



**City of Newport
Planning Commission Minutes
February 13, 2014**

1. CALL TO ORDER

Chairperson Lund called the meeting to order at 6:00 P.M.

2. ROLL CALL -

Commissioners present – Dan Lund, Matt Prestegaard, Susan Lindoo, Anthony Mahmood, Kevin Haley

Commissioners absent –

Also present – Deb Hill, City Administrator; Renee Helm, Executive Analyst; Sherri Buss, TKDA Planner

3. NOMINATION and APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2014

Chairperson Lund - The first order of business is the nomination of Chairperson and Vice-Chairperson for 2014. The normal order of things is the Vice-Chairperson from the previous year but Matt has requested to not be Chairperson.

Motion by Lindoo, seconded by Prestegaard, to appoint Dan Lund as Chairperson and Anthony Mahmood as Vice-Chairperson for 2014. With 5 Ayes, 0 Nays, the motion carried.

4. APPROVAL OF PLANNING COMMISSION MINUTES

A. Planning Commission Minutes of December 12, 2013

Susan Lindoo - I had a minor item on page four, my comment that is second from the bottom it should be "bringing" instead of "brining."

Matt Prestegaard - The last comment on page seven should be "I would move to approve the Resolution" not "I would move the Resolution."

Motion by Haley, seconded by Prestegaard, to approve the December 12, 2013 minutes as amended. With 5 Ayes, 0 Nays, the motion carried.

4. APPOINTMENTS WITH COMMISSION

A. Discussion Regarding Breweries

Sherri Buss, TKDA Planner, presented on this item as outlined in the February 13, 2014 Planning Commission Packet. Derrick and Autumn Lehrke of Opinion Brewing Company submitted the attached letter to the Planning Commission to provide comments regarding the draft ordinance. One of the questions from the letter was asking why a conditional use permit is required for all of the new uses. Ms. Buss stated that the reason she drafted the ordinance to require a conditional use permit is because the Code currently requires any restaurant that serves liquor to have a conditional use permit so it is being consistent with the current code. Ms. Buss also provided examples from what other cities require. St. Paul requires a conditional use permit if the business is located in a mixed-use district. Stillwater has also discussed this issue at length and require a special use permit for any type of brewery or similar use no matter what district it is in so they can place conditions on issues such as odors, waste, events, and bottling. Given the consistency with the current Code and what other cities are doing, Ms. Buss recommends that the new uses require a conditional use permit as drafted. The second question that Mr. and Mrs. Lehrke had was regarding the size. The draft ordinance has a maximum size of 10,000 square

feet for craft breweries, craft distilleries, and craft wineries. Mr. and Mrs. Lehrke asked the Planning Commission to increase the size since the building they are buying is 12,000 square feet. Ms. Buss recommended increasing the size to 15,000 square feet.

Matt Prestegaard - Could you go through the definitions?

Ms. Buss - Sure. The first one is Brew on Premises Store. It's somewhere that sells the equipment to do beer or wine making. It's basically a retail business.

Susan Lindoo - You can brew on the premises though?

Ms. Buss - Yes, they have very small batches though. The second is Craft Brewery. This is strictly a brewery and does not include small breweries that are operated in conjunction with a bar or restaurant. Next is Craft Distillery. This is someone who is producing premium distilled spirits such as vodka or gin, they're small batches. A Micro or Regional Brewery is the next step up from a Craft Brewery. They can brew up to one million barrels per year. National Brewery is even bigger, they can brew over one million barrels per year. The next item is a small brewery or winery as an accessory use to a bar or restaurant. This would be a brewpub and is what the Lehrke's are thinking about. These businesses can't sell to other businesses. Finally, a craft winery is a small winery that can produce up to 620,000 gallons per year.

Susan Lindoo - Does the 10,000 square feet allow them to brew up to 20,000 barrels?

Ms. Buss - Yes, but St. Paul said to allow them up to 15,000 square feet because craft breweries that started out at 5,000 or 10,000 square feet would need to expand quickly after starting because their business was successful. The 15,000 square feet generally does not have a lot of impacts to the neighbors.

