

Minutes  
**City of Newport Planning Commission Regular Session**  
**Monday, August 22, 2011**

**Commissioners Present:** Jim Patrick, Rod Croteau, Gary East, Mark Fisher, and Glen Small.

**Commissioners Absent:** Melanie Sarazin and Jim McIntyre.

**City Staff Present:** Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, East, Fisher, Patrick, Croteau, and Small were present. Sarazin and McIntyre were excused.

**A. Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of August 8, 2011.

**MOTION** was made by Commissioner Fisher, seconded by Commissioner Small, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

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

**C. Consent Calendar.** Nothing on the consent calendar.

**D. Public Hearings.**

Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contact, bias, or site visits. Croteau declared a site visit. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing this matter; and no objections were raised.

**Quasi-Judicial Actions:**

1. **File No. 2-Z-11.** A request submitted by Pacific Communities Health District (Chris Minor, authorized representative) (Don Shaw, property owner) for a map amendment to the Zoning Map of the City of Newport changing the zoning designation of a tract of property consisting of approximately 11,000 square feet (involving Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CA) from R-3/"Medium Density Multi-Family Residential" to R-4/"High Density Multi-Family Residential". The Comprehensive Plan map designation for the property is currently "High Density Residential" and would not need to be changed. The Planning Commission will make a recommendation to the City Council on this matter.

Patrick opened the hearing on File No. 2-Z-11 at 7:03 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that in the Planning Commissioners' packets was a detailed staff report, which does include the property description, relevant criteria, and findings of fact. The property is about 0.4 of an acre in size located on Tax Lot 9100 of Map 11-11-08-CD, or 749 SW 11<sup>th</sup> Street. He noted that the relevant criteria found in the Newport code are essentially that the change furthers a public necessity and is in the general welfare in order to grant. He said that the findings point out that it is reasonable to determine so in this case. The applicant points out that this is a minor adjustment between the two districts. This adjustment will allow the applicant, Pacific Communities Health District, to renovate and occupy the Shaw house that used to be a 9-plex and now is a very large residence. They will be using the structure for hospital offices and records storage. The R-3 zone does not allow that use. The applicant notes that this is not spot zoning, it is not isolated; but is a logical extension of hospital property just to the west. Tokos noted that the hospital provides a critical service to the community. It is reasonable to conclude this change is both a public necessity and in the general welfare. Tokos said that with whatever recommendation the Commission moves forward to the Council, he will include findings regarding the transportation system planning rule. This action does require that we make findings that there is not significant impact to the transportation network or if so, that it is mitigated. Tokos said that we can find that there is no significant effect if what we are talking about doesn't add additional trips to the system. He believes we can find that based on the small size of the zone change including the property and the adjoining right-of-way. R-3 and R-4 have the same density allowances; so there would not be additional density. There will be an additional mix of uses; but the R-3 zone also does allow some intense uses other than residences. He believes we can find that the zone change is not going to have an effect on the system, and the transportation planning rule will be satisfied. Croteau wondered if the change will influence only the 100' x 100' lot on Case and 11<sup>th</sup> or if it will run to Harbor Drive. Tokos noted that it will not run to Harbor Drive because there is an intervening lot, 9200, which would still be R-3. This change picks up Tax Lot 9100 and SW Case Street to the south. Fisher asked that with the zone change, if the structure cannot be used for patient

care. Tokos replied that the R-4 zone allows hospital uses, so there is no reason it couldn't; but there could be building code issues. Fisher said that the hospital has been purchasing and adding spaces for different uses. He would be opposed to doing patient care in that particular area. Tokos said that he thought the application states that they do not intend to do patient care there. East asked if they wanted to later expand and do patient care, if they would have to come back to the Planning Commission. Tokos said that they wouldn't because hospital use is permitted outright, but they would have to provide the demand for parking and landscaping, etc. East asked if Case Street was vacated, and Tokos noted that the small portion (10') next to their property was vacated. Patrick noted that nothing in the R-3 zone even conditionally allows them to use the structure as hospital offices. That is why they have to change to R-4. He noted it is R-4 zoning on the south side.

