches that will help keep more children from entering the foster care system.

Accessible and Affordable Eldercare.† Work toward meeting the need for quality and affordable housing, independent living, and care facilities for elders in the Greater Newport Area.

TIER III All-Weather Facilities and Activities.* Improve affordable access to recreational and community facilities, including indoor spaces for sports, family and cultural celebrations, classes, youth programs, and other recreational and social activities that are accessible during evenings and the winter season.



City of Newport

Community Development Department

Memorandum

To: Planning Commission/Commission Advisory Committee

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

Date: January 9, 2020

Re: Ex Parte Contacts

On Monday, the Newport City Council conducted a public hearing to reconsider a determination it made regarding whether or not appellants had standing to challenge a City decision related to payment of delinquent room taxes. This was a quasi-judicial proceeding, where the City Council was applying existing policies or regulations to a specific situation and property. As such, Council members were required to disclose “ex parte” contacts and there was discussion about the required scope of such disclosures.

Commissioner Berman attended the hearing and was surprised about the extent of the required disclosures and thought it would be useful for the full Commission to discuss the topic.

Enclosed is an email from Ross Williamson, an Attorney with Speer Hoyt, LLC, who is serving as legal counsel for the City of Newport at this time. He points out that an ex parte contact is “any verbal, written, or visual contact not on the record before the Planning Commission related to the matter at hand.” Disclosure is relevant from the time a land use application requiring Commission approval is submitted, or an appeal to the Commission is filed, until the Commission has made its final determination on the matter.

In the context of quasi-judicial land use proceedings, disclosure of ex parte contacts is specifically addressed in statute (ORS 227.180(3)). This includes placing “on the record” the substance of any written or oral ex parte communications concerning the decision or action at the first hearing following the communication, so that proponents or opponents can respond to the substance of the communication. Communication between city staff and the Planning Commission or City Council are not considered to be ex parte contacts (ORS 227.180(4)).

As evidenced with the attached Oregon Court of Appeals cases, failure to disclose an “ex parte” contact, if challenged, will lead to the matter being remanded back to the local government for rehearing, because it is the type of procedural error that prejudices a substantial right of an aggrieved party.

Please take a moment to review the enclosed materials, and I look forward to fielding any questions you may have on Monday.

Attachments

January 8, 2019 email from Bob Berman, with Ross Williamson’s response

Copy of ORS 227.180

Copy of NMC 14.52.080(B)(3)

Horizon Construction v. City of Newberg, 114 Or App 249, 254, 834 P2d 523 (1992)

Opp v. City of Portland, 171 Or App 417, 423, 16 P3d 520 (2000)

Derrick Tokos

From: Ross Williamson <ross@localgovtlaw.com>
Sent: Wednesday, January 08, 2020 4:25 PM
To: Derrick Tokos
Subject: RE: Ex Parte Contacts

Hey, Derrick.

Keep in mind that ex-parte issues are generally only a concern for quasi-judicial matters for your Planning Commission.

In very summary terms, an ex-parte contact is: any verbal, written, or visual contact not on record before the Planning Commission related to the matter at hand. Commissioners should try and avoid these contacts, but if contacts do happen, they should track the contacts. The Commissioners should then disclose the context and substance of the contacts at a meeting such that the public may respond (e.g., before the record is closed).

As some solace, take note that an ex-parte contact can only occur when there is a pending quasi-judicial matter. So, the period for tracking ex-parte contacts for the Planning Commission would generally start when the application is "ripe" for the Planning Commission's consideration (when the application or appeal is before the Planning Commission). Thus, for example, an ex-parte contact does not include a site visit that took place before a land use application was even submitted to the City.

The old LOC "City Handbook" has the following to say about ex-parte contacts:

An "ex parte" contact is contact with a governing body regarding a land use application outside of the public hearing process. Ex parte contacts are discouraged in quasi-judicial decisions because they can result in undue influence and because all parties do not have the opportunity to hear and respond to such comments. If a member of a governing body has an ex parte contact (and sometimes they cannot be avoided), then the member must disclose and describe the content of that contact prior to opening the public hearing so that all parties may respond. ORS 227.180. Failure to disclose an ex parte contact taints the fairness of the hearing and can result in reversal or remand of the governing body's decision.

