



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, March 08, 2021 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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This will be a hybrid meeting which means that it will be held electronically, via Zoom, with a limited number of people (up to 15) allowed to attend in-person. The meeting will be live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190.

Anyone interested in making public comment is allowed to attend in-person, subject to congregant limitations (up to 15).

Anyone wishing to provide virtual public comment should make a request by noon on the day of the meeting, at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov), and ask for the Zoom meeting information.

Anyone wishing to provide written public comment should send the comment to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). The e-mail must be received by noon on the scheduled date of the meeting. Written comments received by noon on a Planning Commission meeting date, will be included in the agenda packet. These comments will be acknowledged, at the appropriate time, by the Chair. If a specific request is made to read written public comment into the record during a meeting, staff will be provided a maximum of three minutes to read the comment during the meeting.

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.

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1. CALL TO ORDER AND ROLL CALL
  
2. APPROVAL OF MINUTES
  
- 2.A Approval of the Planning Commission Regular Session Meeting Minutes of February 22, 2021.

[Draft PC Reg Session Minutes 02-22-2021](#)

**3. CITIZENS/PUBLIC COMMENT**

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

**4. ACTION ITEMS**

**4.A Disposition/Recruitment to fill Vacancy on the Commission's Citizen Advisory Committee.**

[Memorandum](#)

[Original 2004 Advisory Committee Advertisement](#)

[ORS 227.010 to 227.090](#)

[NMC Chapter 2.05](#)

**5. PUBLIC HEARINGS**

**5.A (Continuation) File 1-SV-21: Vacation of a Portion of SW 2nd Street between Angle St and US 101.**

[Memorandum](#)

[3.3.2021 Letter From Michael Robinson](#)

[Staff Report](#)

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

[Attachment D](#)

[Attachment E](#)

[Attachment F](#)

[Attachment G](#)

[Attachment H](#)

[Public Testimony-Josh Bacher](#)

[Public Testimony-Russ Johnson](#)

[Letter from Applicant-Michael C Robinson](#)

[Public Testimony-Onno Husing](#)

[Public Testimony-William A Barton](#)

**6. NEW BUSINESS**

**7. UNFINISHED BUSINESS**

**8. DIRECTOR COMMENTS**

**9. ADJOURNMENT**

*Draft* MINUTES  
City of Newport Planning Commission  
Regular Session  
Newport City Hall Council Chambers by Video Conference  
February 22, 2021

**Planning Commissioners Present by Video Conference:** Jim Patrick, Lee Hardy, Jim Hanselman, Bill Branigan, Gary East and Bob Berman.

**City Staff Present by Video Conference:** Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Hanselman, Branigan, Berman, East and Patrick were present.

2. **Approval of Minutes.**

A. **Approval of the Planning Commission Work and Regular Session Meeting Minutes of February 8 2021.**

Commissioner Berman and Chair Patrick reported minor corrections to the minutes.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hardy to approve the Planning Commission Work and Regular Session Meeting Minutes of February 8, 2021 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.** None were heard.

5. **Public Hearings.**

A. **File 1-SV-21: Vacation of a Portion of SW 2nd Street between Angle St and US 101.**

Patrick noted the applicant requested a continuance of the public hearing.

**MOTION** was made by Commissioner East, seconded by Commissioner Branigan to continue the public hearing to the March 8, 2021 Planning Commission meeting. The motion carried unanimously in a voice vote.

Tokos noted that the developer had reached out to the County because of an issue brought forward by their Planning Department. The developer would be meeting with the County to make changes before the hearing continuance.

Berman asked if ODOT was an adjacent property owner. Tokos explained they weren't because they weren't vacating to the ODOT parcel.

6. **New Business.** None were heard.

7. **Unfinished Business.** None were heard.

8. **Director Comments.** Hardy asked Tokos when he would be reporting to the Commission about the criminal activity happening at the Surf View Village apartments on 60th Street. Tokos explained that there had been excessive police calls at the location and the City had scheduled a time to meet with the managers in mid-March. Hardy asked to verify if the criminal activity was being done by visitors or residents. Tokos noted the City wanted to meet with management to go over call logs to talk through and see what their strategy was to get the numbers down.

9. **Adjournment.** Having no further business, the meeting adjourned at 7:08 p.m.


Respectfully submitted,

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Sherri Marineau  
Executive Assistant

# Memorandum

To: Planning Commission

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

Date: March 5, 2021

Re: Disposition/Recruitment to fill Vacancy on the Commission's Citizen Advisory Committee

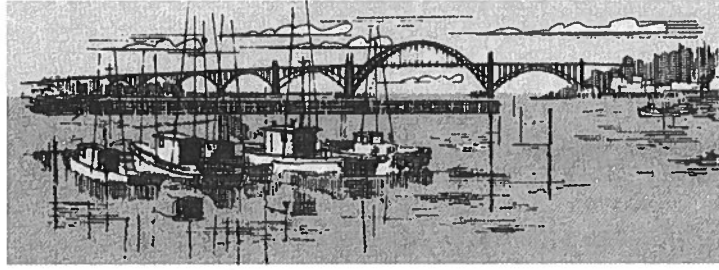
The Planning Commission established a Citizen Advisory Committee to the Commission in 2004 to assist with the review and revision of the Newport Zoning Ordinance. The group was to consist of at least three individuals who were to participate in twice monthly work sessions for a year or more (notice attached). This comprehensive update to the Zoning Ordinance was completed in 2011; however, the Commission elected to keep the Committee empaneled to provide additional community feedback on legislative land use policy and regulatory concepts as they were being developed. With Braulio's appointment to fill a vacancy on the Planning Commission, there is an opening on the Advisory Committee.

Chapter 2.05 of the Newport Municipal Code sets out the rules for Boards and Commissions. From what I can tell, this chapter was established when the City adopted its first consolidated Municipal Code in April of 2007 (Ord No. 1911). Some of its provisions may pre-date that timeframe. NMC Chapter 2.05.003(G) stipulates that permanent Boards and Commissions must be established by ordinance. NMC 2.05.002(G) indicates that vacancies are to be filled by appointment of the Mayor with confirmation by the Council. The Commission has statutory authority to carry out a range of its responsibilities (ref: ORS 227.090) and that authority is acknowledged in NMC 2.05.005(A). While the Citizen Advisory Committee is a "committee" by name, it was not originally envisioned as permanent and could be reasonably construed to be a work group that the Commission pulled together under its statutory authority to assist with specific issues outside the parameters of NMC Chapter 2.05. However, if the group is to remain as a standing, expanded part of the Commission for work sessions, then it might be advisable to codify that by ordinance under NMC 2.05.005. This would also create an opportunity to establish a fixed size of the advisory committee (as opposed to at least three) and to determine whether or not appointments should be made by the Planning Commission or City Council.

Two other individuals interviewed for the vacant Commission position, but were not appointed by the Council. A third individual applied for the Commission vacancy after the Council made its appointment. Our plan is to reach out to these individuals to gauge their interest, once the above issues are sorted out. It would also be appropriate to advertise the opportunity to participate on the Advisory Committee for a period of time in case there are others in the community that might be interested.

A motion to request the City Council codify the Citizen Advisory Committee as a standing committee to assist the Planning Commission with work session topics would be an appropriate step for the Commission to take at this time.

Attachment  
Original 2004 Advisory Committee Advertisement  
ORS 227.010 to 227.090  
NMC Chapter 2.05



# CITY OF NEWPORT NOTICE OF FORMATION OF A CITIZENS' ADVISORY COMMITTEE TO THE NEWPORT PLANNING COMMISSION

**WHAT:** THE CITY OF NEWPORT PLANNING COMMISSION WILL BE UNDERTAKING A REVIEW AND REVISION OF THE NEWPORT ZONING ORDINANCE (NO. 1308, AS AMENDED). THE **CITIZENS' ADVISORY COMMITTEE** WILL CONSIST OF AT LEAST THREE MEMBERS OF THE NEWPORT COMMUNITY WHO WILL PARTICIPATE ALONG WITH THE PLANNING COMMISSION IN THE REVIEW AND REVISION OF THE NEWPORT ZONING ORDINANCE THROUGH A SERIES OF WORK SESSION MEETINGS HELD ONCE OR TWICE A MONTH FOR ONE YEAR OR MORE.

**WHEN TO APPLY:** THE PLANNING COMMISSION WILL BEGIN TO CONSIDER APPLICATIONS FOR THE CITIZENS' ADVISORY COMMITTEE AT THEIR FEBRUARY 23, 2004, MEETING. APPLICATIONS SHOULD BE SUBMITTED BY 5:00 P.M. ON **FEBRUARY 20, 2004.**

**HOW AND WHERE TO APPLY:** APPLICATION FORMS ARE AVAILABLE AT THE NEWPORT COMMUNITY DEVELOPMENT DEPARTMENT, NEWPORT CITY HALL, 169 SW COAST HWY, NEWPORT, OR 97365.

FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT AT THE ABOVE ADDRESS OR CALL JAMES BASSINGTHWAITE (COMMUNITY DEVELOPMENT DIRECTOR, CITY OF NEWPORT) AT (541) 574-0626.

## CITY PLANNING COMMISSION

**227.010 Definition for ORS 227.030 to 227.300.** As used in ORS 227.030 to 227.300, “council” means a representative legislative body. [Amended by 1975 c.767 §1]

**227.020 Authority to create planning commission.** (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an intergovernmental agency for planning as authorized by ORS 190.003 to 190.130. [Amended by 1973 c.739 §1; 1975 c.767 §2]

**227.030 Membership.** (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

**227.035** [1973 c.739 §5; renumbered 244.135 in 1993]

**227.040** [Repealed by 1973 c.739 §13]

**227.050** [Amended by 1969 c.430 §2; repealed by 1975 c.767 §16]

**227.060** [Repealed by 1975 c.767 §16]

**227.070** [Amended by 1969 c.430 §3; 1973 c.739 §3; repealed by 1975 c.767 §16]

**227.080** [Repealed by 1973 c.739 §13]

**227.090 Powers and duties of commission.** (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

(D) Protection and assurance of access to incident solar radiation; and

(E) Protection and assurance of access to wind for potential future electrical generation or mechanical application.

(b) Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3; 1981 c.590 §8; 1987 c.447 §118]



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**CHAPTER 2.05 BOARDS AND COMMISSIONS****2.05.001 Applicability and Authority**

- A. **Applicability.** Sections 2.05.001 through 2.05.003 apply to all city boards, commissions and committees, including temporary or ad hoc committees unless mandated otherwise by state statute or city ordinance. Provisions applicable to specific boards, commissions, or committees shall prevail over inconsistent provisions in these general provisions.
- B. Unless explicitly authorized by statute, ordinance, or other formal action of the City Council, the authority of boards, committees, and commissions is limited to making recommendations to the City Council. No board, committee, or commission, as a whole, or any member or members individually or collectively, may bind the city, its officers, or agents to financial commitments or obligations. The decision-making authority of boards, committees, and commissions is limited to the authority expressly granted by state law or city ordinance.

**2.05.002 Board, Committee, and Commission Appointments and Service**

- A. Any individual or group is encouraged to submit names for consideration for appointments to city boards, commissions, and committees to the city.
- B. Appointments must comply with any ordinances, bylaws, Charter provisions, or state or federal laws concerning the board or commission.
- C. In order to become more familiar with the applicants' qualifications, the Council may interview applicants for a vacancy.
- D. Reappointments to a board, committee, or commission shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. To avoid unfair burdens on some citizens, service of more than eight consecutive years on the same board, committee, or commission without an interval of one term is not encouraged, but may occur if mutually agreed.

- E. Consideration should be given to non-city residents when the board, committee, or commission serves persons outside city boundaries.
  
- F. No individual should be considered for appointment to a position on any board, committee, or commission where a conflict of interest is likely to interfere with the individual's participation. Board, committee, or commission members shall not participate in any proceeding or action in which the member has an actual conflict of interest, as provided by applicable state law. Any actual or potential conflict of interest shall be disclosed at the meeting of the board, committee, or commission where the action is being taken, as required by applicable state law.

*(Section 2.05.002(F) was enacted by Ordinance No. 2129, adopted on February 20, 2018; effective March 24, 2018.)*

- G. Board, committee, or commission vacancies are filled by appointment of the Mayor with confirmation by the Council. Council confirmation shall be by approval of a motion. Appointments are made for terms not to exceed four years and will expire the last day of the calendar year if a replacement appointment has been made unless mandated otherwise by state statute. All board, commission, and committee members shall serve without compensation, but shall be reimbursed for expenses incurred. If no replacement is appointed to replace a member whose term is expiring, the member shall remain in office until a replacement is appointed. When the provisions governing membership or terms are amended, the term of existing members shall not be affected unless expressly stated in the ordinance.
  
- H. To avoid imposition on certain citizens, persons are not expected to participate in more than one permanent commission, board, or committee at a time, although board, commission and committee members may serve as members of ad hoc or temporary committees.
  
- I. Members of a board, committee, or commission serve at the pleasure of the Council and may be replaced at any time.
  
- J. Vacancies shall be filled in the same manner as an initial appointment, but the appointment shall be for the unexpired term.

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**2.05.003 Organization and Operation**

- A. **Bylaws**. Unless the Council determines that bylaws are not needed for a particular permanent board, committee, or commission, the Council shall adopt bylaws for permanent boards, committees, and commissions to govern their meetings process and the performance of their duties. The board, commission, or committee may propose, review, and make recommendations regarding their bylaws. No bylaw adoption or amendment shall be effective without Council approval. In the absence of bylaws, each committee shall elect a chair and vice-chair by motion annually at the first meeting in each calendar year.
- B. **Staff Support**. The city will provide necessary staff support for boards, commissions and committees, including postage, meeting place, secretarial service, and new member orientation and training.
- C. **Meetings**. All meetings shall be subject to the requirements of Oregon public meeting law. A majority of the voting members shall constitute a quorum for the conduct of business and the concurrence of a majority of those members present and voting shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission.
- D. **Annual Reports and Minutes**. Each board or commission shall report on its activities at least annually. The written minutes for each board or commission shall be submitted to Council for information.
- E. **State Law**. Boards, commissions, and committees of the City are subject to state public meeting and public records statutes. Board, committee, and commission members appointed by the city are considered "public officials." As such, they are expected to abide by state statutes governing conflicts of interest and other applicable provisions of state law.
- F. **Comments**. Boards, committees, and commissions may be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise.

- G. **Establishment of Permanent Board, Commissions, and Committees.** Permanent boards, commissions, and committees shall be established by ordinance, except that boards, commissions, and committees may be established by other means if required or expressly authorized by state law.

#### 2.05.004 Task Forces

The Council may establish task forces by resolution to address specific issues or to engage in specific tasks. The scope of the authority and responsibilities of the task force shall be established in the resolution creating the task force. By-laws are not required for task forces.

#### 2.05.005 Planning Commission

- A. The Newport Planning Commission is established, and shall have the authority and responsibility provided by this chapter, city ordinances, and state law.
- B. The planning commission consists of seven members who are not officials or employees of the city. All voting members shall be residents of the city. The mayor, city manager, the city attorney, and city planning director shall be entitled to sit with the commission and take part in its discussions, but shall not have the right to vote. No more than two members may be engaged in the same occupation, profession, trade, or business.
- C. Appointments shall be for a term of three years, commencing on January 1 of the first year and normally ending on December 31 of the third year of appointment. However, a term scheduled to expire will not expire until a successor has been appointed and takes office. The successor shall serve the remainder of the three-year term when appointed.
- D. The Mayor, with approval by the Council, shall fill vacancies resulting from death, resignation, or other cause by appointment for the unexpired term. The Mayor, with approval of the Council, may remove any member for cause, which may include misconduct or non-performance of duty. Non-performance of duty includes two unexcused absences out of eight meetings.

- E. The Commission shall elect a Chair and Vice-Chair to serve one-year terms. Election of the officers shall be held at the first meeting of the Commission in each calendar year, but failure to hold the election at the first meeting in a calendar year shall not invalidate any action by the Commission.
- F. City planning staff shall perform administrative functions for the Planning Commission.
- G. Four members of the Commission shall constitute a quorum. The Commission may act by a majority of those voting while a quorum is present. The Commission shall meet at least once a month. The Commission may adopt and amend rules and regulations to govern the conduct of its business, subject to Council approval.

#### 2.05.010 Budget Committees

- A. The city and the Urban Renewal Agency shall each have a budget committee formed in accordance with state law.
- B. Budget committees shall have the rights, responsibilities, and authority provided by state law.
- C. A city Budget Committee member may also serve on the Urban Renewal Budget Committee.

#### 2.05.020 Retirement Trustee

- A. The Retirement Trustee is responsible for investment of the retirement funds for the City of Newport Employee Retirement Plan, according to the trust document adopted by the Council. The Retirement Trustee has authority to make decisions relating to the investment of funds held in trust and to invest retirement funds.
- B. The Retirement Trustee shall be comprised of five members. One member of the Retirement Trustee shall be a city employee in a position below department head.
- C. The Retirement Trustee shall have all authority, rights, responsibilities, and authorities provided by the trust document or the retirement plan.
- D. The Retirement Trustee may adopt investment strategies or similar policies to govern its investments.

E. The Retirement Trustee may recommend changes to the retirement plan or the trust document to the City Council.

F. The Retirement Trustee shall meet at least quarterly.

#### 2.05.025 Airport Committee

A. The Airport Committee shall include seven full members. The Mayor, the City Manager, and the Airport Director shall serve as non-voting ex-officio members of the Airport Committee, but are not required to attend all meetings. Two members may be non-residents. Only full members shall be counted for quorum purposes

*(Adopted by Ord. No. 2064 on May 5, 2014; effective June 4, 2014.)*

B. The Airport Committee shall have the authority and responsibility to:

1. Recommend rules and regulations for the Newport Municipal Airport.
2. Recommend policies governing the use of airport property.
3. Review and report to the Council on matters referred to it by the Council.
4. Make studies or reports relating to the Newport Municipal Airport.
5. Promote the Newport Municipal Airport.

#### 2.05.030 Library Board

A. The Library Board shall consist of seven members, one of which shall be a high school student, and one of which shall be a cultural diversity representative. The Library Director shall serve ex officio and may participate in all discussions but shall have no vote.

*(Section 2.05.030(A) was enacted by Ordinance No. 2174; adopted January on 19, 2021; effective on February 18, 2021.)*

B. The Library Board shall have the following duties and functions:

1. Prepare policies on library operation and service, including general library operation; acquisition, use and disposition of library property; and coordination of library service with other local governments.
2. Make recommendations to the City Council regarding the appointment of the library director, the library budget, and library facilities.

*(2.05.035 was deleted by Ordinance No. 2012 adopted on March 21, 2011; effective on April 20, 2011.)*

#### 2.05.040 Parks and Recreation Committee

- A. The Parks and Recreation Committee shall consist of eleven members and shall serve two year terms. Seven members must be residents of the City of Newport. The Parks and Recreation Director shall serve ex officio and shall act as secretary for the Committee.

*(2.05.040(A) was enacted by Ordinance No. 2052. Adopted on April 1, 2013; effective on May 1, 2013.)*

- B. Five subcommittees will be established as follows:
1. Parks;
  2. Tree City USA;
  3. Recreation Programs;
  4. Recreation Center;
  5. Swimming Pool.
- C. Subcommittees shall not include more than one non-resident of the city.
- D. The Parks and Recreation Committee shall have the following rights, responsibilities, and authority:
1. To make recommendations to the City Council concerning parks, recreation center, recreation programs, and swimming pool. Recommendations may include the acquisition, development, use, operation, and disposition of parks, facilities, rules, regulations, and programming.

