

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video Conference
December 14, 2020

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

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

Public Members Present by Video Conference: Aaron Murphy, Casey Fischer, Dave Larsen, Jerry Anderson, Kelsey Ingalls, Lisa Phipps, Matt Hughart, Mercedes Serra, Michael Robinson, Polly Studley, Terry Lettenmaier, and Kristin Yuille.

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, East, Berman, Franklin, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of November 23, 2020.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission Work and Regular Session Meeting Minutes of November 23, 2020 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.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman and Hanselman reported a brief discussion with one another concerning the hearing item. Franklin reported a drive-by. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 1-UGB-20/1-CP-20.**

Tokos pointed out that the Commission was making a recommendation to the City Council who would be making a decision. The approval would then go to the County and they would have their own process to approve with the County Commissioners. Tokos acknowledged a public comment letter that Oregon Coast Alliance submitted through their attorney, Sean Malone. They thought the land swap complied with the requirements. There was an email submitted by Jean Daulquist with the Fair Housing Council stating they didn't have any issues at this point. There was also an email exchange with Kristin Yuille about the transportation related standards that was shared with the Commission as well.

Tokos explained that if there was a favorable recommendation, prior to the City Council hearing they would put together an ordinance with explicate findings of facts and address any inconsistencies that might exist

between the applicant's findings and our analysis. He reviewed the staff report and explained how the land swap to adjust the Urban Growth Boundary (UGB) would bring 43.4 acres off of NE Harney Street into the UGB, and remove 71.4 acres in the undeveloped Wolf Tree Destination Resort south of the airport.

Hanselman asked if there was any geological information on the 43.4 acres. Tokos reported there was and it fell within an area where they had historic mapping from the State Department of Geology and Mineral Industries. There were geologic hazards in the area but they only fell just north of this property. Berman asked if there would be any more analysis when the time came to look at annexation. Tokos didn't believe there would be. The way the geologic hazards would be done would be more on a macro level by the State instead of site specific. Berman asked if they would be required to do a geologic report for the property. Tokos reported they wouldn't. Depending how the lots were developed, there would be some degree of analysis there. A lot of it would be triggered under building code, not the geologic hazards code.

Berman noted on Findings A3 there was wording that said there would be a "substantial equivalent" land swap. He asked if this was substantially equivalent or if it exceeded the threshold behind the work. Tokos clarified it was substantially equivalent in the context that it qualified for the land swap provisions in terms of the number of dwellings that could be built there. The big difference was the property to the south had no way of getting city services anytime soon. Branigan asked if the property in the R-4 zone was annexed into the city, could the zoning be changed at that time. Tokos explained they couldn't go to a R-1 zone because the nature of the State's rules allowed the city to go forth with a UGB proposal under the criteria as long as what was coming in has the same designation as what was going out. Tokos explained the R-4 was a flex zone. If it went through and they got the R-4 zoning at that time, they could build at a lower density. Tokos reported that the applicant's intent was to do some development with the property that was consistent with and complimentary to the property next to it in Lakewood Hills. This could be addressed in a development agreement at the time of annexation.

Proponents: Michael Robinson addressed the Commission and noted that he was a land use lawyer working for the applicant and the planning firm. He stated that they agreed with the staff findings and recommendations, and thought the Commission should give their approval to the City Council. Robinson noted that the applicant's intention was to provide workforce housing. Once they were past the UGB adjustment and on to annexation, they would work with the city to come up with an agreement on how they would handle workforce housing. They hoped the Commission would follow the staff recommendation to give a favorable recommendation to the Council for the land swap and comprehensive plan map amendment.

Mercedes Serra with 3J Consulting Firm addressed the Commission and she stated she represented the applicant on this project. She presented a slideshow to the Commission that included images of both properties boundaries that were part of the land swap; current size and zoning of each property; the housing potential; the public facilities for sewer, water, transportation for both sites; and the recreation needs and park inventory for the sites and their existing service levels.

