



**City of Newport
Planning Commission Minutes
September 11, 2014**

1. CALL TO ORDER

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

2. ROLL CALL -

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

Commissioners absent –

Also present – Deb Hill, City Administrator; Renee Eisenbeisz, Executive Analyst; Sherri Buss, TKDA Planner; Tom Ingemann, Council Liaison

3. APPROVAL OF PLANNING COMMISSION MINUTES

A. Planning Commission Minutes of August 14, 2014

Motion by Mahmood, seconded by Haley, to approve the August 14, 2014 minutes as presented and directing staff to review Sherri Buss' comment on page four of the minutes to see if it can be clarified. With 5 Ayes, 0 Nays, the motion carried.

4. APPOINTMENTS WITH COMMISSION

A. Public Hearing – To consider an application from William Dalluhn for Approval of a Minor Subdivision of Property Located at 2769 Bailey Road

Sherri Buss, TKDA Planner, presented on this item as outlined in the September 11, 2014 Planning Commission Packet.

Kevin Haley - I would be in favor of no park dedication fee whatsoever.

Vice-Chair Mahmood - I would second that.

Chairperson Lund - The Council should be setting the fee.

Ms. Buss - They can, the question is do you want any input on taking a look at the numbers or do you want them to set the fee?

Susan Lindoo - I agree with Dan.

Chairperson Lund - I think we should leave it to them because it's their mess.

Susan Lindoo - They also know what the whole budget is and they set the fees normally. If we do it I want to understand the budget implications and have a longer discussion about that. It does seem like a large fee, we've had other subdivisions and I don't remember the fee being that large.

Ms. Buss - It was set as a per unit fee, I think it was set when Dave Newman's subdivision came in and the administrator at that time wanted to have a higher fee. The fee is supposed to be based on your park and trail plan and what the City projects long-term for its cost of developing parks and acquiring land. Given that you have so much of your system developed, it seems like a high fee. I think it is something that the Council should take a look at.

Susan Lindoo - I think it should be the Council because as long as I've been here we've never set fees and have never had budget figures given to us so I don't think it should be something that we deal with.

Chairperson Lund - I don't want to let the Council off the hook on this one, they should set the fee and write it down and that's what it should be for everyone. We should leave it as is and you can go to them and tell them that we think it's too high.

Kevin Haley - I would like to recommend \$0 and let them add to it.

Ms. Buss - We can take out number six in the conditions and decide that we're not going to charge a fee because it needs to be reviewed and can recommend that the Council review the park dedication fee.

Susan Lindoo - The recommendation you're suggesting is just for this case. We're not talking about trying to tell the Council what to set the fee for everything, we're saying that in this particular case, this is too high and that they need to review the whole thing. For this case, we would set it at \$0 until they get it straightened out.

Chairperson Lund - I would rather not get their hopes up. I was not previously aware of this fee and don't understand the justification, if it's as common as it appears maybe setting it to \$0 is a little far.

Kevin Haley - The other choice would be \$1,000.

Chairperson Lund - I don't think we have the information to make a recommendation.

Ms. Buss - You can recommend that the Council set the fee.

Chairperson Lund - That's what we should do.

Ms. Buss - We can leave number six in and ask the Council to set the fee.

Chairperson Lund - That would be my preference.

Kevin Haley - The intent is for acquisition of land for parks and trails and we're doing neither.

Admin. Hill - Yes we are.

Kevin Haley - However, the larger developments are putting in 10 acres, this is a minor subdivision, I think it's exorbitant for a small area like this.

Chairperson Lund - The other part you can look at is that they're buying into the park system that already exists.

Ms. Buss - The theory of park dedication is that everyone has a potential to add and can use parks and trails. The theory is that every time you add a house you're adding users to the parks and trails.

Susan Lindoo - And there's no other fee that they're charged for it.

Ms. Buss - Yes and the question is if this is a supportable fee and if the Council should look at it. If you want to defer it to the Council that's fine.

Susan Lindoo - Can we suggest that the fee is dependent on the size of development?

Chairperson Lund - It already is because it's based on per unit.

Ms. Buss - Some do it based on density.

Matt Prestegaard - There seems to be two issues, should we approve the subdivision and what the fee should be. Where is the fee expressed?

