



**City of Newport  
City Council Minutes  
March 20, 2014**

**1. CALL TO ORDER**

Mayor Geraghty called the meeting to order at 5:30 P.M.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL -**

**Council Present** – Tim Geraghty; Tom Ingemann; Bill Sumner; Tracy Rahm; Steven Gallagher

**Council Absent** –

**Staff Present** – Deb Hill, City Administrator; Bruce Hanson, Supt. of Public Works; Mark Mailand, Fire Chief; Renee Helm, Executive Analyst; Fritz Knaak, City Attorney; Jon Herdegen, City Engineer; Sherri Buss, TKDA Planner

**Staff Absent** – Curt Montgomery, Police Chief;

**4. ADOPT AGENDA**

**Mayor Geraghty** - We would like to move the Engineer's Report to after Council Reports.

**Motion by Ingemann, seconded by Sumner, to adopt the Agenda as amended. With 5 Ayes, 0 Nays, the motion carried.**

**5. ADOPT CONSENT AGENDA**

**Motion by Gallagher, seconded by Rahm, to approve the Consent Agenda as presented which includes the following items:**

- A. Minutes of the March 6, 2014 Regular City Council Meeting
- B. Minutes of the March 6, 2014 City Council Workshop Meeting
- C. List of Bills in the Amount of \$274,619.00
- D. **Resolution No. 2014-6** - Supporting the Authorization of the Commissioner of Transportation to Perform an Engineering and Traffic Investigation to Determine the Reasonable and Safe Speed Limit on County Road 74
- E. Approval of the Park Board's 2014 Goals

**With 5 Ayes, 0 Nays, the motion carried.**

**6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE**

**7. MAYOR'S REPORT –**

**Mayor Geraghty** - Several of us testified before the Senate Commerce Committee on March 10 regarding the bill that was introduced by Katie Sieben and Dan Schoen regarding gas prices. Tom and Steve were there. They did get some ideas from us. They're supposed to be in touch with Katie and Dan's offices and possibly the cities as well. Their lobbyist was there and we got his attention.

**Councilman Sumner** - Were there representatives from neighboring cities?

**Mayor Geraghty** - No. Also, I attended the last Planning Commission meeting last Wednesday, it was a joint meeting with the HPC and I listened to most of the discussion regarding the proposed use for the Knauff property. It was a good

discussion and will be going back to the Planning Commission in April and coming to us at our second meeting if they take action. Deb, Fritz and I attended the closing for the Johnson and Mosley properties. We can start to think about plans for those.

## 8. COUNCIL REPORTS –

**Councilman Rahm** - Nothing to report.

**Councilman Ingemann** - Follow up on the gasoline proposed legislation. At 4:00 p.m. today, the gas price in Newport was \$3.61, in Hastings it was \$3.49, in South St. Paul it was \$3.59. Again, we're still the highest priced gas station in the Twin Cities area. St. Paul Park was \$3.63. Their representative said they were going to meet with us but nothing has happened.

**Councilman Sumner** - I attended the HPC meeting and we spoke about work that is being done to identify particular areas in the City that could potentially qualify for heritage status. It was decided that there are a couple of limits that are put on these kinds of designations. Sherri was there and she said that there are a number of ways that support can be given to developers if they preserve the character. She spoke about using the Code and landmark districts. She also said there can be incentives given. It was somewhat decided that to put broad groups of Newport into a heritage development area would not be good because the houses are so scattered. That is being looked at on an ongoing basis. At the end of the meeting we were joined by the Planning Commission and talked about some things. One of them was a potential development at the Knauff site and a lot was discussed about the character of the Code and what could be put in there and what changes need to be done in order to put the proposed business in there. A few people spoke against it. I think there was an interest from the Planning Commission members to see what could be done to work with this developer. This piece of property has some problems with it such as contamination. Newport has attempted to get funding to clean it up but since we don't have a developer our chances have been limited. It was pointed out that if we have someone interested we can then apply for funds. This individual has indicated that he is willing to work with us and if a grant is not given within two cycles, he will clean it up himself. This is a tremendous opportunity for us. We had some people that were concerned about the fact that he needs a barbed wire fence for his type of business. We are looking at the Zoning Code to see if we can allow barbed wire in the district. He said that it's a deal breaker if they can't have barbed wire. I would hope that residents can understand that this is an opportunity that we have not had. That property has been up for sale for some time. I would hope that a large amount of support comes from the residents and other staff to support this individual who has made an application to buy and develop it in the manner that he is proposing. Finally, I've been part of a group for over a decade called "Basic Needs of South Washington County" and is supported by a number of churches and other social organizations. It operates the Stone Soup Thrift Shop. They have a major fundraiser each year, this year it's Saturday, May 17. It's a bowl-a-thon in St. Paul Park. I always sponsor a lane and there are many ways to participate in it. I want people to understand that this organization has served the citizens of this area for a very long time. We provide clothing and household items at reduced prices. We have taken hundreds of thousands of items and given them new lives. I'm asking for support among the City Council. I would hope that we can be well represented on Saturday, May 17. You can sign up at the store or [stonesoupthriftshop.org](http://stonesoupthriftshop.org).

**Councilman Gallagher** - Nothing to report.

## 13. ENGINEER'S REPORT –

### A. 2014 Street Improvement Projects

Jon Herdegen, Engineer, presented on this item as outlined in the March 20, 2014 City Council packet.

**Councilman Sumner** - Does that schedule allow for all of the posting requirements?

**Engineer Herdegen** - Yes, Renee and I walked through it and there's some flexibility.

**Mayor Geraghty** - When will the bids be due back?

**Engineer Herdegen** - We would open them April 24 and then have them for the Council at the May 1st meeting. The bids

would be advertised in the South Washington County Bulletin and the Finance and Commerce Report. We also have them available online.

