

**MINUTES**  
**City of Newport**  
**Planning Commission Work Session**  
**City Hall Conference Room “A”**  
**Monday, January 11, 2010**

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

**Citizens Advisory Committee Members Present:** Lisa Mulcahy and Dustin Capri.

**Citizens Advisory Committee Members Absent:** Bill Wells (excused).

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the proceedings over to CDD Tokos.

**A. Unfinished Business.**

1. Comprehensive Zoning Code Update.

a. Discussion and review of draft language updating NZO Section 2-4-7 (Geologic Hazards Area). Derrick noted that the updated sections of the zoning ordinance had been provided to the Commissioners. The updates will be tackled in three phases. The first phase has been completed and included procedures. The geologic and SICs will be in the second phase. The third phase will be a wrap up to get all of the last minor issues addressed and roll the whole package into the Municipal Code. In the Planning Commission packet was the initial draft of the Geologic Overlay code update. For clarity, Tokos passed out a couple of examples of the DOGAMI maps. One had areas indicated in red, orange, and yellow; and one was only in blue. The land slide area is shown in blue. The red, orange, and yellow show the active, high, medium, and low bluff erosion in this case. Dune erosion in the south looks similar. Red is active, darker red is high, orange is medium, and yellow is low. Tokos said that he had shared this draft with DLCD staff and staff from DOGAMI and had received comments. He noted that DLCD's comments are rolled into the draft, and he will talk about DOGAMI's comments. Going through the draft, Tokos noted that the purpose statement is redrafted. This makes it more accurate in what we can accomplish. The option of reducing density is eliminated based on the Commission's last discussion where it was determined that this is a function best served by the professional preparing the report. There is new language with cross references to statewide planning goals and giving authority. The geologic hazard areas are designed to the DOGAMI maps. Tokos noted that the inclusion of lots or parcels with 25% slopes came out of the Planning Commission work session. He noted, however, that his advice at this time is not to go to slope right now. We currently don't have the resources to prepare a citywide map like DOGAMI's. That makes it on a case-by-case basis, and there's no real science behind slopes. We have good science to tie to the DOGAMI maps if challenged because there is a DOGAMI study that says why these maps look like this. Therefore, Tokos said he would eliminate item 'C'. We would have the DOGAMI maps, and the other would be "any other documented geologic hazard area" as noted in item 'D'. There probably would be physical reports for these areas on file. The subsection on "geologic permit required" includes tree removal if in a geologic hazard area. Tokos noted that any recommendations in the reconnaissance or geologic report become City recommendations. Discussing the 'exemptions' section, Small noted that item 'E' seemed to be worded incorrectly. Tokos said that he will adjust that language to clear that up. Tokos noted that item 'F' regarding forest practices is included here because if they are working under forest practices permit, they are being reviewed by state forestry. Tokos reviewed the rest of the exemptions and noted that these are common exemptions. Tokos said that one area that stands out for him is Southshore because about half of that development is in an active dune area. He questioned whether we should look at language specific to Southshore. He noted that this is a fairly recent development, and there are a number of parcels in that development that haven't yet been developed. They have development approval, but they haven't obtained permits for the balance of their development. They would have to build with mobile structures. The City can adjust the rest of their development approval based on new scientific information. Tokos said that he could see how many geologic permits are in that area. The Commission directed Tokos to look at that one. Under 'application submittal requirements', Tokos noted DOGAMI's comments. He said that they like the reconnaissance but only want it in low hazard area or prehistoric area. They feel it is inappropriate for high and moderate areas. Tokos said that the purpose of the reconnaissance is to give property owners a quicker response than a full report. Tokos said that one thing we could do is stick with language that gives the reconnaissance option, and if through experience we see a lot of reports triggered in the moderate and high areas, then we can change it. A reconnaissance would not be allowed in an active area. The consensus was to start with the reconnaissance and then adjust

