

Minutes  
**City of Newport Planning Commission Regular Session**  
**Monday, July 12, 2010**

**Commissioners Present:** Jim Patrick, John Reh fuss, Melanie Sarazin, Mark Fisher, Gary East, Rod Croteau, and Glen Small.

**City Staff Present:** Community Development Director (CDD) Derrick Tokos, City Attorney Penelope McCarthy, and Senior Administrative Assistant Wanda Haney.

Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m.

**A. Approval of Minutes.**

1. Approval of the work session and regular session Planning Commission meeting minutes of June 28, 2010.

**MOTION** was made by Commissioner Fisher, seconded by Commissioner Sarazin, to approve the minutes of the Planning Commission meetings of June 28, 2010, as presented. The motion carried unanimously in a voice vote.

**B. Consent Calendar.**

1. Final Order for File No. 1-PD-10/2-PD-10/1-SUB-10. Final Order approving amendments to Phase 1 of the proposed Wilder Community Master Plan site approved by the City of Newport Planning Commission on July 27, 2009, as requested by Landwaves, Inc. (Mike Miller of MGH Associates, Inc., authorized representative). The Planning Commission held a hearing on this matter on June 28, 2010.

**MOTION** was made by Commissioner Fisher, seconded by Commissioner Small, to approve the final order for File No. 1-PD-10/2-PD-10/1-SUB-10 as presented. The motion carried unanimously in a voice vote.

2. Final Order for File No. 2-ADJ-10. Final Order approving an adjustment request submitted by Don Mann (Port of Newport, property owner) (James M. Lewis, gLAs Architects, LLC, authorized representative) for approval of placement of an antenna on top of the future NOAA MOC-P Warehouse to reach a maximum height of 56 feet. The Planning Commission held a hearing on this matter on June 28, 2010.

**MOTION** was made by Commissioner Fisher, seconded by Commissioner East, to approve the final order for File No. 2-ADJ-10 as presented. The motion carried unanimously in a voice vote.

**C. Citizen/Public Comment.** No comments regarding non-agenda items.

**D. New Business.** No new business to discuss.

**E. Public Hearings.**

**Legislative Land Use Actions:**

1. File No. 12-Z-09. As part of the comprehensive Zoning Code update, consideration of proposed revisions updating NZO Section 2-4-7 ("Geologic Hazards Overlay"). Oral testimony was closed June 14, 2010, and the written comment period ended on June 28, 2010. The Planning Commission will begin deliberation in order to make a recommendation to the City Council regarding this matter.

Chair Patrick opened the deliberation at 7:03 p.m. by reading the summary of File No. 12-Z-09 from the agenda. Commissioner Croteau read a statement of disclosure of potential conflict of interest. He stated that because he owns property that is identified as being within the moderate and low zones by this code, it could result in financial consequences to him in the future. No other Commissioners had any declarations. Patrick wanted to break out two items that have been rubbing points all along and vote on them separately. First was the geologic reconnaissance form, and second was the waiver and disclosure requirement. He said that then after voting on whether to retain these two items or make a change, the Commission could vote on the whole thing.

**MOTION** was made by Commissioner Reh fuss, seconded by Commissioner Croteau, to retain the recommendation of the provision for a geologic reconnaissance form as currently written. Reh fuss began the deliberation by saying that this form will save citizens money. Croteau noted that it is written so that if the reconnaissance shows that there is a geologic issue, it would provide for the need for a full study. Small likes that provision because it offers a different course for those homeowners whose

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property is in question. He believes it is good because it doesn't require a full report and gives a better, less expensive option. Patrick noted that it may still trigger the full report. Fisher wondered if nothing was done to change Section 2-4-7, would this reconnaissance survey still be required. Small thought that the reconnaissance form is a better situation than the way the ordinance reads now because it provides another option. Patrick agreed that the only way now is to get a full geologic report. The motion to retain the provision for a reconnaissance form carried unanimously in a voice vote.