**Mayor Geraghty** - Does this just include the 2014 projects?

**Engineer Herdegen** - Yes.

**Mayor Geraghty** - And 3rd Avenue is included in that?

**Engineer Herdegen** - Yes.

**Mayor Geraghty** - And they won't have their hearing until the 16th?

**Engineer Herdegen** - Correct and the assessment hearing will be shortly after.

**Councilman Rahm** - Will we have a link on our website for the bid?

**Executive Analyst Helm** - Yes, we can work with Jon on that.

**Councilman Sumner** - The parcels on Resolution No. 2014-9, #6 and 7 have the same address, is that correct?

**Engineer Herdegen** - I will double check that. They're probably owned by the same person.

**Motion by Geraghty, seconded by Rahm, to approve Resolution No. 2014-8 Approving Plans and Specifications and Ordering the Advertisement for Bids. With 5 Ayes, 0 Nays, the motion carried.**

**Motion by Ingemann, seconded by Gallagher, to approve Resolution No. 2014-9 Calling Hearing on Improvement for 3rd Avenue and Setting the Public Hearing for April 16, 2014 at 5:30 p.m. With 5 Ayes, 0 Nays, the motion carried.**

## **9. ADMINISTRATOR'S REPORT –**

### **A. Ordinance No. 2014-1 - Approving a Zoning Amendment to Section 1300 General, Section 1310 Administration and Enforcement, Section 1340 Residential Districts, and Section 1350 Non-Residential Districts**

Executive Analyst Helm and Sherri Buss, TKDA Planner, presented on this item as outlined in the March 20, 2014 City Council packet. A quick review found that there were four other sections that needed to be amended to change the distance from 350 feet to 500 feet per State Statutes. These sections were 1340, 1350, 1360, and 1370.05.

**Councilman Rahm** - How long can they extend a permit for?

**Executive Analyst Helm** - It varies, I think it's typically another six months and they need to show that progress has been made.

**Councilman Rahm** - That's a long time.

**Councilman Gallagher** - Would they need separate conditional use permits for a micro or regional brewery compared to a brew pub?

**Ms. Buss** - Are you thinking that it would be a micro brewery that would be part of a restaurant?

**Councilman Gallagher** - Yes.

**Ms. Buss** - Then it would be one conditional use permit.

**Councilman Gallagher** - It says 10,000 square feet is the maximum for a brew on premises store.

**Ms. Buss** - There are a number of retail uses in the MX-3 District that have this as a maximum size because that District is meant to be smaller-scale businesses. That is consistent with the other retail uses for that District. A 10,000 square foot store is about the same size as NAPA Auto Parts.

**Councilman Sumner** - Is that limited to one story?

**Ms. Buss** - We don't say that, it's the total size.

**Councilman Sumner** - Is that the size they typically are?

**Ms. Buss** - Actually they're typically smaller.

**Councilman Sumner** - Will the renovation of the restaurant that they're going in to exceed that square footage?

**Ms. Buss** - That's not for their use. The use that the Lehrke's are proposing is for a brew pub and does not have any size limitations.

**Councilman Gallagher** - There are trends right now for these brew pubs to get started and then sell them to other restaurants. Would this prohibit them from doing that? I don't want us to put so many limitations on them so that if that were to happen they could expand.

**Ms. Buss** - That gets more into State definitions and licensure then it does with our Code. They'd have to get a different kind of license.

**Councilman Ingemann** - They already have an off-sale license.

**Councilman Gallagher** - But not selling their own.

**Executive Analyst Helm** - If they wanted to sell their own brew they would need to get a brew manufacturing license through the State and then they would need to become a taproom instead of a brew pub.

**Councilman Gallagher** - Do we have the capability to transition from one to the next?

**Ms. Buss** - No, at this point the Planning Commission is not recommending that use in this District. We would need to allow a micro brewery in this District. I think the Planning Commission's concern is that depending on how much is being produced, there can be smells and waste associated with it that impacts the neighbors.

**Councilman Sumner** - How do they deal with those odors?

**Ms. Buss** - They have to deal with it in such a way that it doesn't produce odors. I didn't go into that but they need to have items at their breweries so it doesn't impact their neighbors.

**Motion by Geraghty, seconded by Gallagher, to approve Ordinance No. 2014-1 as amended. With 5 Ayes, 0 Nays, the motion carried.**

#### **B. Presentation from Sherri Buss, TKDA Planner, on the Costs of Reviewing Plan Applications**

Sherri Buss, TKDA Planner, presented on this item as attached.

**Councilman Rahm** - That 60 days starts when they submit an application to City Hall?

**Ms. Buss** - If it's complete. If it's not complete, I have to let them know that within 15 days. The 60 days starts when the

application is complete.

**Councilman Rahm** - Any communication you have with an applicant you copy the City right?

**Ms. Buss** - Yes both Deb and Renee get a copy of it.

**Councilman Ingemann** - Any time you're doing any of this, you're on the clock correct?

**Ms. Buss** - Yes. When an applicant signs their application, there's a statement on there that says they acknowledge that they will need to pay the fees and escrows associated with the application. I try to keep my conversations with the applicants to the point. If it's a quick question and takes two minutes, I won't bill for that. The minimum amount of time our software bills is 15 minutes.

