



**City of Newport
Planning Commission Minutes
March 10, 2016**

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Present – Anthony Mahmood, Kevin Haley, Matt Prestegaard, Marvin Taylor, David Tweeten

Commissioners absent –

Also present – Deb Hill, City Administrator, Renee Eisenbeisz, Asst. to the City Administrator, Sherri Buss, TKDA Planner.

3. APPROVAL OF PLANNING COMMISSION MINUTES

- A. Planning Commission Minutes of the February 11, 2016 Meeting
- B. Planning Commission Minutes of the February 24, 2016 Workshop Meeting

Commissioner Prestegaard – One thing, I think he was referred to as Tweeter instead of Tweeten in the minutes. I also saw some bolding on page 7 which I figured you didn't intend to mark as very important. That's all I saw.

Motion by Tweeten, seconded by Haley to approve the February 11, 2016 Meeting Minutes and the February 24, 2016 Workshop Meeting Minutes as amended. With 5 ayes, 0 Nays, motion carries.

4. APPOINTMENTS WITH COMMISSION

- A. **Public Hearing** – To consider an application from Steven Bern for Approval of a Variance for Property Located at 1280 Kolff Court
 - 1. Memo from Sherri Buss

Sherri Buss, TKDA Planner, presented on this item as outlined in the March 10, 2016 Planning Commission packet.

- 2. Resolution No. P.C. 2016-6

Chairman Mahmood – I just have one question. Don't we already have a law that says you can't park on the streets?

Ms. Buss – Yeah but not on the right of way. His driveway would be in the street right of way so that means he'll have to bring his car in in the winter time. It's kind of a plowing issue and also to avoid any conflict if someone parks on that driveway and feels like the plowing damaged their car. The engineer has recommended not allowing parking on the right of way between November 1 and April 30.

Commissioner Haley - He's got plenty of room.

Ms. Buss – Yeah.

Steven Bern, 1280 Kolff Court – I think that provision is more relevant when somebody is expanding to the road and is gonna have a really short driveway. My driveway's the exact same either way.

Ms. Buss – Yeah you'll be fine. I think the engineer just kinda looked at it and said oh! Because of the 11 feet but it should be easy to comply with.

Public Hearing opened at 6:08 p.m.

Commissioner Taylor – I just have a more generic question. I think this is a reasonable sized garage but how in a situation like this.....is there a sense of reasonableness with the proportion of the garage? Because of the size I think this is in the right spot.

Ms. Buss – We don't have, per building, a maximum. We don't say to people that we think you're building too big of a garage but we have to use our objective standards in the ordinance. If someone has too much lot coverage, that would be a reason. If a building is too high based on the standard but otherwise we typically haven't in this city and most cities start trying to make judgments about if you're building too big of a garage.

Public Hearing was closed at 6:09 p.m.

Ms. Buss – The other standard in the code is that the garage cannot be bigger than the principle structure so that makes it somewhat in proportion.

Chairman Mahmood – I have a question about something in here that said 20% but I thought we raised it up to 30% lot coverage.

Ms. Buss – Yeah we did but since this was written I forgot to update it in there.

Asst. to the Admin. Eisenbeisz – This is in the RE district so it is 20%.

Ms. Buss – Oh yeah it is in the RE district.

Commissioner Haley – The built garage size, has that been changed in the RE? Because I thought we had changed it after Kim's barn.

Ms. Buss – Yeah it was changed after that was granted.

Commissioner Tweeten – I was wondering about a condition as we're getting really close to the road now and as the pictures indicate there's storage going on on the outside of the garage there. Would it be a reasonable condition to say no further storage on the north side?

Ms. Buss – In the right of way?

Commissioner Tweeten – Yeah, I don't know if it's all right of way. It's between the road and the new edge of the garage.

Ms. Buss – I can see that we'd be concerned about stuff in the right of way. It's up to you guys.....

Commissioner Tweeten – Well we do have setback requirements.

Commissioner Haley – We have outdoor storage ordinances too.

Ms. Buss – More for commercial properties.

Commissioner Tweeten – Part of the reason for the setback is for visual space and this is crowding in on some of that visibility.

Ms. Buss – So Should I add a condition to prohibit storage on the north side of the garage?

Commissioner Tweeten – I'm good with that.

Ms. Buss – He's saying that because it's only 11 feet from the property line and we're giving him a break there, not to allow storage within that area where the reduced setback is.

Commissioner Haley – Doesn't this show a 31 foot buffer from the road?

Ms. Buss – It's probably right of way.

Steven Bern, 1280 Kolff Court – There's a lot of space there. It's a good setback and actually. I'm not worried about further restrictions but it's not going to be an issue either way.