Susan Lindoo - So the 15,000 square feet would work for craft breweries but the Lehrke's are interested in the small brewery or winery as an accessory?

Ms. Buss - Yes. I don't think the 15,000 square feet would limit them too much because they are limited to what they can sell. I had put 10,000 square feet because that's what we have for other retail type businesses.

Executive Analyst Helm - It doesn't look like there is a maximum size at all for the small brewery or winery as an accessory.

Chairperson Lund - As I understand it, in order to put this plan into effect, the Lehrke's have to go through three different layers with the City, we have to change our Code to have it be a permitted use for Zoning and to add a brewpub license to the Alcoholic Beverages Chapter and they'll need a building permit. Our part of this is not the end-all be-all, there's still significant procedures they need to go through. With that in mind, is it possible to address the smells, events and bottling noise as part of the licensing procedure for a brewpub instead of forcing them to get a separate conditional use permit since they already have one?

Ms. Buss - I have not looked at your licensing rules.

Chairperson Lund - We don't have licensing rules yet.

Ms. Buss - It wouldn't be typical to do it that way.

Executive Analyst Helm - I would have to check with the State but I believe those are typically done through conditional uses.

Susan Lindoo - If we require a conditional use permit for restaurants that serve liquor, a brewpub is a restaurant that serves liquor so to me it makes sense to be consistent with the Code.

Chairperson Lund - Maybe I should be more specific. Instead of giving it its own category use maybe we could amend the restaurant use to include brewpubs.

Ms. Buss - You could certainly do that.

Chairperson Lund - In that case, could they continue under their current conditional use permit or would they need to get a new one?

Executive Analyst Helm - They don't have a conditional use permit because it was built prior to the requirements for a conditional use.

Ms. Buss - They don't have any kind of permit right now so whatever is going on in that building right now, which is a bowling alley, heating pizzas and serving liquor, they can continue to do as a legal non-conforming use,.

Chairperson Lund - It's non-conforming because they don't have a conditional use permit?

Ms. Buss - Yes. As soon as they add a new use like brewpub or restaurant, they are subject to the current code, which may require a conditional use permit.

Chairperson Lund - If we define it as an accessory use does that mean they can continue under their current non-permit status?

Ms. Buss - No because it's a new use.

Chairperson Lund - Where is the line drawn?

Ms. Buss - Whatever is in the building code that would define it as a new use. If they add a commercial kitchen then it would be a new use.

Chairperson Lund - So there's not really room for them to do anything additional without getting a permit?

Ms. Buss - Yes.

Chairperson Lund - Right now, we're only aware that someone wants a brewpub. It seems to me that the craft brewery, distillery, and winery, would have a greater impact than a brewpub. I think we should talk about whether it's worth putting those in the Code now or leave it for a future date if someone comes to us and wants to open one in Newport.

Ms. Buss - You certainly can.

Kevin Haley - I certainly would. The request to not have an additional conditional use permit, if it's going to change, that will be required. But to not add a conditional use permit just because they're adding an accessory. If the other two establishments wanted to do brew on premises, they shouldn't have to get a conditional use permit for that.

Chairperson Lund - That wasn't my point but ok. What you're getting back to is that we only have three establishments in town that serve liquor and any new establishment that comes in to town would need a conditional use permit whether they are a brewpub or not?

Executive Analyst Helm - Yes.

Chairperson Lund - So if we don't require a conditional use permit for the accessory use of a brewpub all that means is do we think Tinucci's, the Cloverleaf and Red Rock could open a brewpub without bothering anyone because any new business would need a conditional use permit. I would be comfortable with that.

Susan Lindoo - I think a brewpub is quite different than a regular restaurant. I think the building inspector would be asking questions.

Ms. Buss - The building inspections is separate from a conditional use permit. I've told the Lehrke's that too.

Susan Lindoo - I'm just thinking it's a different type of operation, there are issues of waste, events, noise from bottling...

Kevin Haley - This isn't a bottling facility. There will be growlers.

