

**City of Newport  
Planning Commission Work Session Minutes  
March 11, 2024**

<b>LOCATION:</b> CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT	<b>Time Start:</b> 6:00 P.M.
<b>Time End:</b> 7:14 P.M.	

**ATTENDANCE LOG/ROLLCALL**

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East	
Commissioner Braulio Escobar	
Commissioner John Updike	
Commissioner Marjorie Blom (absent, excused)	
Citizen Advisory Member Dustin Capri (absent, excused)	
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
<p><b>CALL TO ORDER AND ROLL CALL</b></p> <p>a. Roll Call</p>	<p>None.</p>
<p><b>DISCUSS IMPLEMENTATION STEPS FOR SB 1537 "GOVERNORS HOUSING BILL" (ENROLLED).</b></p> <p>a. Staff report</p> <p>b. Commission feedback</p>	<p>Mr. Tokos covered the comparison on SB 1537, the Governor's Housing Bill, and Newport's Ordinance No. 2222 implementing the City's Housing Production Strategy. Both are intended to support new housing construction. Tokos asked the Commission if they had any concerns with the adjustments listed in the bill and if so, how the Commission would want to address them.</p> <p>Escobar asked what kind of flexibility Newport had when a law was signed by the Governor and the city wanted to vary from a legislature mandate. He also wanted to know how many 100 x 50 foot lots would fit in an acre of land when they were talking about limiting the density to six lots per acre. Tokos explained the way that the "home rule" worked was if the state had explicit language that the city had to do something a specific way, they would be bound to this. If there wasn't explicit language, the city was free to interpret the rules. Tokos explained that typically there were six units that were 7,200 square feet would fit in an acre.</p> <p>Berman asked what "net" new housing meant. Tokos explained it meant they were new housing units. So two housing units were removed, and they were adding three units, it would mean there would be one new housing unit. East</p>

asked if the added housing units included accessory dwelling units. Tokos confirmed it did, and the ordinance the city was working on didn't specify the type of net new housing.

Tokos reported that the State limited adjustments to 10 but the city wasn't limited the number. Berman questioned how many adjustments were possible for a triplex. Tokos gave examples of how you could get over a half a dozen adjustment in the Nye Beach area which included adjustments for things like setbacks, building coverage, landscaping requirements, and height limitations. He reminded that Newport didn't see many requests for these adjustments.

Tokos covered the comparison of the eligibility requirements. Updike noted that California was dealing with the builder's remedy law for development that allowed builders to move forward with housing development while avoiding almost all local regulations. He noted there were a lot of incentives at the state level, and the issue in California was the same. The intent was to build more affordable housing, and what was happening was that builders were using the remedy law to reduce the proposed density of projects. They were coming in with replats with less units than what was in accordance and saying that if they didn't do less units, they wouldn't be able to build anything. Updike explained this gave builders loopholes and questioned if this would mean they would see more of this in Newport with these rules.

Berman asked if Newport hired a forensic accounting firm to certify that the criteria was met when they had an incentive. He questioned if Newport did anything to ask developers to prove what they were saying. Tokos didn't think they could do a third party peer review with developers. Berman thought this was an objective way to decide if there was a basis to claim something. Tokos noted that putting the burden on city staff to refute something a developer checked in a box would lead to questions on why the city needed to challenge. Tokos noted that the Multiple Unit Property Tax Exemption was an incentive the city had where a third party reviewed the financials. This added a certain degree of transparency to the government process, and showed that the financials for the project would not have penciled out if it wasn't for the subsidy, therefore justifying it.

Tokos reviewed the comparison on decision type, and fee requirements. Updike asked if there were funds to do a fee study. Tokos explained the last time they did one was in 2009 and it would have to be something that was programed and citywide, not just for land use. He noted the Budget Committee would be looking at the fee schedule. Berman asked if a Community Development review fee was a good idea. Tokos thought a modest fee would be fine and something they might add to the budget. There were other fees Tokos was working on with the Building Department, which was fee supported. Planning was not fee supported and their fees only provided a portion of the cost. The perspective with planning is that that there's a broader public benefit from the application of these rules. It wasn't just the developer that was benefiting. Therefore, they shouldn't bear 100% of the cost on the planning side, whereas they would bear 100% of the costs on the building side. This was one area Newport could look at to disincentivize certain aspects of the Governor's bill if the Commission felt it was appropriate.