Ms. Buss - There's a City fee schedule.

Matt Prestegaard - Is that our jurisdiction?

Ms. Buss - No.

Matt Prestegaard - And the Council could kick it back to us.

Chairperson Lund - Is that even in the Zoning Code?

Ms. Buss - The subdivision regulations are and the park dedication requirement is part of those regulations. Many times, planning commissions are involved in looking at the issue, study what the fee should be but it's always the Council that sets the fee.

Chairperson Lund - So we don't have any information to set the fee today.

Ms. Buss - No.

Kevin Haley - The other point you made is about the easement, that's virtually taking land.

Ms. Buss - Without that, Washington County won't record this. They're getting that right-of-way with all new subdivisions along County roads.

Chairperson Lund - That could be something you bring up with the fee.

Susan Lindoo - Did our City make that rule?

Ms. Buss - No, it's a Washington County requirement.

Susan Lindoo - So the City could complain about it.

Chairperson Lund - They do that with any title transfer?

Ms. Buss - As far as I know.

Anthony Mahmood - In regards to the park dedication fee, it doesn't seem right to charge him with that when it's for the potential of a new citizen coming in and using our parks. Why can't it be deferred?

Ms. Buss - It's for the new parcel. We have no mechanism to make them do that.

Admin. Hill - It's similar to water and sewer charges, you're buying into a system that's already been developed.

Chairperson Lund - Let's have the Council look at the numbers.

The Public Hearing opened at 6:14 p.m.

Lori Dalluhn, 2769 Bailey Road - I have a question on the Washington County easement thing, do we need to have the survey done before the Council approves it next week?

Ms. Buss - No, it'll need to be done before you file the subdivision with the County.

The Public Hearing closed at 6:15 p.m.

Chairperson Lund - You can pass along our opinion on the fee.

Ms. Buss - I will.

Motion by Lindoo, seconded by Prestegaard, to approve Resolution No. P.C. 2014-13 as presented recommending that the City Council approve a minor subdivision for property located at 2769 Bailey Road and recommending that the City Council review the park dedication fees and that they include this subdivision in with any decision they make. With 5 Ayes, 0 Nays, the motion carried.

B. Public Hearing – To consider amendments to the Zoning Code, Section 1350

Sherris Buss, TKDA Planner, presented on this item as outlined in the September 11, 2014 Planning Commission Packet.

Matt Prestegaard - This matches what we talked about last time?

Ms. Buss - Yes.

Matt Prestegaard - Do you suspect those other cities know something we don't or they're being conservative?

Ms. Buss - I think it's a new use and they're being conservative. People have also had a lot of folks come out. Eagan did a review of a proposed micro brewery and taproom and had a ton of people come out from the adjoining residential neighborhoods who wanted strong control over the patio location and hours of operation. The same has happened in a couple other communities. Stillwater has had similar issues where people are worried about trucks, hours, events, etc.

Susan Lindoo - Do we have an ordinance on patios?

Ms. Buss - No.

Susan Lindoo - So if that came up the Planning Commission and City Council would want to look at it?

Chairperson Lund - And you can restrict hours.

Ms. Buss - Yes. If it is a new bar or restaurant, they would need to come in for a CUP so you'd have a chance to do that.

Susan Lindoo - But if it's existing their hours would be set so it'd be too late.

Ms. Buss - It would depend on their CUP, if it says that any change to the business requires an amendment then they would need to come in.

Susan Lindoo - We're not talking about craft breweries are we?

Ms. Buss - Some craft breweries have patios with the taproom.

Chairperson Lund - You can always add an ordinance relating to quiet hours.

Anthony Mahmood - The existing ones don't have CUP's right now anyways.

Ms. Buss - A lot of them are nonconforming so if they wanted to expand and have a patio they would need to come in.

Susan Lindoo - So a patio would be considered an expansion?

Ms. Buss - Yes.

Susan Lindoo - We have defined what small means when it says "small brewery or winery as an accessory use" correct?

Ms. Buss - Yes, that's in the definitions.

Chairperson Lund - The State definitions?

Ms. Buss - Yes, we adopted the State definitions.

Chairperson Lund - Would it make sense to point to the State definitions in case they change?

Ms. Buss - I believe we did that.

The Public Hearing opened at 6:24 p.m.