**Mayor Geraghty** - Did you have him resubmit anything?

**Ms. Buss** - No. I have a choice when I get something like this and in some cities where I work they would consider this incomplete and require them to get an accurate drawing. In this case, the message to me was that the applicant was in a hurry and so I made the choice that based on the limited information I could go to the Washington County website to get parcel information and a map and create a drawing so instead of paying a surveyor or architect, this applicant paid me for an hour to do that. I had to call him and ask questions. You can tell me if you would prefer me to send applications like this back. That would probably delay it for a month. We've tried to be very accommodating and if I can take a sketch and get something off of it to make decisions, I will do that. This type of drawing means that I will spend more time during the review. The other part of this application that was difficult was that there was only an economic rationale for the variance. I could tell there were some other reasons but getting those from the applicant was a little challenging because he was very insistent on the economic rationale.

In summary, we try to keep the costs down as much as possible. Renee and Deb answer as many questions as they can before sending it to me. There are some things that you need a professional planner for. The previous administrator tried to do some planning work himself to save costs and he got in to some reviews of flood plain requests and did not follow the right procedures because he's not a planner. He went ahead and processed those applications without notifying the DNR, FEMA, or me. With FEMA, you get three strikes before you're out. The DNR was notified by neighbors about it and they found that the correct procedures were not followed and told FEMA. If we have three cases in the City, FEMA can suspend flood plain insurance in Newport until they feel the City has cleaned up its act and we don't want that to happen. Last year, the DNR did a special training session for all the staff and required a new procedure for how things will be handled. We've done that. Renee and I created some files that list every parcel that is included in the flood plain and we have some new ways of dealing with requests to make sure we're following procedures. There can be a problem for the City if we're not following requirements accurately. It's important to me that while we use everyone in the City to the degree we can there is a point where staff are limited and you need a professional planner. If there are some things in the Code that you feel are an extra burden, we would be happy to work with you to take them out.

**Mayor Geraghty** - Will you present this to the Planning Commission too?

**Ms. Buss** - I can. It probably won't be at the next meeting but I would be happy to. They were invited to come.

**Mayor Geraghty** - I have a few questions. Mr. Domeier did complain to me about the cost and I figured that it was about 7 to 8 hours of work. How does it take 8 hours of billable time to review a simple variance.

**Ms. Buss** - There's an hour for the completeness review and getting out the letter to the applicant, there were a couple hours for making the drawing...

**Mayor Geraghty** - You just said it took an hour.

**Ms. Buss** - There's that and then calling him to verify that I have it right. Also, from the Engineer's standpoint, this was a challenging application.

**Mayor Geraghty** - But he only charged him \$200 if I recall.

**Ms. Buss** - But I'm the person who writes that all up in the staff report so there are a few hours in any given staff report to talk about the issues, recommendations, findings, and conditions. When it went to the Planning Commission, the Planning Commission changed the findings, conditions, and rationale so there was an hour to revise the staff report. There is about 7 hours in there which included two very long phone calls from Mr. Domeier.

**Mayor Geraghty** - The Banaszewski one was about \$700 too.

**Ms. Buss** - Yes and they provided me a decent drawing but there were some problems in the drawing and in the middle of that application we had a building permit issue with their garage. The Planning Commission also made some changes. It's easily 7 hours of work.

**Councilman Ingemann** - Maybe we should kick them back and say that it's not complete if they don't provide a detailed, to scale drawing.

**Mayor Geraghty** - He could have done that pretty easy. I'm looking at it from the consumer's point of view. They're paying \$300 for the application, \$200 to the Engineer, and \$800 to you. That's a lot for what I thought was an easy variance.

**Councilman Rahm** - This is good information. I think we should have a process and expectations that people can understand. Maybe we can take this presentation, clean it up, and put it on our website so people know what needs to be done.

**Ms. Buss** - Renee and I have put together a checklist for each planning request and those are up on the website.

**Councilman Rahm** - If the Council concurs, I would like to take this presentation and put it on the website. It sets some expectations in terms of what they need to do and the requirements. They also need to understand that they're bearing the costs.

**Mayor Geraghty** - It might make a difference if they know that they have to pay \$1,300 for it.

**Councilman Rahm** - That goes to my next question. Some of the neighboring cities that have staff for this might make it easier because they're not bearing the costs.

**Ms. Buss** - Yes, all of the residents are paying for it. I will say that the application fees are higher than other communities. I understand the concern and try to be as efficient as I can.

**Mayor Geraghty** - Do conditional use permits typically cost more?

**Ms. Buss** - Those vary so much more. Some CUPs are simple but others are not. You heard the conversation for the Knauff site application, that's much more complicated and the Planning Commission is concerned about the impacts of this.

**Councilman Gallagher** - Who is paying for that application?

**Ms. Buss** - The applicant.

**Councilman Gallagher** - Do the applicants get a detailed bill?

**Ms. Buss** - Yes, we do very detailed invoices.

**Councilman Gallagher** - Upfront, do they know how much it is for you to work on their application?

**Ms. Buss** - No.

**Councilman Gallagher** - I think it would be good to put that on the application. Every Councilmember here was talked to about these charges. Is there a way that an applicant can challenge the charges?

**Ms. Buss** - Sure. I haven't been through anything formal like that myself. Typically, I write a letter to the applicant detailing the costs and it's never gone beyond that. It'd be up to you if you want an appeal process.

**Councilman Gallagher** - Wouldn't you be working for the applicant at that point?

**Ms. Buss** - No, I'm working for you. I do know of one city that had the applicants cover up to a certain amount, like \$300, and the city covered the rest.

**Mayor Geraghty** - I was just going to ask if a hybrid like that would work.

**Ms. Buss** - It doesn't because each application is so different. That city didn't get good enough findings because they had the cap.

**Mayor Geraghty** - How much do you get each year from the City?

**Admin. Hill** - We budgeted \$30,000 this year.

**Councilman Ingemann** - I don't think the citizens of Newport should be paying for an applicant that doesn't have their act together.