Tokos reviewed the comparison on sunset requirements. Escobar asked if they would consider revising the ordinance to the same sunset as the State law. Tokos explained that what the city worked on was better and didn't warrant this. They could always repeal it if the city didn't think it was working well. Tokos

explained the problem with sunsets was that it forced us to review things, even if they were working well. Bringing something back that was working well only created extra work down the road.

Berman asked if Newport's incentives to add units was the same as the state by saying if they were showing they would add units they would get an adjustment. Tokos explained that Newport's Ordinance did this for new affordable housing, and the Governor's didn't. Hanselman asked if the Governor's bill covered all housing or just middle housing. Tokos confirmed it was all housing.

Tokos reviewed the type of adjustment requirements covering setbacks, landscaping, and parking minimums. He explained that if they were choosing to ask for relief from off street parking because the narrow street standards were designed to reduce to costs on street construction, and they didn't have provision on street parking, they would have to do full street sections on the front edge to create street parking. Berman thought this was something they should do. Tokos noted that the state made assumptions that Newport had the same kind of transit services that larger community had. Most developers would put in off street parking in their developments because they knew they needed to make developments marketable in our area. Unfortunately, these codes were designed to address the odd developer who came in and choose to make the bad choice to not do parking.

Tokos covered the comparisons on minimum lot size, building coverage, bike parking, and building height. Branigan asked if this meant that if a base zone that had a maximum building height limit of a 40 feet would be allowed to build to 48 feet with a 20% adjustment. Tokos explained they could go the full 20% up to 48 feet, but they wouldn't be able to exceed this. Berman asked why they couldn't lower the numbers so that when they added the 20% they would end up back where they would have been. Tokos pointed out this would force developers to do an adjustment. Berman thought that most of the developers would do this anyway. Tokos didn't think that developers that had an alternative path that was more attractive to them would choose to do this. Berman wanted to know what the risk would be to go through the state process, and in which cases it could fail. Tokos explained that Newport had the authority to deny an adjustment because they didn't believe something was an eligible project. Berman asked what would make a project ineligible. Tokos explained that this included things like no net housing units, not believing the adjustment would make a project less costly, that it didn't influence the timing of the house, or it wouldn't have any influence over the sales or rental price of the unit. There were also other provisions included that said that this didn't alleviate the requirement for meeting safety codes. Tokos reported another provision said that this didn't apply to shoreland areas. He explained the state wasn't explicit with this and just said it didn't apply to coastal shoreland areas. Newport might be able to be expansive on this and it could apply to the better part of Nye Beach and the Bayfront.

Berman wanted it noted that the city's shoreland maps needed to be redone. Tokos explained that they needed to adopt the new boundaries legislatively first.

Tokos reviewed the comparisons for the unit density maximums, mixed-use prohibition for ground floor residential, and design standards. He reminded the city adopted new design standards as part of House Bill 2001 for townhomes and cottage clusters. The Nye Beach Design Standards would be the ones of

most concern since they were the most mature. Much of the Nye Beach design review standards would be waivable through the state adjustment process.

Hanselman asked what historical designations did to the state law. Tokos said they would do nothing. He explained the advocates for historic preservation tried to get those changes but weren't successful. Tokos pointed out how historic preservation rules insured high end housing for people who could afford it. Hanselman agreed that the historical standards seemed to be unfair to some residents because of the heavy cost to do maintenance.

Hanselman asked what standards the city could use to prove when a developer was willfully providing and making false statements in materials, versus just when they were making a mistake. Escobar thought the standard they should hold to was that there needed to be clear and convincing evidence of a willful action, but thought this might make it more difficult to prove.

Berman asked for thoughts on how the city could protect the Nye Beach Design Standards. Tokos was concerned the design standards would be the ones that would get attacked because someone could make an argument against the cost factors of the standards. He thought the Governor's Shoreland designation exemption was something to look to protect them. Tokos reminded that there was a discussion to try to get a live work environment going in Nye Beach. He thought the city might need to have a discussion with the Nye Neighbors to see if there should be a requirement that at least 26% of the finished area in new dwellings be designated for non-residential use in C-2 zones. This would disqualify mixed-use projects from being eligible for adjustments, and would be consistent with the live-work objectives of the neighborhood.