Derrick Lehrke, owners of 374 21st Street - I just had one small thing that I wanted to bring to your attention. It's the wording where it talks about the 5,000 barrels. It says "Craft Brewery with the capacity to manufacture more than five thousand (5,000) barrels."

Ms. Buss - That's what St. Paul says.

Mr. Lehrke - We have a one barrel system so theoretically if we were to brew 24 hours a day, we could crush the 5,000 barrel limit but in order to do 5,000 barrels you would have a much larger system. I didn't have a chance to confirm what St. Paul says. My point would be and I think what you're looking for is that we actually manufacture 5,000 barrels or less.

Ms. Buss - We don't want to monitor them every day to see how much they're brewing.

Chairperson Lund - We'd only monitor it if it were a problem.

Ms. Buss - What the St. Paul ordinance says and it's very deliberate is a brewery that has a capacity to do that because you don't want to have to keep sending your zoning staff out all the time to monitor.

Chairperson Lund - How do you define capacity?

Ms. Buss - It's the size of the equipment.

Kevin Haley - However, he pointed out that if he brewed 24 hours a day, he could exceed that.

Ms. Buss - The question is if his equipment has the capacity to brew that much or more.

Chairperson Lund - A recipe could take a wide variety of brewing time.

Matt Prestegaard - Could you give us examples?

Mr. Lehrke - We have a one barrel system and plan to brew two or three barrels per week but as we get larger we would be moving up to two or three barrel patches. That's what we're anticipating with the one barrel system we have but it has the capacity to brew 12 barrels per hour. As you get larger systems, it gets larger as you go up.

Susan Lindoo - You're not making the overnight beer so you're capacity wouldn't be 5,000 barrels per year right?

Mr. Lehrke - I don't know where that comes to be. Somebody who has a 20 barrel system would only brew that once a week or month. If I were to move to a 10 barrel system and only plan to brew 1,000 barrels per year it would not make sense for this rule.

Chairperson Lund - I'm comfortable for the production limit rather than the capacity because the capacity seems hard to determine and that's what they did at the State level.

Ms. Buss - We won't know what that is for at least a year of operation.

Chairperson Lund - How does the State regulate it?

Susan Lindoo - How do they measure both things?

Ms. Buss - St. Paul did such a study of this stuff that I'm assuming their inspectors have considered how they're going to look at this issue. We can defer it for another month and take a look at it. I think the issue is that if you'll need to wait a year to see how much they brewed.

Chairperson Lund - Can the Lehrke's answer that question?

Mr. Lehrke - The Alcohol, Tobacco, and Fire Arms is going to track every single gallon of beer that we brew, destroy, and isn't of quality. It's all tracked.

Chairperson Lund - So lying to the City would be the least of your concern.

Susan Lindoo - Does it make sense to you, production over capacity?

Ms. Buss - The building inspector will need to look at this.

Chairperson Lund - Why?

Ms. Buss - Because it's a CUP, the City won't monitor it every year.

Chairperson Lund - So if we suspect they made 6,000 barrels, can't we ask them to show us their ATF documents?

Ms. Buss - This is ahead of time. They're getting the permit before they start doing the business.

Chairperson Lund - It's not a problem until they make the beer.

Ms. Buss - We're allowing them to set up a business with a certain capacity.

Chairperson Lund - I don't think anyone else here agrees with you on this issue.

Ms. Buss - I'm looking at all the other city ordinances.

Chairperson Lund - I get what the other cities are doing.

Kevin Haley - I agree with what we're talking about here. I have equipment that has capacity well beyond my ability to sell but if you told me I could only have a piece of equipment that has the capacity of this. What would happen if they bought a system that had a capacity of 15 barrels at one time, someone could come in there and say that they could make 20,000 barrels per year.

Ms. Buss - That's what this is trying to get around is not having someone install equipment that could produce 15,000 or 20,000 barrels per year because it will be hard for the City to monitor it.

Chairperson Lund - The ATF will do that for us.

Ms. Buss - They don't enforce the permit. Is the City supposed to call ATF every year to see how much they're producing?

Chairperson Lund - Are they going to lie to the ATF?

Ms. Buss - Do you call up the ATF for the businesses in town?

Chairperson Lund - They have to turn that over to the State too.