2. To serve as the City's "Tree Board," with authority to approve or deny requests for public tree removal pursuant to Chapter 9.10 (Right-of-Way-Permits) and with the responsibility to study, investigate, develop and periodically update a written manual for the care, preservation, pruning, planting, replanting, removal and disposition of trees and plantings in parks, along public streets, and in other public places.
  - a. As part of this manual, a list of acceptable species shall be developed and maintained for planting trees along public streets. The list shall provide spacing and planting details for each species, and divide trees into three classes based upon mature height: small (under 30 feet); medium (30 to 50 feet) and large (over 50 feet);
  - b. The manual may include criteria for determining, and standards for protecting, heritage trees within the city. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. Criteria may include such things as species rarity, age, size, quality, association with historical events or persons, or scenic enhancement;
  - c. A draft of the manual and any amendments thereof shall be presented to the City Council and, upon Council acceptance and approval, will constitute the official Tree Manual for the city. Adoption by the City Council shall be by resolution; and
  - d. The plan manual shall be reviewed at least once in every three-year period after initial approval.
  - e. To obtain the annual Tree City USA designation by the National Arbor Day Foundation, including coordination of an Arbor Day observance and proclamation.

*(Chapter 2.05.040(D)(2) was amended by Ordinance No. 2154 on September 3, 2019; effective on October 3, 2019. Chapter 2.05.040 was adopted by Ordinance No. 2034 on April 16, 2012; effective on May 16, 2012.)*

## 2.05.045 Destination Newport Committee



- A. The Destination Newport Committee shall have seven members serving one-year terms. Of the seven members, three shall be owners or managers of hotels or motels, and two shall be owners or operators of retail establishments.
- B. The Destination Newport Committee shall advise the City Council regarding the preparation of the advertising budget funded by the city's room tax.
- C. The Destination Newport Committee may make recommendations regarding the placement of advertising, the hiring of advertising consultants, and all other matters relating to advertising the city as a tourist destination.

#### 2.05.050 60+ Advisory Committee

- A. The 60+ Advisory Committee shall consist of seven members who serve two-year terms.
- B. The city manager shall designate a staff member to attend all 60+ Advisory Committee meetings. The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.
- C. The 60+ Advisory Committee shall have the following rights, responsibilities, and authority:
  - 1. To study and make recommendations to Council regarding the economics, physical condition, operation, maintenance, development, use, regulation, and expansion of the 60+ Activity Center.
  - 2. To acquire and promote programs for seniors in the city.

*(Ordinance No. 2096, adopted on April 4, 2016; effective on May 4, 2016, changed the name of the Committee.)*

#### 2.05.055 Bicycle and Pedestrian Advisory Committee

- A. The Bicycle and Pedestrian Advisory Committee shall consist of seven regular members, and up to three alternate members.
- B. Regular and alternate members shall serve three-year terms. All members must be residents, or business owners, of the City of Newport.

- C. An alternate member shall only vote in the absence of a regular member.
  
- D. The City Manager shall designate a staff member to attend all Bicycle and Pedestrian Advisory Committee meetings. The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.
  
- E. The Bicycle and Pedestrian Advisory Committee may have the responsibility to:
  - 1. Advise the City Council regarding issues relating to bicycle and pedestrian transportation, safety, recreation, and education.
  - 2. Act as a resource to the City Council to provide additional information related to the unique problems associated with non-motorized transportation.
  - 3. Act as a source of current information to the City Council in matters relating to the use of the bicycle or pedestrian routes as a means of transportation in the City of Newport.
  - 4. Review, at the request of the City Council, the goals and objectives of the existing state and city Bicycle and Pedestrian Master Plans, and recommend changes.
  - 5. Advise the City Council of potential funding for bicycle and pedestrian enhancements.
  - 6. Explore and recommend, to the City Council, methods to efficiently and safely move bicyclists and pedestrians through Newport.
  - 7. Support the City Council in creating a greater awareness of non-motorized travel as viable transportation options.
  - 8. Recommend to the City Council locations for safe and convenient bicycle parking at all city-owned facilities.
  - 9. At the request of Council, review bicycle and pedestrian involved motor vehicle accidents to identify safety priorities and remedial measures.

*(Chapter 2.05.055 was enacted by Ordinance No. 2118, adopted on August 22, 2017; effective on September 21, 2017.)*

**2.05.060 Public Arts Committee**

- A. The Public Arts Committee shall consist of seven members serving four-year terms.
- B. The Public Arts Committee shall make recommendations to the Council regarding public art and related issues, as set out in a city public arts policy adopted by resolution.

*(Chapter 2.05.060 adopted by Ordinance No. 2036 on May 7, 2012, effective June 6, 2012.)*

**2.05.070 Wayfinding Committee**

- A. The Wayfinding Committee shall consist of five voting members, and may include one ex-officio/non-voting staff member from the Greater Newport Chamber of Commerce. Committee members shall serve two-year terms. All Committee members must be residents, or business owners, of the City of Newport.

*(Chapter 2.05.070(A) adopted by Ordinance No. 2102 on September 6, 2016; effective October 6, 2016.)*

- B. The city manager shall designate a staff member to attend all Wayfinding Committee meetings. The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.
- C. The Wayfinding Committee shall have the responsibility to:
  1. Collaborate with staff to recommend, create, oversee, and review a directional sign system for residents and visitors to major public areas, destinations, and places in the city or other nearby destinations.
  2. Work with staff to promote the use of banners and other decorations to identify districts, places of interest, and arts, sports, and other public events.
  3. Coordinate with staff on the implementation of wayfinding plans and goals adopted by the City Council.
  4. Recommend policies governing the wayfinding signage.

5. Review and report to the City Council on matters referred to it by the Council.

*(Chapter 2.05.070 adopted by Ordinance No. 2048 on March 18, 2013, effective April 17, 2013.)*

#### 2.05.075 Vision 2040 Advisory Committee

- A. Visioning Advisory Committee Established. There is hereby established a Vision 2040 Advisory Committee. The Committee shall consist of 16 members. Members shall be appointed by the Mayor and confirmed by the City Council. To be eligible for appointment, members shall reside within the greater Newport area, own property in the city limits, own a business in the city limits, or work in the city limits of the City of Newport. The Vision 2040 Advisory Committee membership shall be comprised of:
  1. Five citizens at-large with at least one representative from the Latino community;
  2. Five members of existing City of Newport standing committees with one representative from the Planning Commission; and
  3. Six members from stakeholder/partner organizations with one representative from the health community, one member from the education community, one member from Lincoln County, and other stakeholder/partner organizations as identified through the appointment process.
- B. Term of Office. Appointments will be made for a term of five years or until successors are appointed. Initial appointments will serve staggered terms. Terms of office shall begin the first day of the calendar year. Any vacancy shall be filled for the remainder of the unexpired term in the same manner provided in A. above.
- C. Committee Leadership and Meetings. A Chair and Vice-Chair shall be elected by the Committee members at the first meeting of each calendar year. The Committee will hold quarterly meetings with additional special meetings as needed.
- D. General Powers and Duties. The purpose of the Vision 2040 Advisory Committee shall be to promote the city's citizen-based visioning process. The Committee is responsible to

promote continued citizen involvement in the visioning process; establish, review, and update a vision action plan for review and approval by the City Council; and provide regular updates on the visioning process to the City Council and the community at-large. Committee shall be advisory and shall have powers, duties, and functions as follows:

1. Informing the annual City Council goalsetting and budgetary processes by linking planned projects with Vision Statements and Strategies;
2. Tracking implementation of key Strategies, developing metrics for measuring progress, and preparing annual progress reports;
3. Engaging city committees, staff, and partner organizations to facilitate implementation of Strategies;
4. Recommending periodic updates to the Vision and Strategic Plan to reflect changes in the community; and
5. Promoting the Vision and Strategic Plan, increasing public awareness of the Vision Statements and Strategies, and supporting community engagement efforts to achieve desired outcomes.

*(Chapter 2.05.075 was enacted by Ordinance No. 2124, adopted on November 20, 2017, effective December 20, 2017.)*

## 2.05.080 Audit Committee

### A. Membership

The Audit Committee shall consist of three members; two City Council members and one qualified voter in the city limits with a preference toward selection of a Budget Committee member. There shall also be one alternate City Council member, and one alternate public member who is a qualified voter in the city limits. A quorum of the Audit Committee shall be a minimum of two members, at least one shall be a City Council member, and in no case would a quorum be comprised of two public members. Committee members, including alternates, shall be appointed for two-year terms. The city's Finance Director and his/her designee shall staff the Audit Committee.

### B. Committee Responsibilities

1. The Committee shall meet with the auditor at the conclusion of the audit firm's field audit in the spring.
2. The Committee shall meet with the auditor at the conclusion of the annual audit.
3. The Committee shall prepare a report to the City Council on the audit findings, and present this report to the City Council at a regular City Council meeting.
4. The Committee shall meet with the auditor and staff at the request of the Committee or the audit firm or staff.

*(Chapter 2.05.080 adopted by Ordinance No. 2107 on February 6, 2017; effective March 8, 2017.)*

#### 2.05.085 Parking Advisory Committee

- A. Parking Advisory Committee Established. There is hereby established a Parking Advisory Committee. The Committee shall consist of eleven (11) members. Members shall be appointed by the Mayor and confirmed by the City Council, and shall include:
  1. Three members each from the Bayfront, Nye Beach, and City Center special parking areas as defined in Section 14.14.100; and
  2. Two at-large members that live or work within the Newport City limits.
- B. Committee Appointment Guidelines. When making appointments the City Council shall seek to ensure that a broad range of stakeholder interests are represented, including persons that reside, own property, own a business, or work within special parking areas; are affiliated with commercial fishing, fish processing, or tourist industries; have special parking/mobility needs (e.g. disabled persons); or are often underrepresented on city committees (e.g. members of the Latino community).
- C. Term of Office. Appointments will be made in a manner consistent with Section 2.05.002 for a term of three years. Initial appointments will serve staggered terms. Terms of office shall begin the first day of the calendar year.
- D. Committee Leadership and Meetings. A Chair and Vice-Chair shall be elected by the Committee members at the

first meeting of each calendar year. The Committee will hold quarterly meetings with additional special meetings as needed.


E. General Powers and Duties. The Parking Advisory Committee shall have the following powers, duties, and functions as it relates to special parking areas:

1. Engage policy makers, city committees, staff, and partner organizations to plan for, and facilitate the implementation of parking and other transportation related improvements;
2. Provide recommendations regarding city parking policies and programs, including maintenance of parking and related infrastructure, fees, wayfinding, transit, sidewalk connectivity, and parking enforcement; and
3. Advocate and promote public awareness of parking and related initiatives, community engagement, and other efforts to achieve desired policy outcomes.

F. Administrative Support. The City Manager shall designate staff to attend meetings and perform administrative functions for the Parking Advisory Committee.

*(Chapter 2.05.085 adopted by Ordinance No. 2164 on March 16, 2020; effective April 15, 2020.)*

# Memorandum

To: Planning Commission  
From: Derrick I. Tokos, AICP, Community Development Director   
Date: March 4, 2021  
Re: Potential Vacation of a Portion of SW 2<sup>nd</sup> St Between US 101 and SW Angle St  
(File No. 1-SV-21)

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Included with your packet is a March 3, 2021 letter in support of the street vacation from Michael Robinson, an attorney representing the abutting property owner 2<sup>nd</sup> Street Newport, LLC. No other testimony has been submitted since the Planning Commission opened the public hearing on February 22, 2021 and continued it to March 8, 2021. Packet materials from the original hearing date have been reposted for your convenience. I have not prepared a supplemental staff report beyond this memo, but will be prepared to respond at the hearing to comments received after the original report was prepared, including Mr. Robinson's correspondence.

Mr. Robinson and Brett Fox, with 2<sup>nd</sup> Street Newport, LLC, will be attending the March 8<sup>th</sup> meeting in person to testify. Both Sherri and I will be present in the Council Chambers, and we will have a computer setup so that they can provide testimony to those of you that are participating by video-conference.



March 3, 2021

**VIA E-MAIL**

Mr. Jim Patrick, Chair  
Newport Planning Commission  
Newport City Hall  
169 SW Coast Highway  
Newport, OR 97365

**Michael C. Robinson**

Admitted in Oregon  
T: 503-796-3756  
C: 503-407-2578  
mrobinson@schwabe.com

**RE:** City of Newport Case File 1-SV-21, Request to Vacate a Portion of SW 2nd Street between SW Angle Street and US Highway 101; Letter in Support of the City Council-Initiated Street Vacation and Responding to February 22, 2021 Letter from Mr. Onno Husing

Dear Chair Patrick and Members of the Newport Planning Commission:

This office represents Mr. Bret Fox and 2nd Street Newport, LLC (“Bret Fox”). This letter is submitted on behalf of Mr. Fox to explain the following:

- The **only** approval criteria for the Newport City Council (the “City Council”)-initiated street vacation concern notice of the street vacation hearings, opposition by more than 50% of the affected area property owners and opposition by abutting property owners that allege that the street vacation will “substantially affect the market value of their property.” The only relevant evidence before the Planning Commission shows that these criteria are satisfied.
- The “prejudice to the public interest standard” in ORS 271.120 (it is not found in ORS 271.130 or ORS 271.080(2)) does **not** apply to this City Council-initiated street vacation.
- Mr. Husing’s February 22, 2021 letter does not address the relevant approval criteria nor does it contain any evidence related to the approval criteria and as the Lincoln County (the “County”) Department of Planning and Development Planning Director, Mr. Husing undoubtedly recognizes that applications such as this may be decided only on the approval criteria and not on issues unrelated to the approval criteria.

The Planning Commission continued the street vacation hearing from February 22, 2021 to the date and time certain of March 8, 2021 at 7:00 p.m. at the request of Mr. Fox. The continuance allowed Mr. Fox to review Mr. Husing’s letter and provide this response.

**1. The City Council initiated this street vacation under ORS 271.130(2).**

The City Council initiated the street vacation under ORS 271.130(2). Staff Report Page 3. The City Council did so because it found its policies for initiation of a street vacation to be met.

The area proposed to be vacated is *only* the north 30 feet (the north half) of SW 2nd Street east of the intersection of SW Angle Street and SW 2nd Street. Staff Report Attachment “F.” The area contains just 2,198 square feet. Staff Report Attachment “C.” The street does not and cannot connect to US Highway 101. The area remaining after the street vacation includes the south half of SW 2nd Street and the triangular area to the south of that owned by the Oregon Department of Transportation (“ODOT”). Staff Report Attachment “C.”

After the initiation of the street vacation, the City gave the required newspaper and on-site posting notices of the Planning Commission hearing. Staff Report Page 2.

The City Council-initiated street vacation is subject only to the approval criteria in ORS 271.130(1). The approval criteria for a property owner-initiated street vacation petition in ORS 271.120 do not apply in this hearing. This is an important point because, as explained below, even though Mr. Husing raises a number of issues, none of them relate to the approval criteria. As the Planning Commission knows, its decision must be based on the relevant approval criteria. In this case, the street vacation is governed solely by the state law in ORS Chapter 271 and the legislature did not choose to include the issues raised by Mr. Husing as approval criteria. While those issues might be appropriate to a land use application for development, that is not what is before the Planning Commission.

**2. The Relevant Approval Criteria are Satisfied.**

**A. Explanation of different street vacation approval criteria.**

ORS Chapter 271 is divided between property-owner initiated street vacation “petitions” in ORS 271.080 and the City Council-initiated street vacations in ORS 271.130. As relevant here, the only overlap between the two is the provision of public notice of the street vacation hearings. Otherwise, the approval criteria for a property owner-initiated street vacation petition are found in ORS 271.120 and in ORS 271.130(1) for the City Council-initiated street vacation.

The main difference between the two kinds of street vacations is that whereas a property owner-initiated street vacation requires the written *consent* of affected area and abutting property owners, the City Council-initiated street vacation requires written *opposition* in order to deny the street vacation.

Significantly, the “prejudice to the public interest” standard is found only in ORS 271.120 and not in ORS 271.130(1), so it does not apply to this City Council-initiated street vacation.

**B. The approval criteria in ORS 271.130(1) are satisfied.**

The Staff Report addresses the relevant approval criteria for this street vacation and found them to be satisfied. Mr. Fox agrees with the Staff Report.

ORS 271.130(1) allows a City to approve the City Council-initiated street vacation if the following approval criteria are satisfied:

- Notice is provided according to ORS 271.080 (as noted above, the City has given the required notices);
- If the owners of the majority of the “affected area” do not object in writing; and
- If abutting property owners object in writing to the street vacation because the street vacation “substantially affects the market value of such [their] property.”
  - a. The owners of a majority of the affected area have not objected in writing to the street vacation.**

The affected area of the street vacation is defined in ORS 271.080(2). The Staff Report explains at Page 4 that the owners of the majority of the affected area have not objected in writing to the street vacation. This is true even considering Mr. Husing’s letter.

**Exhibit 1** is the affected area as defined in ORS 271.080(2). The two letters in opposition from property owners within the affected area contain 1.50 acres or 27.7% of the affected area. The affected area contains 5.41 acres and 27.7% is far less than the required 50% of the affected area. The Staff Report Page 4 finds that this standard is met.

Additionally, Mr. Husing is an *employee* of one of the affected area property owners, Lincoln County; he is not a property owner. The Board could be considered the owner of County property. Mr. Husing’s letter does *not* state that he has been authorized by the Lincoln County Board of Commissioners (the “Board”) to submit the letter of opposition. But even if the Board subsequently affirms Mr. Husing’s letter, the Planning Commission can find that the owners of a majority of the affected area have not objected in writing.

The Planning Commission can find that this approval criterion is satisfied.

- b. The abutting property owner has not objected in writing and has not alleged substantial affect on the market value of their property.**

Staff Report Attachment “C” shows the street right-of-way proposed to be vacated. The only abutting property owner is Mr. Fox, who owns the property to the north of the area proposed to be vacated. Staff Report Page 4. The Staff Report Page 4 finds this this standard is met. Mr. Fox does not object to the street vacation.

The south and east abutting properties are rights-of-way controlled respectively by the City and ODOT. Since the City and ODOT are tax-exempt public entities, their properties have no market value that could be substantially affected by this street vacation.

Even assuming that the County is an abutting property owner (the County owns Tax Lot 14600, which touches the northwest corner of the area to be vacated), the County is also a public entity and its property has no market value. Therefore, its written opposition cannot be a basis for finding this standard not met. Additionally, Mr. Husing's letter does not allege a substantial affect on the market value of the County property.

The Planning Commission can find that this approval criterion is satisfied.

**c. The “prejudice to the public interest standard” does not apply to this city council-initiated street vacation.**

Staff Report Pages 3 and 5 note that this standard “arguably” applies. In fact, both the text of ORS Chapter 271 and case law demonstrate that the standard is not applicable to this City Council-initiated street vacation. The Staff Report Page 5 found this standard to be satisfied. Even if this standard did apply, it is met but for the reasons explained below, it does not apply.

The construction of ORS Chapter 271 shows that this standard is not applicable. The standard is found only in ORS 271.120, which expressly refers to street vacation “petitions,” which are initiated only by property owners under ORS 271.080(1). Second, ORS 271.080(1) does not reference this standard, so even though ORS 271.130(1) references ORS 271.080(1) for purposes of defining the affected area, it does not include this standard since it does not appear in ORS 271.080(1). Finally, the City Council-initiated street vacation approval criteria do not include this standard.

The relevant case law supports this construction of ORS Chapter 271.

*Heitsch v. City of Salem*, 65 Or LUBA 187 (2012) involved a street vacation proceeding pursuant to ORS 271.130, where an opponent argued that the City Council's finding that the public interest would not be prejudiced by the vacation was not supported by substantial evidence. LUBA held that in making that argument, petitioner only set out a portion of ORS 271.120 discussing prejudice to public interest and omitted the rest. LUBA held that “ORS 271.130 appears immediately after ORS 271.120 and ORS 271.130 expressly applies to vacations that are initiated by the governing body and does not expressly require a finding that the vacation will not prejudice the public interest. When the part of ORS 271.120 that petitioner did not set out or address in her petition for review is read in context with ORS 271.130, it is highly questionable that in approving a vacation that is initiated by the governing body, as is the case here, the City Council is required to adopt an express finding that the public interest will not be prejudiced by the vacation.”