**Councilman Gallagher** - That's the City's cost or the flow through as well?

**Admin. Hill** - It's the flow through as well.

**Ms. Buss** - We have two budgeting items for you. One is the general services like updating the ordinances and answering questions and the second is what you charge to applicants.

**Mayor Geraghty** - So you don't get a monthly retainer?

**Ms. Buss** - No, it's way too hard to predict what each month will be.

**Councilman Sumner** - Do I understand that they don't know what the possible rate will be?

**Ms. Buss** - That's correct. We can definitely put that on the application.

**Councilman Gallagher** - I think that would be smart.

**Mayor Geraghty** - It seems like a lot of it isn't in the control of the applicant.

**Councilman Sumner** - It sounds like some of the costs are incurred when the plans are altered by the Planning Commission.

**Ms. Buss** - Yes, it's more time. We shouldn't be inhibiting what they do.

**Councilman Ingemann** - If they Planning Commission has all of the information they need at the meeting there's not an issue, it's when they don't have all of the information and need it before they make a decision. That requires another meeting.

**Mayor Geraghty** - At the last meeting, the applicant was well prepared but most of the discussion was around what zone it should be by the Planning Commission.

**Councilman Gallagher** - Sherri, you've been with us for five years now and I would like to point out that this was the only complaint that I've heard in four years. I think that's pretty good.

**Mayor Geraghty** - I felt we needed to talk about it.

**Ms. Buss** - I understand and don't mind.

**Councilman Rahm** - Again, I know these things vary but if we can give expectations and a range, people are usually more satisfied.

**Ms. Buss** - Renee could certainly go back a couple years to get a typical cost for planning requests, we could put that on there as well. It's depending on the issues and information provided. I'm all for letting people know.

**Executive Analyst Helm** - I do already have a spreadsheet of all the planning requests since I came on in 2011.

**Councilman Rahm** - Does the Council see a point in putting this online?

**Mayor Geraghty** - It's fine but I think we should put a good-faith disclosure of what the range could be.

**Councilman Sumner** - I would also suggest we look at our costs to see where we are competitive wise.

**Admin. Hill** - I think showing the pictures would help as well.

**Councilman Sumner** - Just redact all names.

**Councilman Gallagher** - I heard that we have a large amount of ordinances that you need to go through.

**Ms. Buss** - Your Code has not been updated for a long time so people have kept adding things in.

**Councilman Gallagher** - Have we begun the process of cleaning it up?

**Ms. Buss** - We keep trying.

**Councilman Gallagher** - I know it can cost quite a bit of money to have someone do that.

**Ms. Buss** - Yes, we did that in Scandia and it cost probably \$40,000. We had that grant for the MX-3 District and used some of it to clean up the Code.

**Mayor Geraghty** - Thank you.

**C. Ordinance No. 2014-2 - Amending Chapter 8, Section 800.04, of the City Code to Provide for Additional Penalties for Chronic or Repeated Property Nuisance Offenders Within the City**

Admin. Hill presented on this item as outlined in the March 20, 2014 City Council packet.

**Attorney Knaak** - This was discussed at the workshop and the initial reaction from the Council was that they thought the frontend was a little harsh but they approved of the concept overall so we made it so that the third offense is the violation instead of the second offense.

**Councilman Sumner** - Committing a third nuisance violation within one year of a prior conviction. What's the penalty for the first conviction?

**Attorney Knaak** - The penalty is whatever the penalty is. In other words if they come in, there's a nuisance violation, we do a disposition, and they've already cleaned it up, it could be a conviction and a \$50 fine.

**Councilman Sumner** - So then they would need to commit a third one?

**Attorney Knaak** - Yes, a third one within a year. We had talked about the second one being the enhanced offense but the Council unanimously disagreed with that idea because they feared that it would be abused. What this means is that someone would need to be convicted twice before violating this ordinance and I honestly think you have a chronic problem when they're convicted a third time. Then they would be guilty of an aggravated violation and have the minimum fine. My guess is that I won't see this. I'm anticipating that after a couple of these violations, we'll have a conversation about other remedies like abatement. I would suggest you reserve abatement for the more serious properties. For the more routine kind of nuisance cases, this would be another arrow in the quiver that could be used if you have a habitual customer.

**Councilman Sumner** - Two violations in one year, three violations in two years, or four violations in three years, that makes them a chronic nuisance?

**Attorney Knaak** - Yes.

**Councilman Sumner** - Then when you're talking about the penalties "Committing a third nuisance within one year of a prior conviction," so they would have already been convicted. Is this a 365 day period or calendar year?

**Attorney Knaak** - 365 days.

**Mayor Geraghty** - Do they get through the system that quickly? Will processing be an issue?

**Attorney Knaak** - It could be a problem.

**Councilman Sumner** - And this is a person who has gone to court and been convicted?

**Attorney Knaak** - Yes, they actually need to be convicted and this needs to be the third conviction in a short period of time.

**Councilman Sumner** - So all ordinance violations, grass 9 inches tall, garbage cans outside of the garage, could potentially be written up and be one of these violations?

**Attorney Knaak** - Yes, if it qualifies as a nuisance under the Code. So if you have someone that was cited for a nuisance because they had 15 inch grass and then gets cited and convicted of a second nuisance because of a vehicle that is inoperable, and then gets a third nuisance violation for trash cans then yes, that becomes a chronic property. There's nothing in the way this is written that requires it to be the same nuisance violation each time.

**Councilman Rahm** - Then I would say we need to go through all our Codes and define what is really a nuisance.

**Councilman Sumner** - Exactly.

**Mayor Geraghty** - There's usually a process to where they'll get a warning and it's usually taken care of before it gets to the prosecution point.