Ms. Buss - It means the City then has to...

Chairperson Lund - Let's move this along.

Susan Lindoo - Now wait a minute Dan, this is not fair. I'm getting upset here. I don't think we need to attack Sherri because she is trying to tell us what other cities are doing.

Kevin Haley - We've heard it.

Susan Lindoo - I think it's worth listening to, that we are setting something up ahead of time and saying that we don't want them to have the capacity to do more than this. Can we give them a CUP and take it back in a year's time if you produce more?

Ms. Buss - It's very hard.

Susan Lindoo - I think so. I think there's a reason that cities like St. Paul do this sort of thing. They have the staff to study this in a much greater detail than we do. Maybe we can come to a compromise but I don't what Sherri is saying is ridiculous. We're giving them something saying go forth and do but we're not saying go forth and do and we'll be checking up on you, we don't have that ability.

Ms. Buss - To take a CUP away is very difficult. If after the fact, we find out that they or another owner are brewing 6,000 or 7,000 then the City is in the position of trying to take away a CUP, which is a lengthy and expensive process. My sense of why St. Paul and other cities have set this up as a capacity issue is that they want to say ahead of time that this is the use we're issuing the permit for, this is the maximum you can do and we don't expect to keep following up every six months or year to track you guys and then try to go through the difficult process of trying to take it away. You can say "able to brew up to," it's however you want to word it.

Chairperson Lund - If all this is true, how do you measure capacity?

Ms. Buss - We'll need to rely on our building inspector for that because he will be the guy that's looking at what they're putting into the building. He can call up the inspectors in St. Paul to see how they're doing it. He's an experienced guy.

Kevin Haley - No way.

Susan Lindoo - Is there a reason to even have any limits on it then if we're not going to say something about we don't want them to produce more than 5,000 gallons. Are we going to tell them to come back in a year and prove it to us, no way. We don't want to do that.

Kevin Haley - I don't think that is what's going on here at all.

Susan Lindoo - Then how do you enforce it?

Chairperson Lund - We still have a public hearing, let's allow the Lehrke' speak.

Mr. Lehrke - I guess I would go back to the question of if our system would be within capacity. We have a one barrel system and I'm planning to brew three to four a week. If I brew 13.69 barrels a day, you could argue that I would double the capacity. Someone who has a 10 or 20 barrel system might only have a 200 or 300 per year output. This is tracked constantly by the ATF. If there is a limit set, I don't understand why I would be allowed to break that. If the City law says that you're bound to produce 5,000 barrels, if I break that then I'm breaking the law and I don't know if it'll take you a year to find out. I know ATF will be on it every single month. They track the beer pre-tax, post-tax, etc. It's very strictly regulated and I'm sure it'd be easy to figure out if we break it.

Susan Lindoo - So what do you want it to say?

Matt Prestegaard - Manufacture not capacity.

Mr. Lehrke - Right. I haven't seen this small detail in other city ordinances but I haven't been looking for it either. It's my understanding that at a State level, it's about production.

Susan Lindoo - So then you would suggest that our City staff check with ATF to see how much you produced at the end of each year?

Kevin Haley - It's in the State requirement as well.

Ms. Buss - No, a craft brewery can brew far more than 5,000.

Matt Prestegaard - I'm trying to understand...

Chairperson Lund - If it's an issue then the staff would get involved and the paperwork will be there.

Susan Lindoo - So there's no need to have any restriction until we know there's an issue?

Chairperson Lund - No, we have the restriction for when it becomes an issue.

Kevin Haley - It's the wording of capacity vs manufacture.

Ms. Buss - Why don't we just change the wording, this issue is not worth going round and round about. I'll explain the issue to the Council and they can talk about it as well and we'll go from there.

The Public Hearing closed at 6:40 p.m.

Matt Prestegaard - I'll move the Resolution with an amendment to the language so it'll be manufacture instead of capacity.

Vice-Chair Mahmood - The whole point of having this is so they don't have to get a CUP correct?

Ms. Buss - If they're a small operation?

Vice-Chair Mahmood - But that's what it's all about, is amending it so they don't have to get a CUP?

Ms. Buss - Yes, for any craft brewery that comes in with a small operation. You can change it in the future.