This LUBA decision supports the conclusion that the “prejudice to the public interest” standard does not apply to a city-initiated street vacation. *See also West Linn Corp. Park, LLC v. City of West Linn*, 349 Or. 58, 99 (Or. 2010) (“ORS 271.130(1) sets forth a second statutory mechanism by which a city governing body may initiate vacation proceedings. Using that mechanism, a city proceeds without the filing of a petition and attached legal description and without consent of affected landowners. The city gives notice of hearing that includes a description of the street to be vacated to abutting and affected landowners. After hearing, the city may vacate the street unless (1) the abutting landowners do not consent and the vacation will substantially affect the market value of such property, unless the city provides for payment of damages; or (2) a majority of the affected landowners object in writing.”).

For these reasons, the Planning Commission can find that this standard does not apply to this City Council-initiated street vacation. Mr. Husing’s issues are related only to this standard and because it is not relevant to this street vacation, these issues are irrelevant.

**3. Mr. Husing’s letter does not provide a basis for denial of the street vacation.**

Mr. Husing’s letter is not relevant to the approval criteria on which the Planning Commission must make its recommendation to the City Council. His letter does not address the approval criteria and is not from an affected area property owner or an abutting property owner. Further, the letter treats this City Council-initiated street vacation as a land use development application, which it is not. Whether the coffee kiosk is a good idea or not is irrelevant to the approval criteria. Finally, as explained below, even if the reasons contained in Mr. Husing’s letter have some relevance, they are not supported by facts about the matter.

**First**, Mr. Husing argues that the small area to be vacated is needed for various kinds of parking. At most, one legal parking space is provided in the area to be vacated. Even if the area were parked beyond what is legal, perhaps up to six parking spaces can be there. **Exhibit 2** shows on-street and off-street parking in the surrounding area. The County has over 300 off-street parking spaces in its three parking lots. The surrounding area has over 200 on-street parking spaces. Even assuming that this issue is relevant, the vacation of this area has no impact at all on the availability of parking spaces. This area to be vacated is not “heavily utilized.”

**Second**, Mr. Husing argued that contractors and others park in this area to visit the County Planning Department at 210 SW 2nd Street. **Exhibit 2** shows the location of the Planning Department and the hundreds of off-street parking spaces in the adjacent County parking lots. Available on-street parking is also found on the surrounding public streets. There cannot be any impact on Planning Department visitors if fewer than six parking spaces are lost when compared to the available parking.

**Third**, Mr. Husing argues that the Farmers Market will be impacted. The Farmers Market is on the east side of US Highway 101. **Exhibit 2** shows that there are numerous parking spaces available near the Farmers Market that do not require pedestrians to cross US Highway 101.

Mr. Jim Patrick, Chair  
March 3, 2021  
Page 6

**Fourth**, Mr. Husing's opinion of the coffee kiosk is irrelevant to the street vacation approval criteria. As long as the use is allowed in the C-1 zoning district and otherwise complies with City regulations, the use is allowed. Moreover, the street vacation has nothing to do with the ultimate use of the vacated area. This street vacation is not and cannot be an occasion for opining on a business person's intent to develop a new business in the City. As noted above, this is not a land use development hearing.

**Finally**, the area to be vacated is part of a dead-end street, not a public square. ORS 271.080(1) recognizes a difference between the two. The area is designated and zoned for commercial uses, not as a public square. The Staff Report Pages 2, 5 and 6 found that this area does not serve a transportation function.

Because this area is not needed for access to any property other than Mr. Fox's, provides only a small number of parking spaces, ample parking spaces are provided throughout the area including the County's large parking lots, the Farmers Market is on the other side of US Highway 101 with ample adjacent parking not requiring persons to cross US Highway 101, ample parking is provided at the Planning Department's front door, the area is not a public square and is designated for commercial use and the ultimate use as a coffee kiosk is irrelevant, the Planning Commission can reject Mr. Husing's arguments, in addition to the fact that the owner of the County property has not objected in writing to the street vacation and the County property has no market value.

#### **4. Conclusion.**

The Planning Commission can find that the relevant approval criteria are met and that Mr. Husing's letter does not provide a legitimate basis for denial of the street vacation under the approval criteria. Mr. Fox respectfully requests that the Planning Commission recommend approval of the street vacation to the City Council.

Very truly yours,



Michael C. Robinson

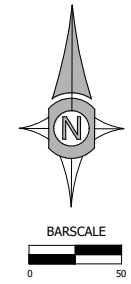
MCR:jmhi  
Enclosures

cc: Mr. Derrick Tokos (*via email*)  
Mr. Brett Fox (*via email*) (*w/enclosures*)  
Mr. Brian Vandetta (*via email*) (*w/enclosures*)  
Mr. Onno Husing (*via email*) (*w/enclosures*)

PDX\136888\257225\MCR\30267205.1



LIMIT OF AFFECTED AREA



**SUMMARY OF AFFECTED AREA:**

|                                                     |   |                                    |
|-----------------------------------------------------|---|------------------------------------|
| TOTAL AFFECTED AREA                                 | = | 5.41 AC ±                          |
| AMOUNT OF AFFECTED AREA OPPOSING THE VACATION       | = | LINCOLN COUNTY 1.38 AC ± (25.5% ±) |
|                                                     | = | RUSSELL JOHNSON 0.12 AC ± (2.2% ±) |
| TOTAL AMOUNT OF AFFECTED AREA OPPOSING THE VACATION | = | 1.50 AC ± (27.7% ±)                |

THIS PLAN WAS CREATED FROM LINCOLN COUNTY GIS INFORMATION FOR PLANNING PURPOSES ONLY. THE AREAS LISTED ARE TO BE TAKEN AS APPROXIMATE ONLY.

| PLAN REVISIONS | DATE |
|----------------|------|
|                |      |
|                |      |
|                |      |
|                |      |

Sheet **C100**  
SCALE: SEE BARSCALE

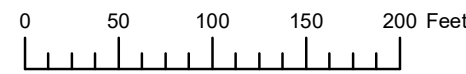
CLIENT:  
2ND STREET NEWPORT, LLC  
PO BOX 970  
MEDFORD, OREGON 97501

UDELL ENGINEERING AND LAND SURVEYING, LLC  
63 EAST ASH ST.  
LEBANON, OREGON 97355  
(541) 451-5125 PH.  
(541) 451-1366 FAX

AFFECTED AREAS  
2ND STREET VACATION  
NEWPORT, OREGON

DATE: 2-24-2021  
PROJECT: 14-189 FOX TERRA GRAVITY COFFEE  
DRAWN BY: BSV  
CHECKED BY: BSV

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



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

11 11 08 AB  
NEWPORT



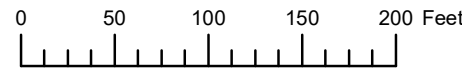
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- 300
- 400
- 500
- 600
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- 800
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- 3800
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- 4200
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- 4700-21
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- 9900
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- 10201
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- 11700
- 12000
- 13900
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- 14800
- 14900

Revised: SEB  
11/19/2020

NEWPORT  
11 11 08 AB

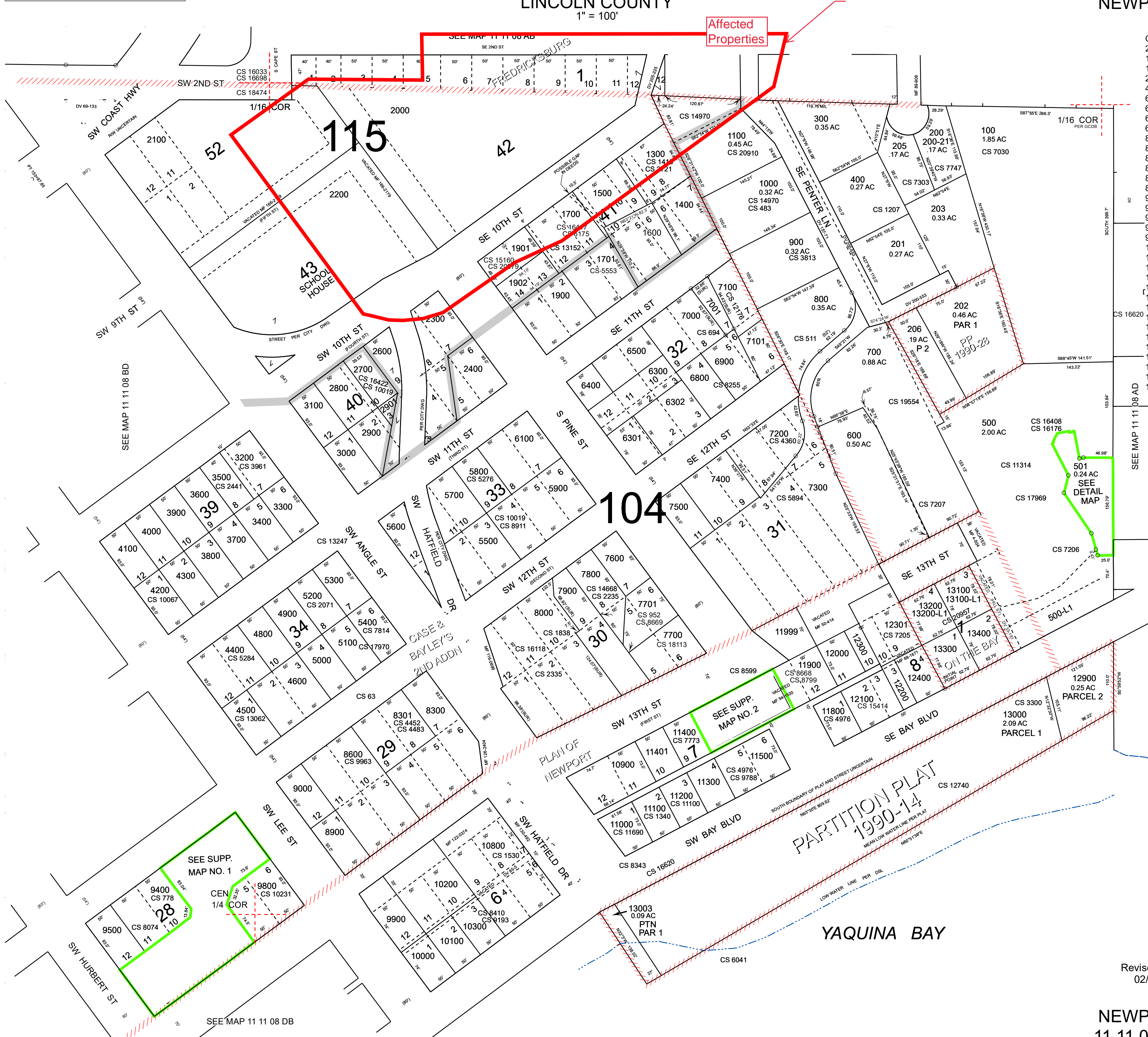


THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



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

11 11 08 AC  
NEWPORT



Cancelled  
204  
1200  
1800  
2500  
4700  
6000  
6200  
6600  
6700  
8100  
8200  
8400  
8500  
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8800  
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9300  
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10700  
10801  
11501  
11600  
11700  
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13001  
13002  
13004

SEE MAP 11 11 08 AD

Affected Properties

SEE SUPP. MAP NO. 2

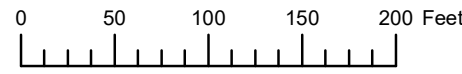
SEE SUPP. MAP NO. 1

SEE MAP 11 11 08 DB

Revised: SAO  
02/24/2020

NEWPORT  
11 11 08 AC

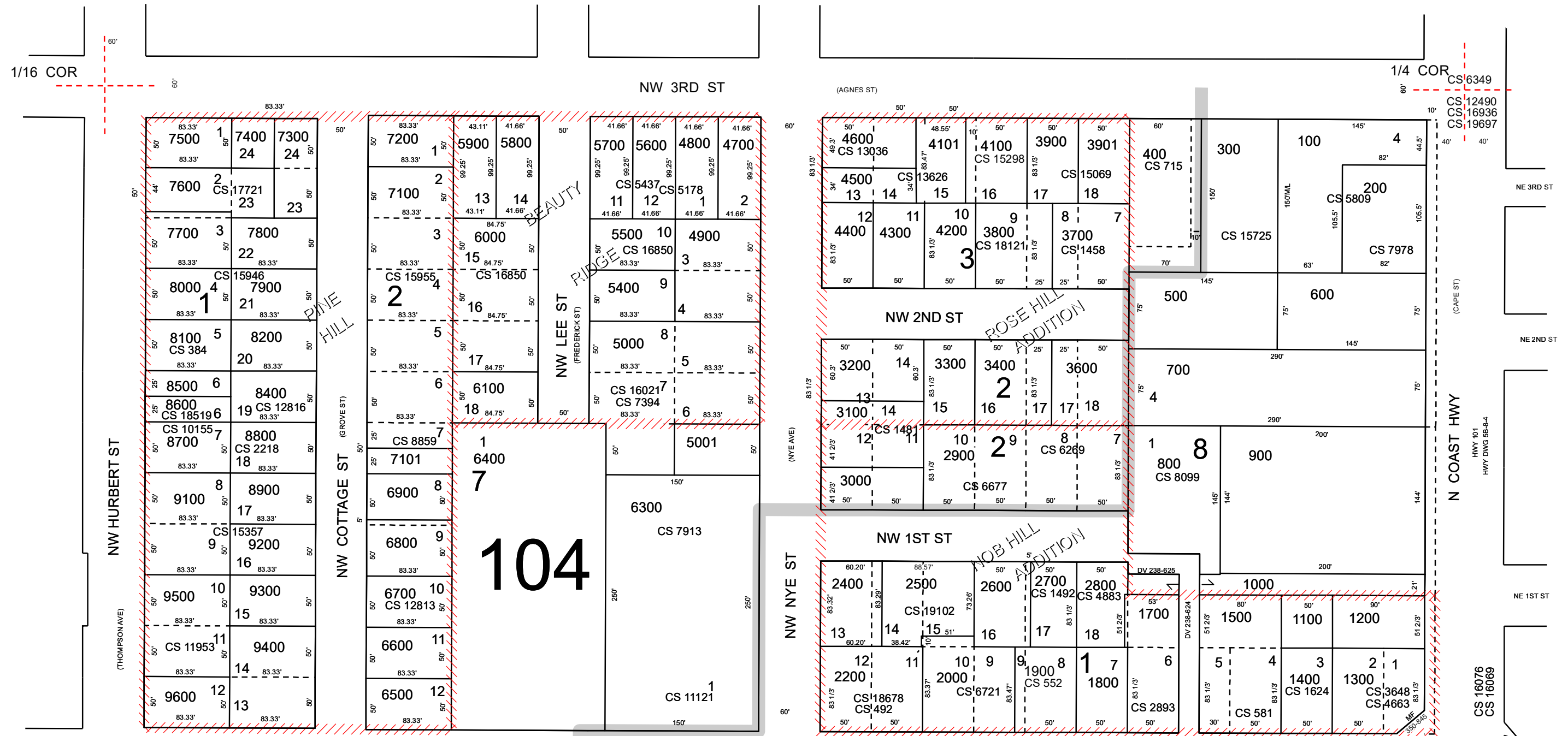
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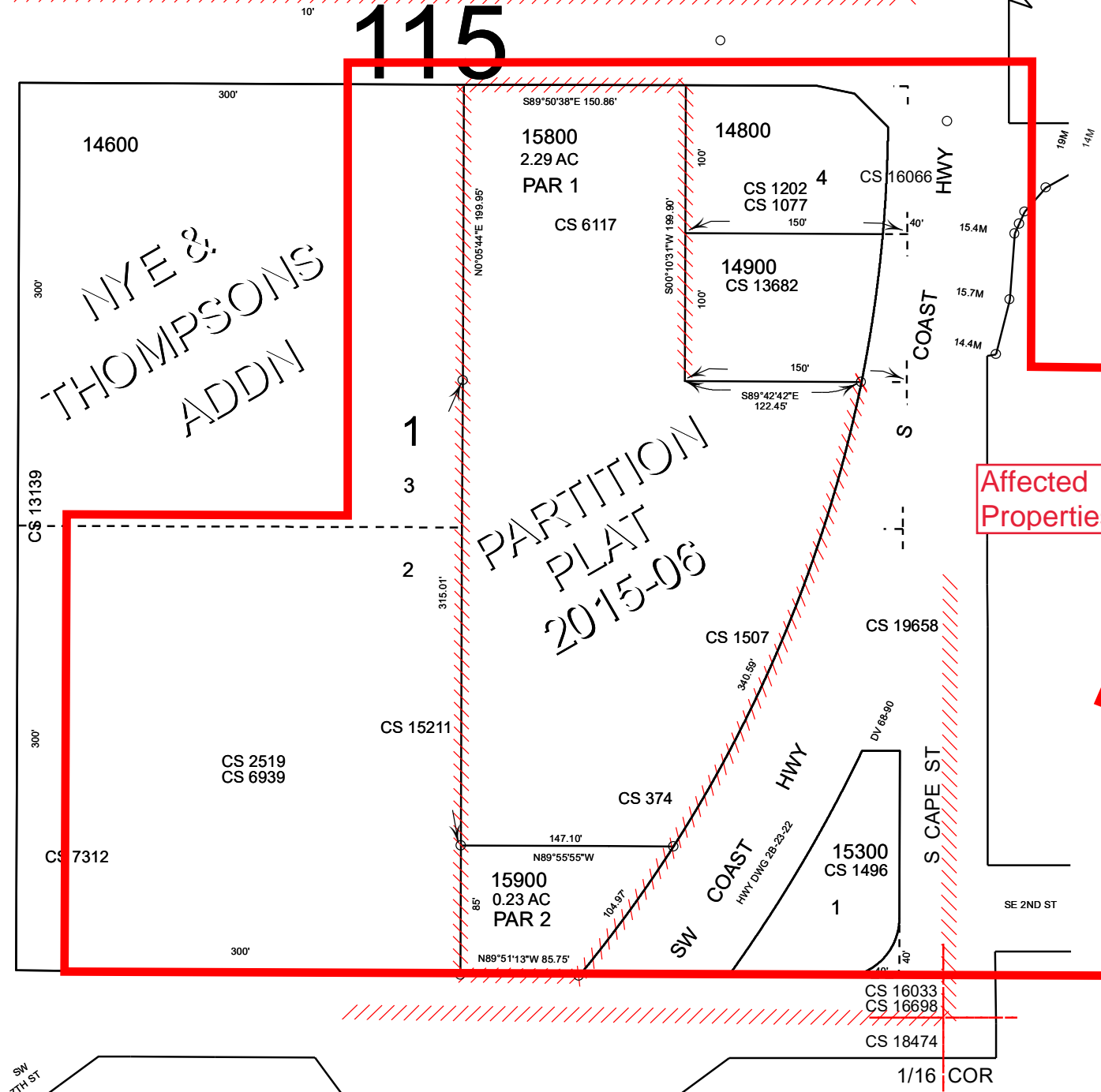
N.E. 1/4 N.W. 1/4 SEC. 8 T. 11S. R. 11W. W.M.  
LINCOLN COUNTY  
1" = 100'

11 11 08 BA  
NEWPORT

SEE MAP 11 11 05 CD



104



115

Affected Properties

- Cancelled
- 301
- 1600
- 2100
- 2300
- 2900-31
- 3500
- 4000
- 5100
- 5200
- 5300
- 6200
- 7000
- 8300
- 9000
- 10000
- 10901
- 13600
- 13700
- 13900
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SEE MAP 11 11 08 BB

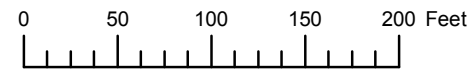
SEE MAP 11 11 08 AB

SEE MAP 11 11 08 BD

Revised: SEB  
07/28/2020

NEWPORT  
11 11 08 BA

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



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

11 11 08 BD NEWPORT



- Cancelled
- 200
- 400
- 500
- 1600-31
- 2100
- 2600-31
- 3100
- 3500
- 3600
- 3700
- 3800
- 3900
- 4100
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- 90000
- 90001
- 90002

Revised: SAO 10/28/2019

NEWPORT 11 11 08 BD



Public Parking



Case File: 1-SV-21  
 Date Filed: January 22, 2021  
 Hearing Date: February 22, 2021/Planning Commission

**PLANNING STAFF REPORT**  
**Case File 1-SV-21**

- A. **APPLICANT:** Brett Fox, representing 2<sup>nd</sup> Street Newport, LLC (initiated by the Newport City Council on November 16, 2020).
- B. **REQUEST:** Vacate the northerly 30-feet of a 3,500+/- sq. ft. segment of SW 2<sup>nd</sup> Street right-of-way between SW Angle Street and US 101. The developer, 2nd Street Newport, LLC, intends to construct a drive through coffee establishment in the vicinity of the Courthouse Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers.
- C. **SUBJECT PROPERTY:** Real property abutting the right-of-way to be vacated is identified as Parcel 2 of Partition Plat 2015-06 (Tax Lot 15900 of Lincoln County Assessor's Map 11-11-08-BA). Its address is 104 SW Second Street.
- D. **STAFF REPORT**
1. **REPORT OF FACT**
- a. **Plan Designation:** Commercial.
  - b. **Zone Designation:** C-1/"Retail and Service Commercial."
  - c. **Surrounding Land Uses:** Retail commercial uses to the north. County administrative offices to the west, Newport City Hall and a gas station to the east (opposite US 101), and a law office to the south.
  - d. **Topography and Vegetation:** The 2,198+/- square feet to be vacated is relatively level and paved.
  - e. **Existing Structures:** None.
  - f. **Utilities:** There is a 6-inch diameter public water line and 8-inch diameter public storm drainage line within the area that is to be vacated. A public sanitary sewer line and cleanout are situated just outside of the subject area.
  - g. **Development Constraints:** None known.
  - h. **Past Land Use Actions:** None relevant to the right-of-way.