The second issue for discussion was the question of including the waiver and disclosure statement. **MOTION** was made by Commissioner Rehfluss, seconded by Commissioner Small, to adopt the proposed waiver and declaration as written. Croteau began deliberation by saying that he was against the hazard and liability waiver. He said the form is unnecessary and unfair. It is covered by the state law of disclosure, as has been stated many times over in public testimony. He noted that the most current geologic report will be on file and will be publicly accessible, which is sufficient. He said that the City shouldn't be responsible for buyers to do their due diligence. He doesn't believe that any further disclosure is necessary. He sees no compelling need for the statement. He said that all the City has offered as proof of significant liability is Jumpoff Joe; no other evidence of liability has been provided. He said the Commission has taken testimony that the liability waiver is flawed. The liability waiver is unfair because it applies to only one set of citizens, those in active and high zones; not any other hazard group. Croteau talked about how it is unfair that one neighbor seeks a permit and signs the waiver while the other neighbor doesn't do anything requiring a permit. He added that then after all this, if the first neighbor sells and moves away, the new owner has no liability. He said that in lack of providing an economic analysis, the City should minimize those impacts. He said it needs to be applied equally for those requiring a permit and those not and those in other hazard areas. Croteau recommended that the disclosure statement and liability waiver be deleted in its entirety. Rehfluss asked City Attorney McCarthy about the real estate disclosures. She doesn't believe it replaces the disclosure in the ordinance. She conceded that the City has nothing but Jumpoff Joe to show. She said that this provision in the ordinance is forward looking in terms of the future. McCarthy said that she has learned from the Community Development Director that we get more geologic permits as time goes on. As we do that, the possibility of geologic hazard incidents is going to increase. Small said that he thinks the real estate disclosure statement covers such instances. It speaks specifically to geologic hazard zone. It is pretty specific. If a study were done, the seller would know if it is in a hazard zone. Small said that at the hearings, he had asked specific questions about whether these disclosures cover these geologic issues. He is satisfied that they do. Patrick said that he doesn't think so. He said it is implied but it doesn't actually say. He said there have been cases when people have sold things with geologic reports and don't disclose them. Patrick said that the Appendix A statement protects the buyer because he knows that the property is in a geologic hazard zone and that there is a report. It also protects the City from being sued because we allowed somebody to build something. He said at least there is something that says that they knew about it and are taking responsibility for it. He believes that is what the form is designed to do. Patrick said he doesn't believe the statement form is right yet, but he thinks it should be passed on to the City Council and let them tinker with it. East said that is his opinion with this section. Small said that he doesn't want to pass this on with this provision. He would be willing to pass this on to the City Council with this whole disclosure and liability waiver section removed. If the Council wants to put it back in, that is up to them. Fisher said that he doesn't like it and will never vote for it. He believes there are enough other safety measures. In answer to a question from Rehfluss, McCarthy said that the language under item number 7 of the statement was added because someone in the public brought it up. She agreed that the owner should not be indemnifying the city for the city's negligence or misconduct. Patrick said that he believes the statement was unfair before that statement was added. Croteau believes that in a lawsuit anyone would claim negligence or misconduct. McCarthy said that anyone could argue that, but whether negligence would be proved is another matter. A vote was taken on the motion to accept the language that speaks to the geologic hazard statement. The vote failed 3-4 in a show of hands, with Commissioners Patrick, East, and Rehfluss voting in favor; and Commissioners Small, Croteau, Fisher, and Sarazin opposed.