Chairperson Lund - For continuing the discussion, that's a small craft brewery.

Vice-Chair Mahmood - And you aren't even brewing yet? So we're doing a lot to make sure that you guys will get what you want?

Ms. Buss - You are the most liberal city in the nation at this point.

Kevin Haley - Great.

Vice-Chair Mahmood - I just want to make sure that everyone realizes that we are bending over backwards to do what you guys want to make sure your business is successful.

Ms. Buss - I think you need to be very clear that this would apply to anyone, this is not being done for one business.

Mr. Lehrke - The current ordinance doesn't allow craft breweries at all where we're located so it's not just the ability to have a small brewery, the ordinance is that we can't have a brewery so we're Opinion Brewing Co and can't brew.

Motion by Prestegaard, seconded by Haley, to approve Resolution No. P.C. 2014-14 as amended. With 3 Ayes, Mahmood Voting Nay, Lindoo Abstaining, the motion carried.

C. Discussion Regarding Draft Response for the Mississippi River Corridor Critical Area Rules

Sherri Buss, TKDA Planner, presented on this item as outlined in the September 11, 2014 Planning Commission Packet.

Matt Prestegaard - Who governs the shoreland regulation?

Ms. Buss - We have a shoreland ordinance and it's based on the State's model ordinance. We implement it.

Matt Prestegaard - So this is a proposal to?

Ms. Buss - It's another overlay on top of that?

Matt Prestegaard - Through the DNR.

Chairperson Lund - Thank you for putting this together, all of these are excellent points. Either they'll agree with us and the other cities or they won't. We need to set ourselves up to get an exemption on the setback because of the City sewer and water that runs along the River. In my opinion, that should be point number one so that even

if all of this passes that they understand that we have a particular difficulty unique to Newport where we have a City sewer and water line that runs right at the 100 foot mark. Every single lot along the River will be unbuildable other than the pre-existing, non-conforming use if the 100 foot setback is put in. We should flag that as an issue now so they'll be aware of it. We can point out the significant expense and impossibility of connecting those people to the City water along 2nd Avenue instead. The amount of value degradation will be severe. We saw what happened to the houses behind the levee when they were limited. It's millions of dollars, either in property value or to more the City's sewer and water plus some degradation. You can't do that in piecemeal because the first house that is required to move will go right on top of the City easement.

Ms. Buss - No one will be required to move backwards.

Chairperson Lund - There are teardowns though, they would be unbuildable.

Kevin Haley - As Mr. Flood brought up earlier, this is probably bigger than nationally what is trying to happen. Imposing some rules so that over time, we won't have a house on the River given the conditions.

Ms. Buss - We can emphasize that we need to keep the flexibility provision in there. That allows communities to ask for flexibility from the regulations.

Chairperson Lund - We could just present it as a problem in the letter so they're already aware of the issue. I have an email from Kevin Chapdelaine, it says:

"Hi Deb,

Thanks again for keeping me in the loop with Newports response to the DNR Critical Area issue.

I was planning on attending the PC meeting tonight but something else has come up. I have read through TKDA's draft letter and support the findings Sherri has addressed. Friends of Pool 2 does represent many of the riverfront homeowners in Newport so I thought this endorsement may be helpful.

Kevin Chapdelaine"

Kevin Haley - I appreciate the work that you did. It's insurmountable to look over this stuff. It's an issue of taking again. They continue to take from communities and people.

Ms. Buss - We'll add that one point and this will go to the Council next week.

Chairperson Lund - If anyone would like to come forward and speak on this we'd be happy to hear you. If anyone saw the Council meeting, it was impressive, the consensus and outrage that everyone on the Council had about this.

Kevin Haley - I think it's the same feeling here too.

Marvin Taylor - My concern is that they emphasized the simplicity to homeowners in all of their communications but then all these unique cases came up in the letter. I can live with the vegetation issue even though I find it annoying. Cutting down one tree on my lot would require a permit and that's the case with a lot of homeowners along the River. I don't think it'll make anything better. I teach a class on the history of development along the Mississippi River in Minneapolis and St. Paul and one thing I talk about is the decline of single-family housing, there isn't any. I don't see the benefit.

Chairperson Lund - Do you look at the sediment solution source from the drain tiles and how that's increased?