- i. **Notification:** Notification to abutting and affected property owners, to City departments, and to public/private utilities/agencies was mailed on January 29, 2021. Notice of this Planning Commission public hearing was also published in the Newport News-Times on February 5, 2021, February 12, 2021, and February 17, 2021, and signs were posted on the premises.
- j. **Attachments:**
  - Attachment "A" – November 12, 2020 letter from Michael Robinson, Attorney, representing 2<sup>nd</sup> Street Newport, LLC, requesting the City Council initiate the street vacation process.
  - Attachment "B" – Minutes from the November 16, 2020 City Council meeting where the Council initiated the street vacation process.
  - Attachment "C" – Map illustrating the area to be vacated.
  - Attachment "D" – Legal description of the area to be vacated
  - Attachment "E" – Conceptual site plan of the Gravity Coffee drive through, landscaping, and redesigned driveway approach (would fall partially within the vacated right-of-way).
  - Attachment "F" – 2018 Aerial image showing utilities.
  - Attachment "G" – Copy of ORS Chapter 271.080 to 271.230.
  - Attachment "H" – Notice and mailing list for the public hearing.

2. **Explanation of the Request for Street Vacation:**

Bret Fox, on behalf of the owner 2nd Street Newport, LLC, is looking to develop a drive through coffee establishment on vacant property on the west side of US 101 across from Newport City Hall. It is in the vicinity of the Courthouse Café that was demolished a number of years ago. The site is accessed from SW Angle Street, through a small section of SW 2nd Street that was isolated when Highway 101 was placed in its present alignment. The landscaped area, immediately south of SW 2nd Street, is owned by the State of Oregon and is the former location of a clock tower.

Mr. Fox would like the City to vacate the northerly 30-feet of this isolated, 3,500+/- sq. ft. segment of SW 2nd Street to facilitate a drive through design that maximizes vehicle queuing and allows for the driveway to be realigned in a manner that is more intuitive to drivers. Mr. Fox would landscape areas along US 101, SW Angle Street, and between the coffee establishment and driveway. This is discussed in a letter from his attorney, Michael Robinson, to the Newport City Council, dated November 12, 2020 (Attachment "A"). A map illustrating the area to be vacated (Attachment "C") and text legal description (Attachment "D") have been prepared by Udell Engineering and Land Surveying, LLC. A conceptual site plan illustrates how the

coffee establishment would be situated on the property following the street vacation (Attachment "E"). City water, sewer, and storm drainage infrastructure exists within the area that would be vacated and a utility easement would need to be reserved so that the City can maintain the utilities. The alignment of the utilities is depicted on a 2018 aerial image of the property (Attachment "F"). Mr. Fox has been informed that he would be responsible for reconfiguring utilities impacted by his project.

On November 16, 2020, the Newport City Council elected to begin the street vacation process (Attachment "B"). This was done in accordance with policies the Council adopted to govern when it would initiate street vacation proceedings. Those policies require consideration of (a) the extent of public benefit; (b) the extent of present and anticipated future use of the right-of-way; (c) potential environmental and geologic impacts; (d) financial factors; (e) effect on property owners; (f) consistency with applicable plans, ordinances and regulations; and (g) the amount and quality of the information provided by the person requesting the vacation.

3. **Evaluation of the Request for Street Vacation:**

- a. **Comments:** Abutting and affected property owners, city departments and public/private utilities/agencies were notified on January 29, 2021. Notice of this Planning Commission public hearing was also published in the Newport News-Times on February 5, 2021, February 12, 2021, and February 17, 2021 and signs were posted on the premises (Attachment "H"). No comments were received in response to this proposal.
- b. **Planning Commission Review Required:** Pursuant to NMC 14.52.030, Approving Authorities, the City Council will decide street vacation proposals following a public hearing and upon receipt of a recommendation from the Planning Commission.
- c. **Applicable Criteria set forth in Oregon Revised Statutes (ORS) 271.130:**
  - i. Have the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, objected in writing to the vacation of the subject street; and
  - ii. Will the vacation of the right-of-way adversely affect the market value of abutting properties and, if so, have those owners consented in writing to the vacation; and
  - iii. Has notice has been duly given *[required for hearing before the City Council, pursuant to ORS 271.080]*; and,
  - iv. Will the public interest will be prejudiced by the vacation of such plat or street or parts thereof *[arguably required by ORS 271.130(1) through its cross reference to ORS 271.080]*.



- d. **NMC Chapter 14.26 Maintenance of Public Access:** The city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean. Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, ex-changed, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.
- e. **Staff Analysis:**

The Planning Commission reviews this request and makes a recommendation to the City Council. In order to recommend approval of the request, the Planning Commission must find that the applicant's proposal meets (or is capable of meeting) the following criteria:

- i. Have the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, objected in writing to the vacation of the subject streets; and;

Notice of this proposal to vacate the listed street segment was provided to affected property owners on January 29, 2021. Pursuant to ORS 271.080, individuals entitled to notice are those that own property within a notice area that extends 400 feet beyond the terminal points, and 200 feet perpendicular to, a stretch of right-of-way that is being vacated. A list of the affected owners is included with this report (Attachment "H"). If the owners of two-thirds of the land area that is subject to notice object in writing then the street vacations cannot proceed. To date, the City has not received any written objections to this street vacation proposal.

- ii. Will the vacation of the right-of-way adversely affect the market value of abutting properties and, if so, have those owners consented in writing to the vacation; and

The party requesting the street vacation, 2nd Street Newport, LLC, is the only abutting property owner. Road right-of-way abuts the area to be vacated on all other sides. This request by 2<sup>nd</sup> Street Newport, LLC, through their attorney Michael Robinson, serves as evidence of the abutting property owner's consent to the street vacation (Attachment "A"). The street right-of-way at issue is not needed to provide access to abutting property and when vacated will accrue to the 2<sup>nd</sup> Street Newport, LLC parcel, increasing its size. For these reasons, it is reasonable for the Planning Commission to conclude that the requisite consent has been provided and that vacating the right-of-way will not adversely impact the abutting properties.

- iii. Whether notice has been duly given [required for hearing before the City Council, pursuant to ORS 271.080]; and,

The Newport Municipal Code does not contain notice requirements for this type of Planning Commission hearing, and ORS Chapter 271 does not require Planning Commission action on a street vacation proposal. Abutting and affected owners received written notice as provided in ORS 271.080, notice was published in the News-Times, and notice was posted on the premises (Attachment "H"). This is sufficient for the Commission to find that this requirement has been satisfied.

- iv. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof [arguably required by ORS 271.130(1) through its cross reference to ORS 271.080].

While the subject segment of SW 2nd Street is presently developed as a street, it stopped serving that purpose in a meaningful way when the highway was realigned and its approach onto US 101 was terminated. Its only real purpose now is to serve as a driveway access to the 2nd Street Newport, LLC commercial site. The City presently has utilities within the affected area; however, that need can be addressed with an easement reservation. Vacating the right-of-way will allow the proposed development to proceed in a manner that will enhance existing landscaping, and result in a driveway approach onto SW Angle Street that is more intuitive to drivers. Development of the property will also have a positive impact on the tax base. The only property that this street serves is the 2<sup>nd</sup> Street Newport, LLC commercial site, so vacating the street segment would not impact access to other property now or in the future. For these reasons, it is reasonable for the Planning Commission to conclude that the public interest will not be prejudiced by the vacation.

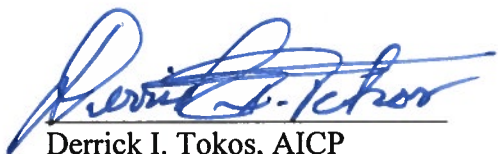
- v. As outlined in NMC Chapter 14.26 Maintenance of Public Access, the city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean. Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, ex-changed, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.

The right-of-way proposed to be vacated is well removed from the Pacific Ocean and Yaquina Estuary and is not relied upon to access these areas. Considering the above, the City does not need to retain the right-of-way, or require that it be replaced, in order to ensure public access to the ocean or estuary.

4. **Conclusion:** If the Planning Commission finds that the proposal meets the minimum City and statutory criteria (or is capable of meeting the criteria) established for the street vacation, the Commission may forward a favorable recommendation to the City Council. If the Planning Commission finds that the criteria have not been met (or are not capable of being met), the Commission should identify changes necessary to meet the criteria or should deny all or part of the request.

- D. **STAFF RECOMMENDATION:** Findings contained in this report establish that the street vacation proposal can satisfy City and statutory approval standards provided the following conditions are imposed:

1. The Newport City Council should reserve a utility easement over the area to be vacated.



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

February 12, 2021

**Attachment "A"**

1-SV-21



November 12, 2020

**Michael C. Robinson**

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

**VIA E-MAIL**

Mayor Dean Sawyer  
Newport City Council  
Newport City Hall  
169 SW Coast Highway  
Newport, OR 97365

RE: Initiation of Vacation of Public Right-of-Way by Newport City Council;  
November 16, 2020 Newport City Council Agenda Item

Dear Mayor Sawyer and Newport City Council Members:

This office represents Mr. Bret Fox and 2<sup>nd</sup> Street Newport, LLC. Mr. Fox has developed the retail center northwest of the corner of US Highway 101 and SW 2<sup>nd</sup> Street. As the City Council knows, there is an area near this corner which contains both unvacated City right-of-way and property owned by the Oregon Department of Transportation ("ODOT") (**Exhibit 1**). Neither area is being used for public street purposes nor is that likely to be the case in the future. This agenda item requests that the Newport City Council initiate a vacation of the City right-of-way and the area now owned by ODOT after a transfer of the ownership from ODOT to the City of Newport (the "City"). Mr. Fox agrees with the Staff Report to the City Council.

Mr. Fox would like to obtain this area through a vacation in order to do two things. First, to reconfigure the existing driveway to the retail center so that vehicle access is safer and, second, to add to the existing landscape area and to maintain the landscaped area at his cost. By vacating this area, the City will support the retail center, the landscaped area will be increased and the City will not have to maintain the landscaping.

ORS 271.130 allows a City Council on its own motion to initiate and vacate City right-of-way. While the owners of the majority of the affected area as defined in ORS 271.080(2) must not object to the vacation, a City Council initiated-vacation is a more streamlined process than a property owner-initiated process and still provides for a public hearing.

Additionally, the City Council can find that the City Council's October 6, 2008 "Policy on Requests for City-Initiated Right-of Way-Vacations" (the "Policy") is met by this request. The City's Council's Policy contains seven substantive factors, all of which can be found by the City Council to be met in this case. The factors that are met are:

Mayor Dean Sawyer  
November 12, 2020  
Page 2

1. There is a public benefit to the vacation because the area will become part of an existing retail center and will be subject to property taxes and the undeveloped area will be landscaped and maintained by the property owner, alleviating the City from the cost of maintaining that area.
2. The area is not presently used for nor is it needed in the future for public transportation purposes; it serves only as access to the retail center.
3. There are no known environmental or geologic impacts.
4. The financial factors benefit the City and its residents.
5. There is no burden imposed on near-by property owners; for example, no property owner is deprived of access or on-street parking.
6. The vacation is consistent generally with development policies in the City's acknowledged Comprehensive Plan.
7. Mr. Fox will provide all of the information needed by City staff to evaluate the vacation proposal.

Mr. Fox understands that the decision to initiate the street vacation is not a guarantee of approval of the street vacation. However, Mr. Fox would appreciate the City Council adopting a motion to initiate the vacation and, as he has done so far, pledges to cooperate fully with City staff on the vacation process and to appear at the subsequent public hearing in order to make the case for the vacation and to answer questions that the City Council may have.

Mr. Fox and I will be present at the November 16, 2020 City Council meeting in order to answer questions from the City Council.

Thank you in advance for your consideration of this request.

Very truly yours,



Michael C. Robinson

MCR:jmhi  
Enclosure

cc Mr. Derrick Tokos (*via email*) (*w/enclosure*)  
Mr. Spencer Nebel (*via email*) (*w/enclosure*)  
Mr. Bret Fox (*via email*) (*w/enclosure*)

PDX\136888\257225\MCR\29429438.1

November 16, 2020

6:00 P.M.

Newport, Oregon

CITY COUNCIL

The Newport City Council met on the above date and time in the Council Chambers of the Newport City Hall. On roll call, Collett, Goebel, Hall, Botello, Jacobi, Sawyer, and Parker were present.

Staff in attendance was Spencer Nebel, City Manager; Peggy Hawker, City Recorder/Special Projects Director; David Allen, City Attorney; Rob Murphy, Fire Chief; Jason Malloy, Police Chief; Derrick Tokos, Community Development Director; and Chris Janigo, Interim City Engineer.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

ADDITION TO THE AGENDA

MOTION was made by Parker, seconded by Hall, to add Update on COVID-19 Related to City Facilities and Programming as agenda item 6.G. The motion carried unanimously in a voice vote.

PUBLIC COMMENT

Kent Doughty, a representative of the Audubon Society of Lincoln City, stated the society plans to propose Cape Foulweather as a Marine Conservation Area under the state's rocky habitat management strategy. He noted the area needs special designation in order to keep those areas pristine for years to come. He explained tourists, residents, the habitat, education, and wildlife will benefit from the designation. He added the designation will protect nesting seabirds, increase community involvement, and protect landscapes. He indicated designation will not change commercial or recreational fishing or harvesting regulations or restrict access to tidepools. He invited Council to visit <http://www.lincolncityaudubon.org/> for more information and to share input.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approve Minutes of the Work Session of November 2, 2020;
- B. Approve Minutes of the Regular Session of November 2, 2020;
- C. Ratify the Mayor's Appointment of Sandy Roumagoux to Fill an At-large Vacancy to the Short-Term Rental Ordinance Implementation Work Group for a Term Expiring December 31, 2020;
- D. Receive the Monthly Financial Report;
- E. Receive the Approved Committee Minutes.

Parker noted the work group position expires December 31, 2021.

MOTION was made by Goebel, seconded by Hall, to approve the consent calendar as amended. The motion carried unanimously in a voice vote.

### COMMUNICATIONS

**From Jan Kaplan Regarding Status of Establishment of a Nye Beach Neighborhood Association.** Hawker introduced the agenda item. Nebel reported on October 1, 2018, the City Council adopted Resolution No. 3827 which outlines the requirements for creating a neighborhood association within the City of Newport. He stated the resolution establishes the criteria for recognition of a neighborhood association, which include the development of a governing document, commitment that meetings should be well-publicized, encouraging full participation of neighbors within the group, that the association shall be open to the total area, and diversity of interest present in the neighborhood will be represented. He noted Jan Kaplan would like to update the Council on efforts to establish a Nye Beach neighborhood association under the terms of this resolution.

Kaplan, a Newport resident, updated Council on efforts to organize a neighborhood association in Nye Beach. He noted one of the challenges is gathering people during COVID, and any outreach ideas are welcome. He added a draft mission statement is in the packet.

Tom Briggs, a Newport resident, emphasized that this will provide a forum for neighbors to meet neighbors. Jacobi thanked Kaplan and Briggs and praised the mission statement. Hall confirmed the group is working on bylaws at this time. Hall asked how would the boundaries be determined for the neighborhood association. Kaplan replied in the draft bylaws, they have adopted the historic Nye Beach district. He added they are trying to be as inclusive as possible.

Goebel commended the group for its efforts. Parker asked what percentage of residents are in support of this. He asked how much outreach has been done to working families, the younger generation, and the Hispanic community. He noted it would be nice to see cross-representation of all neighborhood residents. Kaplan agreed. He explained it is a small group that has begun the process of reaching out. He added he is trying to figure out the outreach strategy. Parker clarified the outreach email is Nyeneighbors@gmail.com.

Botello suggested developing an organizational chart and list of members. She recommended writing down the process so that this can be replicated in other neighborhoods. She clarified this idea come about socially.

Collett noted there is a Nye Beach Merchants Association and suggested reaching out to them.

### CITY MANAGER'S REPORT

**Request for Council Initiation of the Vacation of a Portion of SW 2nd Street between SW Angle Street and Highway 101.** Hawker introduced the agenda item. Nebel reported across from City Hall, there is a small segment of 2nd Street that extends from the intersection of Angle Street and runs to a dead-end at the sidewalk along US Highway 101 south of the Antique Mall parking lot. He noted this section of 2nd Street occurred with the realignment of Highway 101. He stated the developer who owns the adjacent strip mall that the Antique Mall is part of is Bret Fox. He is proposing to build a drive-thru

coffee establishment on the site of the former Courthouse Cafe which was demolished several years ago. He indicated Fox is requesting that the city vacate the 3,500 square foot segment of SW 2nd Street, so he can construct a driveway approach into the commercial property, that conforms with city standards, which is more intuitive to drivers than the dead-end of 2nd Street that currently exists for this purpose.

Nebel reported the City Council's action recommended for tonight is to initiate this process. He noted this is not a decision of Council's on the merits of the street vacation. He stated this will be forwarded to the Planning Commission for their consideration, and a decision to vacate the street would be a separate action by the Council after considering the recommendation from the Planning Commission and any public comments received regarding this possible action.

Goebel clarified the nearby triangle park could be obtained by the city or the property owner. He clarified the location of the proposal. He asked if the county has been informed of this proposal. Tokos replied the developer plans to reach out to the county.

Allen explained if Council initiates the vacation, this will eventually be a quasi-judicial proceeding at Council. He suggested refraining from speaking with developer or Councilors will have disclose ex parte contact.

Botello asked if the Angle Street entry is going to be changed. Nebel replied the driveway would be better defined, and the corner cleaned up. He noted Angle Street would be slightly narrowed. Botello confirmed there is planning to manage traffic. Hall emphasized the need to evaluate a left turn onto Highway 101. Collett confirmed there would not be a traffic analysis because the volume is too low. Collett suggested incorporating something internal to the parking lot so that people do not try to circumvent Highway 101 through the parking lot.

MOTION was made by Parker, seconded by Goebel, to initiate the vacation of a portion of SW 2<sup>nd</sup> Street between SW Angle Street and Highway 101 with the developer paying a filing fee of \$845 and any surveying and recording costs incurred as part of this process. The motion carried unanimously in a voice vote.