Susan Lindoo - How are they serving it? When they bottling on a conveyer built there is a noise there.

Chairperson Lund - There's a difference between a few hundred and a few thousand.

Vice-Chair Mahmood - They'll be doing it by hand.

Susan Lindoo - There are big machines that they're brewing it in though.

Kevin Haley - And it smells like bread baking. For this small of a business, we're not talking about a lot of waste or bottling.

Ms. Buss - Just to clarify, you're thinking the craft brewery correct?

Chairperson Lund - No, a craft brewery is a much bigger operation than a brewpub.

Ms. Buss - A brewpub is defined as an accessory use to a bar or restaurant. You're talking about it being an accessory use to an existing bar or restaurant?

Susan Lindoo - Yes.

Chairperson Lund - To piggy back off of your idea, if we have it as a permitted use, any new restaurant that serves liquor will still need a conditional use, but the existing ones, we would say that they already have their liquor permit.

Kevin Haley - Yes. If Tinucci's wants to take out a couple thousand square feet and start brewing it isn't going to affect the neighborhood. The bigger facilities, yes, but this isn't a bottling facility whatsoever.

Susan Lindoo - In that case, I'm wondering why other towns require conditional use permits for brewpubs, is that unusual?

Ms. Buss - If we have an existing restaurant or bar that wanted to add a brewpub, at this point, what they would need to do is amend their existing conditional use permit to allow that use because whatever permit they have at the moment doesn't allow the new use. That would allow us to put on a size limitation and conditions. If someone came in proposing a new bar or restaurant/bar then they would be requesting a new conditional use permit and could add a brewpub to that.

Kevin Haley - If we wanted to take care of this situation and no conditional use, we have one facility that is being used as a bar that could possibly make a brewpub, that doesn't have a conditional use permit, we could say same or similar use a conditional use is not required.

Susan Lindoo - So because the Red Rock does not have a conditional use permit now, you wouldn't be interested in requiring anyone who took it over to get a conditional use permit?

Kevin Haley - No, why, it's a similar use, it's not adding significantly to it, if they have to get a building permit to expand it, we could look at it then because it would be asking for more.

Ms. Buss - You wouldn't see the building permit.

Susan Lindoo - So we would have a continuation of a legal non-conforming, which doesn't make sense to me. I think when you're getting a new owner and a new use coming in. If they had a conditional use they would need to amend it to do the brewpub so they would have to come to us to amend something they don't have which is complicated.

Ms. Buss - At this point, it would be a new conditional use.

Susan Lindoo - He's recommending that they don't get a conditional use at all.

Ms. Buss - If they expand the uses beyond what it is now they would need a conditional use permit and then they are treated just like anyone that comes in. That's how non-conforming uses are treated in any code.

Chairperson Lund - It sounds like they're mostly out of luck. We can still help them out by not requiring a conditional use specifically for a brewpub in the event they don't go for a brewpub first.

Matt Prestegaard - Can you articulate for me what the concern is regarding a conditional use?

Chairperson Lund - It's expensive, you have to put a few thousand dollars in escrow to the City.

Kevin Haley - Then you're at the will of those that are doing the inspections. Our planner and engineer can jack up numbers quite significantly.

Susan Lindoo - Do they usually do that? Is that the policy of the City to jack up numbers and charge people more?

Admin. Hill - No.

Susan Lindoo - Yea, I wasn't aware of that.

Kevin Haley - There are some that would disagree with you. It has been happening.

Matt Prestegaard - Your argument is that this is an opportunity to take something legal and non-conforming and validate conformance?

Susan Lindoo - It sounds like that in the way that most cities operate across the State that when you come in with a new use for a legal non-conforming business then you have to conform with the current Code and get a conditional use.

Ms. Buss - We would need to ask the Attorney if you can make an exception.

Chairperson Lund - I think the City Council can take that up. There's really nothing we can do since they don't have a current conditional use right?

Ms. Buss - Yes and we're not writing this just for them. I think the question is if someone comes in and proposes a restaurant and a brewpub, this makes it accessory to that use and they don't have to get a second conditional use for it.