Mr. Taylor - I've covered some of that but it's not my primary course.

Chairperson Lund - The point I would make there is that if they really cared about the health of the River they would not exempt farmers and drain tiles from point source pollution because it is filling up the River a measureable amount every time it floods. They should require some drainage ponds for slowing up that water before it even gets here so it can settle out in farm fields. That's my biggest frustration is they're picking on the easiest target.

D. Resolution No. P.C. 2014-15 - Recommending City Council Approve a Zoning Amendment to Section 1300, General

Admin. Hill presented on this item as outlined in the September 11, 2014 Planning Commission packet.

Chairperson Lund - Once we have these definitions, the City Council will be discussing whether or not we should allow manufactured or other homes in Newport without a basement.

Admin. Hill - Yes there are a couple lots in town that have high bedrock so a slab would work better than a basement.

Chairperson Lund - And manufactured homes aren't mobile homes. Adding this definition, it'll allow the Council to say that you don't need a basement.

Motion by Prestegaard, seconded by Lindoo, to approve Resolution No. P.C. 2014-15 as presented. With 5 Ayes, 0 Nays, the motion carried.

5. COMMISSION AND STAFF REPORTS

6. NEW BUSINESS

Chairperson Lund - I think as our zoning currently goes, MX-1 and maybe MX-4, the zoning requires the parking to not be out front and I think as far as Hastings Avenue is concerned, that's impractical. I think we should look at removing that requirement, at least along Hastings Avenue.

Admin. Hill - Would you like Sherri to draft a report on that for discussion?

Chairperson Lund - If you have a farm field it would be a lot easier but we already have buildings and to tell a new guy that he needs to have his building in front and parking in back, that's not practical.

Admin. Hill - She probably knows the history behind it and the reasoning.

Chairperson Lund - I think I was around when we did that and it carried over from MX-3 which is different because it's not the same level of development in MX-1 and MX-4.

Susan Lindoo - I think historically, that's how other cities handle mixed-use districts and when we put in the MX, that was the desire to go in that direction.

Admin. Hill - It is visually more appealing.

Chairperson Lund - But do we expect that to happen on Hastings Avenue. The new NAPA building wouldn't have been allowed, did we pass it afterwards?

Admin. Hill - That happened before I got here so I don't know.

Chairperson Lund - I think it's a fairly recent change, the new NAPA building went in and everyone's happy with it so we should be happy with more.

Matt Prestegaard - It's hard for me to picture what it would look like if parking was in back.

Admin. Hill - Think of Central Bank, where the parking is in the back.

Chairperson Lund - No, it's off to the side. Maybe I'm wrong on this but it seems tough with the mall there.

Kevin Haley - I would be in concurrence with what Dan is saying. I've looked at other communities to determine if it's feasible for us but any business in there that wants to change, would need to conform. One business stopped construction because of it.

Chairperson Lund - Yes, South Suburban Rental had plans and I don't know if the zoning was the reasoning but I'm sure it didn't help. The question I would have is where has there been a successful transition from the parking lot out front to the parking lot out back? If there is an example, is that something we can reasonably expect to happen in Newport? Could we add more value or expect more development if we changed that?

Admin. Hill - I'm not sure if it means a big difference to some developers.

Matt Prestegaard - So our question is if it is practical for MX-1 and MX-4.

Kevin Haley - I would like to see it open for discussion.

Chairperson Lund - And it's next to Highway 61 so it's not a walking utopia that you think of when you're doing something like this.

Admin. Hill - It all depends on what you want your community to look like in the future.

Chairperson Lund - It's not what we want it's what can happen. We can say this is what we have now and what can we expect to happen.

Admin. Hill - We'll have her look into that.

7. ANNOUNCEMENTS

Chairperson Lund - There's a meat raffle at Cloverleaf tomorrow starting at 7:00 p.m. for the Fire Department. The next City Council meeting is September 18 at 5:30 and our next meeting is October 9.

8. ADJOURNMENT

Motion by Mahmood, seconded by Haley, to adjourn the Planning Commission Meeting at 7:08 P.M. With 5 Ayes, 0 Nays, the motion carried.

Signed: _____
Dan Lund, Chairperson

Respectfully submitted,

Renee Eisenbeisz
Executive Analyst