Sawyer requested the clock return to the triangle property.

**Approval of an Intergovernmental Cooperative Purchasing Agreement with the League of Oregon Cities.** Hawker introduced the agenda item. Nebel reported the League of Oregon Cities is a member of the National Purchasing Partners (NPPGov), which provides for intergovernmental cooperative purchasing for public safety, first responders, law enforcement education, and EMS. He stated NPPGov provides group purchasing, marketing, and administrative support for governmental entities, which includes master price agreements. He noted this process satisfies the bidding and procurement requirements for goods and services where NPPGov has conducted a procurement process. He indicated the League of Oregon Cities is the lead contracting agency within the state of Oregon. He added the City of Newport would be designated as a participating agency if Council authorizes involvement in this joint purchasing program.

Nebel reported the reason for exploring this option is that there is a recommendation on the Local Contract Review Board agenda to proceed with a five-year lease/purchase to replace the existing tasers used by the Police Department. He stated the tasers currently used by the department will no longer be supported, so there is a need to consider replacing these units. He noted the city could utilize the joint purchasing agreement with the League of Oregon Cities for this purchase.



MOTION was made by Goebel, seconded by Hall, to approve an Intergovernmental Cooperative Purchasing Agreement with the League of Oregon Cities and authorize the City Manager to execute a participating agency endorsement and authorization agreement with the League of Oregon Cities to participate in the intergovernmental cooperative purchasing agreement entities that are members of the National Purchasing Partners. The motion carried unanimously in a voice vote.

**Approval of Amendment No. 2 to the Intergovernmental Agreement with the State of Oregon for Motor Vehicle Fuel Dealer Tax Collection Services.** Hawker introduced the agenda item. Nebel reported since 2009, the City of Newport has had an agreement with the State of Oregon acting through the Department of Transportation for the collection of Newport's local gas tax. He noted the current agreement for this service expired in October 2020; Amendment No. 2 will extend the agreement to October 1, 2030. He stated the agreement also names the City Manager as the project manager, and the Finance Director as the city contact.

MOTION was made by Parker, seconded by Goebel, to approve Amendment No. 2 to the intergovernmental agreement with the State of Oregon for motor vehicle fuel dealer tax collection services. The motion carried unanimously in a voice vote.

**Report and Potential Action on Electric Vehicle Charging Policy for the City of Newport.** Hawker introduced the agenda item. Nebel reported on November 2, the City Council met in work session to discuss policies regarding electric vehicle charging stations. He noted the city had an opportunity to participate in a program to provide charging stations and employee work places through Forth Empowering Mobility. He explained, unfortunately, with COVID-19 and the budgetary impacts on the city, the City Council opted not to proceed with this project due to the installation costs necessary to put these chargers in place. He stated since that time, there have been several developments that have occurred with electric vehicle charging in the city.

Nebel reported there are three areas in which the city can influence and support the use and advancement of electric vehicles in the City of Newport. He stated the first is through the installation of electric vehicle chargers for public use. He noted as the number of electric vehicles are increasing, there is also corresponding opportunities for expansion, and opportunities for individuals to charge their vehicles in the community. He explained when the city was discussing the provision of vehicle chargers through Forth Mobility, the city would be the provider and maintainer of electric charging stations on public property on various locations. He indicated in reviewing this original plan, there were concerns that the city may not be in the best position to operate and maintain charging stations for the public. He added the city may play a more sustainable role by providing financial support to others who would provide the charging stations.

Nebel reported this could be done through support from the Urban Renewal District to incentivize national companies such as ChargePoint to install chargers at specific locations. He stated the city could incentivize private property owners to install chargers such as the Oregon Coast Aquarium utilizing Urban Renewal Agency funds. He recommended the city administration develop locations within the Urban Renewal Districts where Urban Renewal funds could help incentivize charging stations from national companies and/or local businesses for charging stations located in the Urban Renewal boundaries. He added city-owned locations where commercial charging stations

could be located, include the Ernest Bloch Wayside and the Angle Street parking lot as examples.

Nebel reported the second area in which the City can influence electric vehicle charging opportunities is through city codes. He stated the city can adopt the optional statewide code provisions which require new developments of certain sizes, to install conduit for future electric vehicle charging purposes. He recommended Council initiate a code amendment requiring certain development projects to install electric conduit capable of supporting future electric vehicle charging locations as part of that development. He explained the third area in which the city could encourage and support electric vehicles is through the development of a policy impacting the City organization. He suggested the city develop a policy where employees can charge electric vehicles at worksites, with a monthly payroll deduction established to offset electric use by those employees. He recommended the city require departments to analyze the possibility of utilizing e-vehicles or hybrids for any passenger vehicle purchases requested in the annual budget.

Jacobi asked why the fourth recommendation is restricted to passenger vehicles. She asked if the recommendation could include trucks or police vehicles. Goebel agreed. Nebel replied there are limited options for larger vehicles, but Council can modify that recommendation. Goebel suggested modifying the recommendation to any city vehicles. Parker noted there are limited options and a need to locate where the city vehicle charger station would be. He suggested replacing passenger vehicle with fleet vehicle purchases either plug-in hybrid or all electric based on market availability at the time of purchase. The Council reached consensus to change the fourth recommendation to reflect Parker's suggestion.

Botello confirmed charging stations last at least a decade. Discussion ensued on charging station infrastructure. Botello asked if other cities have incentives for employees. Parker replied the state and federal government provide credits in addition to utility companies. He noted it is common in other cities to have a payroll deduction for employees who utilize the charger.

Goebel suggested changing the fourth recommendation from analyze to prioritize. Nebel replied based on the current wording, department heads know that it is Council's intent to move toward electric vehicles.

MOTION was made by Parker, seconded by Botello, to approve the policies as amended regarding electric vehicle charging stations as outlined in the City Manager's report. The motion carried unanimously in a voice vote.

**Update on COVID-19 Business Assistance Grants.** Hawker introduced the agenda item. Nebel reported during the COVID-19 emergency, the City of Newport, in consultation with the taxing entities impacted by the Urban Renewal Agency, contributed \$1 million in unrestricted interested earnings from the South Beach Urban Renewal District tax increment to assist small businesses during the COVID-19 pandemic. He stated these funds were broken down into two separate programs with \$900,000 administered directly by the City of Newport, and \$100,000 pooled with an equivalent amount of funding from Lincoln County, to leverage funding from the State of Oregon for small business assistance. He noted the packet report from Community Development Director, Derrick Tokos, outlines the funding used to assist Newport's critical small businesses of \$900,000.

Nebel reported the \$100,000 that the city contributed, along with a similar amount from Lincoln County, was administered by Community LendingWorks. He stated the funding from the city and Lincoln County leveraged total grants in the amount of \$629,475. He noted of this, 47% of these funds are benefitting City of Newport businesses. Nebel thanked the organizations that partnered with the city to make the grants available.

Goebel confirmed when the last grants are awarded, Council will be informed of the businesses that benefited. He asked how much funds are left for the community. Tokos replied the last rounds have wrapped up. He reported there is one round left, round five that was recently authorized by the state. He stated there will be \$20 million state-wide, targeted at larger businesses, FTE up to 100, and administered by Business Oregon. He noted he does not know how it will be distributed around the state. He added the programs for small businesses have wrapped up.

**Approval of Budget Calendar.** Hawker introduced the agenda item. Nebel reported the preliminary budget meeting will be March 2, 2021, and the goal setting meeting will be February 8, 2021. He encouraged Council to include these dates in their calendars. Goebel asked how dots would be used for the goal setting meeting. Nebel replied the process will be different next year. Botello requested an Outlook invite for these dates.

**Update on COVID-19 Related to City Facilities and Programming.** Hawker introduced the agenda item. Nebel reported the city will be closing operations for the Recreation Center, Aquatics Center and VAC effective Wednesday November 18, 2020 for the Governor's two-week freeze. He stated the city will place part time employees from these facilities on furlough through this closure. He noted the city will be reverting to virtual meetings effective November 18 through December 1. He indicated Municipal Court will be closed until December 2. He proposed to keep City Hall open to the public on the current reduced schedule of 8:00 A.M. until 2:00 P.M. Monday through Thursday during this two-week period. He explained City Hall has made a number of improvements to protect the public and our employees, which puts the city in a better position to remain open during this time period. He added the city is waiting for further guidance from the Governor's Office to make sure that this is a course of action that is permitted under this action.

Nebel reported as an alternative Council could close City Hall during this period of time. He stated the city will accommodate working from home where Department operations will allow during the freeze.

MOTION was made by Hall, seconded by Parker, to confirm Emergency Order 2020-31 Revising the City of Newport's Reopening Matrix as impacted by Governor Brown's implementation of a statewide freeze to control the spread of COVID-19. The motion carried unanimously in a voice vote.

### **LOCAL CONTRACT REVIEW BOARD**

**Notice of Intent to Accept a Purchase Agreement from Axon Enterprises, Inc., for the Purchase and Subscription of 20 Taser 7 Devices for the Police Department in the Amount of \$52,920.** Sawyer opened the Local Contract Review Board at 7:37 P.M. Hawker introduced the agenda item. Nebel reported the Police Department currently deploys tasers for all sworn police officers and community service officers. He noted the devices

are intended to control a violent or potentially violent individual, while minimizing the risk of serious injury to subject and officer. He stated Axon is also the distributor for the city's fleet cameras and body cameras. He explained the capability of these systems is important since the cameras are connected to any deployment of a taser by an officer. He added the existing devices used by the department have reached the end of their useful life, and are no longer being supported for repairs.

Nebel reported the tasers are part of the required dutygear for officers in accordance with city policy. He stated this acquisition is being completed through a lease purchase over a 60-month period, for a total amount of \$55,943.62, with the first year's expenses being \$5,880, including a credit of \$3,023.62 for trade in for the current devices., and a discount of \$2,856.38. He noted the purchase of this new equipment is through a cooperative purchasing arrangement that the Council considered earlier in this agenda with the League of Oregon Cities.

Hall asked why this request is not part of the budget process. Malloy replied currently, the department maintains several individual contracts for its different tasers. He noted when the department contacted the taser representative, they were informed the current tasers would all have to be replaced by this model. He noted it makes financial sense and increases efficiency to have the same device.

Jacobi asked how many times does the police department use tasers over a five- to ten-year period. Malloy replied the threat is used much more often than deployment. He stated they are typically deployed three to five times a year. Jacobi asked how close does the officer have to be to the person. Malloy replied there is a close contact option or an up to 21 feet option. Jacobi asked if the department has considered using BolaWrap. Malloy replied the department does not have them. He explained the technology is relatively new and still being tested. Jacobi encouraged looking further into the technology.

Botello asked what is the difference in voltage for these tasers. Malloy replied these will be the same; they are just a newer model. Botello asked if these come with warranties. Malloy replied there is a five-year warranty. Goebel asked why the taser would be deployed. Malloy replied they are deployed to effect an arrest with the least amount of injury to the officer or person. Malloy confirmed over the next five years these devices will still have service life.

Hall asked why this request is not part of the budget process. Malloy replied the department needs Council approval for a five-year lease. Goebel clarified the yearly cost of the tasers.

MOTION was made by Jacobi, seconded by Goebel, to authorize the City Manager to execute the sales terms and conditions for the purchase of 20 Taser 7s from Axon Enterprises, Inc., in the amount of \$52,920 payable over a 60-month period. The motion carried 6-1, with Parker opposed.

### LOCAL CONTRACT REVIEW BOARD

Authorization of an Agreement for Consulting Engineering Services with Water Systems Consulting for Risk and Resiliency Assessment and Emergency Response Plan in the Amount of \$79,295. Hawker introduced the agenda item. Nebel reported in October of 2018, the American's Water Infrastructure Act (AWIA) was signed into law. He stated under this program, communities serving more than 3,300 people are required to develop or update risk assessments in an emergency response plan for their water infrastructure.

He noted the risk and resiliency assessment deadline is due to the EPA on June 30, 2021, with the emergency response plan due on December 31, 2021. He explained this project was not budgeted with the intent that the work would be completed internally. He indicated with the current vacancy of the Public Works Director/City Engineer, the city will not have the time to complete this internal work. He added the city is experiencing savings that will partially offset this expense.

Nebel reported the city has worked with Water Systems Consulting for other projects. He stated they have expertise in water systems, site resiliency, and rehabilitation, as well as, experience in preparing these documents for other communities in Oregon.

Collett confirmed this could have been done in-house with more staff. Janigo explained the emergency at the Water Treatment Plant also contributed to the inability to conduct the program in-house. Collett confirmed this will not delay the hiring process in Public Works.

MOTION was made by Hall, seconded by Botello, to re-appropriate \$50,000 from the Public Works Contingency Fund to the Public Works Professional Services line item. The motion carried unanimously in a voice vote.

MOTION was made by Hall, seconded by Goebel, to approve an agreement for consulting engineering services with Water Systems Consulting for risk and resiliency assessment and the development of an emergency response plan as required by the America's Water Infrastructure Act, in the amount of \$79,295. The motion carried unanimously in a voice vote.

Sawyer closed the Local Contract Review Board at 8:08 P.M.

### REPORT FROM MAYOR AND COUNCIL

**Council Reports.** Hall encouraged participation in the Transportation System Plan Update open house on Saturday, and ODOT future planning meeting on Wednesday. Botello noted housing grants are offered to those in the county affected by fire. Nebel stated he has had discussions with Lincoln County Counsel Wayne Belmont on pursuing use of these funds. He noted the county is working on partnering with a non-profit. Botello suggested an exercise for the Council on disaster preparedness, especially fire. Nebel replied the plan is to do that at the first of the year. Botello requested an agenda item of discussion on a permanent Farmer's Market. Jacobi requested a work session on affordable housing developer requirements by the city. Sawyer recommended visiting Newport restaurants and shops during the freeze. Nebel reported the city will have a holiday tree, but there will not be a public ceremony.

### ADJOURNMENT

Having no further business, the meeting adjourned at 8:21 P.M.



TAX LOT 14600  
TAX MAP 11-11-08-BA

SCALE:



PARCEL 2  
PARCEL PARTITION NO. 2015-06

TAX LOT 15900  
TAX MAP 11-11-08-BA

$\Delta = (6^{\circ}34'27'')$   
 $R = (914.89')$   
 $L = (104.97')$   
 $LC = (S35^{\circ}50'46''W 104.92')$

(N0°03'41"E)

**POINT OF BEGINNING**  
SW CORNER OF PARCEL 2  
PARTITION PLAT NO. 2016-06

(N89°51'13"W 85.75')

VACATION AREA  
2,198 ± SQUARE FEET

$\Delta = [2^{\circ}27'38'']$   
 $R = [914.89']$   
 $L = [39.29']$   
 $LC = [N40^{\circ}21'49''E 39.29']$

[S89°51'13"E 60.38']

SW 2ND ST.  
(60.00') RIGHT OF WAY

[S00°08'47"W 60.00']

[30.00']

[30.00']

90°00'00"

[S89°51'13"E 32.67']

$\Delta = [2^{\circ}33'28'']$   
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 $LC = [N42^{\circ}52'22''E 40.84']$

OREGON COAST  
HIGHWAY 101  
(RIGHT OF WAY VARIES)

UDELL ENGINEERING  
AND  
LAND SURVEYING, LLC  
63 EAST ASH ST.  
LEBANON, OREGON, 97355  
541-451-5125

EXHIBIT B  
2ND STREET NEWPORT LLC  
104 SW 2ND ST.  
NEWPORT, OREGON

Date 12/19/2020  
Project 14-189 DEDICATION  
Drawn by GSR  
Checked by KWL



SHEET 1  
of 1  
SCALE: AS NOTED

LEGEND

- ( ) RECORD DATA PER LINCOLN COUNTY SURVEY 2015-06
- [ ] CALCULATED DATA

EXHIBIT 'A'

RIGHT OF WAY VACATION

A PORTION OF SW. 2<sup>ND</sup> STREET IN THE CITY OF NEWPORT

(TO TAX LOT 15900, ASSESSORS MAP 11-11-08-BA)

AN AREA OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 11 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN, CITY OF NEWPORT, LINCOLN COUNTY, OREGON AND BEING MORE SPECIFICALLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 2, PARTITION PLAT NO. 2016-06, CITY OF NEWPORT, LINCOLN COUNTY, OREGON; THENCE SOUTH 0°08'47" WEST PERPENDICULAR TO THE RIGHT OF WAY OF SW. 2<sup>ND</sup> STREET, 30.00 FEET; THENCE PARALLEL TO THE RIGHT OF WAY, SOUTH 89°51'13" EAST 60.38 FEET TO THE WEST RIGHT OF WAY OF THE OREGON COAST HIGHWAY 101; THENCE ALONG THE ARC OF A 914.89 FOOT RADIUS CURVE TO THE LEFT FOR 39.29 FEET (WHICH CHORD BEARS NORTH 40°21'49" EAST 39.29 FEET) TO THE SOUTHEAST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 NORTH 89°51'13" WEST 85.75 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA CONTAINS ± 2198 SQUARE FEET

LINCOLN COUNTY SURVEY PARTITION PLAT NO. 2015-06 WAS USED AS A REFERENCE.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

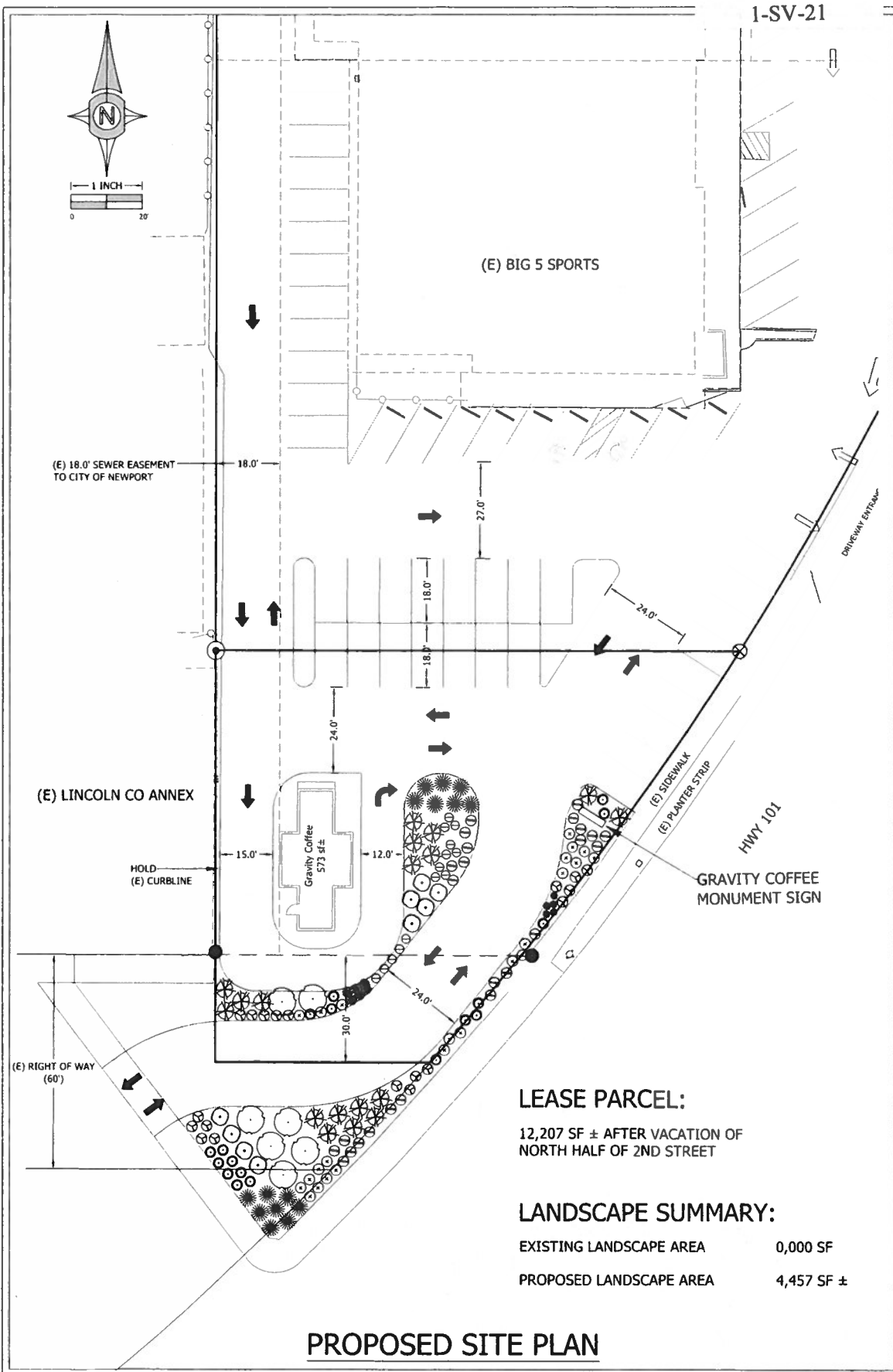
*Kyle W. Latimer*

OREGON  
JUNE 12, 2013  
KYLE W. LATIMER  
80442

EXPIRES: *12-31-2022*

Udell Engineering & Land Surveying, LLC  
63 East Ash Street, Lebanon, OR 97355  
Ph: 541-451-5125 • Fax: 541-451-1366

1-SV-21



**LEASE PARCEL:**

12,207 SF ± AFTER VACATION OF NORTH HALF OF 2ND STREET

**LANDSCAPE SUMMARY:**

|                         |            |
|-------------------------|------------|
| EXISTING LANDSCAPE AREA | 0,000 SF   |
| PROPOSED LANDSCAPE AREA | 4,457 SF ± |

**PROPOSED SITE PLAN**



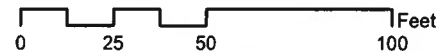


City of Newport  
 Community Development Department  
 169 SW Coast Highway Phone: 1.541.574.0629  
 Newport, OR 97365 Fax: 1.541.574.0644

**Aerial and Utilities - 104 SW 2nd Street  
 (water - blue, sewer - green, storm - orange)**

Image Taken July 2018  
 4-inch, 4-band Digital Orthophotos  
 Quantum Spatial, Inc. Corvallis, OR

This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its completion or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.