Chairperson Lund - Yes, if we make the accessory use the only permitted item then they can get their original conditional use permit modified and that's the best we can do. Is there any significance if it's an accessory use of whether that accessory use itself requires a conditional use permit? For example, if Tinucci's already has their conditional use permit and they want one of these, would it make any difference to them if we list accessory use of a brewpub as a conditional use versus permitted?

Ms. Buss - No because if they have a conditional use permit in place and want to add a brewpub they would need to amend their existing conditional use permit.

Chairperson Lund - So it doesn't make any difference whether we put a "C" or a "P" down?

Ms. Buss - No. What we're saying is that someone can't come in to do a brewpub on its own.

Chairperson Lund - We might as well just require a conditional use permit so that people don't look at this and think they don't need one.

Kevin Haley - If Tinucci's or Cloverleaf want this, I don't see why they would need a conditional use permit.

Ms. Buss - They would need an amendment, which would be a lot less staff work.

Kevin Haley - My question is that, if a new facility came in and wanted to establish a brewpub with a restaurant that there would be need to do anything more than one conditional use permit.

Ms. Buss - No they would only need one.

Matt Prestegaard - If Red Rock came to us today and said they wanted to open a bowling alley, serve pizza and liquor, where would they fall under this table?

Ms. Buss - They would fit under a restaurant category. We should probably add bar and grill to the restaurant use.

Chairperson Lund - So we're all in agreement with the brewpub?

Executive Analyst Helm - Yes.

Chairperson Lund - I did want to talk about the craft brewery, winery and distillery. The smells and noise could be much more significant than the brewpub. Do we want to add them at this point given that no one has approached us. I think the best place for them would be MX-4 or MX-2.

Ms. Buss - If you want to leave them out we certainly can do that.

Susan Lindoo - We don't know how MX-4 will develop. It's nice to have things in the Code in case someone approaches the City.

Ms. Buss - Another option would be to just allow it in MX-4.

Chairperson Lund - Or maybe B-1, if it's going to make smells and noise. Or even industrial.

Ms. Buss - In that case, I would suggest they be permitted uses in business or light industrial.

Chairperson Lund - Should we take those three out of the mixed-use districts then?

Matt Prestegaard - That sounds fine to me.

Ms. Buss - Do you want to leave the brew on premises store?

Chairperson Lund - Yes.

Ms. Buss - Ok, we'll take craft brewery, distillery, and winery out of the mixed-use districts and leave them in the business and industrial districts as a permitted use.

Susan Lindoo - Where is the facility that people think is causing the smell problems and resulting in push-back with the MX-3 area?

Executive Analyst Helm - It's north of 494.

Susan Lindoo - Do we want to allow that so close to the MX-3 district? I think down on the end is fine. Since we're really trying to promote development in the MX-3 District...

Kevin Haley - We're not talking about the same type of odors.

Susan Lindoo - No but the recycling place doesn't produce odors either but there's a perception that it does and people don't want to develop in the MX-3 district because they're hearing stories about it being smelly.

Ms. Buss - These are all small. The micro and regional breweries I have only put in the industrial one and two. We can take those out. They're put in industrial districts in any city.

Kevin Haley - If the perception is that Newport has odor we have no control of what's going on across the river. It won't change the perception.

Susan Lindoo - Do we want to add to the smells?

Chairperson Lund - I don't think it's the same type of smells.

Ms. Buss - We could make it a conditional use.

Susan Lindoo - The only area I'm concerned about is the area near the MX-3 district.

Vice-Chair Mahmood - So you're saying that you want to move it out of an area where people already think it smells and put it in a place that doesn't smell. People won't notice the difference if we keep it where they already think it smells.

Susan Lindoo - I'm just thinking about what we've heard about the development for the MX-3 district and what is best for Newport. What do we want to happen at that end?

Chairperson Lund - If the biggest concern is the smell on the micro and regional brewery, let's make it a conditional use permit. The craft brewery and distillery, the volume is much smaller, I don't see why we would want to exclude them from the industrial districts. For the three craft ones, make it a permitted use in the I-2 district.