**Attorney Knaak** - I would have to say about three or four cases come to mind in all of the nuisance violations that I've dealt with in the City.

**Admin. Hill** - When a property owner is given a warning, it's usually taken care of immediately.

**Mayor Geraghty** - Is this modeled after any other cities?

**Attorney Knaak** - No, to my knowledge this is quite innovative.

**Councilman Sumner** - I still have a problem. I can understand certain situations and I know my situation. For the benefit of the Attorney, there have been allegations about my personal conduct. I'm one of those that think it's my land and my stuff and if you don't like it there's a lot of other places you can look. I know my neighbors are glad that I am their neighbor because I look out for them and help them. I ask them if it's bothering them and they say no. I know some people take offense and I know that my plan is of course to address these issues but if they're not addressed within someone else's timetable I think these are pretty draconian measures from my personal situation. I understand the situation that an audience member had and I know a balance has to be struck but I think our current Code allows the possibility for someone to be targeted and make their life very difficult. I have no problems with the current Chief or CSO, I think they're outstanding officers. I know that when we had the workshop there was some reaction and I felt one of the Councilmembers was urging people to go out and snoop and report on their neighbors.

**Councilman Gallagher** - One of the Councilmembers?

**Councilman Sumner** - Yes, you.

**Councilman Gallagher** - No, not at all.

**Councilman Sumner** - I thought so. I think these could be harsh and could be used if a different Council was here. We've had previous Councils and CSO's and there was a strong backlash from the community against the enforcement and I understand that there's another swing right now. I'm very concerned that things could be difficult on people that are otherwise good citizens. I am not in favor of this. I'm not sure how to rewrite it but the fact that so many things in our Code are considered violations. I know someone that had a lawn mowing violation last year and I heard she got a notification for having bagged yard waste next to her house but she could have been targeted twice within a year and subject to these penalties and finds. I'm concerned it's an overreaction to what I believe is a minor problem in the world and Newport. I know many of the local business people and none of them have come to me to say that they would like to expand their business but can't because I allegedly have stuff in my back yard. I'm concerned there's an overreaction on a problem that may not be as broad as we have.

**Councilman Rahm** - I think the original intent was because we had certain properties that had violations and we're trying to clean up those areas and apply it equally among all of the properties so we can clean up Newport to attract more development along the 61 Corridor and residential areas. I thought this was a continuation of that process to have a graduated system of penalties so people wouldn't just pay the fine and go away.

**Councilman Sumner** - I also know that we've had quite a bit of development within the last year and we haven't had this law in effect. There's a lot happening right now. The Planning Commission is reviewing an application for the Knauff property.

**Mayor Geraghty** - Is there more you want to say on this?

**Councilman Sumner** - No.

**Councilman Rahm** - We've had some workshops on this. I agree with Bill a little bit in that if we pass this we should look at all of the nuisances because there are things on there like trash cans beside the house.

**Mayor Geraghty** - They are in there for a reason.

**Councilman Rahm** - I hear more about the trash cans than anything else. For instance, up on Century Avenue, we all leave our trash cans about 50 or 100 feet away from the road because we don't want to drag them back to the house so technically we would all be in violation of the ordinance.

**Councilman Gallagher** - I believe about 99% of residents would be in violation of some ordinance.

**Councilman Rahm** - That's the scary thing. You need to have common sense with these things and if we're putting something in place like this it can be used as an attack thing.

**Councilman Gallagher** - I think this move is more for the extreme problem properties.

**Councilman Sumner** - But it says any violation.

**Councilman Gallagher** - We also have police and prosecutor discretion.

**Councilman Sumner** - But if certain neighbors want to insist that a property be targeted the Police need to follow the Code.

**Councilman Ingemann** - I can see this being abused by people who are perfect.

**Councilman Sumner** - Yes, something needs to be done about problems when there's a danger or their disturbing neighbors.

**Councilman Rahm** - Would you be supportive of this if we looked at the nuisances first?

**Councilman Sumner** - I think some of the violations need to be looked at. I remember when I first campaigned I told one of the sitting Councilmembers that there was a concern about over enforcement and she said "What do you expect the Code book is this big" and yes the nuisance violation book is pretty substantial and Councilman Gallagher just said that 99% of the people are probably in violation. I understand with chronic offenders but I don't think is specific enough in regards to what the violations are. I know someone who doesn't have a garage and is nervous because he has his lawnmower outside.

**Councilman Rahm** - I would table this until we've looked at our nuisance violations.

**Councilman Gallagher** - That could be years.

**Mayor Geraghty** - They're there for a reason. I'm more concerned about the neighbors that are fighting and could use it against each other. How do we control that?

**Attorney Knaak** - We do have situations like that and at some point you need to rely on the discretion of staff and the prosecutor. I can be asked for a written opinion as to whether or not something is a nuisance violation. By the time it gets to the courts, it needs to be pretty clear that it's a violation.

**Councilman Rahm** - And it does say convictions so it needs to go through that entire process to get to that point.

**Councilman Sumner** - So we had a chronic problem and it was resolved, it probably took too long.

**Councilman Gallagher** - Would this have sped that process up?

**Attorney Knaak** - It probably would have. I'm thinking of a situation up on the hill and this would have been an effective tool for us to use.

**Councilman Gallagher** - This is a tough one for me.

**Mayor Geraghty** - Well after we go through it for a year and there are abuses, we can change it.

**Councilman Ingemann** - It's hard to change it.

**Mayor Geraghty** - No it's not.

**Councilman Sumner** - And we know there are people in town that would love to start filleting their neighbors.

**Councilman Gallagher** - They would have already done that.

**Councilman Sumner** - So the homeowners and businesses that are struggling...

**Mayor Geraghty** - They can still be cited and fined for those without this. This is beefing it up a little for the chronic offenders.