## VACATION

1-SV-21

**271.080 Vacation in incorporated cities; petition; consent of property owners.** (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing. [Amended by 1999 c.866 §2]

**271.090 Filing of petition; notice.** The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

**271.100 Action by city governing body.** The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

**271.110 Notice of hearing.** (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005 c.22 §196]

**271.120 Hearing; determination.** At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall

deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**271.130 Vacation on city governing body's own motion; appeal.** (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**271.160 Vacations for purposes of rededication.** No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement.** To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad,

steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

**271.190 Consent of owners of adjoining property; other required approval.** No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**271.200 Petition; notice.** (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**271.210 Hearing; grant of petition.** Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

**271.220 Filing of objections; waiver.** All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

**271.230 Records of vacations; fees.** (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records

of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]

**CITY OF NEWPORT**  
**NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION<sup>1</sup>**

**This meeting will be a hybrid meeting conducted by video-conference and a limited number of people (up to 15) are allowed to attend in person. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate by video-conference or in person in the hearing.**

**NOTICE IS HEREBY GIVEN** that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, February 22, 2021, to review and make a recommendation to the Newport City Council on a partial street vacation as requested in:

**File No.:** 1-SV-21

**Applicant:** Initiated by the City Council, at the request of Bret Fox on behalf of 2nd Street Newport, LLC.

**Request/Subject Property:** The request is to vacate the northerly 30-feet of a 3,500+/- sq. ft. segment of the SW 2nd Street right-of-way between SW Angle Street and US 101. Developer, 2<sup>nd</sup> Street Newport, LLC intends to construct a drive through coffee establishment in the vicinity of the Courthouse Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers. (See the attached illustration of the proposed area to be vacated).

**Date Request Received:** The street vacation was initiated by the City Council at the applicant's request on November 16, 2020.

**Applicable Criteria:** Oregon Revised Statutes (ORS) 271.120 requires that: (1) The consent of the owners of the requisite area have been obtained; (2) Notice has been duly given; and (3) The public interest will not be prejudiced by the vacation of such plat or street or parts thereof. ORS 271.130 provides that a governing body may initiate vacation proceedings, and make such vacation without a petition or consent of property owners, as long as the owners of a majority of the area affected do not object in writing and the vacation will not substantially affect the market value of abutting properties, unless the city governing body provides for paying damages.

**Testimony:** Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department (address under "Reports/Materials") must be received by 12:00 p.m. (Noon) the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

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

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

**Time/Place of Hearing:** Monday, February 22, 2021; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

**MAILED:** January 29, 2021.

**PUBLISHED:** Friday, February 5, 2021; Friday, February 12, 2021; and Wednesday, February 17, 2021/ Newport News-Times.

<sup>1</sup> Notice of the public hearing is being sent to affected property owners (according to Lincoln County Assessor's records) within the notification distance required for the request, affected public/private utilities/agencies, and affected city departments.



TAX LOT 14600  
TAX MAP 11-11-08-BA

SCALE:



PARCEL 2  
PARCEL PARTITION NO. 2015-06

TAX LOT 15900  
TAX MAP 11-11-08-BA

$\Delta = (6^{\circ}34'27'')$   
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POINT OF BEGINNING  
SW CORNER OF PARCEL 2  
PARTITION PLAT NO. 2016-06

$(N89^{\circ}51'13''W 85.75')$

VACATION AREA  
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SW 2ND ST.  
(60.00') RIGHT OF WAY

$[S00^{\circ}08'47''W 60.00']$   
[30.00']  
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HIGHWAY 101  
(RIGHT OF WAY VARIES)

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EXHIBIT B  
2ND STREET NEWPORT LLC  
104 SW 2ND ST.  
NEWPORT, OREGON

Date 12/18/2020  
Project 14-189 DEDICATION  
Drawn by GSR  
Checked by KWL

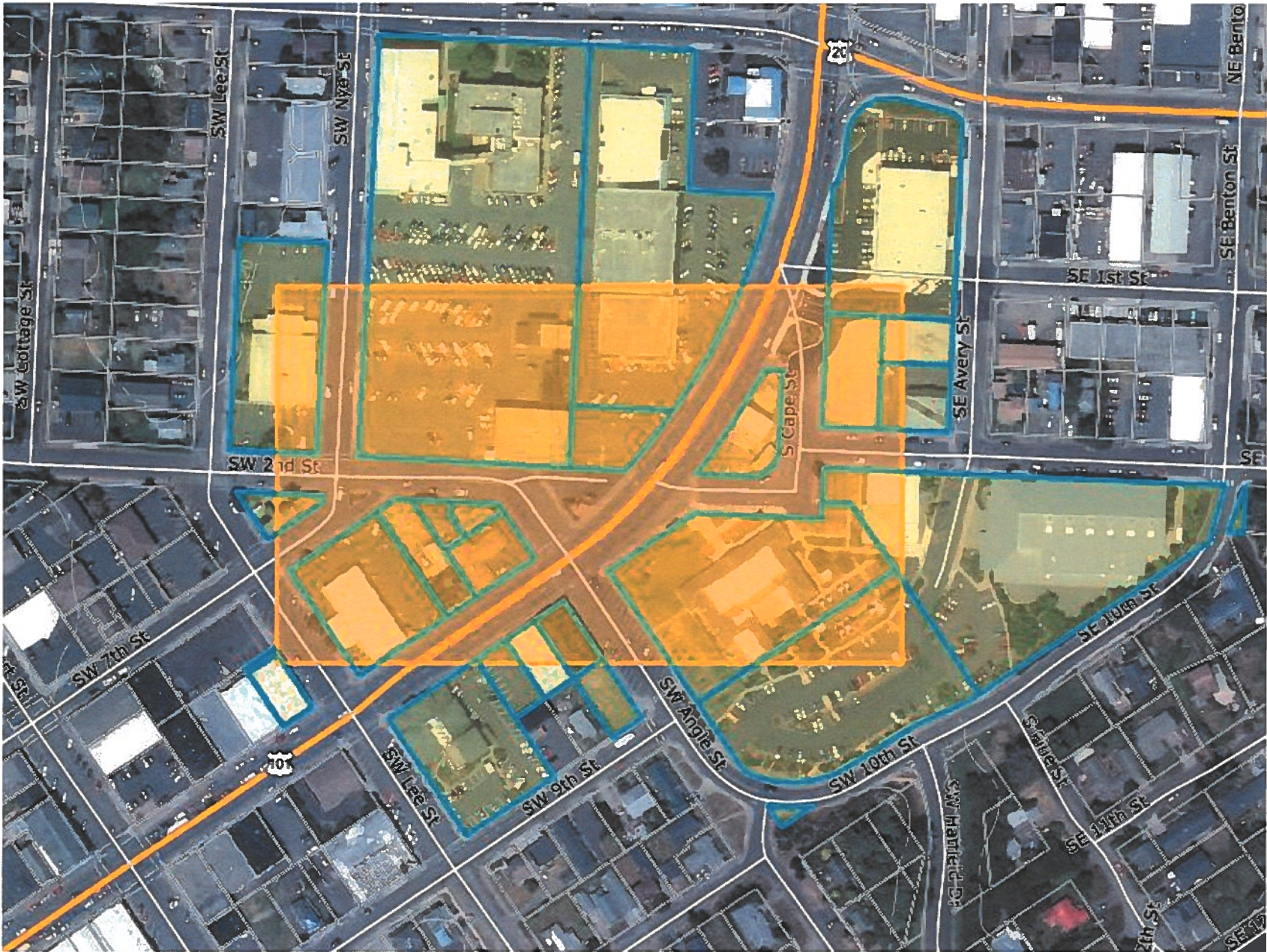


SHEET 1  
of 1

SCALE: AS NOTED

LEGEND

- ( ) RECORD DATA PER LINCOLN COUNTY SURVEY 2015-06
- [ ] CALCULATED DATA



Notification Area 1-SV-21



2ND STREET NEWPORT LLC  
ATTN: BRET FOX  
PO BOX 970  
MEDFORD; OR 97501

BARTON WILLIAM A  
PO BOX 870  
NEWPORT; OR 97365

CITY OF NEWPORT  
ATTN FINANCE  
169 SW COAST HWY  
NEWPORT; OR 97365

GOODWILL INDUSTRIES OF  
THE COLUMBIA WILLAMETTE  
1943 SE 6TH AVE  
PORTLAND; OR 97214

JOHNSON RUSSELL TRUSTEE &  
FORINASH RHONDA M TRUSTEE  
% LINCOLN COUNTY LEASE  
225 W OLIVE ST RM 110  
NEWPORT; OR 97365

JOHNSON RUSSELL TRUSTEE &  
FORINASH RHONDA M TRUSTEE  
629 NE 8TH ST  
NEWPORT; OR 97365

LINCOLN COUNTY  
ATTN LINCOLN CO PROP MGMT  
880 NE 7TH ST  
NEWPORT; OR 97365

NEWPORT COAST INVESTMENTS LLC  
PO BOX 970  
MEDFORD; OR 97501

NFE GREENWOOD TER LLC; ETAL  
ATTN WALGREEN CO  
REAL ESTATE PROPERTY TAX  
PO BOX 1159  
DEERFIELD; IL 60015

PACIFIC ONE BANK  
ATTN BANK OF THE WEST  
PO BOX 5155  
SAN RAMON; CA 94583

REYES FLAVIANO D &  
REYES YOLANDA V  
2704 SE 84TH AVE  
PORTLAND; OR 97266

SCHRANTZ JEFFREY M  
313 SW 2ND ST  
NEWPORT; OR 97365

SLAPE INVESTMENT PROP LLC  
61762 BROKEN TOP DR  
BEND; OR 97702

TEAGUE GABRIELLE C  
13978 SE 131ST AVE  
CLACKAMAS; OR 97015

TRUAX CORPORATION  
PO BOX 3002  
CORVALLIS; OR 97339

WAYMAN JACOB  
224 SW COAST HWY  
NEWPORT; OR 97365

MICHAEL C. ROBINSON  
SCHWABE WILLIAMSON & WYATT  
PACWEST CENTER  
1211 SW 5TH, SUITE 1900  
PORTLAND, OR 97204

WESTERN POSTAL REALTY  
HOLDINGS LLC  
75 COLUMBIA AVE  
CEADERHURST; NY 11516

EXHIBIT "A"  
MAILING LABELS  
ADJACENT PROPERTIES  
File No. 1-SV-21

**Lincoln County Assessor  
Lincoln County Courthouse  
225 W Olive St  
Newport OR 97365**

*Email: Lisa Phillips  
DLCD Coastal Services Center  
lisa.phillips@state.or.us*

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

**\*\*EMAIL\*\*  
odotr2planmgr@odot.state.or.us**

**Central Lincoln PUD  
ATTN: Randy Grove  
PO Box 1126  
Newport OR 97365**

**Lincoln County Clerk  
Lincoln County Courthouse  
225 W Olive St  
Newport OR 97365**

**NW Natural  
ATTN: Dave Sanders  
1405 SW Hwy 101  
Lincoln City, OR 97367**

**Charter Communications  
ATTN: Keith Kaminski  
355 NE 1<sup>st</sup> St  
Newport OR 97365**

**Lincoln County Commissioners  
Lincoln County Courthouse  
225 W Olive St  
Newport OR 97365**

**Lincoln County School District  
ATTN: Superintendent  
PO Box 1110  
Newport OR 97365**

**Lincoln County Surveyor  
880 NE 7<sup>th</sup> St  
Newport OR 97365**

**OREGON DEPT OF PARKS & REC  
725 Summer St. N.E. Suite C  
Salem, OR 97301**

**PORT OF NEWPORT  
600 SE BAY BLVD  
NEWPORT OR 97365**

**Chris Janigo  
Public Works**

**Laura Kimberly  
Library Director**

**Clare Paul  
Public Works**

**Rob Murphy  
Fire Chief**

**Jason Malloy  
Police Chief**

**Mike Murzynsky  
Finance Director**

**Joseph Lease  
Building Official**

**Spencer Nebel  
City Manager**

**Beth Young  
Associate Planner**

**EXHIBIT 'A'  
Affected Agencies**

**Michael Cavanaugh  
Parks & Rec.**

# BUILDING SUPPLY

Located Just East of Hwy. 101



**Building Materials from Local People You Know & Trust - Every Day!**

Lincoln County's oldest locally owned building supply company

**3551 SE FERRY SLIP RD. SOUTH BEACH**

**541-867-7681**



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**Free Estimates**

Call 541-614-1424 for a free estimate

1845 SW HWY 101 Lincoln City

Note: Grumblefish Cleaning is now the official cleaning company for Grumblefish Aerospace Industries "Developing technology for tomorrow, at yesterday's prices!"

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DAY 10AM-6PM  
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) 265-8285

2/5/21

TY OF LINCOLN; Probate Department. No. 20PB09109; In the Matter of the Estate of Doris Maxine Aleckson, Deceased. Notice is hereby given pursuant to ORS 113.155 that the undersigned has been appointed and has qualified as the co-personal representatives of the estate. All persons having claims against the estate are hereby required to present the same, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the personal representative at: Steven Aleckson and Tony Aleckson c/o Jeffrey C. Pridgeon Attorney at Law 515 W. Olive Street Newport, OR 97365 (541)265-2217 or they may be barred. All persons whose rights may be affected by the proceedings in this estate may obtain additional information from the records of the court, the personal representative or the attorney for the personal representative. Date first published: February 5, 2021. Jeffrey C. Pridgeon, Attorney for Co-Personal Representatives. F5 F12 F19 (32-19)

conference meeting call due to COVID restrictions, to solicit comments on proposed ordinance prohibiting certain discharges to sanitary system. The proposed ordinance is on file at the Salishan Sanitary office and on our website. The proposed regulations are intended to protect the sewage processing facilities and resulting water quality discharges into Siletz Bay. It furthers defines the required actions that may be required to address any violations. All persons interested are invited to attend this teleconference hearing and be heard. Written comments may be submitted to: Salishan.sanitary@gmail.com F5 (31-05)

### NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION; CITY OF NEWPORT

This meeting will be a hybrid meeting conducted by video-conference and a limited number of people (up to 15) are allowed to attend in person. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate by video-conference or in person in the hearing. The Newport Planning Commission will hold a public hearing at 7:00 p.m. on Monday, February 22, 2021, in the City Hall Council Chambers, to review and make a recommendation to the Newport City Council on a proposed street vaca-

tion (File No. 1-SV-21) as initiated by the City Council at the request of Bret Fox on behalf of 2nd Street Newport, LLC. The request, which was initiated on November 16, 2020, is to vacate the northerly 30-feet of a 3,500+/- sq. ft. segment of the SW 2nd Street right-of-way between SW Angle Street and US 101. Developer, 2nd Street Newport, LLC intends to construct a drive through coffee establishment in the vicinity of the Court-house Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers. Oregon Revised Statutes (ORS) 271.120 requires that: (1) The consent of the owners of the requisite area have been obtained; (2) Notice has been duly given; and (3) The public interest will not be prejudiced by the vacation of such plat or street or parts thereof. ORS 271.130 provides that a governing body may initiate vacation proceedings, and make such vacation without a petition or consent of property owners, as long as the owners of a majority of the area affected do not object in writing and the vacation will not substantially affect the market value of abutting properties, unless the

city governing body provides for paying damages. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included, as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the

application. The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The file materials and the applicable criteria are currently available for inspection at no cost or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). F5 F12 F17 (30-17)

### BOARD MEETING

The Depoe Bay Fire District Board of Directors will hold their monthly Board Meeting at 4pm on Tuesday, February 9, 2021, at the Gleneden Beach Fire Station, 6445 Gleneden Beach Loop, Gleneden Beach, OR 97388. PLEASE NOTE: To promote social distancing guidelines currently in place at federal and state levels, the Board asks that individuals who wish to attend the meeting contact the District Administrative Assistant at least forty-eight hours prior to the noticed meeting time by phone at 541-764-2202 or by email at jwoolsey@depoebayfire.com. F5 (29-05)

### PUBLIC AUCTION

On February 17th, 2021 at 11:00 AM, a public sale will be held at Ideal Storage, 134 NE Metcalf Ave Siletz, OR 97380; Dennis Geer-S060. On February 17th, 2021 at 2:00 PM a public sale will be held at Ideal Storage. 5441

W. Hwy 20, Toledo, OR 97391; Paige Ewen - T028. On February 18th, 2021 at 2:00 PM, a public sale will be held at Ideal Storage 235 SW Dahl Ave. Waldport, OR 97394; Aaron Estelle - WE92, Jason Weeks - WB009. Minimum bid \$50.00 Cash only. F5 F12 (28-12)

### SELF-STORAGE PUBLIC SALE

Safe-Lock Storage 3639 SE Ash, South Beach, Oregon 9766. Saturday 2/13/21 @ 10:00am. G15: Cheryl Tokkubbi; L16: Michael Mauk; E01: Jennifer Morgan; R28: Terence Hair; D21: Kevin Kass; F16: Annette Helsley; K14: Ethan Lorimor; F03: Sherri Shepard; J01: John Weaver; P08: Brian Wilks; L03: Christopher Wills; O04: Juan Garcia; K04: Lucy Keith; H15: Patricia Crisp; L18: Tracey Thompson; D29: Lucy Keith; B09F: Kevin Walsh; F49: Nick Kamerer. Sale Subject To Cancellation Safe-Lock Storage reserves the Right to refuse any and all bids. J29 F5 (22-05)

### LEGAL DEADLINES:

**Wednesday Edition: 5:00pm Thursday PRIOR**  
**Friday Edition: 5:00pm Tuesday PRIOR**

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may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or J.F. Ouderkirk, attorney for the personal representative. Date of first publication: February 12th, 2021. J.F. Ouderkirk, OSB #752903 Attorney for Personal Representative Ouderkirk & Hollen P. O. Box 1167 615 SW Hurbert Street, Suite A Newport, OR 97365 541-574-1630 / 541-574-1638 fax. F12 F19 F26 (42-26)