**MOTION** was made by Commissioner Small, seconded by Commissioner Sarazin, to forward the geologic hazards zoning ordinance to the City Council without Section 2-4-7.025 statement D that talks about the provision for Appendix A, the disclosure and waiver form. Small added that, in other words, the entire ordinance minus the waiver. Rehfluss brought up the fact that from time to time the audience had talked about the use of the color red to show the high risk area. He wondered if any thought had been given to changing the color. Small said that he doesn't see the color red mentioned in the ordinance. It merely talks about using the DOGAMI maps. For clarification, Tokos asked if the motion was a recommendation to the City Council that the ordinance be adopted as is with the exception of the language that refers to the statement in Appendix A. Small clarified by restating that section 2-4-7.025 subsection D, which language he then read, be removed from the ordinance. Sarazin again seconded the clarified motion. Fisher began deliberation on this motion. He said that he went into this process with no preconceived ideas. He talked about all the work that went into the process and all of the testimony that had been received. He said that at the end he concluded that the citizens didn't want this. He added that we have to look at the need. If we are doing this for health and safety and because the present geologic section is inadequate, that raises the question whether we are at the point where risks are such that we really should take this action and have the geologic hazards overlay. He said that after doing all of this work, it doesn't seem fair that we do nothing; but he honestly believes that is what we should do. He said he would have a motion in that regard. He said he is thinking that we don't have to do this. He doesn't believe there is significant danger out there. There are always problems, but that doesn't mean they are serious enough that we have to do something. He believes that what is in place is adequate for us. Small said that he agrees on some points. He said that the first draft of the code was not very good, which caused a lot of concern and anxiety. He believes the process has been good. He thinks the system has worked as it was designed to work so the public can speak into the process. He said the Commission listened to that, paid attention, and

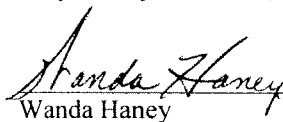
adjusted accordingly. Small thinks there are aspects in this code that are better, such as the erosion control and offering the reconnaissance form as opposed to the full geologic report. He thinks that in some ways this is less restrictive than the previous code. Small said that essentially we have come to a place where this is a good ordinance if we take out that one piece. Then he would feel good about forwarding it on. Croteau said that he felt the code did need revision. It is old and needs to be revised based on the best evidence available. What emerged are site-specific evaluations, which will save the City and homeowners anguish in the future. He said that he wants to see that stay. He agreed with Small that the disclosure and waiver has to go. Rehfluss said that he is satisfied with the ordinance after the comments made. Small said that the City owes the public the latest information it has. This ordinance updates that and gives the latest information, which is something that needed to be done. The old maps were outdated. The adjusted ordinance allows the latest information, which he thinks is good. He believes the Commission needs to pass it on. Sarazin concurred with Small. She said the Commission has tried to do its best by making proper adjustments and bringing updates. She believes it is best to pass it on to the City Council and get a fresh set of eyes. She added that we need a new view on this. Patrick said that we started with a code that was basically what we thought the state wanted, but we discovered that the citizens didn't. He said we have picked up a development-friendly code. He noted that he has also heard from others in the public that liked the ordinance as it was when we started. He thinks we ended up with a pretty good ordinance. Patrick said that he would like to see some sort of statement, but he is happy to send it to the Council without it and let them decide about that. Amended **MOTION** was made by Commissioner Fisher to not pass any recommendation on to the City Council and continue using the Section 2-4-7 that we currently have in effect. The motion died due to lack of a second. A vote was called for on the initial motion to forward the ordinance without section 2-4-7.025 subsection D. The motion carried unanimously in a voice vote.

Rehfluss again brought up a recommendation to change the map colors. Discussion regarding that ensued. Patrick noted that the color scheme is what people normally would look at as meaning hazard or caution. There was discussion that changes to the colors would only cause confusion. **MOTION** was made by Commissioner Rehfluss to recommend color change for the maps. The motion died for lack of a second.

**F. Unfinished Business.** Tokos noted that the City Council indicated that they would like to hold a joint work session with the Planning Commission regarding the geologic hazards section update. He asked about a noon work session on August 2<sup>nd</sup>, but several of the Commissioners indicated they wouldn't be available then. Tokos will see what the Council's availability is for the 9<sup>th</sup> and get back to the Commissioners.

**G. Adjournment.** There being no further business to come before the Planning Commission, the meeting adjourned at 8:00 p.m.

Respectfully submitted,

  
Wanda Haney

Senior Administrative Assistant