Ms. Buss - Do you think you'd be ready for a public hearing at the next meeting?

Chairperson Lund - There was an amendment to the setback as well.

Ms. Buss - Yes, that's something I had come across. I noticed that you have a minimum side yard setback for properties adjacent to residential of five feet. Typically it's usually 20 feet.

Chairperson Lund - I like that catch. Could we add multi-family to it as well? So it would be "Minimum side yard for commercial, industrial, or multi-family use if adjacent to any R district."

Matt Prestegaard - Would the hearing be next month?

Ms. Buss - Do you want to see it again before going to a public hearing?

Chairperson Lund - I think we should move it forward.

Ms. Buss - Ok, you'll have an application as well for the Knauff property. We'll also have a joint meeting with the HPC to discuss the historic overlay district.

Susan Lindoo - You talked about events, do we have an event permit?

Executive Analyst Helm - Our current "Alcoholic Beverages" chapter has a liquor entertainment license. I've never issued one. It will be up for discussion when they discuss the amendment for brewpubs.

5. COMMISSION AND STAFF REPORTS

Executive Analyst Helm - So the next meeting will be on Wednesday, March 12 instead of Thursday, March 13 since you're having a joint meeting with the Planning Commission. They meet at 5:30 so the joint meeting would be 5:30 to 6:30 and then you would start your regular meeting at 6:30 and have the public hearings for the application and this one.

6. NEW BUSINESS

Vice-Chair Mahmood - I would like to welcome Kevin.

Kevin Haley - Thank you.

7. ANNOUNCEMENTS

A. Upcoming Meetings and Events:

- | | | |
|--|-------------------|-----------|
| 1. City Offices Closed for Presidents' Day | February 17, 2014 | |
| 2. City Council Meeting | February 20, 2014 | 5:30 p.m. |
| 3. City Council Meeting | March 6, 2014 | 5:30 p.m. |
| 4. Planning Commission Meeting | March 12, 2014 | 6:30 p.m. |

8. ADJOURNMENT

Motion by Lindoo, seconded by Mahmood, to adjourn the Planning Commission Meeting at 7:04 P.M. With 5 Ayes, 0 Nays, the motion carried.

Signed: _____
Dan Lund, Chairperson

Respectfully submitted,

Renee Helm
Executive Analyst

February 13, 2014

Dear Planning Commission,

We have reviewed the packet for this evenings meeting and would like to provide a few comments.

From viewing the information provided, we respectfully request that the planning commission follow the direction of St. Paul regarding brewery ordinances. As you can see, St. Pauls ordinance states "a small brewery accessory to a bar or restaurant, or brew pub, is allowed wherever restaurants or bars are allowed, including T2-4.....districts... A conditional use permit is required to exceed a floor area of 15,000 square feet."

Per page 34 of your packet (pg 7 of St. Pauls report), table 2 "Breweries in commercial or mixed use districts" this table lists seven cities (Mpls, Duluth, Dallas, Denver, Portland, Seattle, and St Paul) and only one (Dallas) requires a CUP for bars and sometimes for brew pubs or restaurants.

As you know, the site we have chosen is already doing business as a bar/restaurant and the use is not changing with the change of ownership. We plan on still serving food and liquor as the previous owners have done for decades. Changing our occupancy or CUPs can have adverse effects on building and operating requirements. Our current project cannot afford these additional, unnecessary expenses.

Another concern with the staff recommendation is the size limitations. Due to the bowling alley on site, our facility is over 12,000 sf. As a result, this recommended ordinance wouldn't even allow for our location to be sited for a brewery. Please adopt St. Pauls direction that allows breweries the flexibility to grow in Newport.

We understand there is a certain comfort level with requiring a CUP when sighting a NEW establishment that serves liquor to ensure it is in line with the city's plans. However, this is an EXISTING establishment where a CUP should not be needed. Please consider St Pauls approach to business friendly policies that encourage businesses to come in and redevelop.

Thank you for your consideration.

Derrick & Autumn Lehrke

Opinion Brewing Company, LLC.