### NOTICE OF ELECTION OF DISTRICT BOARD MEMBERS

Notice is hereby given that on May 18, 2021, an election will be held for the purpose of filling the following board positions for the following districts. Each candidate for an office listed must file a Declaration of Candidacy or Petition for Nomination for Office with the Elections Department of Linn County not later than the 61st day before the date of the election. THE FILING DEADLINE IS 5:00 PM ON MARCH 18, 2021 Linn-Benton-Lincoln Education Service District: Director Zone 1, 4-year term (Linn & Marion County) Director Zone 2, 4-year term (Benton, Lane, Linn, Polk & Lincoln County) Director Zone 3, 4-year term (Linn & Benton County) Director Zone 4, 4-year term (Linn & Benton County). F12 (41-12)

### CITY SURPLUS

City of Depoe Bay; Per Resolution No. 503-21.  
(2) Jade Brand Kitchen Ranges Gas Top-Convection Electric Bottom Over Stainless Steel Starting Bid \$50.00 for one or 75.00 for both.  
• Wisconsin 3" Discharge Pump Gas Motor on Military Trailer Starting Bid \$75.00.  
• Delta Drill Press Serial #8910 Starting Bid \$10.00.  
• Honda Push Mower Model HRS2162PDA Starting Bid \$20.00.  
• Hytrol 12" x 8" Electric Conveyor System Starting Bid \$50.00.  
• Target Mini Con II Asphalt/Concrete Saw with Robin Motor Starting Bid \$25.00.  
• Hitachi 15" Miter Saw Serial #166060 Starting Bid \$25.00.  
• Delta Horizontal Band Saw Serial #011414 Starting Bid \$25.00.  
• 2006 Ford F-150 Pickup 2 WD VIN #1FTRF12256NA19262 Starting Bid \$1,000.00  
• 2001 Chevy Silverado Pickup 2 WD VIN #1GCEC14W312115769 Starting Bid \$500.00  
• Quincy 55 Gallon Hor-

zontal Air Compressor Serial #6012206 Starting Bid \$20.00  
• 1972 Coronado 27 Ft. Sail Boat/No Trailer with 9.5 Mercury Long Shaft Kicker Hull #WNZ43133L272 Starting Bid \$1,900.00 All items are to be sold in "as-is, where-is" condition and awarded to the highest bidder. Bids must be sealed, identify the item for bid, and submitted no later than 1:30 p.m., Tuesday, February 23, 2021. Bids will be opened at 2:00 p.m., Tuesday, February 23, 2021, at Depoe Bay City Hall, 570 SE Shell Avenue. Submit bids clearly marked "Depoe Bay Surplus Bid" to City of Depoe Bay, Attn: Brady Weldner, Public Works Director, 570 SE Shell Avenue (drop box by front door), or PO Box 8, Depoe Bay, OR 97341. City reserves the right to reject any or all bids. Payment must be cash or cashier's check. For information contact, (541) 765-3005. F12 F17 (40-17)

### INVITATION TO BID

The Pump Station and Force Main Improvements Project in Lincoln County, Oregon consists of constructing two replacement sewage pump stations, two generator buildings, a force main and terminal manhole, two renovations of sewage pump stations, and related site improvements. Secured Online Bids for the Project will be received by the Gleneden Sanitary District through the bidding services of the Issuing Office, until 2:00 P.M. local time, on March 16, 2021. Bids will not be received after the stated time. A remote bid opening will be held by the District Engineer at the day and time of the bid closing via Microsoft Teams. Access information is provided in Bidding Documents. The Issuing Office is Precision Images Virtual Plan Center, 503-274-2030 at 900 SE Sandy Boulevard, Portland, OR 97214. Bidding Documents may be examined at no cost and ordered online from the Issuing Office at <http://www.precisionimages.com>. Registration through the Issuing Office and purchase of the Contract Documents in digital form is required to become a Planholder for bidding purposes. An electronic download of a complete set of Bidding Documents is available for a payment of \$35. Complete printed sets of Bidding Documents may be obtained from the Issuing Office for a payment of \$125 plus shipping per full size (22" x 34") set of drawings or \$60 plus shipping per half-size set of drawings. Expect one or two days for document preparation. The price is intended to cover the cost of labor and materials of production and is

non-refundable. Upon Issuing Office's receipt of payment, printed Bidding Documents will be sent via the prospective Bidder's delivery method of choice. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the Bidder's date of receipt of the Bidding Documents. Partial sets of the Bidding Documents will not be available. Direct pre-bid inquiries to Ken Condit, District Engineer at [kenc@hhpr.com](mailto:kenc@hhpr.com). Pre-bid submittals shall be sent to Ken Condit, at [kenc@hhpr.com](mailto:kenc@hhpr.com) or HHPR Inc., 205 SE Spokane St. Suite 200, Portland, OR 97202. A mandatory pre-bid conference will be held on February 23, 2021, from 10:00 a.m. to noon local time starting at the District storage garage, 105 Wells Street, Gleneden Beach, OR 97388. Attendance at the pre-bid conference is mandatory for bidders only. No other separate site tours will be offered. No bid will be considered unless the required forms are fully completed and submitted in the manner prescribed and are accompanied by a bid security, executed in favor of the Owner, in an amount not less than 5 percent of the total amount of the bid. This contract is for public work being financed by a loan from the Clean Water State Revolving Fund administered by the Department of Environmental Quality and is subject to the compliance, reporting, and documentation requirements thereof. Licensing under ORS 468A.710 is not required. The contracting agency may cancel the procurement or reject any or all bids according to ORS 279B.100. No bidder will withdraw his bid after the hour set for the opening and before award of contract, unless award is delayed beyond sixty (60) calendar days from the bid opening date. F10 F12 (38-12)

### NOTICE TO INTERESTED PERSONS

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN Probate Department; No. 20PB09094. In the Matter of the Estate of James M. Corothers, Deceased. Notice is hereby given pursuant to ORS 113.155 that the undersigned has been appointed and has qualified as the personal representative of the estate. All persons having claims against the estate are hereby required to present the same, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the personal representative at: Marie Deserano c/o Jeffrey C. Pridgeon Attorney At Law 515 W.

Olive Street Newport, OR 97365 (541)265-2217 or they may be barred. All persons whose rights may be affected by the proceedings in this estate may obtain additional information from the records of the court, the personal representative or the attorney for the personal representative. Date first published: February 5th, 2021. Jeffrey C. Pridgeon, Attorney for Personal Representative. F5 F12 F19 (33-19)

### NOTICE TO INTERESTED PERSONS

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN; Probate Department. No. 20PB09109; In the Matter of the Estate of Doris Maxine Aleckson, Deceased. Notice is hereby given pursuant to ORS 113.155 that the undersigned has been appointed and has qualified as the co-personal representatives of the estate. All persons having claims against the estate are hereby required to present the same, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the personal representative at: Steven Aleckson and Tony Aleckson c/o Jeffrey C. Pridgeon Attorney At Law 515 W. Olive Street Newport, OR 97365 (541)265-2217 or they may be barred. All persons whose rights may be affected by the proceedings in this estate may obtain additional information from the records of the court, the personal representative or the attorney for the personal representative. Date first published: February 5, 2021. Jeffrey C. Pridgeon, Attorney for Co-Personal Representatives. F5 F12 F19 (32-19)

### NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION; CITY OF NEWPORT

This meeting will be a hybrid meeting conducted by video-conference and a limited number of people (up to 15) are allowed to attend in person. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate by video-conference or in person in the hearing. The Newport Planning Commission will hold a public hearing at 7:00 p.m. on Monday, February 22, 2021, in the City Hall Council Chambers, to review and make a recommendation to the Newport City Council on a proposed street vacation (File No. 1-SV-21) as initiated by the City Council at the request of Bret Fox on behalf of 2nd Street Newport, LLC. The request, which was

initiated on November 16, 2020, is to vacate the northerly 30-feet of a 3,500+- sq. ft. segment of the SW 2nd Street right-of-way between SW Angle Street and US 101. Developer, 2nd Street Newport, LLC intends to construct a drive through coffee establishment in the vicinity of the Courthouse Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers. Oregon Revised Statutes (ORS) 271.120 requires that: (1) The consent of the owners of the requisite area have been obtained; (2) Notice has been duly given; and (3) The public interest will not be prejudiced by the vacation of such plat or street or parts thereof. ORS 271.130 provides that a governing body may initiate vacation proceedings, and make such vacation without a petition or consent of property owners, as long as the owners of a majority of the area affected do not object in writing and the vacation will not substantially affect the market value of abutting properties, unless the city governing body provides for paying damages. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included, as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continu-

### PUBLIC AUCTION

On February 17th, 2021 at 11:00 AM, a public sale will be held at Ideal Storage - 134 NE Metcalf Ave Siletz, OR 97380; Dennis Geer-S060. On February 17th, 2021 at 2:00 PM a public sale will be held at Ideal Storage. 5441 W. Hwy 20, Toledo, OR 97391; Paige Ewen - T028. On February 18th, 2021 at 2:00 PM, a public sale will be held at Ideal Storage 235 SW Dahl Ave. Waldport, OR 97394; Aaron Estelle - WE92, Jason Weeks - WB009. Minimum bid \$50.00 Cash only. F5 F12 (28-12)

### PUBLIC LIEN SALE

U-Store Self Storage 105 NE 73rd Street Newport OR 97365 Auctions will be held for 10 days online at [storageauctions.com](http://storageauctions.com) Auctions start on Tuesday, February 9th, 2021 at 10:00 AM, and end Friday, February 19th, 2021 at 10:00 AM. Unclaimed storage units to be sold by competitive bidding. Scott Addy #347, Allen Barnett #CY05, Vickie Cabaniss #219, Jodi Gonzales #522. Goods of every description sold by the storage lot. CASH or CREDIT CARD ONLY. F3 F12 (23-12)

### COMMUNITY SERVICES CONSORTIUM GOVERNING BOARD EXECUTIVE COMMITTEE MEETING

Community Services Consortium's Governing Board Executive Committee meeting will be held Thursday, February 25, 2021 at 10:00 am via Zoom. The agenda will address adoption of CSC's Supplemental Budget 2 of Fiscal Year 2020-2021. The meeting is open to the public; all interested persons are welcome to join. Connection information is available by emailing [eday@communityservices.us](mailto:eday@communityservices.us). F12 (21-12)

hauled to Pacific Region Compost near our landfill south of Monmouth,"

grease and food scraps. "If it grows it goes. That's a good catchphrase

other food containers num, animal waste, diapers, toilet paper or any mally be recycled with hazardous material.

2/17/2021

Bids will be opened at 2:00 p.m., Tuesday, February 23, 2021, at Depoe Bay City Hall, 570 SE Shell Avenue. Submit bids clearly marked "Depoe Bay Surplus Bid" to City of Depoe Bay, Attn: Brady Weidner, Public Works Director, 570 SE Shell Avenue (drop box by front door), or PO Box 8, Depoe Bay, OR 97341. City reserves the right to reject any or all bids. Payment must be cash or cashier's check. For information contact, (541) 765-3005. F12 F17 (40-17)

additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: February 10th, 2021. Jeffrey C. Hollen, OSB #761757 Attorney for Personal Representative 541-574-1630 P.O. Box 1167 615 SW Hubert Street, Suite A Newport, OR 97365 Douglas E. Rider Personal Representative 2080 SE Ammon Road Toledo, OR 97391. F10 F17 F24 (36-24)

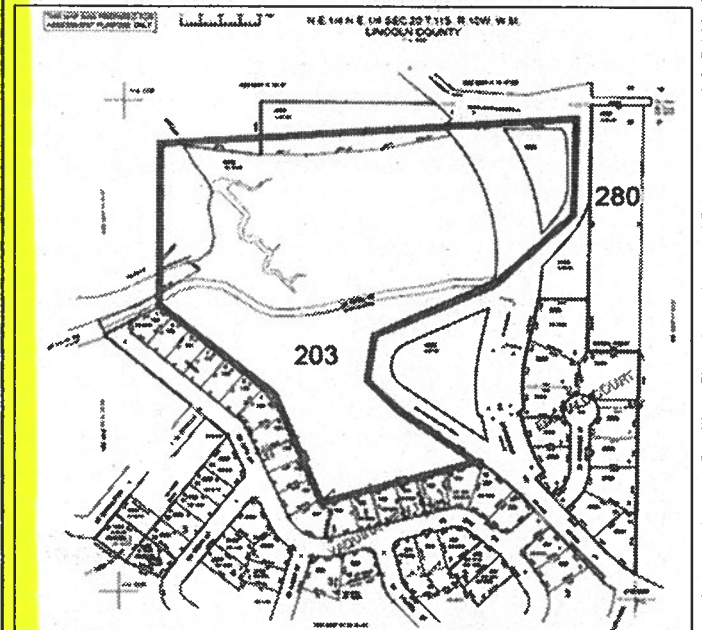
a proposed street vacation (File No. 1-SV-21) as initiated by the City Council at the request of Bret Fox on behalf of 2nd Street Newport, LLC. The request, which was initiated on November 16, 2020, is to vacate the northerly 30-foot of a 3,500+/- sq. ft. segment of the SW 2nd Street right-of-way between SW Angle Street and US 101. Developer, 2nd Street Newport, LLC intends to construct a drive through coffee establishment in the vicinity of the Courthouse Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers. Oregon Revised Statutes (ORS) 271.120 requires that: (1) The consent of the owners of the requisite area have been obtained; (2) Notice has been duly given; and (3) The public interest will not be prejudiced by the vacation of such plat or street or parts thereof. ORS 271.130 provides that a governing body may initiate vacation proceedings, and make such vacation without a petition or consent of property owners, as long as the owners of a majority of the area affected do not object in writing and the vacation will not substantially affect the market value of abutting properties, unless the city governing body provides for paying damages. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included, as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or

**PUBLIC HEARING NOTICE**  
City of Toledo; PURSUANT TO TOLEDO MUNICIPAL CODE (TMC); TITLE 3, REVENUE AND FINANCE; CHAPTER 3.12.060, DISPOSAL OF STANDARD UNDEVELOPED PROPERTY AND DEVELOPED PROPERTY, THE CITY OF TOLEDO HEREBY PROVIDES NOTICE: That the Toledo City Council shall hold a public hearing on March 3, 2021 beginning at 6:00 p.m. via Zoom Meeting online. The Toledo City Council received an inquiry in purchasing some or all of Lincoln County Assessor's Map number 11-10-17 DD Tax Lot 5401; approximately .91 acres and the Eastern most portion of Lincoln County Assessor's Map 11-10-20 AA Tax Lot 4300; approximately 0.59 acres. The City Council will determine whether the sale of any parcel is in the public interest, and whether the property is needed for public use. Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing or prior to the hearing. Written testimony must be submitted to the City Recorder by 3:00 p.m. on March 3, 2021 to be included in the official record. For more information in regards to the public hearing process and how to participate, please contact the City Recorder at 541-336-2247 extension 2060 or visit the City website at www.cityoftoledo.org/meetings. F17 F24 (44-24)

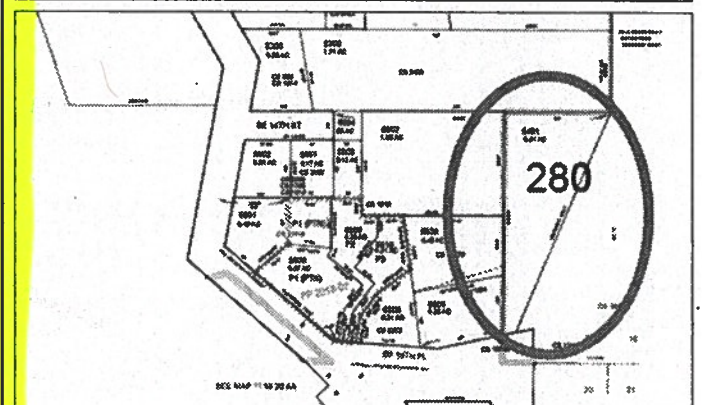
**NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT ESTATE OF DAVID WARREN JOHNSON, DECEASED CASE No. 21PB00327** Notice is given pursuant to ORS 113.155 that Sharon L. Cox has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: February 10th, 2021. Jeffrey C. Hollen, OSB #761757 Attorney for Personal Representative 541-574-1630 P.O. Box 1167 615 SW Hubert Street, Suite A Newport, OR 97365. Sharon L. Cox Personal Representative 1235 NE Newport Heights Dr. Newport, OR 97365. F10 F17 F24 (37-24)

**NOTICE AND SUMMONS BY PUBLICATION** (Dependency); Case No: 21-7-00040-06. SUPERIOR COURT OF WASHINGTON COUNTY OF CLARK JUVENILE DIVISION. In re the Interested of: OPPERUD, BABY GIRL DOB: 02/01/2021 Minor Child. TO: Nathan Opperrud, Presumed Father, A Dependency Petition was filed on February 2nd, 2021: A Fact Finding hearing will be held on this matter on: March 9th, 2021 at 8:30 a.m. at Clark County Superior Court, Family Law Annex, 601 West Evergreen Blvd., Vancouver, WA 98660. YOU SHOULD BE PRESENT AT THIS HEARING. THE HEARING WILL DETERMINE IF YOUR CHILD IS DEPENDENT AS DEFINED IN RCW 13.34.050(5). THIS BEGINS A JUDICIAL PROCESS WHICH COULD RESULT IN PERMANENT LOSS OF YOUR PARENTAL RIGHTS. IF YOU DO NOT APPEAR AT THE HEARING THE COURT MAY ENTER A DEPENDENCY ORDER IN YOUR ABSENCE. To request a copy of the Notice, Summons, and Dependency Petition, call DCYF at 360-993-7900. To view information about your rights in this proceeding, go to www.atg.wa.gov/DPY. DATED: February 2st, 2021, By Scott G. Weber, Clark County Clerk. F10 F17 F24 (35-24)

**NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION; CITY OF NEWPORT** This meeting will be a hybrid meeting conducted by video-conference and a limited number of people (up to 15) are allowed to attend in person. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate by video-conference or in person at the hearing. The Newport Planning Commission will hold a public hearing at 7:00 p.m. on Monday, February 22, 2021, in the City Hall Council Chambers, to review and make a recommendation to the Newport City Council on



Graphic for (44-24) 11-10-204A Tax Lot 4300, approximately 0.59 acres



Graphic for (44-24) Lincoln County Assessor's Map 11-10-17DD Tax Lot 5401, approximately .91 acres

**NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT ESTATE OF PATRICIA ANN RIDER, DECEASED CASE No. 21PB00868** Notice is given pursuant to ORS 113.155 that Douglas E. Rider has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain

no cost or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). F5 F12 F17 (30-17)

no cost or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). F5 F12 F17 (30-17)