Berman asked for the general idea of the number of units between single family detached and multi-family dwellings they envisioned. Serra reported that the vision was for single family detached with the option for single family attached. They were initially looking at around a 200 unit trip cap but they needed to see the final Transportation System Plan (TSP) to see what would be supported in the area. Casey Fisher, representative of the owner Boston Timber Opportunities, LLC addressed the Commission and reported that their desire was to meet what the city needed and planned to meet with the city to determine what this should be. They thought that single family units would be more prevalent in the development. Robinson added that the development would be limited to the traffic analysis requirements.

Branigan asked if there were any plans to divert traffic to Big Creek Road. Matt Hughart from Kittelson and Associates reported that when they scoped and prepared the study there, They made a number of assumptions. Given the current design, width and configuration of Big Creek Road, it was assumed that

there likely would be a very small percentage of trips generated from the future development that would use Big Creek Road in the south direction given that it was a directional street in its current state. Hughart explained they discussed with city staff about the likelihood of that road being updated. From the city's perspective they wanted to see the road upgraded but it wasn't clear there was a likelihood it would be done in the current time period. Tokos reported that the feedback the city was getting from public on the TSP update showed that they liked Big Creek Road as a one way south. If they could get a Harney extension put in around Forest Park there was a lot of support to see it more vehicle oriented and then have an ability to have Big Creek Road be more of a bike/pedestrian alignment. Work on these roads would happen further in the future. If this went forward, there would likely be a discussion on how it linked up on potential signalization on 36th Street. This was already a priority and candidate for signalization. Tokos reported that this wasn't the only development that would contribute to the vehicle trips. There was also 66 multi-family units currently under constructions to the south, and other properties to the north and south that would develop multi-family. Currently the city was collecting system development funds to help share in the cost for of the signalization of 36th Street. They expected people to use this signalization at this intersection to get onto Highway 101.

Berman noted that a bypass on Harney Street could be used to direct traffic off of Highway 101. He asked how they took this into account when they did their traffic study when there might be more traffic on Harney Street. Hughart explained they did their best with the information they had at the time. The study they prepared had to make some assumptions because some of the new information on the TSP wasn't available to them at that time. They expected that when the TSP was completed they would have to make adjustments at the TPR stage. Hughart noted they had more work to do but would work with city staff to make sure everything was accounted for. Hanselman thought that the traffic study said signals would be required at 36th and 31st Streets. He thought this put signals only a quarter of a mile apart on a busy road. Hanselman thought moving traffic on Highway 101 would be even more difficult due to this additional traffic. He hoped that future studies could come up with other allotments of trips because of this. Hughart reminded that the findings were preliminary and based on the information they had at that time. They understood that the TSP was looking at some revisions to the circulation network there. One of the things that would be made clear was if 36th Street was signalized, and the city didn't look at doing other signals in close proximity such as 31st Street, traffic probably wouldn't be the easiest at maneuvering at certain times of the year. They would have to adjust their study and redistribute more trips to the 36th Street intersection, and there may need to be some enhancements for capacity improvements at those intersections to accommodate an increase of trips due to this potential future development. This would be done post TSP. Tokos added that the traffic study Kittlesen did looked at the reasonably worst case scenario, and thought it was important to keep in mind when they would realistically expect that level of development to happen. The key was they had the ability to work with the developer and put in place thresholds of development and trip caps until it was signalized. This would be something similar to the Wilder development, and this would ensure that the TSP could take on the trips allowed underneath the cap.

Franklin noted that the properties north of NE Harney Street property were owned by Hancock Forest Management. He asked if the only reason they were adding the 43.4 acres property in at this time was because they stayed under the trip cap for a signal to go in. Robinson explained that the conceptual site plan illustrated how they could provide connections. He reported that they and the city were bound by State law on how much land they could bring in and be approved for.