**Councilman Sumner** - I'm not sure that's the thing that drives businesses to Newport and we already know that some of the properties along 61 with the trucks, one of them has a CUP and the other one has the right to have trailers there and if a person comes in and looks at those places they might think it's a nice piece of property and not mind about the trailers. We have someone that wants to build 4 houses right now.

**Councilman Gallagher** - At the same time, we could have a developer come in and look at those same pieces of property and say that it looks like a dumpy town.

**Councilman Rahm** - It's part of a strategy to change the image.

**Councilman Sumner** - Will this change the appearance of 61?

**Councilman Rahm** - No.

**Councilman Gallagher** - Not unless they're in violation.

**Motion by Gallagher, seconded by Rahm, to approve Ordinance No. 2014-2 Amending Section 800.04. With 3 Ayes, Ingemann and Sumner voting Nay, the motion carried.**

**D. Ordinance No. 2014-3 - Repealing Chapter 4, Section 410, Tobacco Sales, and Approving Amendments to Chapter 4, Licensing, and Section 750, Tobacco**

Executive Analyst Helm presented on this item as outlined in the March 20, 2014 City Council packet.

**Councilman Sumner** - What are the penalties for tobacco sales compared to our ordinance violation penalties?

**Executive Analyst Helm** - The first violation is at least one day suspension and \$75 fine, the second is at least three days suspension and \$200 fine within 48 months, the third is at least seven days suspension and \$250 fine, and the fourth is revoking the license. Those are in addition to criminal or civil penalties. There are also penalties for employees and minors.

**Councilman Sumner** - What about the minors?

**Executive Analyst Helm** - Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense within a forty-eight (48) month period; and \$250 for a third or subsequent offense within a forty-eight (48) month period.

**Councilman Gallagher** - I don't think they'll be under 18 for 48 months.

**Executive Analyst Helm** - I had changed it to 48 months, it was at 24 months but I was trying to be consistent with the other penalties.

**Councilman Gallagher** - I think 48 months is fine. Bill was saying that we just passed something where the fines are \$500, \$750, and \$900 and the third here is a \$200 fine.

**Councilman Sumner** - Are we now going to require the Police to card anyone who is smoking?

**Executive Analyst Helm** - If they look to be under 18.

**Councilman Gallagher** - They do.

**Admin. Hill** - It's part of their job.

**Councilman Sumner** - Do we have instances where they charge these kids?

**Executive Analyst Helm** - I believe so, it's probably under "Juvenile Problems/Petty Citations."

**Councilman Sumner** - Here we have kids that are setting themselves up for a lifetime addiction and health problems and we've got one set of penalties for that and we have people that might have something in their backyard. Who gets charged then?

**Executive Analyst Helm** - The juvenile and I'm assuming there are also civil penalties.

**Attorney Knaak** - There can be.

**Councilman Sumner** - Have we ever had a case charged in Newport?

**Attorney Knaak** - Not that I can recall.

**Mayor Geraghty** - I think we should talk about e-cigarettes.

**Executive Analyst Helm** - That's covered under "tobacco products."

**Councilman Sumner** - What's this lobelia?

**Executive Analyst Helm** - That's for e-cigarettes.

**Councilman Ingemann** - I personally think we're starting to think we're doing too much legislation for personal issues.

**Executive Analyst Helm** - The penalties for minors were already in Section 750.

**Motion by Gallagher, seconded by Rahm, to approve Ordinance No. 2014-3 Repealing Section 410 and Approving Amendments to Chapter 4 and Section 750. With 5 Ayes, 0 Nays, the motion carried.**

**E. Resolution No. 2014-7 - Amending Resolution No. 2014-5 Establishing a Credit for Water Usage for Properties that are Running Water 24-7 to Prevent Frozen Water Lines**

Admin. Hill presented on this item as outlined in the March 20, 2014 City Council packet. This resolution is amending the previous resolution to give a credit of \$0.60 per day for property owners that are running water at a pencil width stream 24-7 to prevent their water lines from freezing.

**Motion by Sumner, seconded by Geraghty, to approve Resolution No. 2014-7 Amending Resolution No. 2014-5 Establishing a Credit for Water Usage for Properties that are Running Water 24-7 to Prevent Frozen Water Lines. With 5 Ayes, 0 Nays, the motion carried.**

**10. ATTORNEY'S REPORT –**

**A. Prosecution Report**

There were no questions on the prosecution report.

**11. POLICE CHIEF'S REPORT** – Nothing to report

**12. FIRE CHIEF'S REPORT** – Nothing to report

**14. SUPERINTENDENT OF PUBLIC WORKS REPORT** –

**Superintendent Hanson** - We did have another couple frozen lines. It's pretty cheap insurance to run water because it can cost up to the thousands to get it thawed. Just a reminder too for residents to start looking at flood insurance if they're in that area. The flood report isn't much yet but it is the time to purchase flood insurance.