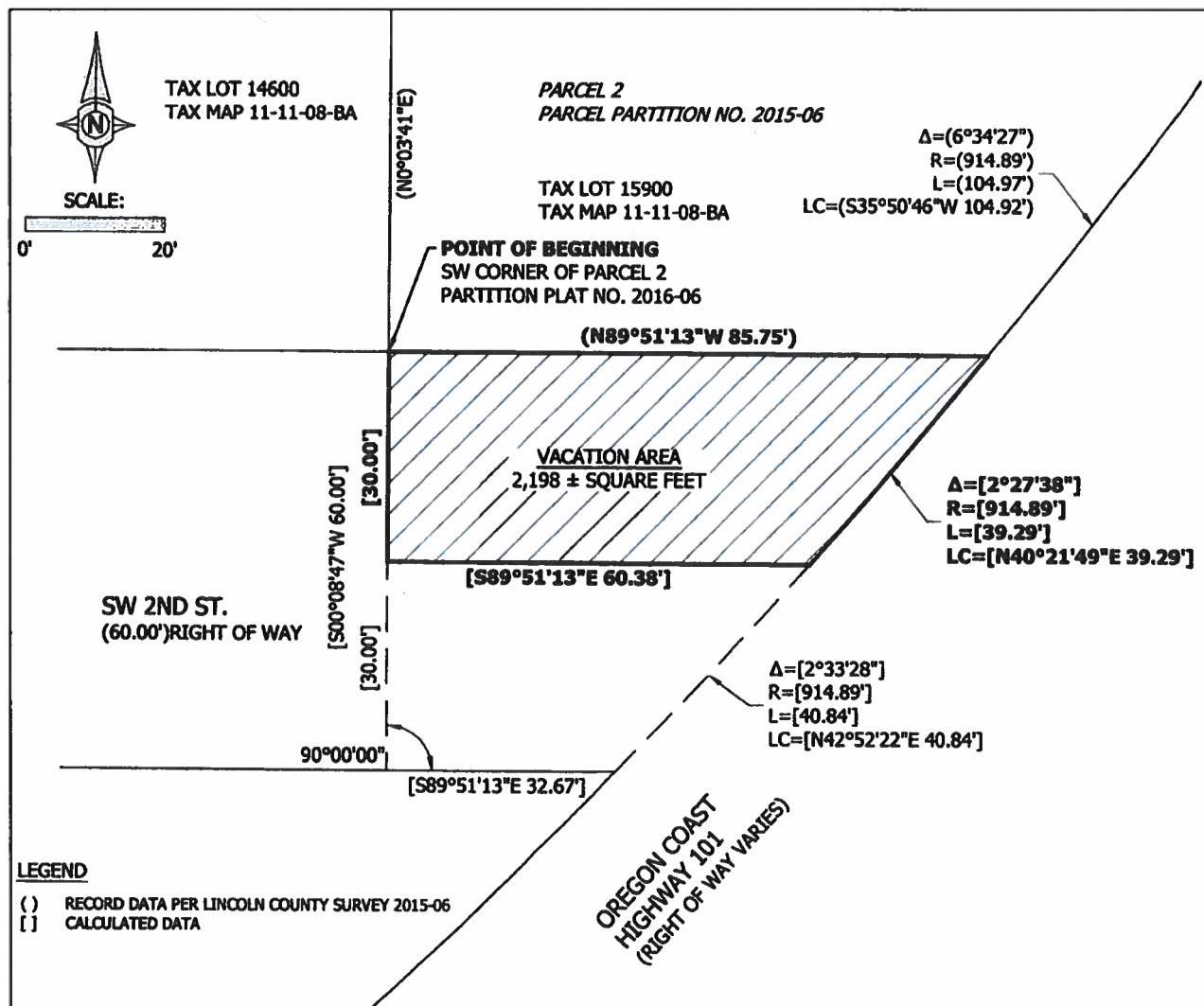
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# CITY OF NEWPORT

## NOTICE OF STREET VACATION

The Newport Planning Commission will hold a public hearing by video-conference on Monday, February 22, 2021 at 7:00 p.m. in the City Hall Council Chambers to take public testimony and hear any objections to a proposal to vacate the portion of SW 2<sup>nd</sup> Street illustrated below (File No. 1-SV-21). This street vacation proceeding was initiated by the Newport City Council at the request of Bret Fox, representing 2<sup>nd</sup> Street Newport, LLC. The proposal is to vacate the northerly 30-feet of a 3,500+/- sq. ft. segment of the SW 2<sup>nd</sup> Street right-of-way between SW Angle Street and US 101. Developer, 2nd Street Newport, LLC intends to construct a drive through coffee establishment in the vicinity of the Courthouse Café that was demolished a number of years ago. Vacating the right-of-way will give the developer sufficient space to place the new commercial building and construct a new driveway approach with landscaped areas in a manner that conforms with City standards and makes the road approach in and out of the property more intuitive to drivers.

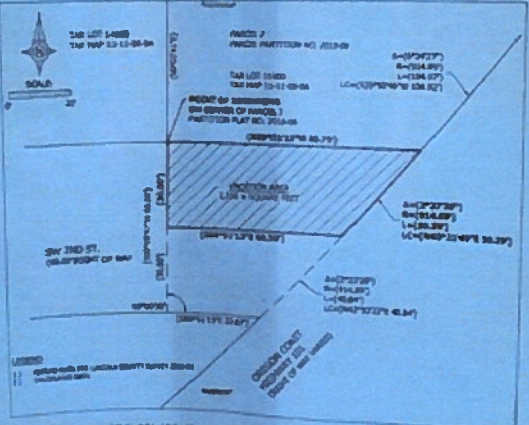


Oregon Revised Statutes (ORS) 271.120 allows a vacation to be granted if: (1) the consent of the owners of the requisite area have been obtained; (2) notice has been duly given; and (3) the public interest will not be prejudiced by the proposed vacation. Please contact Derrick Tokos, Community Development Director at (541) 574-0626 for options on how you can participate by video-conference or in-person at the hearing. Written testimony may be sent to the Community Development Department at 169 SW Coast Hwy, Newport, OR 97365. Such testimony must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing.



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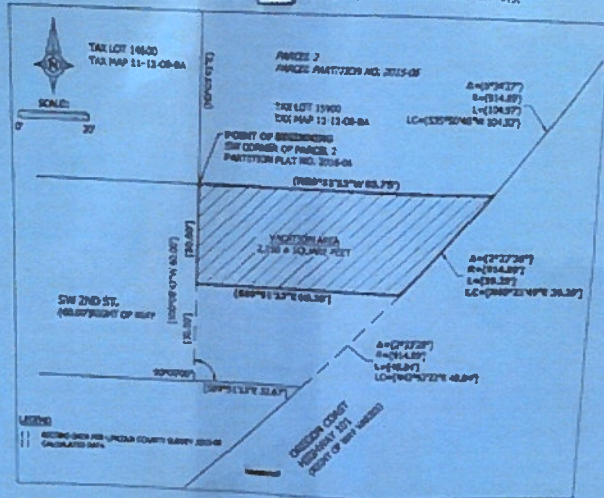


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Oregon Revised Statutes (ORS) 271.120 allows a vacation to be granted if: (1) the consent of the owners of the requisite area have been obtained; (2) notice has been duly given; and (3) the public interest will not be prejudiced by the proposed vacation. Please contact Derrin & Tolkos, Community Development Director at (541) 574-0626 for options on how you can participate by video-conference or in-person at the hearing. Written testimony may be sent to the Community Development Department at 169 SW Coast Hwy, Newport, OR 97365. Such testimony must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing.





02/12/21

To the Planning Commission of the City of Newport:

Today I am writing to you to request you deny the application 1-SV-21 to vacate the street directly in front of the office of my employer.

For over 5 years, I have watch vehicles blow through the intersection, in all 4 directions, with little to no regard for pedestrians or other vehicles. Stop signs merely seem to be a "suggestion" within the City of Newport. My son was struck by an oblivious traveler at the south crosswalk a few years ago, and the crosswalk lights were activated. There is already a "blind corner" from vehicles travelling Southwest through the parking lot, often accelerating and not being cautious of pedestrians on the sidewalk of Angle Street. This is already an incredibly dangerous right-of-way. I have personally witnessed multiple accidents in the proposed development area. Was a traffic study performed?

Anyone who has spent any time in Newport can attest to the fact that traffic will back up in both entrances off Highway 101 at popular coffee kiosks such as Dutch Bros and Human Bean. There are sufficient drive-through coffee establishments here within the City of Newport. Another is not required nor desired.

There seems to be this infectious ideal that every square inch of property at the Coast should be developed; I disagree. The Applicant holds an LLC that is registered in Medford. The use applied for might be welcome there, but it will not be welcome here. The current use of that right-of-way is just fine the way it is. It serves as temporary parking for clients of the Lincoln County Planning Department, landscapers, maintenance providers, and delivery vehicles.

Finally, I'm fearful for the impact it will bring to myself, co-workers and clients who visit this office or use the sidewalk. This is a safety issue where people need to prevail, not dollars.

Thank you,

Josh Bacher



Newport, OR 97365

February 14, 2021

Planning Commission of the City of Newport,

I am a concerned property owner at the corner of SW 2<sup>nd</sup> and Angle Street and find this partial street vacation, File No. 1-SV-21, difficult to accept. Based on the information indicated on the Notice of Public Hearing, I think the City would be giving up any opportunity to make the intersection at SW 2<sup>nd</sup> Street and Highway 101 wider and safer, if ever needed. I've been a property owner at this location for over 35 years and have seen many close calls, with vehicles and pedestrians. This street and intersection is one of the busiest, in Newport. It's probably the most used route to the Post Office. The sketch you've enclosed on the notice of Street Vacation is misleading. To better understand the proposal, the drawing should show the proposed improvements (showing ingress and egress), the existing street improvements (edge of asphalt, curbs, etc.), existing utilities in relation to the proposed improvements and current ownership of the affected areas, to say the least. If a drive thru coffee shop is allowed, it has the potential for traffic being backed up on the highway, as well as congestion into the retail shopping center and the County's parking lot. Look no further then at Dutch Bros., further south along Highway 101. This is also nearby the corner where the Farmer's Market is located on Saturdays. During those times, there is already congestion with cars and pedestrians. This would make the situation even more dangerous.

I understand that the coffee shop plan may be an outright use, but for the City to allow the entire street to be vacated is not a good idea. The City needs to anticipate any future improvements, of that intersection and/or other options. Once the vacation is given and the coffee shop and drive thru improvements are made, it could be too late for any future street changes. What happens if the coffee shop and drive thru fail? The street vacation is still there. For these reasons, I urge you to deny this partial street vacation!!

Thank You,

Russ Johnson

February 22, 2021

**Michael C. Robinson**  
Admitted in Oregon  
T: 503-796-3756  
C: 503-407-2578  
mrobinson@schwabe.com

**VIA E-MAIL**

Mr. Jim Patrick, Chair  
Newport Planning Commission  
Newport City Hall  
169 SW Coast Highway  
Newport, OR 97365

RE: City of Newport Case File 1-SV-21, Request to Vacate a Portion of SW 2nd Street between SW Angle Street and US Highway 101; Letter Supporting the Street Vacation

Dear Chair Patrick and Members of the Newport Planning Commission:

This office represents Bret Fox and 2nd Street Newport, LLC (“Bret Fox”). Mr. Fox is the only abutting property owner of the commercial area (Staff Report Attachment “F”) north of the portion of the SW 2nd Street right-of-way proposed to be vacated (Staff Report Attachment “C”).

**1. Introduction.**

As explained in the Staff Report, the Newport City Council (the “City Council”) initiated the vacation of the north half of the SW 2nd Street right-of-way under ORS 271.130(2) at its public meeting on November 16, 2020 after taking public testimony. No one testified in opposition to the City Council’s initiation of the street vacation. Mr. Fox testified in favor of the initiation of street vacation.

The street vacation will facilitate new development by Mr. Fox on his property and will leave the south half of the right-of-way in place. Mr. Fox has agreed to landscape and maintain the area proposed to be vacated, the remaining right-of-way and the triangular area owned by the Oregon Department of Transportation (“ODOT”) south of the SW 2nd Street right-of-way, resulting in an attractive landscaped area as viewed by the public.

This letter explains why the Newport Planning Commission (the “Planning Commission”) should follow the Staff Report recommendation and recommend to the City Council that it vacate the north half of the right-of-way. Mr. Fox agrees with the Staff Report findings and its recommendation that the Planning Commission find that the street vacation approval criteria have been met and that a utility easement be retained by the City in the area to be vacated.

SW 2nd Street formerly connected to US Highway 101 but as explained in the Staff Report, the rerouting of the highway resulted in the closure of the intersection of SW 2nd Street and US Highway 101. The street now serves as access only to Mr. Fox's development and for parking. Because of the alignment of the highway and ODOT rules governing local street access to state highways, SW 2nd Street will remain in its current configuration.

**2. ORS Chapter 271 Governs Street Vacations.**

Street vacations are governed by ORS Chapter 271. A street vacation can be started by a property owner or a city. In this case, the City Council initiated this street vacation because it found its policy for doing so was satisfied. The Staff Report at Page 3 explains this process and the City Council's findings. Mr. Fox submitted a letter to the City Council explaining how the City Council's policies for initiating a street vacation were satisfied (Staff Report Attachment "A").

**3. The Approval Criteria for this City-Council Initiated Street Vacation are Satisfied.**

The approval criteria for this City Council-initiated street vacation are different from a property owner-initiated vacation. ORS 271.130(1) provides that this City Council-initiated street vacation can be approved if the Planning Commission makes the following findings:

**A. If the City provides the required newspaper publication and on-site posting notice of the street vacation hearing.**

The Staff Report at Page 5 and Attachment "H" explains that the City timely provided the required notices.

**B. If owners of the majority of the "affected area" as defined in ORS 271.080(2) have not objected in writing to the street vacation and if abutting property owners have not alleged that the vacation will substantially affect the market value of their properties.**

Although two persons have submitted letters opposing the street vacation, while the authors of those letters may own property within the "affected area," they are not abutting property owners to the area proposed to be vacated. Mr. Fox is within the "affected area" and is the only abutting property owner and he supports the street vacation.

**C. If the street vacation does not prejudice the public interest.**

As the Staff Report explains, it's unclear if this standard applies to a street vacation initiated by a City Council because while it is an express approval criteria for a property owner-initiated street vacation under ORS 271.080(1) and ORS 271.120, the standard is not listed in ORS 271.130(1) and that section only references the notice provisions in ORS 271.080(2). However, for purposes

of this hearing, the Planning Commission can find that there is no prejudice to the public interest standard and the standard is met.

The Staff Report at Page 5 explains why the standard is met. Mr. Fox agrees with this analysis. Additionally, the public interest is not prejudiced by vacating a street which does not serve a useful transportation purpose. By vacating a portion of the right-of-way, the City encourages additional development and increases its *ad valorem* tax base. Because Mr. Fox's property is the only property abutting the area proposed to be vacated, the public interest is not prejudiced by adversely affecting a property owner's access to a public street.

**4. The Two Letters Opposing the Street Vacation do not Contain Reasons to Deny the Street Vacation.**

Both letters may be from property owners within the affected area but they do not constitute the ownership of a majority of the affected area property and neither author is an abutting property owner.

First, neither letter addresses the approval criteria in ORS 271.130(2) for a street vacation. The approval criteria must be the basis for the Planning Commission's recommendation to the City Council.

Second, both letters contain factual mistakes. The proposed street vacation is for only half the right-of-way, not the entire right-of-way (Staff Report Attachment "C"). Additionally, Staff Report Attachment "E" shows that the proposed drive-through coffee kiosk will not have access to US Highway 101 and vehicle queuing will be on private property, not on a public street. The proposed development that will follow the street vacation will not be a cause of any safety issue nor will it affect public safety.

Third, neither letter identifies a public interest that is prejudiced by the street vacation, assuming that this standard applies. The parking that occurs on the street is not required parking for any near-by use and the right-of-way's purpose is not for temporary parking. By vacating the right-of-way, the City will further economic development and *ad valorem* tax revenues. There is no evidence in the record that SW 2nd Street can be connected to, or will ever connect to, US Highway 101. Neither ODOT nor City staff object to the street vacation for this reason.

Finally, the street vacation is not a land use hearing. While it may be difficult to distinguish between the street vacation criteria and future land use development issues, the Planning Commission should do so because the street vacation approval criteria do not address land use issues.

**5. Conclusion.**

For the reasons contained in the Staff Report and this letter, the Planning Commission can find that this street vacation meets the approval criteria for a City Council-initiated street vacation.

Mr. Jim Patrick, Chair  
February 22, 2021  
Page 4

Mr. Fox requests that the Planning Commission recommend approval of the street vacation to the City Council.

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive, flowing style.

Michael C. Robinson

MCR:jmhi

cc: Mr. Derrick Tokos (*via email*)  
Mr. Brett Fox (*via email*)  
Mr. Brian Vandetta (*via email*)

PDX\136888\257225\MCR\30210675.1



## DEPARTMENT OF PLANNING AND DEVELOPMENT

210 S. W. 2nd ST  
Newport, OR 97365  
(541) 265-4192  
Fax (541) 265-6945

TO: Derrick Tokos, Planning Director  
City of Newport

RE: Lincoln County Response to 1-SV-21

February 22, 2021

Lincoln County received notice from the City of Newport regarding a request for the City Council to initiate a vacation of a portion of SW 2nd Street situated between SW Angle and US Highway 101.

The applicant seeks to develop a drive-through coffee business next to US Highway 101. The applicant, through this vacation process, would gain space to construct private driveway approaches to serve (exclusively) their proposed coffee drive-through business.

Lincoln County has reservations and concerns about the proposed vacation.

The right-of-way (ROW) in question, for years, and today, is heavily utilized by the public. It provides, among other things, parking for people accessing Lincoln County's Department of Planning and Development. And, on weekends, during the summers, the right-of-way provides public parking for Saturday Market.

In addition, individuals using this space, at present (for parking) are contractors, realtors, and members of the public doing business with the County's Planning and Development Department. People can make quick stops, drop off or pick up plans, or otherwise confer with County staff. And, when the weather is nice, people stop there to have conversations.

And, increasingly, that right-of-way experiences large amounts of pedestrian usage unrelated to the County facilities. People walking along US Highway 101 often pause there (many use public transportation directly across the highway). And, on both sides of the highway, this public area is increasingly being used as a public square. Citizens congregate there to communicate social-political views with the public.

With all that mind, I wish to draw attention to a statement in the Staff Report. The Staff report (on page 1 and page 2) provides, "In this case, the subject segment of SW 2nd Street has long been isolated form the public street system and no longer serves that function. Its only real purpose is to serve as a driveway access to Mr. Fox's (*the applicant's*) commercial site."

That statement, in the staff report, is factually incorrect. The statement, though, is correct in one respect. That right-of-way is not a thru-street. But, as we explain above, many other truly important "real purposes" are being served at that strategic public location.

This matter should be placed into a broader context. These days, many cities, including the City of Newport, are taking steps to enhance pedestrian experiences. In Nye Beach, for instance, the City of Newport accomplished outstanding work to improve streetscapes. The City of Newport also made noteworthy improvements to the pedestrian/bike experience along US Highway 101. All these improvements have made the community better and safer.

A choice, though, to approve the vacation of this public right-of-way, at this strategic location, for a private purpose (driveways for a drive-through coffee shop), runs counter to what the City has achieved in recent years to create/enhance streetscapes in Newport.

The burden of proof, of course, falls upon the applicant. After reading the public notice and the staff report, I believe the applicant failed to provide substantial evidence on the record that the public interest would be served by vacating this public right of way. And, a vacation of that right-of-way, as proposed, would be detrimental to the operations of Lincoln County.

As I noted above, this public space, proposed for vacation, is gaining in public significance. For that reason, it would make sense to undertake a public discussion, employing skilled experts and the community at large, to examine how we can work together to make this strategically significant public space in Newport reach its full potential.

I request the record remain open for seven days.

Thank you.



Onno Husing  
DIRECTOR, DEPARMENT OF PLANNING & DEVELOPMENT



**barton**  
TRIAL ATTORNEYS

William A. Barton | TRIAL ATTORNEY  
Brent W. Barton | TRIAL ATTORNEY  
Fadra Day, J.D. | CASE MANAGER

214 SW Coast Hwy.  
P.O. Box 870  
Newport OR 97365

(541) 265-5377 main  
(541) 265-5614 fax  
bartontrialattorneys.com

March 8, 2021

Via Email: [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov)

Derick Tokos  
Planning Director  
City of Newport  
169 SW Coast Hwy  
Newport, OR 97365

**Re: 1-SV-21 (Written Testimony)**

Dear Mr. Tokos:

I am writing to express my opposition to the vacation request before the City of Newport's Planning Commission (1-SV-21). I do not believe it is in the public interest to convey the ownership of that right-of-way from the public to a private party for a private/commercial purpose.

Please enter this testimony into the record.

Thank you,

THE BARTON LAW FIRM, P.C.



William A. Barton