The one big exception in the quasi-judicial land use context is the communication between staff and the Planning Commission. Even though these staff contacts may occur outside of a hearing/meeting, they are not ex-parte as a matter of law in Oregon. (Planning Commissioners are allowed to talk with staff, including the City's legal counsel.)

Ex-parte contacts can also be cured by putting the material in the record. Thus, sometimes it is a staff decision to put newspaper articles and similar items into the record when staff understand that an issue may be a "hot" issue and avoiding the newspaper coverage is impossible.

-Ross

From: Derrick Tokos <D.Tokos@NewportOregon.gov>
Sent: Wednesday, January 8, 2020 3:55 PM
To: Ross Williamson <ross@localgovtlaw.com>

Cc: Spencer Nebel <S.Nebel@NewportOregon.gov>; Cheryl Atkinson <C.Atkinson@NewportOregon.gov>
Subject: FW: Ex Parte Contacts

Hi Ross,

See the email below from one of our Planning Commissioners. Do you have any canned materials on ex-parte contacts that I can provide our Commission members on Monday? If not, could you provide a brief email response outlining the types of things they should be thinking about that might qualify as "ex-parte"?

I'll try to pull some information together over the next day or two as well.

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

From: Cindy Lippincott and Bob Berman [<mailto:CindyAndBob@earthlink.net>]
Sent: Wednesday, January 08, 2020 3:45 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>; Jim Patrick <jbpatrik@newportnet.com>
Subject: Ex Parte Contacts

Hi -

Given the discussion/explanation at the Council meeting on Monday, I think the PC needs a better sense of what an "ex parte contact" means. I had no idea that reading a newspaper article, or having a simple conversation, could require disclosure.

Maybe we could take a few minutes at the next meeting to explain what is required to be disclosed.

Thanks

Bob

--
=====
Cindy Lippincott and Bob Berman
180 NW 73rd Court, Newport, Oregon 97365
541-265-7736 home 541-961-6395 cell
=====

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500. In lieu of a transcript prepared by the governing body and the fee therefor, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

the date set for public hearing, and copies will be provided at the city's rate for photocopies.

14.52.080 Hearings Procedures (Quasi-Judicial/Limited Land Use)

This section shall govern the conduct of quasi-judicial/limited land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of quasi-judicial and limited land use hearings and may be supplemented by any duly adopted rules of procedure.

- A. Nature and General Conduct of Hearing. The approving authority, in conducting a hearing involving a land use action, is acting in a quasi-judicial capacity, and all hearings shall be conducted accordingly. Parties to the hearing are entitled to an opportunity to be heard, to present and rebut evidence, and to have a decision based on evidence supported by findings of fact and supporting information. Testimony shall be made with sufficient specificity so as to afford the approving authority and other parties an adequate opportunity to respond to each issue.
- B. Disqualification, Ex Parte Contacts, Bias, Challenges to Participation. Proponents and opponents are entitled to an impartial tribunal that judge land use actions. A proponent or opponent may, therefore, challenge the qualifications of a member of the approving authority to participate in the meeting or decision. A challenge must state with sufficient specificity the facts relied upon by the submitting party relating the person's bias, prejudgment, personal interest, or other facts from which the party has concluded that the member of the approving authority may be unable to participate and make a decision in an impartial manner. Challenges shall be incorporated into the record of the meeting.
 1. Disqualification. No member of the approving authority shall participate in discussion of an application or vote on an application for any land use action when any of the following conditions exist:
 - a. Any of the following have a direct or substantial financial interest in the proposal: members of the approving authority or a member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, or household, or there is an actual conflict of interest under state law.

- b. The land use action involves a business in which the member is directly associated or has served within the past two (2) years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
 - c. The member owns property within the area entitled to receive notice of the action.
 - d. For any other reason, the member has determined that participation in the decision cannot be in an impartial manner.
2. Disclosure of Potential Conflict of Interest. Even if an approval authority member chooses to participate, the member shall disclose any potential conflict of interest as required by state law.
 3. Ex parte Contacts. In quasi-judicial matters, approving authority members shall reveal any ex parte contacts, including site visits. Parties to a hearing shall have the right to rebut the substance of an ex parte contact.
 4. Challenges. Any person may challenge the participation of a member of the approving authority in a decision-making process. A challenge must state with sufficient specificity the factual and legal basis of the reasons for the challenge.
 5. Rights of Disqualified Members of the Approving Authority. An abstaining or disqualified member of the approving authority shall be counted if present for purposes of forming a quorum. A member who represents personal interest at a meeting may do so only by abstaining from voting on the proposal, vacating the seat on the approving authority, and physically joining the audience, and by making full disclosure of his or her status and position at the time of addressing the approving authority.
 6. Requalification of Disqualified Members of the Approving Authority. If all members of the approving authority abstain or are disqualified, all members present, after stating their reasons for abstention or disqualification, shall by doing so be requalified unless

