

MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room “A”
Monday, May 24, 2010

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

Citizens Advisory Committee Members Present: Dustin Capri, Lisa Mulcahy, and Bill Wells.

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 meeting over to CDD Tokos.

A. Unfinished Business.

1. Continued Comprehensive Zoning Code Update:

a. Continued discussion regarding the update of NZO Section 2-4-7 (Geologic Hazards).

Tokos gave everyone a few moments to read through the additional comments they had just received. Tokos said that he wanted to walk through the comments and some key points made and some things he noted in his cover memo regarding land divisions. Following that he will talk about the structure of the ordinance and a presentation for June 14th. Tokos noted two comments included in the packet; one from Mr. Filby, and one from Mr. Diaz. Filby noted that he understands that red and yellow designations line up with DOGAMI, which is part of the report, so it makes sense to use the same color scheme. But, he questioned using red and yellow for landslide areas. Red is high and yellow is low on DOGAMI's maps for bluff and dune erosion. Tokos noted that because it lined up with the color scheme on DOGAMI's report, our office applied red to active slides and yellow to low or all other slides. Tokos thinks it is less confusing to be consistent and keep red and yellow for the landslide areas as well. Filby suggested cross-hatching, but Tokos said that our software doesn't have an option for that. Patrick noted that it is standard that red means caution. Croteau noted that the colors only appear on the maps. The ordinance uses high, moderate, and low designations. The 2004 DOGAMI report does have a colored set of maps, and this color scheme matches that report. Tokos clarified that what he is hearing is that the color scheme is okay as long as it lines up with the DOGAMI report and to keep the landslides the same way. Next, Tokos noted that Diaz's comments were geared toward Schooner Landing. Both of Diaz's comments had to do with exemptions. First, he suggests clarifying "habitable floor area". Since this was changed at the last meeting, his first comment has been addressed. His second comment was about including parking lots as exemptions. Tokos noted that is under maintenance and repair, so Diaz's concerns have been addressed. Moving on to Dennis Bartoldus' memo of May 21st, Tokos noted that Bartoldus' first comment has to do with square footage in the land divisions clause; which requires 1500 square feet be available outside the hazard area for building. Bartoldus encourages using 1000 square feet rather than 1500. Following discussion, it was the consensus to go with 1000 square feet. Bartoldus' second comment deals with the appeals language. He suggests using "shall" instead of "may". The consensus was that that is fine, so Tokos will change that language. Bartoldus' last concern is with the nonconforming use provision. He is asking to adjust that so they would not be subject to the appeal process. Tokos noted that we have the nonconforming use section of the zoning code, which provides an alternative to applying the strict application of the code. The nonconforming section says there is an alternative process if the current provisions can't be met. Casualty loss does require an appeal process. An applicant has to show that they are nonconforming. There is an appeal process. Tokos noted that if this section is set so that there is no appeal hearing, then it is set up differently than any other area of the code. Tokos' advice is not to do that. He said there are a lot of nonconforming situations. It is an appealable land use process. He said that the way it is set up, they don't have to go through the whole geologic review. They do have to do a report when going through the casualty loss provision of nonconforming. If nonconforming, the decision is appealable; they could appeal saying a report wasn't provided. If it isn't under nonconforming, it is appealable under the geologic report as well. Tokos' suggestion is just to leave it alone. He noted that under the existing code, if there was a nonconforming home in the geologic hazard area and it burns down, they have to pull a building permit, so they would have to get a geologic permit. Next, Bob Ward's comments were discussed. His comments concerned discretionary language regarding access, which have been addressed; and the consensus was that the language is good enough. Next were comments from Chris Minor. He raised two things that have