**15. NEW/OLD BUSINESS**

**16. ADJOURNMENT**

**Motion by Geraghty, seconded by Rahm, to adjourn the regular Council Meeting at 7:37 P.M. With 5 Ayes, 0 Nays, the motion carried.**

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm  
Executive Analyst

# ANALYSIS OF COSTS TO REVIEW PLANNING AND ZONING APPLICATIONS

Presentation to Newport City Council,  
March 20, 2014  
Sherri Buss, Planner, TKDA

# **Brief History—Why a Consulting Planner & Charges to Applicants?**

- **Prior to using consulting planner, Planning Zoning applications were reviewed by City Staff—salaries paid by all City residents**
- **Those staff positions eliminated**
- **TKDA had been hired through competitive process to complete the City's Comprehensive Plan**
- **Administrator identified options for completing necessary planning on-going planning tasks, since City no longer had staff to do this work.**

# **Brief History—Why a Consulting Planner**

- **City completed a contract with TKDA for general planning services**
- **City decided costs for planning services would be charged to applicants**
- **This is the typical way that small cities and Townships in Washington County and the Metro Area provide planning services and pay the costs of those services**

# **Application Review Process and Costs**

- **City staff and consultants are both involved in the review process for planning and zoning applications**
- **City staff answer initial questions, provide and receive applications**
- **The consulting Planner completes steps that are required in state statute and the City's zoning ordinance for review of the applications**

# Application Review Process and Costs

- **Planner tasks in typical review process:**
  1. **Completeness review of submittal**
    - Determine if it includes all of the items required by the ordinance
    - Call applicant if additional items are needed
    - Determine issues for review
    - Send letter notifying the applicant that the application is complete, identifying the 60-day review period, and notifying the application of the process and meeting dates.
- State statutes require the City to determine that the application is complete and provide timely notice to the application regarding the 60-day review period.

# Application Review Process and Costs

## 2. Review of application and creation of report for Planning Commission

- The City's zoning ordinance includes specific requirements and criteria for review of each type of planning and zoning application.
- The Planner's review must address each of the standards and criteria in the ordinance
- Send application to other City staff and agencies as needed for comments

# Application Review Process and Costs

2. Review of application and creation of report for Planning Commission
  - Ordinance requires analysis of whether application meets each code requirement (dimensions, lot coverage, performances standards—a long list).
  - For variances, the report must include Findings by State law and ordinance
  - Report must include Conditions, if applicable

# Application Review Process and Costs

## 3. **Coordination with other staff and agencies**

- Planner needs to get comments from other City staff and incorporate them in the application
- Planner requests comments from other agencies (Watershed District, etc.) and incorporates them as needed in the staff report

## 4. **Revise staff report, findings and conditions based on Planning Commission meeting, and prepare the report for the Council meeting**

# Costs of recent planning applications

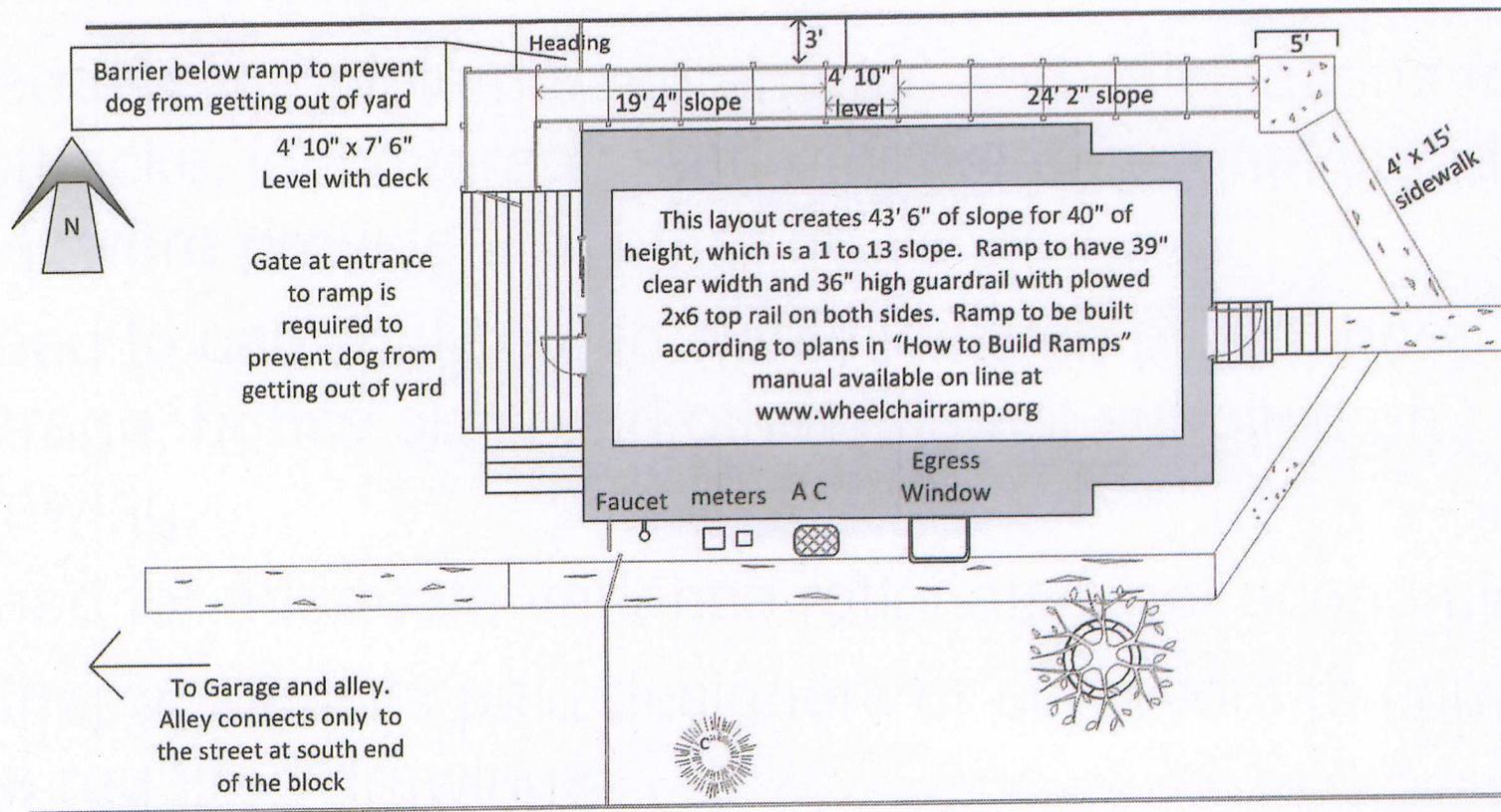
- **Planner costs of representative applications during past year:**
  - [REDACTED] variance: \$726.48
  - [REDACTED] variance: \$408.06
  - [REDACTED] variance: \$874.87
- **Differences in costs based on:**
  - Number and types of issues
  - Quality of information provided by the applicant and need to obtain additional information to address the ordinance requirements
  - Number of phone calls with applicants
  - Results of Planning Commission process and changes to report for Council