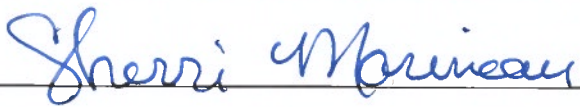
Berman asked if Newport could say if someone asked for adjustments they wouldn't be eligible for the other incentives. Tokos explained Newport wasn't obligated to provide incentives. The state couldn't expect that the city subsidize this as well.

Escobar asked what type of outreach would be envisioned to the Nye Beach neighbors who were invested in the design standards to give input in the ultimate ordinance. Tokos thought they could reach out the Nye Neighbors to find out any changes they had on what they would entertain, such as requiring an amount of nonresidential space in a dwelling unit. We could also use it as an opportunity to inform the neighbors of the package and pallet of adjustments. Tokos pointed out the Nye Neighborhood Association was aware of this but the broader Nye Beach neighborhood weren't.

Tokos asked for the Commission's thoughts on the Governor's proposal. The Commission was in agreement that they were concerned about the parking and design standards, and wanted to make an ineligibility for financial incentives when someone didn't follow the local rules a disincentive.

Berman questioned if a developer could either say they wanted all the adjustments they were entitled to, or they wanted go through the process if Ord. 2222 was passed. Tokos said that was true and explained that if Ord. 2222 passed, the decision would be ministerial and an over the counter type of process. The Governor's rules would involve a limited land use decision, and the city would be able to set pricing based on either a per adjustment basis or for the entire review. Berman noted what he was hearing was it was up to the developer to determine what path to go down and it was up to the city to convince them what path to go down. Tokos agreed.

	<p>Updike asked if there could be a speed incentive to deliver decisions for financial incentives. This way if someone went down a ministerial route, the decision would be done faster. Tokos noted that what the city was dealing with on ministerial was a plan review timeline that took around 8-12 weeks to complete. He didn't know how they could commit to a faster speed. Tokos thought this could be done on a one-off instance, but didn't think it could be done programmatically.</p> <p>Hanselman was concerned about any decisions where the applicant was the only one who was notified and able to appeal, not the neighbors. He believed in sunlight laws and felt the Governor's bill left neighbors out of the decisions. Tokos reminded they would need some legal help on this.</p> <p>Tokos noted that what he was hearing was that design standards and parking were the Commission's principal concerns with the pallet, and they liked the concept of not subsidizing these. Berman thought they should find some way to incentivize developers to use the ministerial process. Tokos asked if they wanted to try to maximize whatever they could cover with the shoreland designation. The Commission was in general agreement with this as well.</p> <p>Escobar asked if they were to incentivize the ministerial process would they then be minimizing citizen input. Berman reminded there was no input on the other process. Updike thought this was the lessor of two evils. Tokos reminded they were working with fairly tight constraints and there wasn't a lot of leeway on this.</p> <p>Tokos reminded that this discussion would be provided to the City Council for their March 18th meeting to consider.</p>
<p><b>FINALIZED LIST OF FISCAL YEAR 2024/25 GOAL SETTING.</b></p> <p>a. Staff report</p> <p>b. Commission feedback</p>	<p>Mr. Tokos provided a finalized list of Planning Commission Goals for FY 2024-25.</p> <p>Berman questioned if the goal to secure funding from the State of Oregon should be in department goals, not the Commission goals. He thought it was unclear what the distinction was between Commission goals and department goals. Updike suggested the goal say "supports the securing of funding" instead of "securing" funding from the State. The Commission was in general agreement to change this.</p> <p>East thought they should incorporate some of the erosion control goals into the landscaping standards. A discussion ensued regarding the Wastewater Plan and the city's efforts to modernize the system.</p>
<p><b>PLANNING COMMISSION WORK PROGRAM UPDATE.</b></p>	<p>Tokos covered the updates to the Planning Commission's work program.</p>

Submitted by:   
Sherri Marineau, Executive Assistant