if we see a lot of reports required in high hazard areas. The 'geologic report guidelines' include the erosion control standards that Tokos wrote in as something the geologist considers and will need to address. He said that is probably the safest way. He took out some language on shoreline protection because that is already regulated by Oregon Parks and Recreation. The 'limitations on construction within hazard areas' section is not restricting a use, the type of construction is restricted to something that can readily be moved out of there in case of slope failure. For residential, that would be a manufactured dwelling up to a doublewide. In terms of commercial and industrial, we are also looking at modular. There are doublewide modular structures that can be used for commercial and industrial. The state wants us to prohibit commercial and industrial. Some of the things allowed include improvements to beach access and accessory structures other than buildings. Tokos went over the list of types of construction allowed. Patrick suggested adding language to cover future development that can be demonstrated as mobile (something that could relatively easily be lifted off the foundation and taken off the site) such as the large tents used at the Seafood and Wine Festival. Tokos' concern is that if the language is too broad, folks may try for stick built. The Commission was generally agreeable with the concept, so Tokos said that he will work on some language to also cover tents and the like. Development in any of the areas listed in item 'A' through 'C' under subsection 2-4-7.045 is in a prohibition area. Development on dunes is prohibited; and the geologist will have to address that. That is tied to statewide planning goals, and we don't have a whole lot of flexibility. Under subsection 2-4-7.50 there is a list of erosion control measures. Dogami had comments having to do with drainage. They would like language saying that drainage that will cause erosion and put the slope at risk must be managed. Tokos will put some of that language in there. We will provide this list to the applicants for their engineering geologist to address in their reconnaissance or as part of the report. Tokos said these erosion control measures are focused during construction, and that there would be some sort of stabilization. There was discussion about creating runoff on neighboring properties. McCarthy noted that the Municipal Code addresses it. This takes erosion control from suggested to required in the geologic areas. McCarthy suggested that Tokos look at the Municipal Code to make sure these are in line. Subsection 2-4-7.055 ('Land Divisions within Hazard Areas') asks that geologic hazard areas be avoided as part of land divisions. Regarding the 'appeals process' section, Tokos said that it is best to adhere to the appeal process that takes it to the Planning Commission, the City Council, and LUBA, etc. It encourages people appealing that it would be in their interest to provide another report that says something different than what we have. It can also be appealed because people didn't provide all submittal requirements. Tokos noted that slope density requirements went away per previous conversation. The previous suggested erosion subsection was replaced with what was just talked about. The 'Certification of Compliance' subsection was recommended by DOGAMI. It says that the project needs to be followed through. The engineering geologist gives a report that everything was adhered to. DOGAMI wants the author of the report to be the one that certifies. Tokos doesn't believe it needs to be the one that wrote the report, but there was discussion that someone needs to be willing to sign off on it. Subsection 2-4-7.080 ('Applicability of Nonconforming Use Provisions') is in here to note that an applicant can't use nonconforming rules for this hazard area unless it is due to casualty loss, ADA requirements, or safety and health. There was discussion that, regarding the requirements to adhere to this section, the phrase "to the extent possible" might be too broad. Tokos said that he is not sure how to rewrite it, but he will put some thought into that and will clear it up so it is not as broad. The last subsection, "Hazard Disclosure and Liability Waiver", helps future buyers and releases the City of liability. Tokos noted that the code is about minimizing loss, not insuring loss won't happen. He said that if the Commissioners were comfortable with the draft, he will go ahead and make a couple of changes. We will send notice (a Measure 56 notice) that has strong language. We will notice once for a public workshop at first (with Tokos and DLCD representatives) followed with a Planning Commission hearing.

## **B. New Business.**

### **1. Comprehensive Zoning Code Update:**

a. Discussion and review of draft language updating NZO Section 2-2-29 (Temporary Uses) regarding special events and vending carts. Tokos noted that these amendments are coming from two different directions. One is the City Manager's interest in getting the special events rule cleared up. Temporary uses are in the Municipal Code and the Zoning Ordinance and are at odds. It needs to be cleared up. The other request comes from Landwaves, who wants language that will allow vending carts on the commercial piece of property in the Wilder development to bring in a van to have foodservice in close proximity to the college. Their thought is that they are far removed from any others. Tokos said that there are parts of these amendments that are relevant to the Planning Commission, and other pieces are not; but it is one giant package. The fee waiver is more of a City Council policy even though the Planning Commission will be making recommendation on it. Some aspects are more land use, and some are more fiscal policy. Anything related to special events is being pulled out of the Zoning Ordinance and being put into the Municipal Code. Tokos noted that essentially under special events, applicants have to agree to a number of conditions and sign an agreement that they will adhere to the legislation. One requirement is that they cannot compromise parking for use of the main business. Patrick thought that item needed some work. Events such as the Clam Bake and the Seafood and Wine Festival were discussed. Tokos said that he will work on this parking requirement. He wondered if it was an issue that even needs to be captured. Patrick thought that maybe we should be talking about traffic management rather than parking. Tokos noted that vision clearance requirements are in the code. He noted that other changes in the temporary structures section of the Zoning Ordinance have to do with vending carts. He

essentially cleaned up the purpose statement so that criteria are not tied to it. There is some language that placement of structures for special events are regulated under the Municipal Code. Temporary living quarters are only allowed in conjunction with an active building permit to build a house. Temporary structures for other than special events (like the Port's request on tonight's agenda) have a few standards included rather than trying to relate it to the purpose section. The requirement for a cash deposit is still in place. Tokos explained that Landwaves would like to have temporary carts not for special events up in their area. They have put together standards, which Tokos can refine. Essentially they have put together language for temporary signage. It exempts vehicles from building codes and exempts them from SDCs because they have to be self-contained structures. There is a provision that the Fire Marshall inspects temporary structures. The code includes an exemption for construction trailers (job shacks), and the Commissioners were in agreement with that exemption. Because Fisher raised his concern over having someone specifically named in the code and no one else, there was discussion about the issue of having the code narrowly designed only for Wilder. Tokos questioned if the Commissioners wanted the code limited or broader. Landwaves is the one that approached the City for their specific area. Patrick thought that maybe we should somehow tie it to a zoning area and make it a littler broader than the draft. All agreed that there is concern about writing a one-purpose code again. Tokos said that he could take out Wilder and make it generally applicable citywide. Wilder is the only request, if we get others maybe take the time to go broader. Patrick recalled a similar incident on the Bay Front and said that we could be headed down the same road. He thought that maybe we should write it broader for everyone or not allow it. Tokos had a concern that eventually we could get feedback from restaurants that have to pay SDCs.

**C. Adjournment.** Having no further time, the meeting adjourned at 7:05 p.m.

Respectfully submitted,

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Wanda Haney  
Senior Administrative Assistant