# Costs of recent planning applications

- [REDACTED] variance: \$726.48
- [REDACTED] variance: \$408.06
- [REDACTED] variance: \$874.87
  
- [REDACTED] variance had only one issue to analyze
- [REDACTED] and [REDACTED] variances raised issues related to several code requirements or city policies—each needed to be addressed in the staff report and findings
- [REDACTED] variance required coordination with City Engineer on right-of-way policies and issues
- [REDACTED] and [REDACTED] variances each required several phone calls with the applicants
- [REDACTED] and [REDACTED] variances resulted in extensive changes during Planning Commission discussion and therefore in report to Council

# Costs of recent planning applications

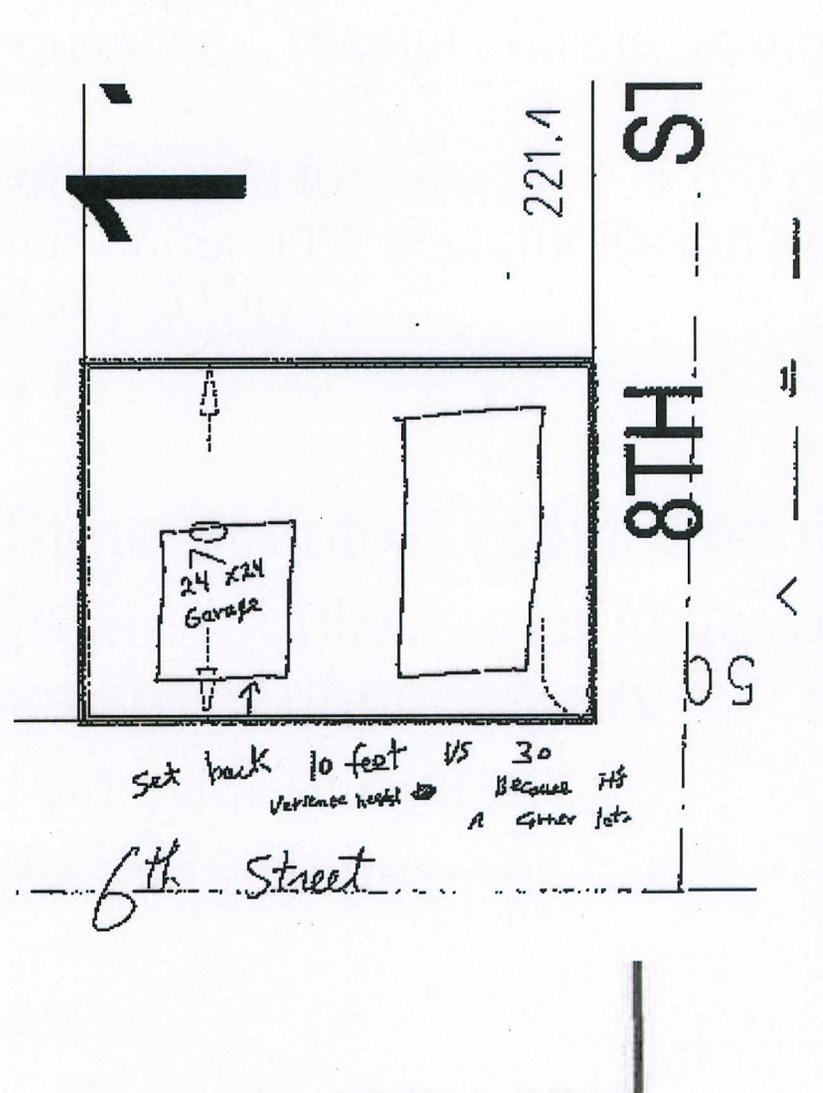
- Quality of submittals— application





# Costs of recent planning applications

- [REDACTED]
- Application



# Costs of recent planning applications

- For [REDACTED] variance, need to go to County website for scaled drawing
- Need to complete measurements and calculations for setbacks, lot coverage, and other dimensional standards that were provided on other drawings
- Need to call applicant to clarify location of proposed garage, house size, and other info not supplied on drawing
- Need for adequate variance rationale—not economic only
- Other applicants paid designers or surveyors to complete the required drawings
- Some cities would not accept this as “complete”

# Summary

- The steps in the process, items that need to be analyzed, and contents of the staff reports are governed by State Statutes and the City's Zoning Ordinance
- The City needs an adequate record of the analysis, findings, conditions, and process. The report forms we utilize have been developed over many years of working with City Attorneys and Administrators to provide the findings and record that the City needs for planning and zoning decisions.

# Summary

- We try to keep costs down by:
  - City staff handle the questions, receipt and distribution of the application
  - The applicants are not charged for meetings--\$100 meeting rate (no matter how much Planner time at Commission and Council meetings) is charged to the City
  - Working as efficiently as possible
- We must abide by State Statutory requirements
- The City can change the requirements in its ordinances, if some requirements seem unnecessary
- We will work based on your direction
- Thanks for asking for this discussion