to do with the clause that requires this waiver. One concern he has is that it is required as part of the application whether the permit is approved or not. The other is that the reference to “natural hazards” is too broad and could mean other things than what we are talking about. Tokos said for the purpose of this liability waiver, we are talking about earth movement. Tokos noted that when McCarthy put the waiver form together, she took a stab at defining what we are talking about. Included in #2 of the waiver are earthquake fault or seismic movement and water inundation and runoff. Tokos thought that with respect to the application requirement, that is appropriate. He believes it makes sense that it is part of the application. There is still a geologic report, and we want them to acknowledge that they need to disclose it. Tokos admitted that “natural hazards” could be a bit broad; and he could put in “earth movement” since that is what we are driving at. McCarthy suggested just defining what is meant by natural hazards in the code. Tokos noted that Minor’s concern would be addressed by adding the definition of natural hazards consistent with what McCarthy had used and with the addition of “water inundation that contributed to slope failure”; both here and in the Comprehensive Plan where the term natural hazard is used. McCarthy noted that when looking at the clean copy of the draft ordinance in terms of natural hazards, there are areas where it talks about natural hazards and then switches over to geologic hazards. She said this needs to be more consistent. Tokos agreed that it needs to be consistent in the terminology. Continuing with discussion of Minor’s concerns, McCarthy noted that on the second page of his letter about half way down under item ‘a’ she believes is a valid concern that the property owner not be stuck with other hazards not caused by the permittee. She said that in paragraph 5 of the waiver, she would suggest putting in something about things that occur as a result of the actions of the owner so that there is a tie to the indemnification. Minor says “carrying out activity pursuant to the permit”; her recommendation is that it should just be their activity whether related to the permit or not. She believes they should still be responsible, if they cause it. The language she suggests is “as a result of the owner’s activity. It was suggested to put ‘action of the owner or his agent’”. Fisher expressed his objection to using this form at all. McCarthy continued reviewing Minor’s comments, and noted that the next issue regarding the term ‘hazard’ was already discussed. The third issue Minor raised, item ‘c’ of his letter, is that the phrase “risk arising out of the real property” seems ambiguous. McCarthy said that she doesn’t have any problem with taking that last sentence out of the waiver form. McCarthy noted that Minor’s last concern was an issue of liability, and that there was another individual, Robert Glenn, who also alludes quite a bit to liability. *(It was time to proceed to the regular session, but because there was only a legislative item on the agenda, extra time was taken to conclude the work session.)* McCarthy noted that Minor’s last concern had to do with the phrase “should consider” under section 2-4-7.035(A)(1). There was discussion of whether this is intended to be just encouraging language rather than a directive. It was decided to leave it alone. The last comments received were in an email from Robert Glenn. The first issue that Tokos discussed was on page 2 of the email, regarding Section 2-4-7.010(A)(3); and he noted that this is a provision of the existing code regarding applicability of these regulations that is just being carried forward. Discussion ensued about documented geologic hazard areas and what could be potential hazardous areas. It was decided to leave the language as is, which leaves some flexibility. If a potential hazard is not on file with the building official, then we don’t know about it; and how could we be able to say that they need to have a review. Glenn had some questions with respect to the exemptions, and there has been discussion of that. Glenn raised some issues under the application submittal requirements. Tokos noted that the liability waiver has been covered. On page 4, Glenn made a comment about the geologic report guidelines under Section 2-4-7.030. He suggested adding a phrase “employing generally accepted scientific and engineering principles”. Tokos doesn’t think it will hurt to add that. Under construction limitations (Section 2-4-7.035(A)) Glenn made a request to add “including completion of any remediation of the site in question that is recommended by such report”. Tokos noted that there is a clause about post-construction certification elsewhere, so this may be redundant. It was decided to leave the language as is. In response to Glenn’s comments about Section 2-4-7.040 (prohibited development on beaches and foredunes), Tokos noted that this is language that is required under state law and is verbatim. It was in the Comprehensive Plan, but wasn’t put in the zoning code. This is not deviating from that. Glenn raised a question whether erosion control measures are being required elsewhere, and Tokos noted that not at this juncture. He noted that if a developer is not careful, they can easily loose the slope. There is a rationale why they are asked to use erosion control in a geologic hazard area. Discussing Section 2-4-7.055 (land divisions), Tokos switched to his staff memo. He noted that the Commission had already decided to go to a 1000 square-foot footprint. Tokos believes it is cleaner to move this out of the geologic section and put in with the land division code. There is a clause in the existing land division code that talks about triggering at 12% slope. Now that we are taking this reference to 12% slope out of the geologic hazards section, he suggests that we take it out of the land division code as well; and the Commission concurred. Continuing on with Glenn’s email, Tokos noted that the nonconforming provisions have already been covered. In response to a question, Tokos noted that the way this is set up with exemptions, as the result of a casualty loss, you can repair an existing structure within the existing footprint and be exempt from a geologic report. If the structure is lost and a new one is built, then it is probably going to be slightly different. In that case, it will come under the geologic permit or will be exercised under the casualty loss of the nonconforming code. You have to have evidence of nonconformity and still have to have the report. Lastly, Tokos noted that he included a draft staff memorandum and ordinance to show how this would look. His intent is to bring this forward to where the Planning Commission could make a recommendation at the next meeting. He noted that the Commission doesn’t have to, but it is the first time where it is ready to be presented in a form suitable to make a recommendation. Tokos said that at the public hearing on June 14th, the Commission can have people submit testimony. Then it is up to the Commission whether they feel comfortable that those comments have been

addressed. Tokos noted that we have been working diligently and the comments are getting narrower and narrower. He said that at some point the Commission has to bring this to an end. The record has to be closed at some point so that there is no more testimony coming in, and the Commission can make sure they have read everything and feel comfortable making a recommendation. Croteau noted that Mr. Glenn had raised a question whether the City has the authority to have someone sign the waiver. Tokos believes we do in order to protect the general public welfare. He said that the Statewide Planning Goals require the City to eliminate loss and risk of loss; and these are the types of rules we can put in place for that. McCarthy agreed and noted that other jurisdictions have similar waivers and provisions in their codes.

B. Adjournment. Having no further discussion, the work session meeting was adjourned at 7:20 p.m.

Respectfully submitted,

Wanda Haney
Senior Administrative Assistant