Horizon Construction v. City of Newberg

834 P.2d 523 (1992)

114 Or. App. 249

HORIZON CONSTRUCTION, INC., an Oregon corporation, Petitioner, Rich Racette and Walt Racette, Petitioners Below, v. CITY OF NEWBERG, Respondent.

LUBA 92-002; CA A74807.

Court of Appeals of Oregon.

Argued and Submitted June 22, 1992.

Decided July 22, 1992.

*524 Wallace W. Lien, Salem, argued the cause and filed the brief for petitioner.

Terrence D. Mahr, City Atty., Newberg, argued the cause and filed the brief for respondent.

Before RICHARDSON, P.J., and DEITS and DURHAM, JJ.

RICHARDSON, Presiding Judge.

The Newberg City Council denied petitioner a conditional use permit to construct an apartment complex and LUBA affirmed the decision. Petitioner seeks review. We reverse.

We note, preliminarily, that petitioner's brief does not have appended to it a copy of LUBA's opinion, as ORAP 5.50(3) and ORAP 4.60 require. When this court prepares for oral argument, the appellate record is not available to us. We have only the parties' briefs. Consequently, LUBA's opinion was not before us at that time, and our ability to prepare for the argument was therefore seriously hampered. Hereafter, violations of the rule will result in our striking a petitioner's brief on our own motion.

Petitioner's first assignment asserts, in part, that a member of the city council did not make a timely disclosure of an ex parte contact that was unfavorable to the application. Although the contact had taken place two months earlier and at least one intervening council meeting had taken place, the disclosure was not made until the council's December 17, 1991, meeting at which final

action was taken on the application and after the evidentiary record was closed. Petitioner argues that LUBA erred by not remanding the city's decision because of the untimely disclosure.

ORS 227.180(3) provides:

"No decision or action of a planning commission or city governing body shall *525 be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

"(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and "(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related."

ORS 197.835(10) makes the substance of ORS 227.180(3) specifically applicable to LUBA's review of local land use decisions.

LUBA explained its rejection of petitioner's argument:

"The delay in disclosing the ex parte contact and failure to make an announcement of the right to rebut the substance of the ex parte communication are at most procedural errors. See Walker v. City of Beaverton, 18 Or LUBA 712, 729 (1990). This Board has frequently held that where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as a basis for reversal or remand of the local government's decision in an appeal to LUBA. * * * "In addition, we have previously held that where petitioners are present at a local government meeting where an alleged procedural error occurred, an objection must be entered to preserve the right to raise that procedural error in an appeal to this Board. Further, a petitioner is not excused from entering an objection to the procedural error on the ground that the local evidentiary record had previously been closed and there was no scheduled opportunity for public input at the meeting in question. Schellenberg v. Polk County, ___ Or LUBA ___ (LUBA No. 91-018, August 2, 1991), slip op 26. It is in this respect that the facts of this case differ significantly from those in Angel [v. City of Portland, ___ Or LUBA ___ (LUBA No. 90-108, March 6, 1991)]. There was no dispute that the petitioner in Angel made known to the city council, prior to its adoption of a final decision, his objections to the lack of opportunity to rebut the ex parte contacts disclosed during the city council deliberations. Id., slip op at 8. "Here, there is no dispute that petitioners were present at the December 17, 1992 meeting when the disclosure took place, but failed to object to the timing of the disclosure or to the lack of opportunity for rebuttal. Accordingly, petitioners may not assign these alleged procedural errors as a basis for reversal or remand of the challenged decision." (Some citations omitted; emphasis in original.)