Ms. Buss – It looks like it's 20 feet, there's a 20 foot sort of right of way space and then he's 11 feet or so back from that.

Steven Bern, 1280 Kolff Court – So I'm still 31 feet to the south edge of the road. The road is far away, it meanders within the right of way and it so happens that there's a lot of space there.

Chairman Mahmood – Okay if you don't mind having more restrictions I don't.

Steven Bern, 1280 Kolff Court – I do. I'd prefer not to have them. It's the same request as before so my request would be less restrictions or better. I don't plan to put anything there but I don't know. I'd prefer to have it without restrictions.

Commissioner Haley – The ordinance does cover outside storage. I don't think he could put much there, it slopes.

Steven Bern, 1280 Kolff Court – I don't have any plans to put anything there.

Commissioner Tweeten – I'm not talking about the back, I think there's a fire pit there right now. It's not really reflected in the picture.

Ms. Buss – Do you guys want to add that as a condition?

Chairman Mahmood – I'd rather not.

Commissioner Prestegaard – Yeah if anything I'd say in the right of way but not all the way to the garage.

Ms. Buss – Which I think is prohibited already, people cannot put stuff in the right of way.

Commissioner Tweeten – I'm trying to anticipate and objection to the garage getting much closer to the road.

Commissioner Haley – So it isn't actually getting any closer.

Chairman Mahmood – If there was going to be objections they should have been here tonight.

Steven Bern, 1280 Kolff Court – The only person that came out was a neighbor that spoke in favor of some of the work I've done on the house. I think there's good support in the area.

Motion by Haley, seconded by Prestegaard, to approve the variance requested for the property located at 1280 Kolff Court. With 5 ayes, 0 Nays, motion carries.

B. To consider a request from Kim Brown for an Interim Use Permit for property located at 1675 Kolff Street

1. Memo from Sherri Buss and Jon Herdegen

Sherri Buss, TKDA Planner, presented on this item as outlined in the March 10, 2016 Planning Commission packet.

2. Resolution No. P.C. 2016-4

Commissioner Taylor – I just want to start out by thanking Sherri I know I've tested her patience over the last few weeks. I do want to talk about my concerns with you about the use and how we're thinking about the use and what the use is. I've shared it with the commission. There's an existing CUP on this property. I can be very overly nit picky here but when I look at that I think we're making a lot of assumptions about what is in the ordinances and what is in the CUP. Right now the CUP talks about agriculture use in the broadest sense and commercial is not allowed. So that's the language there is no reference to horses or anything more, that's what we're going off of right now. At the time it was passed, agriculture did not include livestock.

Ms. Buss – It does and we've been through that.

Commissioner Taylor – “The definition of agriculture shall mean growing and marketing fruits, vegetables, grains, trees, shrubs for commercial and private purposes but not including the growing or raising of agriculture except...”

Ms. Buss – Except as otherwise provided in this code which is the animal part of the code that allows for having farm animals.

Commissioner Taylor – The question I have here is where would it cross the threshold of commercial use? Of the activities that are going on there and that relates to the intensification that we have before us today because it specifically states that commercial use is not authorized. I'm not clear on what would constitute that threshold.

Ms. Buss – She hasn't asked to have a commercial use on the property. She's asked to have a number of horses. We don't at this point have a request from her to do boarding, to do a commercial use on the site. We could take action on that if we had that request but the request is to have a number of farm animals and the code allows for farm animals at a particular density.

Commissioner Haley – And home occupation.

Ms. Buss – She hasn't asked for this to be defined as that. That would be an option. What is before you is not someone asking for a commercial use.

Commissioner Taylor – Maybe I should have asked this before, what activities are occurring on this site?

Ms. Buss – If there's a concern that there is a commercial use occurring here and it has not been permitted, the way to deal with that is to file a complaint with the City that there's a use occurring here that's not allowed. The City then investigates that use but what is in front of you is not a request to do a commercial use.

Commissioner Prestegaard – While he's writing or thinking.... is there a summary anyone wants to give on the workshop?