**Proponents:** Chris Minor, PO Box 510, Newport (representing Pacific Communities Health District). Minor said that he found the staff report to be very thorough. He explained that Pacific Communities Health District is the governmental entity operating the hospital here in Newport. He noted that the District entered into a lease agreement with Samaritan, and a new district was formed. Samaritan operates the hospital, and the district still owns it. The Health District provides home health care and needs offices for that. They need places to store records and house administrative people to work. They are currently renting spaces outside the hospital area to do that. The district will acquire the property and lease it to Samaritan on terms that allows the district to repay their investment with interest. Minor said there is no intent to provide patient care there. The cost of converting an existing building to meet standards imposed by the State Building Codes for a hospital care facility would make it impractical. They already have bare land that can be used for that purpose. He anticipates that the District and Samaritan will be putting together a plan to build something new and replace existing buildings. That will be in the P-1 zone. Minor said they thought they would just need a conditional use permit, but it was pointed out to them that it made more sense to do the zone change since the property is just on the edge of the R-4 and P-1 zones. He said it is not spot zoning; it is just a relocation of the R-4 boundary. He said the hospital is the only one in the area, and if Newport didn't have this hospital, people would have to go to Lincoln City or Corvallis for medical treatment. He said the hospital is a necessary and important part of the community, and space is needed basically for financial reasons. The State has announced that it will cut back on certain reimbursements, so the District is looking for any cost cuts it can find. He said this is also a benefit to Mr. Shaw. Mr. Shaw bought the property as a 9-unit apartment building and converted it into a giant residence. Since his wife has passed away, he would like to sell it. He said the fact that the District and Samaritan can make use of the property is kind of a God-send to Mr. Shaw. He said this change will not be generating any additional substantial traffic. Although there will be employees in the building, there will not be patients. He said there is very little parking on that property. Any parking will take place on existing parking lots, which are in the P-1 zone. So, this property being in the R-4 zone won't really impact it because the parking will be elsewhere. Minor noted that with him tonight was Michael Larimer, the Director of General Services for Samaritan Pacific. He said that the remodeling will basically consist of just bringing the structure up to standards and meeting ADA requirements. Commissioner Small noted that it is pretty clear that Pacific Communities Health District wants to purchase the property, but Mr. Shaw owns the property, and Small wondered if he knew about the request. Minor said that the District has signed an earnest agreement. Mr. Shaw signed and is indicating that the District had the authority to go through this action. There were no other proponents present wishing to testify.

**Opponents or Interested Parties:** There were no opponents or interested parties present wishing to testify.

Chair Patrick closed the hearing at 7:20 p.m. for Commission deliberation. Small said that he had the concern that the District was talking about a piece of property that they didn't own yet, and he didn't want to create a situation where an owner would be forced to sell. That has been answered. He believes the criteria are met. It is not spot zoning. He thinks it is in the best interest of the community and doesn't see any reason not to move forward with this. Croteau, Fisher and East all agreed. Patrick said that his thoughts were the same. He noted that the housing study showed the City has enough residential property, so there is no burden with this change.

**MOTION** was made by Commissioner East, seconded by Commissioner Fisher, to approve File No. 2-Z-11 as presented and forward it to the City Council. The motion carried unanimously in a voice vote. Tokos noted that this matter is scheduled for hearing before the City Council on September 6<sup>th</sup>.

**E. Unfinished Business.** No unfinished business to discuss.

**F. New Business.**

1. Discuss 2011 Oregon Land Use Legislation. Tokos noted that in the packets he had included a couple of different summaries of legislative bills. One was from DLCD dealing more with land use, and the other was from the League of Oregon Cities with a broader Community Development chapter and includes some that didn't pass. Tokos said that really this last legislative session didn't have much in it that will impact us significantly. It was largely about fine-tuning and mopping up existing rules. He wanted to briefly cover those that he thought might have the most significance. He noted that SB 264 and 766 relate to transportation planning. SB 264 changes rules for ODOT regarding their ability to regulate approaches to the highway. Public approaches are no longer required to get a new approach permit. ODOT has to take into consideration the economic development needs of the community when they consider approaches. They will have to do some rulemaking. This is not effective until 2012. Tokos noted that this came up in the Walgreens development. The State still has the ability to make sure safety isn't compromised. This is making things a little more realistic especially in areas that are already developed. ODOT was