Petitioner contends that its supposed opportunity to object was ephemeral, given that the record was closed and no introduction of evidence or public participation was contemplated for the December 17 meeting. It also argues that the failure to disclose in accordance with ORS 227.180(3) deprived it of the opportunity to learn the facts about the ex parte communication and to prepare, much less present, any rebuttal showing. Relying on *Angel v. City of Portland*, supra, petitioner asserts that providing the opportunity to present rebuttal is among the principal reasons for the timely disclosure requirement. Finally, petitioner argues, LUBA was wrong in characterizing the error as merely "procedural." [1] We agree with each of the points that petitioner makes. [2]

*526 ORS 227.180(3) does not simply establish a procedure by which a member of a deciding tribunal spreads a fact on the record. It requires that the disclosure be made at the earliest possible time. Implicit in that requirement is that the parties to the proceeding must be given the greatest possible opportunity to prepare for and to present the rebuttal that ORS 227.180(3)(b) requires that they be allowed to make. The purpose of the statute is to protect the substantive rights of the parties to know the evidence that the deciding body may consider and to present and respond to evidence. [3]

Whatever there is to be said about LUBA's general view about the role of objections in local land use proceedings, see note 2, supra, an objection by petitioner here would not have been likely to cure the prejudice that it suffered from the disclosure violation. An objection to the timeliness of the disclosure at the December 17 meeting, at which the council made its decision, could not have cured the city's antecedent failure to follow the statutorily required procedures to assure that petitioners have the opportunity to respond to the ex parte communication while evidence was still being prepared and presented. Moreover, the error did not occur on December 17; it occurred at the earlier meeting when the council member was required and failed to make the disclosure, and no objection could have been made at that time to an error of which petitioner could not have been aware.

Arguably, the city could have reopened and extended the proceedings, if an objection had been made on December 17. However, we are unwilling to assume that that would have occurred, given that the meeting was not one at which either additions to the record or public participation, by way of objections or otherwise, were scheduled to be entertained. We are also not impressed by the city's argument that additional evidence and comment on other matters were in fact received at the meeting. Petitioner and the other proponents were utterly unprepared for the eventuality that a response would be necessary or could be made to the council member's belated disclosure.

Failure to comply with ORS 227.180(3) requires a remand to the city council and a plenary rehearing on the application. Our disposition of the case makes it unnecessary to discuss petitioner's other contentions, with one exception. We agree with LUBA that, under the pertinent city legislation, the city council could reach all of the issues that it did and that its scope of review extends to all aspects of the planning commission's decision.

Reversed and remanded with instructions to remand to the city.

NOTES

[1] For a "procedural error" to be reversible by LUBA, it must "[prejudice] the substantial rights of the petitioner." ORS 197.835(7)(a)(B); see also ORS 197.850(9)(a).

[2] It also contends that an objection was not necessary and that preservation requirements should not be rigid in the land use decisional "arena," which contemplates far less formality than court proceedings and more lay participation. Although we do not base our decision on that point, we agree with it, at least in the abstract. See *Boldt v. Clackamas County*, 107 Or.App. 619, 813 P.2d 1078 (1991); but see ORS 197.763.

[3] In its brief, the city argues that petitioner acknowledged that the error is procedural by so describing it in its petition for review to LUBA. We do not agree that that constitutes a concession, if that is the city's point. Our reading of the petition indicates that the word "procedural" was a matter of word choice, but the text of the argument made clear that petitioner asserted a deprivation of rights under a remedial statute.

Opp v. City of Portland

FILED: December 13, 2000

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROSE MARIE OPP,

Petitioner,

v.

CITY OF PORTLAND,

Respondent.

(LUBA No. 2000-001; CA A110946)

Appeal from Land Use Board of Appeals.

Submitted on record and briefs November 3, 2000.

Rose Marie Opp filed the briefs pro se for petitioner.

Kathryn S. Beaumont filed the brief for respondent.

Before Haselton, Presiding Judge, and Deits, Chief Judge, and Wollheim, Judge.

HASELTON, P. J.

Affirmed.

HASELTON, P. J.

In November 1996, the Portland City Council approved a conditional use permit for a community center in a public park area. During a recess in the council's proceedings on the permit application, Mike Lindberg, then a member of the council, conversed briefly with a person in the audience, Cooley. Petitioner, an opponent of the application, appealed to LUBA. She contended, inter alia, that Lindberg's conversation with Cooley constituted an ex parte contact that was not disclosed on the record and that opponents were not given an opportunity to rebut. LUBA remanded the case to the city council to determine if Cooley was a person interested in the outcome of the proceedings

under the applicable city code provision and, if so, to provide "petitioner an opportunity to rebut the substance of [Lindberg's] communication with Mr. Cooley[.]" Opp v. City of Portland, 33 Or LUBA 654, 657 (1997), aff'd 153 Or App 10, 955 P2d 768, rev den 327 Or 620 (1998).