Ms. Buss – At the workshop people talked about some additional conditions and additional information that we got from our experts, an equine expert from the U as well as the person from Washington County. After listening

to that information and talking a little bit about what she's actually asking for, the conclusion of the majority of the commission was to allow up to 8 adult horses and up to 8 foals as long as they'd only be there up to 6 months. As a less intense thing than allowing 16 adult horses which is how it was originally being discussed. So 8 adults, foals for a limited period of time, to take the manure management recommendations of the Washington County Staff for her needing to get a dumpster. For her having to take the manure out of the pasture everyday and the barn at least everyday. For her to actually own the dumpster and have a company contracted to have it emptied. To have it be covered, there was a set of regulations about that that were then included. To do inspections and to make this a 6 month permit with required inspections and if she can show that there are no impacts to neighbors and that she's complying with everything, the permit can be up to 3 years as an Interim Use Permit. That's one of the features of an Interim Use Permit that would not be possible with a Conditional Use Permit. We can make that a 6 month trial period and then have someone from the City inspecting once a month to see that she's complying with the conditions that there aren't impacts to neighbors and then at the end of 6 months the City makes a determination of whether the use will be allowed to continue. Also, she has to maintain a good groundcover in the pasture, that was one of the expert's discussions, is that if it is too heavily used by the horses there won't be enough cover in the pasture and there'll be the chance of runoff. So she has to maintain groundcover in the pasture and then the 6 month trial period I think were most of your recommendations. People asked me then to go back and put those into the conditions. So that's what you have in front of you, what we're recommending is an interim use permit with that 6 month trial period with inspections. I think you have identified someone from Public Works to do that?

Admin. Hill – Yes.

Ms. Buss – She'll have to pay for all of the inspections, she has to get a dumpster and maintain it. She has to remove the manure with a level of frequency and maintain the cover in the pasture. Most of the horses are not outside they're show horses which is a different setup than farm horses. So it should be easier to maintain the groundcover in the pasture than it would be if all the horses and foals were outside all the time. So those are the conditions at this point and it's based on recommendations from people who are horse experts and who have horses themselves not me.

Chairman Mahmood – You got the letter from the attorney as well? Were you able to read that?

Commissioner Prestegaard – Yes.

Chairman Mahmood – Marvin, did you gather your thoughts? Do you have any more things you'd like to talk about?

Commissioner Taylor – I just wish there was clarification on what commercial is. That would help if there are questions about compliance, I feel like it's very vague.

Ms. Buss – Typically what it would mean is she's making her livelihood from a business where she was making money from the activities that are going on. In our ordinance, people are allowed to have something called a home occupation and that's a kind of commercial use but it's a very limited one where people can have a limited number of employees. The place still has to look like a single family residence for the most part, they can't have a lot of extra traffic that's impacting neighbors those kinds of things but we do allow people to have a home occupation so there's a limited kind of commercial use that can be allowed if it is in residential areas. Typically a commercial use would be you're making money from it. You're not just doing it for fun and they're not just your pets they're animals from which you are actually making a livelihood. The problem is Marvin that she is not asking for that use. We'd have to go through a process of tabling this and asking her to ask for that use and she's not going to because her previous conditional use permit that allowed the barn doesn't allow for a commercial use on the property. So where we'd be at with that if you feel like there is a commercial use going on on this parcel, that it's not in compliance with the variance is that you or someone else needs to file a complaint with the city that she's not complying with the ordinance and then the city investigates that.

Commissioner Haley – So on Bailey Road right down the road from me, there's a couple of businesses that their only purpose one was for a kennel and there wasn't anybody living there. There was another landscaper that purposefully bought the land for landscaping didn't live there. In that case Woodbury asked them to stop use of the property and that was solely a commercial use.

Ms. Buss – Right. Typically when it's something that's a very limited use like somebody operating an accounting business out of their home or someone's doing some woodworking those kinds of things qualify as home occupations because the primary use of the property is still a residential use and it's just the people that live there that are engaged in an occupation but it isn't the primary use of the property. The City permits that and we allow it and we don't have any sort of permit for it but if somebody starts going beyond that if people start noticing a lot of traffic, if it starts having impacts on neighbors, if pretty soon the home is gone and the only use on the parcel is that use then it's clearly a commercial use that's not allowed in residential districts.

Chairman Mahmood – Does that help you?

Commissioner Tweeten – I think it's fair to be concerned about incremental requests which seems to be what you're concerned about. Requesting the barn and then requesting more animals and then requesting commercial use. Now all this reliance is built upon reliance. So it's fair to question that at this time.

Ms. Buss – Horse boarding is a commercial use that is allowed in the residential estates business. If she came forward and asked to have a horse boarding business we could grant a conditional use permit for that use but she hasn't asked for that use

Commissioner Prestegaard – The incremental requests is one of my concerns. Less so around commercial use or not but just...I think it was 6 horses and then went to 8 and now we're trying to go to 16 in a handful of months. The second concern is around impacts to the neighbors and how we're going to measure that. Again that would be a long drawn out conversation and I'm not asking you to answer it now but I think we're in a state where we have a neighbor saying that there's already an impact at the current number of horses and so what are we expecting 6 months from now? That they will vanish? Maybe as a result of these conditions but my preference would be that we see the complaints or impacts be eradicated at the current level of horses before increasing it further.