Opponents: Dave Larsen addressed the Commission and reported that he lived in the neighborhood at Lakewood Hills. He wanted to get across the message that the discussion on where people would go on 36th Street was very naïve. When people wanted to go south it was easier to use the Big Creek Road. Larsen thought they should take into consideration that Big Creek Road was a problem road to start with, and there was another development currently being built with potential for another two developments in that area. This would increase the traffic on Big Creek Road dramatically and putting a light on 36th and 31st Street wouldn't change this. To think that Big Creek Road wouldn't have a ton a traffic with the increase in houses was extremely ignorant.

Polly Studley addressed the Commission and reported that she had owned her property for 30 years on Lakewood Drive and lived at it for 25 years. She asked if when they were talking about the water and sewer being adequate were they taking into account the apartment complexes currently being built and the others that were being proposed. Studley noted that you couldn't walk or ride your bikes on the narrow road there. She asked if there was any plans to widen the roads, and noted there were no shoulders. Studley reported that as far as Harney Street being expanded, they were told when they bought their property 30 years ago that Harney would go through. Because of this they shouldn't count on this happening in the future. Studley asked why they wouldn't change the zoning for Site "B" before it was brought into the city so they could bring it in as a R-1 or R-2 so they weren't in the data with more apartments. She thought traffic would be a big headache.

Tokos explained that with respect to the wastewater system, the lift stations were the big ticket items there. They had been upsized at Big Creek and Schooner Creek and could handle the wastewater affluent. They did take in consideration the apartment complex under construction and the other two sites that could go under construction for that purpose. Tokos reported that the water distribution in this area was capable of servicing quite a bit more than what it presently was. They did factor this in but it didn't mean the applicant wouldn't be on the hook to do some improvements. A lot of this would be internal to their own property and they talked about this in terms of lift stations. Tokos explained that in terms of the bike/pedestrian aspect, there was an existing trail system in and around Big Creek. The expectation was that there would be some improvements particularly for bikes and pedestrians, and there was a desire through the TSP update that there would be a parallel system so people wouldn't have to go out to Highway 101 because it wasn't the most desirable location to be walking or cycling. The applicant's role would be determined and they would have some responsibility in this, but not the sole responsibility. Tokos explained that in respect to transportation, this UGB amendment and comprehensive plan designation didn't get them to a point that they were ready to or could develop. The next step would be an annexation with zoning being applied. This was where they would have the trip cap and a development agreement in place that would spell out a lot of the details relative to this. The transportation planning rule that they would have to meet at that time requires that the transportation system be capable of accommodating the traffic. Tokos noted that with respect to the apartments, the applicant had said they were looking more at single family detached and attached units there, which were more conducive with the terrain at this property. Apartments or multi-family were more challenging in the steeper terrain. Tokos didn't believe they were going to see a whole lot of apartment development as part of this because it wasn't how this project was framed originally. He confirmed that the process for a land swap was mapped out to be a like for like zoning of R-4 because of state rules.

Studley said that Lakeview Hills has been a community that has come before the Council and the Planning Committee before to keep our road open and to not allow the apartment complex to have extra height. This is during a pandemic right now. Normally neighbors get together and knock on each other's doors and tell them what's been going on. We have not been able to do that. She was kind of surprised they didn't have as many neighbors there tonight. If they really wanted input during a pandemic and a holiday season, she didn't think they would get as much input as you would in their neighborhood. Studley stated she opposed this. She didn't mind single family homes. She thought this would be good but didn't agree with bringing it in as high density because they could change their minds and put in more apartments. Casey Fisher explained that it was never their intent to put in more apartments, it had always been single family and potentially attached. Their hope was to get more single-family housing for the city. She saw zero chance of apartments at any point.

Patrick added that this was a recommendation to the Council and there would be another opportunity to give additional testimony.