The present controversy arises out of petitioner's subsequent appeal to LUBA from the city council's action in the proceedings on remand. Those proceedings began with a determination that Cooley was an interested person. Thereafter, as described by LUBA:

"Lindberg then made a disclosure regarding the substance of the ex parte conversation with Cooley. Lindberg testified that he did not recall the nature of his discussion with Cooley, although he did not think he obtained information from Cooley that influenced his vote or the votes of the council. Following Lindberg's disclosure testimony, the council offered the parties an opportunity to rebut that testimony. The parties offered no rebuttal, on the grounds that Lindberg's statement had failed to disclose the substance of the communication, and there was nothing that could be rebutted. The parties then requested a plenary rehearing on the conditional use permit application. The council denied the request for a plenary rehearing, concluding that it 'heard nothing at the remand hearing that could lead the Council to question or reconsider the correctness of its earlier decision.'" (Footnotes omitted.)

In her appeal to LUBA, petitioner argued, as summarized in LUBA's opinion,

"that Lindberg's inability to recall the substance of the ex parte contact amounts to a failure to disclose, thereby denying petitioner her substantive right to a full and fair hearing. Petitioner argues that the city's conduct in this case violates ORS 227.180(3), because the city failed to disclose the substance of the ex parte contact at the first hearing following the communication, as the statute requires, or at any time thereafter. Accordingly, petitioner argues, the city erred in refusing petitioner's request for a plenary rehearing of the application, as required by Horizon Construction, Inc. v. City of Newberg, 114 Or App 249, 834 P2d 523 (1992)." (Footnotes omitted.)
(1)

Petitioner relied on our statement in Horizon Construction that "[f]ailure to comply with ORS 227.180(3) requires a remand to the city council and a plenary rehearing on the application." 114 Or App at 254. It is not wholly clear whether petitioner understands Horizon Construction to establish a remedy that applies in every case where a city has failed to comply with ORS 227.180(3) or whether she simply regards this particular case to call for the same remedy that we prescribed in that case. In either event, petitioner construes our phrase "plenary rehearing" as meaning that the city council or other deciding entity must repeat its proceedings on the permit application in their entirety, including, for example, taking evidence and hearing arguments anew on all issues. Petitioner specifically contends that new presentations limited to any issues that are directly implicated by the ex parte contact, coupled with a reevaluation of the original record as it bears on other issues, cannot suffice.

LUBA agreed with petitioner that the city's proceedings after the first remand had not been adequate, and it again remanded the city's decision. However, LUBA did not agree with the more expansive aspects of petitioner's understanding of ORS 227.180(3) and Horizon Construction. After discussing case authority of its own and from this court, LUBA stated:

"In sum, the Court of Appeals' decision in Horizon Construction, Inc., * * * makes it clear that it is the party's right to a full and fair hearing that is protected under ORS 227.180(3) * * *. Where the city makes a decision in violation of ORS 227.180(3), Horizon Construction, Inc. requires that the local government provide a plenary rehearing. As discussed above, the scope of that rehearing must be sufficient to ensure that the city makes a decision that is untainted by uncured ex parte communications or, stated more broadly, a decision based solely on publicly disclosed evidence and testimony that is subject to rebuttal or the opportunity for rebuttal.

"What remains is to apply the foregoing to the city's decision on remand in the present case. We agree with petitioner that former Commissioner Lindberg's inability to recall the substance of his communication with Cooley effectively nullifies petitioner's right to an opportunity to rebut that communication or, stated differently, to a decision untainted by undisclosed ex parte communications. The city adopted findings concluding, essentially, that nothing that was known or could be surmised about that communication showed that it affected the city's decision. However, the fact is that little, if anything, of the substance of that communication is known, which belies the city's confidence that it did not affect the city's original decision. More importantly, ORS 227.180(3) prohibits undisclosed ex parte communications, whether or not those communications in fact influence the city's original decision. Even more to the point, the integrity of the city's original decision is not the issue. As stated above, to comply with or remedy a violation of ORS 227.180(3), the city must make a decision based solely on publicly disclosed evidence and testimony that is subject to rebuttal or the opportunity for rebuttal. The city's original decision did not meet the standard at the time it was adopted, and its integrity cannot be restored by undertaking a procedural exercise on remand. The city's only recourse on remand is to adopt a new decision on the application that is based solely on publicly disclosed evidence and testimony that is, or was, subject to rebuttal or the opportunity for rebuttal. However, the city failed to do so. It simply concluded that what was known or could be surmised about the ex parte communication gave it no reason to revisit its original decision, and then ended the proceedings. That is insufficient to satisfy the remedial purpose of ORS 227.180(3) or Horizon Construction, Inc."