trying to maintain traffic flow levels that weren't realistic in urban areas. This process will be a little easier. That also includes a growth threshold for what requires an approach permit; which is 50 trips per hour or 500 in a day. SB 766 is the legislation dealing with the designation of regionally significant industrial areas. Tokos said that the word he is hearing is that this is a political bill and will not have a lot of impact. An economic recovery review council will be created that will be charged with determining 15 significant industrial areas in the state. Whether we want it or not, that council can theoretically designate that. Tokos said the downside of this designation is that you can't make very many changes to the industrial zone; you are locked in on industrial zoning as is. You could probably add uses; but can't restrict them. Newport has a lot of commercial uses allowed in our industrial zones; which they may not like. Tokos said that state permitting can get complicated, and this would expedite that. It takes out the Land Use Board of Appeals. A referee would be appointed by the local jurisdiction. Tokos said he doesn't know if this is relevant here. This will stay in effect until the unemployment rate is under 6%. Tokos said that the other that is most significant is HB 2129. That one will make our zone changes and comprehensive plan changes go a little quicker. It reduces the notice to DLCD from 45 days to 20-35 days. The other thing is that there is a clause that says if what we are doing is simply modifying statute, we can avoid the hearing processing with a written statement to DLCD. There is some legislation where we don't have discretion. So the thought here is why hold a public hearing at local level when we know we can't influence what was already decided by the legislature. Tokos said we should probably put this in our procedures section if we want it. Tokos said that SB 795 could actually be significant. There is a committee working on changes to the transportation planning rule, and they are under a mandate to get that done. He said that does impact the process we are going through with ODOT in terms of an alternate mobility standard. Patrick asked under SB 2700 what a linear facility is. Tokos said that it is a water line that shoots through multiple properties and will make us have full written consent from every individual property. We should have that base covered anyway. Tokos said that HB 2130 applies when we do major amendments; like when Wilder was brought in and modified the UGB. The process should get easier and is not treated in the manner of a periodic review. HB 2131 basically clarifies statute such that it reads we cannot require housing to go through a discretionary process if that is the only one we have. We have to offer clear and objective standards. For instance, we can't do design review without offering something clear and objective. Nye Beach Overlay has clear and objective standards. If they're not there and we are challenged, we have to defend ourselves. There can be an option of discretionary or clear and objective. HB 3166 sets time limits where we could be subject to appeal if we don't do notice right. The limit is three years for an error in the notice, or ten years if they didn't get notice. Prior there was no limit. HB 3516 basically says we can't force solar energy systems to go through conditional use review. These are the typical solar units attached to a house. We didn't do that anyway. For HB 3361, we will have to deal with cluster mailboxes. That will have to land in the subdivision code probably. It may have to go with the addressing code. We have until 2012 to get it done. We will have to make sure it is consistent with the structural code. HB 3017 provides for the extension of the sunset of the enterprise zone. We participate with the County to offer an enterprise zone. An E-zone provides a tax break if a company employs a certain amount of employees and continue to expand. Tokos said that Rogue Brewing is a poster child for that. Croteau wondered if the language in SB 264 that says ODOT and a city can negotiate an agreement for transfer of ownership of a state highway could affect us. Tokos said it could if the City wanted to do that; but there is the expense and cost of maintaining that structure to consider. We would have to look at what goes along with that. Tokos summed up that it was a modest session when it comes to land use things.

### **G. Director's Comments.**

1. Tokos reminded the Commissioners that our next session, September 12<sup>th</sup>, will be a vacation rental workshop only. We will have a notice by the end of the week to go out in the utility billing, and we will get out a press release. It will be a 6:00 p.m. start. Tokos is thinking of having a brief presentation and then breaking out into groups; maybe with four to five stages to cover enforcement, approval standards, parking, etc. Everyone agreed that sounded reasonable. Tokos said that we want to pay particular attention that we have a good mailing list. Maybe we would spend time mapping out what the next steps are so people know where it will go next.

2. Tokos noted that sometime between September 12<sup>th</sup> and 23<sup>rd</sup> DLCD and the ocean planning folks will hold a workshop for local governments. Tokos will send a heads up to the Commissioners when that comes out. He thought it might be good to have one or two Commissioners attend. He noted that the ocean planning group has been working on zoning three miles out to accommodate wave energy type development. They have been struggling with aesthetics and how to protect the view shed and how best to coordinate with the local governments so that they are in sync with what is being approved on land. We have rules that apply in the uplands, not in the ocean. They will hold this workshop and set out a framework for what they should ask of local governments. He said this will probably involve a 4-6 month time frame.

3. Tokos wanted to give the Commissioners a heads up that, as authorized by the City Council, he has submitted one and will be submitting a second economic development grant to DLCD for economic opportunity analysis. He is trying to split this between two pools. It is set up as a 50% match; \$30,000 total. It will involve consulting costs; half borne by the City and half by the State. Consultants would be brought in to do an economic opportunity analysis and get our data updated. Per Goal 9, the City is to have an inventory of economic data. Ours was last updated in 2005 using 2003 data. It predates NOAA and some of that development. The second aspect has to do with developing a comprehensive economic Yaquina Bay initiative and how to increase marine-related research development in our community. That group is starting to work. In addition, the Mayor is very interested in having a broader discussion about economic development in consultation with the Chamber. Tokos said that if we can bring these resources together, we can probably do a more effective job. Another issue is that our Comprehensive Plan

doesn't provide direction to the City. The State says we have an obligation for a 20-year supply. The policy basically says we can't achieve that; so we are not even going to try. Tokos said it would be good if through this process, we can engage the Planning Commission much like we did for the housing study. Tokos said he should know about the grant around September or early October.

**H. Adjournment.** There being no further business to come before the Planning Commission, the meeting adjourned at 7:49 p.m.

Respectfully submitted,



---

Wanda Haney  
Executive Assistant