Kristin Yuile addressed the Commission. She stated, "Good evening Commission members. My name is Kristen Yuile and I am a resident of Lakewood Hills neighborhood. I reviewed the application. I do have several concerns that several neighbors have brought up as well regarding this development. Mainly around

just the safety and livability for the residents in that area. The main concern is the traffic impact study needs to be done before any more steps are taken in this process. Whether the applicant is allowed to defer it at this step is really not appropriate for this type of development because it's fundamental to determine whether this project should move forward. As a resident of the Big Creek area for several years I use the alternate route to 101, Big Creek Road on a daily basis, as does the majority of local residents in the area. I agree with previous comments by Dr. Larsen. There has been assumptions stated today regarding what routes our residents take and with little clue as to what is occurring. That's why you do a traffic impact study. Big Creek Road is not adequate currently to carry the traffic. There has been significant sliding on the last few years. The city has spent money to repair and yet it remains a one lane travel road. When I reached out to city staff they indicated that Big Creek Road would likely be converted into pedestrian and bike use only. If that's accurate and the plans are not to improve it, then a traffic study is even more imperative. As current residents and future residents we'll have no alternate route to and from town as 101 will be their only access. Originally the city carefully considered amending the UGB to include Site B, the 71.4 acres parcel. Now it's being swapped, hastily changed after a few months after you had already approved it. The criteria under land exchanges OAR 660.24.70 has not been met under sub A, meaning that the land is not substantially equivalent to the amount of residential buildable land that is being removed. In the application it identifies only 28 acres that may accommodate development. In this application they identify 12 acres as containing slopes that would prohibit any kind of development. So that would only leave around 28 acres. DLCD also indicated in their email that there is geological concerns in need of further work because of landslide typography. This will likely lead to even more land that would not be developable of the 28 acres that currently exist on Site A. Under ORS 197.298, land that is prone to landslide should not be included in the UGB and the portion of the 28 acres should be excluded. So, you know, we are going to be back here again, maybe go through the same process that you went through for Site B and then eventually part of this is not even going to be considered because it's not going to be developable. That's why this, our front work, needs to be done now by the developer. You know, as Planning Commission members you guys have discretion when reviewing land use applications. You can waive factors such as safety and livability for your residents. The applicant hasn't done it's necessary front end work to show that this proposal should be considered, let alone be approved. I request that you continue this hearing and require the applicant complete at a minimum a traffic impact study before recommendation is made to the City Council."

Rebuttal: Robinson thanked the public who gave testimony during the hearing. He noted that they heard what they were saying and he hoped to answer some questions. Robinson thought it was fair to say that there was an opportunity to talk to these public members personally by phone or Zoom and would try to set this up. He reminded that there would be further options to gain public testimony. Robinson explained that regarding Ms. Yuile's testimony on ORS 197.298 regarding landslide hazards, there is substantial evidence in the record that this was not a mapped or an identified landslide hazard area. If they believed that there were landslide here, historic or otherwise, they would have done more for the application in that regard. Robinson noted they heard testimony that DOGAMI did not include this in their mapping and thought this was substantial evidence there was not that kind of gap. He thought it was worth talking about why they hadn't completed the transportation planning rule. The State requires for the transportation planning rule that they match up land impacts with transportation needs. When you are dealing with a UGB map amendment like this the State law expressly allows you to defer it to a later stage. They wanted to wait until the zoning stage to have a better opportunity of what they intended to do with respect to development. The traffic study itself, demonstrating compliance with the TPR, would be better. They also wanted to see more work on TSP and by waiting they would have a traffic study that better related to the TSP. Robinson also noted that this gave them more time to coordinate with transportation within the city, which they intended to do. Because they heard the neighbors' concerns, they would do their best to talk to them. They would be working with the city and the state to make sure that their traffic study was accurate and demonstrated when the trips would go. If they are obligated to make improvements they would have to do so.