At a more mechanical level, LUBA also indicated in its opinion that the proper procedure to be followed by a city on remand of a decision made in violation of ORS 227.180(3) would be to provide a fair opportunity for the interested persons to develop and present evidentiary and argumentative responses to the matter disclosed by the recipient of the contact; to consider the responsive matter, if any, together with all of the evidence in the existing record; to make any additional or different findings that may be indicated from those in the original decision; and to reach a decision based on the original evidence and findings as supplemented in that manner. See

Schwerdt v. City of Corvallis, 163 Or App 211, 216, 987 P2d 1243 (1999); on appeal following remand, ___ Or LUBA ___ (LUBA No. 99-201, June 8, 2000).

Petitioner now seeks our review and argues that LUBA erred by not ordering the city to conduct the ab initio proceedings that she understands ORS 227.180(3) and Horizon Construction to require. Summarily put, we agree with LUBA's opinion, insofar as we have summarized and quoted from it. We acknowledge that our choice of the word "plenary" in Horizon Construction may have been unfortunate, insofar as it might suggest that a complete reiteration of the local proceedings should ever be required to remedy a failure to disclose a contact that, in substance, does not pertain to all of the matters that were the subject of evidence and argument in the original proceedings. Be that as it may, however, nothing in Horizon Construction suggests that that or any other remedy should be the exclusive one in all cases where the city deciding body has failed to comply with ORS 227.180(3). Rather, the remedy should be tailored to rectify the evil at which it is directed, in the light of the particular circumstances of the case.

As a general proposition, an adequate remedy is a remand that assures (1) that interested persons be made aware of the substance of the ex parte communication; (2) that they be afforded the opportunity to prepare and present evidentiary and rhetorical responses to the substance of the communication; and (3) that the deciding body reevaluate its original decision, and issue an appropriate new written decision, taking into account the evidence and argument in the original record viewed together with the evidence and argument presented on remand. Seldom, if ever, would it be likely that the substance of the improper communication would be so pervasive that it would affect all of the issues in the case, and only in those rare instances would a new presentation going to all of the issues--as distinct from a new evaluation of the original record with respect to the unaffected issues--be an essential part of the remedy or of the proceedings on remand.

Petitioner maintains, however, that the broadest possible remand is in order here, because of the "impossibility of disclosure of the substance of [the] ex parte communication, and hence of rebuttal." As an abstract proposition, we might agree with petitioner that, if the substance of a communication cannot be recalled and disclosed, it cannot be known what issues it did or did not relate to; hence, rebuttal is impossible, and the past or present ability of the deciding body to base its disposition solely on the original evidence and argument, uninfluenced by the communication, cannot be categorically guaranteed. Of course, it is equally true, as an abstraction, that the more difficult it is to recall the substance of a communication, the less likely it is that the communication was regarded as significant by or influenced the hearer at the time it was made.

It may become necessary for us to resolve that conundrum on some later occasion when the two abstract possibilities are in equipoise. In this case, however, they are not. While Lindberg was not able to remember the substance of his communication with Cooley, he did affirmatively state in his testimony his recollection that he did not impart the communication to his fellow council

members, at least three of whom--a majority independently of Lindberg-voted to approve the permit in the original proceeding. (2)

The nature and scope of the remand ordered by LUBA were adequate under the circumstances of this case.

Affirmed.

1. ORS 227.180(3) provides:

"No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

"(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

"(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related."

LUBA noted in its opinion that it was somewhat questionable whether ORS 227.180(3), rather than the local code provision, was apposite. However, LUBA concluded that the city did not challenge petitioner's premise that the state statute was applicable, and it proceeded to decide the appeal on the statutory ground. The city has not cross-petitioned to us from LUBA's treatment of that issue.

2. Because Lindberg is no longer on the council, there is no tangible possibility that the substance of the communication can now be imparted to the present members of the council.