Ms. Buss – That was part of the recommendation from Wendy and from the equine person that part of the issue was that the manure needed to be in the dumpster that was covered. SO that was part of their recommendation I mean maybe it'll work maybe it won't but I don't think that'll be part of....the inspector's job will be to look at that and potentially to talk to neighbors and ask how it's going. Is it getting worse? Is it getting better? Also to look at how the vegetation is in that pasture and to look for evidence of runoff . All those things would be things to look at.

Chairman Mahmood – Which she purchased and has.

Ms. Buss – Which she has purchased now but part of their comment is that the reason for flies is potentially related to not having the manure covered or not having it removed often enough. It's a really tough one I have to tell you that I'm really on the fence with this one myself. I find it difficult especially because of working elsewhere in Washington County but the thing that makes this difficult is that your Council changed this ordinance and allowed for one acre per animal and allowed for an Interim Use Permit to have more. We need to deal with her application based on the ordinance that's in place.

Chairman Mahmood – I just have a couple of things to say. 2013 I believe it was, you came and asked for the barn and we said okay and did that. You had 6 horses and it went up to 8 horses now you have 10 horses even though it's only 8 horses and now we're asking for 16 horses. It is kind of concerning for me. I believe that a person should be able to do what they want on their property to an extent. You own it it's yours, who the heck am I to tell you what you can do on it to a certain point. What you've shown as you've gone on is that you kind of push the envelope a little bit with everything. Here you get the barn then you get the 6 horses now it's 8, now I've got 10, and we need to do this so you're in compliance. It's a little concerning for me. I believe you have the best

intentions in mind. I think you can do what's put forth in front of you and if you can't, guess what? You can't do it. So why not at least give you the opportunity to that's where I'm sitting. I want to give you the opportunity to prove that you can do what you're saying you can do and if you can and everybody's happy then that's great. If you can't do it then they're not happy and you don't get it and you have to sell some of your horses. So that's why in the beginning I said I don't want you to do this if you can't do it because I don't want to see you lose all this money on this deal. So I'm hoping you can, so that's where I'm sitting right now. I just wanted to put that out there to let everyone know where I was sitting since everyone's putting it out there.

Commissioner Taylor – Can I just make a technical point or two? One thing is that reading about dumpsters and manure storage, one of the main points talking about keeping it covered for not only insects, bugs, and odor but for leaching of....so that's going to be a harder thing to monitor perhaps. A lot of them recommend having a buffer area, I know it's going to be hard in that area. The other thing is related to dumpsters. I have more of a comment which is that our ordinance on dumpsters requires them to be screened. Is that typically the case?

Chairman Mahmood – I believe that's just commercial.

Ms. Buss – Probably commercial.

Asst. to the Administrator – It's section 1330.05 I believe. It can't be in the front yard of residential properties.

Commissioner Haley – It's a more visual thing from the streets.

Ms. Buss – It's hard to screen the whole thing because people have to get at it to empty it but they aren't allowed in front yards.

Asst. to the Administrator – Our ordinance regarding dumpsters is more for commercial and we just say that recycling and trash containers on residential properties just can't be in the front yard unless it's 24 hours prior to pick up.

Ms. Buss – It's fair for you totally if you are uncomfortable with the ordinance that's in place to say to the Council, "we'd like to take a look at this ordinance having been through this now. In the future we'd like to take a look at it". The part that's hard with this is that we have to deal with what's already in place.

Peder Wallace, 1651 11th Ave. – I guess if you're looking to pass this we just have a couple items. In 6 months we're going to have to come in front again, can we still continue with monthly inspections?

Ms. Buss – They could decide to do that yes. What it says now is at least once a year so the City can always decide to do more.

Motion by Haley, seconded by Tweeten, to approve an Interim Use Permit for the property located at 1675 Kolff Street. With 3 ayes, 2 Nays, motion carries.

5. COMMISSION & STAFF REPORTS – Nothing reported

6. NEW BUSINESS – Nothing reported

7. ANNOUNCEMENTS

A. Upcoming Meetings and Events:

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|--------------------------------|----------------|-----------|
| 1. City Council Meeting | March 17, 2016 | 5:30 p.m. |
| 2. City Council Meeting | April 7, 2016 | 5:30 p.m. |
| 3. Planning Commission Meeting | April 14, 2016 | 6:00 p.m. |

8. ADJOURNMENT

Chairperson Mahmood called to adjourn the meeting at 6:39 p.m.

Signed: _____
Anthony Mahmood, Chairperson

Respectfully submitted,

Andrew Brunick
Administrative Intern/Administrative Assistant