Robinson explained this was a two stage process. Right now they were recommending to the Council that they bring the property into the UGB. The second stage would be when they would provide roads and what

their contributions would be to the public improvements. This didn't happen at the UGB stage. Robinson noted that Site B wouldn't have an opportunity to meet the housing needs analysis because it wasn't in the city. This property owner had no desire to do anything with the property other than his home. Site A has sufficient land to do single family homes and was in an appropriate area because of its proximity to roads and public facilities to meet that housing needs. Robinson explained that OAR 660.024.0070(3)(A) said that the amount of UGB to meet a specific type of residential need should be substantially equivalent to the residential land removed. He thought that Tokos' staff report was correct and asked everyone to remember that what they were also talking about was the number of dwelling units. They could work with the parcel they were bringing in to make sure what the number of dwelling units would be, and this was what they would be looking at during the next stage. Robinson added that they had an obligation to do a full traffic study at the appropriate time, and they intended to do this. There would be a trip cap and a development agreement that they fully intended to do. All of this would be a public process with additional opportunities to talk to the Commission. Robinson would talk to his client about reaching out to folks as soon as it was reasonable. They thought the evidence was sufficient to give a favorable recommendation to the Council.

Chair Patrick closed the hearing at 8:22 p.m.

East thought swapping out Section A for Section B was a good idea because Section B no longer wanted to develop that property. Leaving it within the UGB wouldn't do us any good. It was too expensive to develop the property due to the lack of public facilities. It was a good time to swap the properties out and add Section A into the UGB where it would do some good.

Branigan thought the proposed findings satisfied the criteria. The biggest issue he had was with the traffic as the area continued to grow. Before they really proceeded the traffic impact analysis would be key to the process. Since this was just the UGB, they would have several other opportunities to understand the traffic impact before any final developments.

Franklin thought the swap was a perfect fit. He thought the traffic impact in that community was a valid concern. Franklin wanted the people who gave testimony to talk to their neighbors to allow more people to voice their opinion at the Council level. He thought the developers did a good job of communicating with them thus far. Franklin would vote to approve it.

Berman saw two major problems ultimately, but not in this phase. The first problem was the traffic. It sounded like they could analyze this with more information on how people used the roads. Berman was worried about Lisa Phipps' memo that noted that a review of the course level did show landslide typography on the whole site. The fact that this may not require any formal review bothered him and he thought they could address this when the time came. Berman thought this would help with housing which was a very high priority. He would recommend it.

Hanselman thought housing was needed in the community. This was in an area in town that had drawn attention for development. Transportation had been repeatedly mentioned as a problem up there. The geologic was the most important to him. Hanselman didn't want to see a property included that could become a liability. The geology might limit the number of houses that could be put out and they didn't know what it was yet. A report would have been helpful. Hanselman thought the trade of 43 to 71 acres stood up with what was needed by the community. It would be good to use the TSP time to help with improvement in that area because it was going to be developed. Hanselman would recommend this to the Council and reminded the public would still be able speak to the Council.

Hardy didn't have a problem with the application. She agreed there was a lot more due diligence that was needed as they went through the next steps that would be required from the standpoint of protecting not only the investor's interest but the community interest as well. There was a number of impacts in this neighborhood that people were concerned about. If these were addressed directly and clearly it would resolve some of these problems. Hardy had no problem forwarding this to Council.

Patrick didn't have a problem recommending this to the Council. He didn't have a problem with the substitution because they were trading an area they couldn't serve with something they could. The problem was that they had this giant chunk of ground in Newport that they counted as part of a reserve in Wolf Tree but it wasn't developable or wouldn't be developed anytime within the next 10 or 15 years. Patrick noted that a lot of the R-4 land in Newport was single family. He knew the transportation was an issue and didn't think they should be doing the traffic analysis when they didn't know what they were doing. He was in favor of making a recommendation.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve File 1-UGB-20/1-CP-20 with a positive recommendation to the City Council. The motion carried unanimously in a voice vote.

Franklin asked if the request to continue the hearing had any impact on the recommendation. Tokos explained that they were just making a recommendation at this point and didn't have an obligation at this point to continue the hearing. Before a final decision was made by the Council, an open record could be requested, but that would be with the Council.

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

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

8. **Director Comments.** Tokos asked if there were any objections to not having a meeting on December 28th. The Commission have no objections. Tokos explained they would reconvene after the first of the year.

The Commission thanked Franklin for his service.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:35 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant