

ASTORIA PLANNING COMMISSION MEETING

Astoria City Hall

June 24, 2014

CALL TO ORDER:

President Nemlowill called the meeting to order at 6:30 pm.

ROLL CALL:

Commissioners Present: President Zetty Nemlowill, Vice President McLaren Innes, David Pearson, Thor Norgaard, Kent Easom, Peter Gimre, and Sean Fitzpatrick

Staff Present: City Manager Pro Tem/Community Development Director Brett Estes, Planner Rosemary Johnson, and City Attorney Blair Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

APPROVAL OF MINUTES:

ITEM 3(a): May 6, 2014

President Nemlowill asked for approval of the minutes of the May 6, 2014 meeting. Vice President Innes moved that the Astoria Planning Commission approve the minutes as presented; seconded by Commissioner Easom. Motion passed unanimously.

PUBLIC HEARINGS:

President Nemlowill explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff.

ITEM 4(a):

CU14-07 Conditional Use CU14-07 by Jim Ray, Board President of the Astoria Rescue Mission, to locate a semi-public use as a two-unit family Mission facility in an existing single-family dwelling at 64 W. Bond in the R-3, high density residential zone.

ITEM 4(b):

V14-05 Variance V14-05 by Jim Ray, Board President of the Astoria Rescue Mission from the required 4 off-street parking spaces to provide zero parking for a two family Mission facility at 64 W Bond in the R-3, high density residential zone.

President Nemlowill requested that public hearings for Items 4 (a) and (b) be conducted simultaneously, as both applications were by the same Applicant. She asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. She asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, she asked Staff to present the Staff Report.

Planner Johnson reviewed the written Staff Reports. No correspondence had been received for either application and Staff recommended approval of both requests with the conditions listed in the Staff Reports.

President Nemlowill called for questions of Staff. Hearing none, she opened the public hearing and called for a presentation by the Applicant.

Jim Ray, Board President, Astoria Rescue Mission, PO Box 294, Hammond, OR, 97121, said the Rescue Mission had no objections to the Staff Reports or the Findings. The Staff Reports were well written. He offered to answer questions.

Commissioner Pearson asked if the building needed major or superficial improvements. Mr. Ray replied the building needs a new foundation, a new roof, and complete interior renovation. The building has not been maintained for years.

President Nemlowill called for any testimony in favor of, impartial to, or opposed to the applications.

Lorrie Durheim, 398 Atlantic, Astoria, asked how tenants parking in Warrenton would get to their vehicles. She also wanted to know if the building/parking was secure.

Mr. Ray responded that the mission has a van that is used to transport people to the hospital, doctor's appointments, church, pharmacies, and other appointments. Residents that need to park at Gateway Church in Hammond would be followed to the church in the van, and then brought back in the van. Residents would be taken back to their vehicle in the van when necessary.

President Nemlowill closed the public hearing and called for Commission discussion and deliberation.

Commissioner Pearson said the applications appear to meet all of the criteria that the Planning Commission has been asked to review. He supported both applications.

Commissioners Fitzpatrick, Norgaard, Gimre, Easom, and Vice President Innes agreed. Commissioner Gimre added that he has never heard anything negative about the work that the Rescue Mission has done. This is an opportunity for a house to be rehabilitated and he fully supported the applications.

Commissioner Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff Report and approve Conditional Use 14-07 by Jim Ray, with Conditions; seconded by Commissioner Fitzpatrick. Motion passed unanimously.

Commissioner Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff Reports and approve Variance 14-05 by Jim Ray, with Conditions; seconded by Commissioner Norgaard. Motion passed unanimously.

President Nemlowill read the rules of appeal into the record.

ITEM 4(c):

A14-02 Amendment A14-02 by the Community Development Department, City of Astoria, to amend the Development Code and Zoning Map to implement the Riverfront Vision Plan in the Civic Greenway Area (16th to 41st Streets, Marine Drive to the Columbia River); add Compact Residential zone; add Civic Greenway Overlay zone; add clear and objective standards for residential development; renumber several zones and overlay zone; miscellaneous related changes with the new Code references; and rezone the area on the north half of the blocks between Marine Drive and the Columbia River from 30th to 32nd Streets from the C-3 (General Commercial) zone to CR (Compact Residential) zone. The City Council meeting is tentatively scheduled for July 21, 2014 at 7:00 pm in City Hall Council Chambers. This item was continued from the May 27, 2014 Planning Commission meeting.

Planner Johnson reviewed some highlights and changes in the written Staff Report and direction Staff received from the Planning Commission at the May 27, 2014 meeting. She handed out copies of the changes made to the draft at the dais. Page 13, Item C.2 contained a typographical error and should read "The maximum width of an individual overwater building located greater than 500 feet from the shoreline shall be a maximum of 50 percent of the total parcel width (measured along the parcel frontage adjacent to the Columbia River) or 150 feet, whichever is less." She noted that Tim Ramis' letter discussed the East End Mooring Basin Master Plan, but the Port does not currently have a master plan for the area that has been submitted to the City. Therefore, it is premature to include the master plan in the ordinance. Staff is recommending that the Port work on a master plan outside of this amendment process. Once a plan is adopted, the Port can come to the City to work on integrating the plan into the Code and/or make any necessary amendments. After the public hearing, Staff would like the Commission to respond to the following:

- If overwater building heights are limited to the bank height, does the Commission want to limit the restriction to no variances in the future?
- The exact location of the potential overwater development above the bank line, which Staff has recommended be located from 35th to 39th Streets and at 500 feet from the shoreline.
- Two pieces of correspondence were received, the letter from Mr. Ramis included in the Staff Report, and a letter from Annie Oliver. Staff recommends the Planning Commission recommend that the City Council approve the amendments.

President Nemlowill called for questions of Staff. Staff responded to Commissioner's questions and concerns with these comments:

- The Code currently allows potential development of the East End Mooring Basin area for grain terminals, coal and oil terminals, and cold storage. More research would be needed to determine if a liquefied natural gas facility would be allowed, which was mentioned in a document prepared by Port of Astoria representative Attorney Jordan Ramis. These uses would still be limited to height and mass restrictions in the new Code.
- Page 7 of the Amendment Request document cited Comprehensive Plan language that stated major Port development would be encouraged at the existing Port docks and East End Mooring Basin. Many of those Comprehensive Plan sections were written in 1982, and then amended in 1986. The Port had two major holdings, the west docks and the East End Mooring Basin. North and South Tongue Point were not under Port control at that time. At the time that language was written, it was envisioned that the two largest Port areas would be the West end and Tongue Point areas and the Comprehensive Plan acknowledged that the Port had control of the East End Mooring Basin. The Plan did not specifically state what could be developed.
- The A-2 zone, which is the overwater area between 17th and 21st Street, currently allows professional and business office, personal service establishments, residences, and arts and crafts studios as conditional uses. These uses are limited to upper floors because the building must have approved commercial or tourist-oriented uses on the ground floor. Up to 25 percent of the ground floor can be used for the business and residential uses. These uses would be eliminated from the Civic Greenway Area, but other A-2 zones elsewhere in the City would retain these uses.
- The Gateway Overlay Zone would still be applicable within the Civic Greenway Area because the Gateway Overlay Zone has its own set of standards and its own design review criteria. The Civic Greenway Area overlaps some of the Gateway Overlay Zone. The design guidelines between the two areas are similar, but the overlap will put a few more restrictions on the Gateway properties, such as the setbacks and some building setbacks being proposed for on-land development standards.
- Home stay lodgings are being considered as a conditional use in the Compact Residential zone. However, the intentions for the neighborhood are affordable housing for working Astorians. This use could be removed if the Commission believes the area should not have any transient lodging. Home stay lodgings would be restricted to owner occupied, one or two bedroom dwellings.
- Transportation issues have not been included in the Compact Residential zone section of the Code because it has been addressed in the Transportation System Plan (TSP). Requirements for connections from developments within a certain distance of transit to transit facilities have been included in the TSP. Those requirements apply throughout most of the City. The proximity of subdivisions to transportation facilities and routes are considered at the time of development.
- The Planning Commission had been divided on the decision to include the allowance of overwater eating and drinking establishments in the Code. Staff kept the use in the Code, but added more restrictions, because clear and unanimous direction was not given by the Commission.
- Generally, variances are from numeric values. However, the proposed amendment includes a variance process from development that is restricted to below bank height, which is not a numeric value. Staff believed it was important to specifically state whether a variance was allowed to avoid future misinterpretations.
 - President Nemlowill stated that she hoped to hear from the public about the variance process because it was an important issue.
- Height restrictions for on-land development would apply to the vacant commercial property in Mill Pond along Marine Drive. The new height restrictions would be a reduction from the current allowable height, which is 45 feet. Staff understood that the Planning Commission wanted the remaining vacant lots to be reduced in height.
- The Recommended Native Plant List was reviewed by several people who deal with street trees as well as the Columbia River Estuary Study Taskforce (CREST), who reviews shorelands and native vegetation. President Nemlowill wanted to ensure that the trees conformed to size standards.

- Handrails on gangways and walkways must be at bank level, so the walkway would be need to be stepped down from the bank level. Planner Johnson displayed a graphic showing two examples, Pier 39 and 36th Street causeway to the East Mooring Basin and noted that an exception for handrails could be included in the amendment.

Matt Hastie, Angelo Planning Group, 921 SW Washington, gave a PowerPoint presentation, which included a summary of the May 27, 2014 Planning Commission meeting. He noted that most of the proposed amendments are limited to the overwater development standards. He briefly reviewed these proposed overwater development standards, showing graphics that demonstrated examples of the standards. A local arborist and CREST reviewed the proposed tree species in conjunction with the rest of the Code amendments; however, he did not confirm whether the heights of the tree species would comply with building height limits. Criteria for the trees on the list include species that were not super tall and species that were columnar. The intent was to prevent planting trees that would block views of the river.

President Nemlowill opened the public hearing and called for testimony in favor of the application.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said that like Planner Johnson, she has been involved with this project since 2007. She noted that no consensus was received from the Planning Commission that the eating and drinking establishments were desired, but they felt out of place to her. She was unclear about the variance from the bank height. However, she was happy and believed this was the closest the City has been to something that is really in harmony with the spirit of preserving open water. Many people have talked to her about the ordinance and she believes she represents many of these people. She reiterated that she was happy with the proposal.

Planner Johnson explained that the Planning Commission needed to clarify for Staff whether they wanted to include variances to the bank height restriction in the Code.

Michael McCusker, 757 27th Street, Astoria, stated he was confused as to whether he was for or against the amendments. He read his written statement into the record, and gave a copy of his statement to Staff. He stated that it is essential that the City preserve the people's right to public use of the Riverfront. He did not want to see condominiums, cruise ship docks, aquariums, hotels, restaurants, etc. on the Riverfront. He stated that limited views from these facilities was not what was envisioned by the Riverfront Vision Plan as waterfront views. He believed a park atmosphere was the best use of the Riverfront.

President Nemlowill reminded that this portion of the public hearing was open to those who wish to speak in favor of the application.

Chris Farrar responded that Mr. McCusker's comments were the most favorable the Planning Commission would hear.

Cindy Price, 1219 Jerome, Astoria, said she felt a little like Mr. McCusker, but more like Ms. Menetrey. She believed that with some exceptions, Astoria had the best of the worst set of Codes. She encouraged the Planning Commission to refrain from implementing variances and implement President Nemlowill's suggestions into the Code. Her neighbor was surprised to hear that she had been attending Planning Commission meetings because implementation of the Riverfront Vision Plan has not been in the paper. Most Astorians who have known about the Riverfront Vision Plan have been very concerned about potential development on the river, particularly in the Civic Greenway Area, which she has come to love for its vast open spaces over the last seven years as she engaged in the Plan. Her neighbor thought the Riverfront Vision Plan had been put to bed years ago and was concerned that the river would be taken away from the citizens. Ms. Price told her neighbor there was talk about development on the river, like the Cannery Pier Hotel. The neighbor indicated that while she liked the hotel, she would not want more overwater development. Ms. Price believed this spoke to the types of exceptions being discussed. Stay below river bank height and do not allow variances. Shel Cantor and Ms. Menetrey's presentations at previous meetings were heartfelt and data-rich. She wanted to add to those presentations by bringing attention to the landscaping. She did not spend a lot of time looking at the trees because she believed European horned beams and sugar maples easily grow in this area up to 90 feet and are very wide. She understood the value of native plantings. She is a Master Gardner and has spent many of the last 16 years digging up plants in her own garden that she believed would be cool, but turned out to be thugs. Some of those plants are on the list of recommended shrubs to be planted on the river side of the River Walk at a maximum of three feet high. Most of the plants on the list start at three feet. The Ribes Lobbi stops at about six

feet and most of them get as much as 28 feet high. The plants sucker prolifically and produce colonial thickets. Many produce beautifully colored berries that birds adore, eat, and deposit the seeds in yards, which have to be dug up. All of the shrubs on the list require a lot of maintenance, at least semi-annually. Almost all of the shrubs on the list will require some digging up because they will get so enormous, and she doubted digging was wanted on a riverbank. She urged the City to re-examine and extensively revise the shrub list because this is all about details. The same goes for the herbaceous grasses and ground covers list. Everyone should be wary of common firewood, horsetail, clasping arnica, sharp tooth angelica. These plants are not what the City wants. One aspect of open views of the river that she considers supremely important is the riverbank, the ebb and flow of the tide, the hide and seek the tides play with the rocks, piers and artifacts, and the slap of water made by the wake of a passing ship. She wants to see and hear all of these things and they need protection.

Robert Clark, 145 2nd Street, Astoria, said that implementation of the Civic Greenway Area would either be a feature or a problem for the sea lions in the East End Mooring Basin.

President Nemlowill believed Mr. Clark needed to address a different commission with his concern. Mr. Clark responded that the Civic Greenway Area would include the East End Mooring Basin. He wanted to know if this would be considered a feature or a problem since the sea lions would be in the East End Mooring Basin.

Director Estes explained that the City of Astoria had no control over how the sea lions were managed and where they congregate. State agencies deal with those issues. The zoning process did not include reviews of sea lion habitat.

Mr. Clark asked if the dwellings in the area would be floatation based.

Director Estes said no, that pilings would be driven and dwellings would have to comply with all Federal and State statutes for overwater development. This is required for any work done along the Columbia River.

Jan Faber, 3015 Harrison Avenue, Astoria, asked for clarification on the height requirements for on-land development on the river side of the River Walk. He wanted to know if the bank height restriction was only for overwater development

Planner Johnson confirmed that only overwater development was proposed to be restricted to bank height.

Mr. Faber said he didn't mind the look of the buildings on either side of the walkway out to Big Red, but if those buildings lined the shoreline all along the River Walk, it would not matter what occurred over the water because the water could not be seen.

Planner Johnson explained that the bank height restriction would not affect buildings on the land north of the River Trail. However, there are very few areas, if any, that would have enough land to support a building not partially over water. She believed the existing building near Big Red was partially over the water because it was built on pilings.

Mr. Faber stated that it makes no sense to allow development of this land and attempt to preserve views by limiting overwater development to bank height. He suggested the City conduct an inventory before the amendments are adopted to determine which parcels are open for building, even a one-story building. Otherwise, preservation means nothing. He asked if overwater development was allowed to be 500 feet out and 28 feet high. Planner Johnson said the only place 28-foot high buildings, 500 feet out, are being recommended is between 35th and 39th Streets. All other development would be limited to bank height. The Planning Commission could consider limiting development to bank height north of the railroad tracks, rather than just over the water, which would address Mr. Faber's issue of buildings along the bank. She showed a photograph of an existing building on the riverfront by Big Red (100 31st Street), noting that the building was partially supported by pilings.

Mr. Faber said after receiving the agenda packet, he wanted to express his appreciation to anyone who volunteers for commission work. The public attends the meetings when they are interested, but Commissioners are present even for things they are not interested in. Regardless of whether the public is for or against an issue, he appreciated the citizens who volunteer. He agreed that visitors are constantly appreciative of what Astoria looks like. He was sure that the Commissioners enjoyed that as well. The comparisons made in Mr. Ramis' letter are the reasons people live in Astoria and get off the cruise ships and walk around. This is not Chicago, Seattle,

or San Francisco. He was reminded of Waterfront Park in Portland, also known as Tom McCall Waterfront Park. Mr. McCall and a group of citizens fought against commercial development on valuable land. What they did and preserved is enjoyed by everyone that comes to Portland and by Portland citizens. Years after Mr. McCall and the group of citizens have passed, people go to the park and say, "Look what a wonderful thing". By preserving the area for the future, people who come to town years after the Planning Commission and their children are gone will remember that this is what the Commission preserved for posterity. He urged the Planning Commission to preserve the area. He stated he was always worried about restrictions that offer the opportunity for exceptions. The next Planning Commission or City Council could be pressured for exceptions and it is not possible to know the criteria. If the Commission is going to preserve the area, they need to do it without exception. He urged the Planning Commission to say no to variances from overwater height limits. He was interested in the exception for restaurants with fish processing plants and asked about its purpose. He was concerned about people wiggling around the preservation standards. He was unsure why the exception would allow a dock possibly with only two slips to have a restaurant. Astoria is not such a large city that someone would be unable to get to a restaurant from a marina. He preferred a preserved beautiful park through the entire area. Nevertheless, in view of competing interests, he believed the Planning Commission had made some accommodations. The Port and Floyd Holcom weighed in at the last meeting and it seems like the City Staff has come back with allowances for what they want to do. After looking at the list of things Mr. Holcom wants struck out of the ordinance, he believed Mr. Holcom wanted the whole riverfront. He believed the proposed amendments were a good compromise. He urged the Planning Commission to support the amendments with the restrictions for on-land development north of the River Walk.

Vickie Baker, 3015 Harrison, Astoria, thanked the Planning Commission and Staff for all of the hard work they have done. She wanted the Planning Commission to consider no variances which would be very important for preserving the area because wiggle room allows many things to happen later down the road. She opposed the eating and drinking establishments. There are many wonderful restaurants and people would appreciate keeping them in the downtown area instead of in the Civic Greenway Area. Removing the eating and drinking establishments would prevent people from building more than Astorians want built out on the water. She believed the list of recommended plants should be removed from the proposed amendments. The City should consider asking Master Gardeners to look at the landscaping because so many plants are listed and they may have some serious repercussions.

President Nemlowill called for any testimony impartial to the application. Hearing none, she called for testimony opposed to the application.

Lorrie Durheim, 398 Atlantic, Astoria, stated she agreed with Mr. McCusker and Mr. Faber. Through the County and the Port, she has seen the variance problem, which puts fear in her heart that at some point someone will put on the pressure and build whatever they want on either the north or south side of the River Walk. She believed the City needed to be very careful about this. She understood that the Planning Commission was trying to be fair, but the Commission really needs to preserve the area. Astoria is unique. Does Astoria want to become like Malibu or someplace where the ocean or a river cannot be seen without going down a little view corridor? She was surprised about the liquid natural gas (LNG) and knew this would not happen, but once the view is gone, it is gone and will never come back the way it is. Astoria has wonderful hotel and building renovations that are so important to the City's future. Astoria will either preserve the riverfront or allow room for people to maneuver and do what they want for economic gain. She knows Mr. Ramis, the Port's attorney, and she has been fighting against LNG terminals, whether import or export, for almost ten years. Mr. Ramis was one person supporting the people who want this development here. She does not trust Mr. Ramis.

Floyd Holcom, 652 Alameda Avenue, Astoria, said he lives on the south slope of Astoria and owns a building at 100 39th Street called Pier 39, formerly called the Hanthorn Cannery Foundation since 1875. He is not in favor of the ordinance whatsoever. As citizens, everyone must try their best, tell the truth, and give everyone what is believed to be the right way to do things. Being born and raised in Astoria, he had some great founding fathers. Duncan Law was his Scout Master in Boy Scouts. He looks at ordinances critically because they are law. So, he agreed with everyone who had spoken for or against this application. He believed several comments about economics and the environment were true. However, when it comes down to the ordinance there is a different perspective. People like Mr. Ramis are hired because no one out there is smart enough to really figure out the law the citizens just asked City Council to approve. The citizens really do not know how the law affects them. He was part of the Astoria Riverfront Vision Plan, but had to ask to attend because he was never invited. Many of the things he proposed never made it into the Plan. However, the City gave him the Dr. Edward Harvey Award

for renovating a building over the water at the end of 31st Street. He has never received the award for Pier 39. He is a developer, but was offended by the names that Mr. McCusker called developers. Every dime he has made from his tenants at Pier 39 over the last ten years has gone back into the building; he has not made a dime. He believed the issue was getting off track because the facts were not facts, the citizens were presenting emotions to the Planning Commission. The Planning Commission must make a decision to send an ordinance, a change in the way Astoria does things, to City Council. He was opposed to the ordinance going to City Council. He moved his family back to Astoria so he could invest all of his funds in the community. He could count how many buildings he remodeled back to their historic significance. He wanted the Planning Commission to pass the ordinance between 16th and 31st Streets. But between 31st and 40th Streets, he was opposed to changing things midstream of someone with dreams who is trying to work on things. George Brugh has been working down there all of his life. Many people said it was great when Safeway bought several vacant properties because Safeway puts a lot of money into the school. This is not included in the Staff Report because no economic analysis on the benefits of development was completed. The Staff Report and newspapers indicate that developers are bad people trying to take the views and stop issues. This is not true; he was present to tell the facts. He just returned from the east coast on Wednesday, and Mr. Ramis had to tell him that another meeting was scheduled for Tuesday because the City never bothered to let him know the hearing had been continued. Safeway, on 33rd Street, puts in over \$100,000 in taxes, almost \$40,000 of which goes to the school district and \$50,000 to the City of Astoria. Safeway bought the water lot in front of its store and there are pilings in that water lot. He was happy when Safeway was going in because he felt lonely down there in an old cannery that did not have a road. When Safeway began pounding pilings, there was no road to Pier 39 and it was all dirt. The Staff Report does not state that at that time, he asked Doug Tindall of the Oregon Department of Transportation (ODOT) to provide a grant for the City of Astoria to build a road out to Pier 39. ODOT provided \$550,000 and a turn lane into 39th Street. The City of Astoria did not pave this road; he had to ask the State for the road. The State said the City had to sponsor the project. He and his partners decided they needed to make the money back because roads cost money to develop. The developers who built the condominiums went bankrupt. Many people do not like the condominiums and he was not in favor of the design. When no one rents from you, or puts in a road, or a Coffee Girl, there is no money to renovate your historic building. These economic generators must occur. The City of Astoria did not invite him to put in a Coffee Girl and no one told him how to do what he does. He did it because he is an entrepreneur that wants to enhance the economic viability of a portion of town that was bad. He recalled the RV park owned by Mr. Brugh, noting that police reports indicated drugs and prostitution were occurring in the park. This is not stated in the Findings of the Staff Report. He purchased the RV park and decided to move all of those people out, get rid of the trailers, and make it reasonable for other families to move in and get rid of the drugs and prostitution. The City never asked him to do this. In fact, Planner Johnson told him he could not have a RV park in that location. Mr. Lovold, who was alive then, wrote him a letter informing him that the RV park was grandfathered into the Comprehensive Plan, according to Paul Benoit. The RV park is still in the same location. He had to attend the last meeting to defend himself again and retain attorneys. He questioned how many people had read the Development Code and Comprehensive Plan, calling for a show of hands. He read all of both documents on his vacation. The statement at the end of the letter that states this ordinance meets the Comprehensive Plan and the Development Code is false. He asked if the Planning Commission was going to send a false document to City Council for approval. The Code amendments need a lot of work. If the Planning Commission had approved the document at the last meeting and sent it to City Council, he would have had to go to City Council to defend his position. Pier 39 would have been non-compliant. Discussions about this issue indicated that the draft was supposed to change, but if he had not read the document or received a phone call about the continuance, he would not have caught that the building he just spent millions of dollars renovating was non-compliant. His bank would have called the note and the Division of State Lands would have required him to tear the building down. He suggested the Commissioners read an email he received from the Division of State Lands (DSL) if they did not believe him. The email states that if he does not renew his DSL lease in 9 ½ weeks, his building would be non-compliant and he would have to remove the historic building from the waterfront. Why do property owners who spend their life's earning have to defend themselves? When property owners read about the property at the time of purchase, considering all of the Codes and agreements in existence at that time, why do they need to come back and defend themselves over an ordinance that did not exist when the property was purchased? He was sure the people speaking after him would say the same thing because they are property owners. Many people received notices to appear at this meeting or read about the meeting in the newspaper. However, property owners east of 35th Street never received notices that their property would be affected by the discussion at this meeting. Anyone who owns property at the end of 39th Street or who is involved in this process should have received a notice from the agency that has proposed the ordinance. When your neighbor plans to paint their house, you get a notice. When zoning changes are made, property owners are required to receive a notice. If a developer is building something outside of the Code, you

are supposed to get a notice. He could tell that some people in the room were unhappy with him, but this was one of the great things about being an Astorian. Astorians were raised to just act with the knowledge that some people would not be happy about what was being done. He and his family own NBSD, LLC, which owns or controls 28.91 acres within the zone between 35th and 40th Streets, making him the largest land owner affected by the zone. He asked Planner Johnson to display the photograph of Pier 39, pointing out two water lots just north of the RV park. In the last eight months, the consultant never called him to talk about what he might want to do on those lots. He has never spoken to the consultant about Pier 39 Marina and no one from the City has contacted him. He was surprised to see that he could not build anything within 500 feet of the shoreline. He is now reading about this for the first time, yet the ordinance is being sent to City Council. This is not fair. He does not plan to build any buildings on these lots, but he would like to have known what people do with property he owns. One great thing about being an American is that when you own property, you want to feel like you really own it, but he does not. He has been very proactive. He knew there had been discussions about development. When development of Pier 39 began, it was called Pier 39 and Fisherman Suites. He noted the Port is the second largest land owner between 35th and 39th Streets. Safeway and his colleagues own the next largest portion of land in this area. He did not believe Safeway representatives were at the meeting. It would have been nice for them to attend because he would like to hear what they have to say. This is not just spot zoning, it is holistic development. Pier 39 and all of its tenants would not exist today if no one came down to visit. This year, Pier 39 had the highest amount of visitors during the Scandinavian Festival. The Development Code says that Astoria is going to enhance historical development by providing resources to enhance facilities and promoting areas for historical development. He is still waiting on this and had not heard from the City. Everything between 35th and 40th Streets has been done with private money on private lots. He has never received funds from the government and he never requested money from the City, yet everything has been returned to the community. One example of this is the K. Patel Hilton Hampton Suites Hotel. Pier 38 Marina and RV Park was his wholly owned subsidiary when K. Patel asked him what he planned to do with the water-logged lot. He had no plans at the time as funds were limited, so Mr. Patel offered to build the hotel. He spent \$140,000 of his own money going through reviews and zone changes to build the hotel. K. Patel paid \$22,671 in property taxes to the school district in 2013. This is not very greedy. K. Patel spent \$37,000 going directly to the City of Astoria for taxes. K. Patel's total taxes for 2013 was \$89,671 and his water/sewer expenditure for the year was close to \$30,000. He believed he paid about \$3,000 for water and sewer service, which was a horrible amount. These development costs were not included in the Findings. The Planning Commission is making a decision based on issues for which the facts are missing and on cherry-picked items, regardless if anyone will have money to build over the waterfront. He had to come to the Planning Commission at the last meeting to say that a building 12 feet high would only rise 3 feet above Pier 39 because of the mean high high water line. He did not see this in the revised copy. There is so much detail in the economic reports that are supposed to be included in the ordinance that the Planning Commission is taking on more than they can chew, especially between 16th and 40th Streets. He loved the Gateway Zone Plan and thought it was great when it passed. The area included the museum and parks. The new Comprehensive Plan and the proposed ordinance say the City wants to move that all the way down to 40th Street. If that was true at the time the Gateway Overlay Plan was developed, he would not have been able to remodel his building at 31st Street that won the Dr. Edward Harvey Award. At the time, the zone line cut the building in half, so he asked which zone he was in. This was his first time in front of the Planning Commission. As a property owner, he wanted both zones. He believed a tie went to the owner, which was naive. Paul Benoit was the Planner then, and he wrote both ordinance Codes in for his property and allowed him to have both S-1 and S-2 zones. This was not a very big deal, but it cost him a lot of money to get permission to remodel the building and put an in office. This was not done with government money either. He asked the Planning Commission to move forward with the ordinance as they see fit because he did not see anyone complaining from 16th to 31st Streets. However, he believed the Commission should give him some time to regroup and figure out what to do as a property owner between 31st and 40th Streets. He has great things planned and has not done anything wrong yet. He purchased the lot where the third condominium is because he did not want to see another one of those buildings go up; the second building looks horrible. This is what entrepreneurs do; they take a risk and try to do things that make things right with what their friends and colleagues encourage them to do. This is what community is all about, but the Planning Commission is not giving him the chance to be a part of the community by planning things without his review. He stated that the City should not do any plans without his review. He must run down to City Hall and try to defend himself at the last minute, which is not fair. If the Commissioners were in his position, they would likely question what is going on. He was never involved in the grant given to the City of Astoria by the State Department of Transportation to create this ordinance and neither were any of the other property owners who should have been consulted. He was not part of the 500 foot restriction proposal. The reality is that he must make this work for his 28.6 acres on the east side of Astoria. He would like to see a marina and a floating restaurant. He would like to see anyone with an idea come to attract

more people. Visitors have already seen downtown and they want to see something else when they come out to Pier 39. This is what is great about the economic development of a community, the holistic approach that allows people to go to different areas of a community and enjoy it. Spot zoning like this takes away the innovation of the investors that the City needs to bring a return on the investment in the economic development of the community. He was glad to say that he has had a major positive impact in the economic development of Astoria and to the taxation of Clatsop County. Together, with the City and some of its zone changes, which was seen as spot zoning back then, he was able to increase property taxes. There has been no ill will or intent and no one will build an LNG plant in front of Astoria. However, if his dock was two feet longer he would pull a cruise ship up to Pier 39. He knows he can pull up a cruise ship in the East End Mooring Basin and believes it would be great. Cruise ships only show up two times each year, but this is not in the Staff Report. The economic potential is not in the Staff Report. The only thing in the Staff Report is what cannot be done, which is not fair to the innovators, investors, and citizens in the community. He did not understand why eating and drinking establishments were such a big deal. He has some retired friends that like coffee shops and he believes coffee shops are great. He asked if anyone would come to a floating coffee shop. He would not be allowed to put a floating coffee shop off the East End Mooring Basin. Let's not say what we cannot do, let's say what we can do. If it gets bad, he believed Planning Commission meetings would fill up with twice with people and attorneys would get involved again. Let's not restrict development. Everyone likes the idea from 16th through 31st Streets. Allow property owners who own property between 31st and 40th Streets to regroup because they have too much money invested. He will be economically impacted if this ordinance passes and he does not know what he would do. Who could he call to ask for continued investments when there are so many restrictions? You don't tell an artist he can only paint in one color. This is the reality and the truth. There are many things in the current Staff Report that are not true. If the Planning Commission wants the details, the Commissioners should attend the City Council meeting because then he will show what the untruths are. He believed that if the Commissioners read the Development Code, they would direct Staff to do more work and discuss economic impacts with property owners east of 40th Street.

President Nemlowill asked Director Estes to address Mr. Holcom's concerns about notifications of the public hearing. Director Estes stated that he had a copy of the notice of the first public hearing that was mailed to Mr. Holcom, NBSD, LLC.

Mr. Holcom said he did not receive a notice about this meeting. Director Estes explained that this meeting is a continuance of the first public hearing; therefore, another notice was not required.

Mr. Holcom understood that the notice was not required, but he was still a property owner. Director Estes noted that Mr. Holcom and his attorneys were present at the last meeting. The City is in compliance with the law for continuing the public hearing. He did not need to go into detail about the other concerns because City Staff had different positions on those matters.

Planner Johnson noted for the record that every condominium owner, every resident at Mill Pond, and every property owner from 15th Street to 42nd Street and from the water to across Marine Drive were mailed a notification for the first meeting. Once a meeting is continued, the announcement is made at the meeting. This is all that is legally required. She referred to comments about existing buildings on land and noted that those buildings would still be allowed to develop under the current proposed draft, such as Safeway. Safeway is on land and is less than 28 feet tall, so it fits within the Code amendments being proposed. At no time was Pier 39 considered a non-conforming use. The change in the draft Code that was made was the inclusion of the statement that the two existing buildings would not have to comply with the walkways and some of the additional requirements of the new Code for restoration and renovation. All of the existing uses were always allowed and considered conforming in the drafts. The proposed amendment states the buildings would not have to comply with some of the design review features for restoration and renovation.

President Nemlowill called for a recess at 8:21 pm and reconvened the Planning Commission meeting at 8:26 pm.

President Nemlowill stated that during the recess, a couple of people suggested a time limit for public comments be implemented. She believed this was a good idea, but also believed it was important that everyone gets the chance to say what they need to say. She stated there would be no time limits on public testimony and asked the public to stay on topic. She called for testimony opposed to the application.

George McCartin, 490 Franklin Avenue, Astoria, said it appears that over the years and more recently, many people have put many hours into the River Walk and are now incorporating that into an ordinance. It seems as if the Planning Commission is on the right track, but has recently been getting sidetracked. He was concerned that development would be allowed in the Civic Greenway Area, despite this development being limited. By allowing restaurants and residences, the Commission is opening the area up to developers. He was particularly concerned about the conditional uses and exceptions included in the draft. He suggested the Commission be particularly aware of Goal 5 of the Oregon Statewide Planning Goals and Guidelines, which states that local governments shall adopt programs that will protect natural resources, conserve scenic, historic, and open space resources for present and future generations. Development was never mentioned in Goal 5. He was sure that the Civic Greenway Area fit within the mandate of Goal 5. Goal 7 speaks to natural hazards planning and predictions indicate that Astoria's coastal zone is overdue for a large earthquake. The goal states the local governments shall adopt comprehensive plans to reduce risk to people and property from natural hazards, including landslides, earthquakes, and tsunamis. When making final recommendations to City Council, the Planning Commission needs to pay attention to both of these Goals. He suggested the Planning Commission retreat, throw most of the amendments out, and present the ordinance without the amendments.

Shel Cantor, 1189 Jerome, Astoria, said since these meetings began in October, a one-story height allowance for new over river construction was fostered, so he was encouraged to see the change included in the current proposed ordinance. Bank height is what has been recommended. He thanked Mr. Faber for bringing up the distinction between north of the River Walk on shore, versus over the water. He said Planner Johnson had responded that it was not possible to make this distinction, which he supported. He did not understand why the distinction is necessary. The bank height restriction should be implemented from the River Walk to the north. If a building is 12 feet high from the riverbank, you don't see the river from the River Walk. The proposed ordinance includes the option to allow a variance from the bank height restriction. If the Planning Commission chooses not to allow variances, the Commission has complied with both of the two relevant criteria in the Riverfront Vision Plan for new overwater development. River vistas that maintain physical and visual connections to the Columbia River would be protected. Maritime related uses consistent with Astoria's working waterfront would be encouraged, like docks, piers, and marinas. Associated uses would also be protected, providing jobs and maintaining a historic connection to the river. If the Planning Commission chooses to allow variances from the bank height restriction, the riverfront will be left open to new construction that will block river vistas, changing the approved Plan by deleting its fundamental criterion to protect vistas. This argument justifies the selection of riverbank height with no variances allowed. Since these meetings began, no one has presented a cogent argument justifying how allowing the vistas to be blocked protects the vistas. He understood that some uses would require a real building higher than the riverbank, like hotels and restaurants. Those uses are currently included in the ordinance as conditional uses allowed on the north side of the River Walk.

Planner Johnson clarified that in some zones, on land uses on the north side of the River Walk would include hotels, restaurants, and professional offices. Some areas within this zone could have enough land for a small building. Director Estes added that the Code would not allow hotels over the water. The Code includes a provision to allow an overwater restaurant when it's associated with a marine-related use.

Mr. Cantor believed Director Estes contradicted himself. Director Estes stated that a hotel could not be built over the water and clarified that restaurants were being considered separate from hotels. The Planning Commission has discussed both sides of this issue, so Staff has included the proposed Code language for now.

Mr. Cantor stated he did not understand, saying the vistas will either be blocked or they will not be blocked. He did not understand why the distinction between hotels and restaurants had been made, unless he could see through a restaurant. Director Estes explained that the proposed height limitation from 16th to 35th Streets is bank height. He showed a photograph on the screen and explained that the area north of the white line (500' out from the shoreline) is the area that could potentially have a restaurant, but only if it were associated with a maritime-related use. This is also the only area proposed to allow development up to 28 feet high.

Mr. Cantor said this was the first time the exception zone was being proposed. He believed the exception zone was intended to be a suggested compromise based on comments made by Mr. Holcom and the Port's lawyer at the last meeting. The exception zone only benefits Mr. Holcom and the Port, allowing large buildings located well off shore. During the last meeting, he read sections of the Appendix of the Riverfront Vision Plan, reminding everyone of how much Astorians did not support the compromise already represented by the Plan. In the end, most people figured it was the best they could get. Since October, the community has been witnessing an

attempt to erode the Plan's one significant concession, protection of river vistas in the Civic Greenway Area. The exception zone is yet another compromise, which is not in the direction of what Astorians told the steering committee they wanted. He suspected that the exception zone offer was written before Mr. Ramis' June 18 letter arrived, which reveals that Mr. Ramis is not a good faith negotiating partner. Page 3 of Mr. Ramis' letter proclaims that among the highest and best uses of his client's properties are the coal and oil terminals and an LNG facility that Vice President Innes pointed out. He said he wondered if the diners at the Rogue Restaurant would appreciate their food being served blackened from coal dust. Page 7 of Mr. Ramis' letter referred to the prior proposed ordinance, which restricted development in the Civic Greenway Area to such a degree that the Port would be required by its fiduciary obligations to legally challenge the ordinance. Any compromise that the Planning Commission offers will not obviate a potential Measure 37 or Measure 49 claim. It is outside the purview of the Planning Commission to try to accommodate what amounts to legalized extortion. He said he hoped it was obvious to everyone that the treatise for Mr. Ramis should have been directed at City Council since the recommended revisions are tantamount to demanding City Council scrap their approved Riverfront Vision Plan, at least for the singular benefit of the Port and Mr. Holcom. The Planning Commission has been tasked by City Council to implement the approved Riverfront Vision Plan in its current form, not to change it. Therefore, the only correct approach here is not to implement any exception zone and refer Mr. Ramis to the City Council. Don't give away anything if you know it will turn out to be a rather major confrontation, discussion, and compromise. The 500-foot off shore requirement proposed for that zone is one granted variance away from being violated. If a developer asserts a financial hardship, the multi-story building moves closer to the shore or even on to the shore. This is why not allowing variances is so important. So far, the discussion has only been about not allowing variances from the bank height restriction outside of the exclusion zone. However, the Planning Commission has not achieved what they believed they have achieved, if the desire is to achieve a compromise like this in the future without variances. The 500-foot off shore and the trail extensions go away with variances. When the Planning Commission's decisions implementing the Riverfront Vision Plan are tallied, he hoped President Nemlowill would urge everyone to present cogent arguments justifying their positions with respect to the Riverfront Vision Plan's relevant criteria, just as she would with any other application, especially the fundamental criteria to protect the river vistas. Without a cogent justification, giving an irrational or arbitrary argument or no justification at all would undermine confidence in what we are witnessing.

Mike Weston, Interim Director, Port of Astoria, said that although the Riverfront Vision Plan states to protect river vistas and maintain visual and physical connections to the river, it also states to encourage maritime related uses consistent with Astoria's working riverfront, such as docks, piers, and other associated uses. The proposed ordinance amendments are still in line with the Plan. The Port is asking for a balance, not an LNG plant, a coal terminal, or a shipping yard. The Port simply wants the leeway and flexibility in the Code to allow them to develop a Master Plan that will suit the Port's property and the surrounding properties goal of adding economic stimulus to the economy. The proposed amendments create a situation where 90 percent of the available land will be undevelopable. He did not believe this was a balanced approach. If 90 percent of his property is not developable, then 90 percent of the value has been removed from the property. A 70-foot view corridor has also been proposed. He believed that the causeway leading out to the breakwater is only about 40 feet wide. It does not make sense to set buildings back another 25 or 30 feet, as he would have to build additional docking to get around. There are still ways to maintain connections to vistas and views, like viewing platforms, keeping the area open to the public, while building a fisherman's wharf, implementing cold storage concepts and building trinket shops and restaurants; even allowing for the sea lions. He believed there was room for a compromise in this community. His job is to protect the public's infrastructure and investments. Therefore, he is willing to try to keep the sea lions off the public infrastructure docks. The sea lions can still exist and will remain in the area because they have lived there for 34 years. They will not be going away anytime in the foreseeable future, so we have to learn to live with this and deal with it in a sustainable manner. He had issues with building heights and widths, both on land and over water. He agreed that the ordinance should not include variances, which is the concept the Port would like to propose in their Master Plan. The Plan should be designed to fit in with what you want to do and the Comprehensive Plan should be designed in a flexible way so that options are still viable. He believed that the currently proposed restrictions really limited that viability and crushed the economic capabilities of the public's property in that location. He considered many of the uses optimal for tourists and local hubs and would fit well. Right now, there is a dead zone between 31st Street and Pier 39 because there is not a lot of economic development in that area except in the summertime when the fishermen take over everything. He would like to see more activity and foot traffic in that area, which could be accomplished by promoting it like a fisherman's wharf style development out on the East Basin causeway. This could include cold storage, a cruise ship terminal with a processing area at the end of the dock, some trinket shops, a way to see the sea lions, or ice houses for the fishermen. We need to stick with what Astoria was built on, which is a working waterfront.

President Nemlowill said she had previously asked Staff what the Port's position was at the inception of the Riverfront Vision Plan. Director Estes had responded that the Port wanted to maintain its property at the East Mooring Basin. She noted that when Mr. Weston began coming to the meetings, he had not mentioned anything about a fisherman's wharf or a Master Plan, but just asked that some development be allowed at the Port. The Planning Commission had been interested in learning more about the Port's plans, but it seems like since then, Port staff, not elected officials, have begun to come up with plans. She believed the Staff Report and recommendation was reflective of the Commission's direction provided after listening to the public, who want to protect access, and to the Port, who wants to have some economic viability potential. She asked Mr. Weston if the Port's desires have changed and evolved through this process. As a citizen, she wondered who paid the lawyer for the 29-page letter, which represents public and private interests. This bothers her and leads her to question the Port's credibility.

Mr. Weston stated that this has been a group effort. Everyone from 31st Street on down has a viable issue with this ordinance. The Port has been talking to and coordinating their efforts with these people. He did not believe there was anything wrong with this. Everyone has something at stake here and the Port has worked with Mr. Ramis to figure out a way to come up with a viable option that allows the Port to preserve its capabilities on their property. Currently, the Port has about 20 to 25 acres over the water and about another 10 acres on land. The Port has considered its options for the entire area. Substantial development could be possible, but he did not foresee this happening. Those developments are more likely to occur at Tongue Point, but the Port still needs to protect the viability of those options. His job is to protect that public investment, which currently has no height or building restrictions. The Port could build anything they needed to create jobs and a rolling economy for Astoria. Adding restrictions means those options go out the window.

President Nemlowill said she understood the Port's intent to protect economic viability of public property, but she still wanted to know if public or private funds paid for the legal work. The letter represents both public and private interests.

Mr. Weston stated the costs were shared, which he believed was appropriate because the Port must team up with its partners for potential developments. He was unable to give specific details about what the Port has been developing because he is bound by a confidentiality agreement, but said there are potentials for the property and the Port needs to be considered.

Tim Ramis explained that his letter, which was included in the Staff Report, addressed questions asked by the Planning Commission at the last public hearing, describing their vision for potential development and reflecting their ideas for major Port development done in partnership with area property owners. The letter agreed that the Planning Commission had the authority to tailor regulations within the area to different purposes in different areas, and described sample regulations that attempted to strike more of a balance between preservation of views and economic use particularly of public lands in the area. One part of his draft included enhanced design review, which takes Staff's current approach and increases the level of discretionary design criteria by replacing some of the more prescriptive numeric standards. The second part of his draft proposes to put the burden on the property owners to develop a master plan that is put through the public process. He said Staff's introductory remarks slightly mischaracterized this plan district by saying that the Port is asking the City to approve a plan it has not seen yet. However, this is not the case. The Port is asking the Planning Commission to put a Code provision in place that authorizes property owners in the area to come forward with a plan, apply for approval of the plan, and then work with the City to develop regulations that the City would adopt to implement the plan. The proposed enhanced design review changes have to do with using setbacks in the buildings as a way to protect views along the waterfront, rather than Staff's proposal to place buildings 500 feet out into the water. The intent is to bring the public into these uses, drawing them to the waterfront. However, putting major development 1 ½ or more football fields away would be antithetical to creating pedestrian-related energy that would invite people to the water. His proposal also suggests developers be required to create public spaces and public access so that people can enjoy the water in ways other than just from the trail. He asked the Planning Commission to consider the Port's suggestions. If the Planning Commission chooses to move ahead with the regulations from 30th Street to the west, the Port asked that the City delay implementation of the regulations from 30th Street to the east so that the Port can work with Staff to refine the proposal. He stated he wanted to set the record straight after hearing a specific attack on his firm, noting that he has represented public interests before planning commissions for the past 42 years. During this entire time, neither he nor his firm have represented LNG interests. His firm's current job is to represent the regulator that denied an LNG application, who is in litigation

and under attack from LNG applicants. He was unsure how the confusion occurred and reiterated that while his firm is involved in litigation, they do not represent LNG interests.

Commissioner Pearson asked how long the Port would need to develop a Master Plan.

Mr. Ramis stated he did not have the authority to commit his client to a specific timeframe. In other Plan districts and Master Plan projects he has been involved with, the applicants have usually taken about a year to develop a Plan. The process continues until there has been enough public consensus to move ahead. He confirmed for Commissioner Pearson that developing a Master Plan would take a minimum of one year.

Dr. Ted Forcum, 3990 Abbey Lane, Astoria, said he owns commercial spaces in the Cannery Loft Condominiums and three residences in Clatsop County. He noted that Mr. Ramis spoke eloquently. He believed everyone was fearful of change, which is a normal and a natural instinct. He understood that the community does not want to see change because the community is so beautiful. However, he believed in the basic premise that your environment imposes demand on you, whether it is environmental or economic, and you must adapt to the environment in order to thrive. Systems that do not adapt will cease to exist. Therefore, he believed it was important to create some change. A tough balance must be created between preserving nature and preserving economic growth and development. He remembered when all you could see in Astoria was the cannery and the lumber mill, which was not very appealing. Now, Astoria is the place to go to and is exciting. He said he was excited about the development plan because it was a wonderful opportunity for the residents, visitors, and economic development. One of the leading generators for economic development is creating a livable community and the City's planning is doing a great job of this. As a board member on the Joint Commission of Sports Medicine, he is tasked with interfacing with the Center for Disease Control (CDC). How Astoria plans their city plays a major role in dealing with the obesity epidemic. Astoria can reduce public funded health care costs by almost two-thirds through designing the City. Some of this Plan addresses this through things like sidewalk crossing designs. The River Walk is a great asset and the City is doing a good job of creating a walkable community. However, the City needs to create assets around the community for people to walk to so they are not encouraged to get into a car to drive somewhere. People downtown will complain about lack of parking, but they are not used to walking. If the City can get services on the east side of the community, the health of the community will benefit. He believed that adhering to the existing plan from 16th to the beginning of the marina, then having a broader vision for potential development from the marina to the east, would serve the economic health needs and the public health needs. He was concerned about restricting handrails to bank height, which would require a ramp or a step down because American with Disabilities Act (ADA) compliant access would be necessary at some point, which would impair the view. This could be a challenge. He referred to a previous comment about Tom McCall Waterfront Park, noting that the park has a significant amount of development on the north and south ends of the park. The south end of the park has recently been going through a lot development, including towers, hotels, and a tram that services the entire region. On the north end, the park has a lot of housing and redevelopment. This is a good model for Astoria. He compared the different types of development to different personalities. The personality on the east end would probably be different from the personality of downtown. People will go to both areas, but for different flavors. People may go to the east end for more of the fisherman's wharf style, while people who want more history and character of the town may go to the downtown area. He thanked the Planning Commission for listening.

Pamela Alegria, 1264 Grand Avenue, Astoria, thanked the Planning Commission for continuing the public hearing and Staff for addressing the concerns raised at the previous meeting. She requested that no variance or exception be granted for the height restriction. Variances often include discussion of economic hardships, but offering a variance would create an economic hardship for the City because the City would lose the revenue generated by the river. The river is lovely.

Linda Oldenkamp, 1676 Jerome Avenue, Astoria, said she has been involved with this process from the very beginning, beginning with a huge crowd at the library years ago. She specifically remembered Mayor Van Dusen saying at a packed City Council meeting that the City was going to have a vision for the river and the River Walk. He had said this would be for Astorians, not for developers. She believed that was the Mayor's finest hour. From the process that started with the River Vision Committee, she lost a lot of hope and was very disappointed in this process. She believed that this was the most important thing to Astorians because they want their City to remain authentic. If Astoria is authentic, Astorians will continue to love their town, love being here, and visitors will come here because Astoria is so different from any other place in the country. Whether the community members are for or against the application, she was glad they attended this public hearing because this process is so difficult and has been ongoing for seven years. The community wants the Planning Commission to be strong, whether

they approve or deny the application. Some of the Commissioners have asked important questions and the community expects the Planning Commission to keep Astoria authentic because this town really cares about this issue. She did not want any variances. Give City Council a break because they have to deal with all of this and the politics can be miserable. If the Planning Commission approves no variances, things can probably be changed later on. But, it is very important to say no variances in this Plan. She was also opposed to restaurants or buildings between the River Walk and the river. The Port and Pier 39 need to get their plan done and move forward with it. Therefore, they need to comply with the riverfront and make sure that their master plans comply. She stated that Mr. Holcom is a creative person who will figure out how to do this according to the Plan. She mentioned a recent trip to San Francisco, noting that a local person and a guide book discouraged visitors from going to their fishermen's wharf. The local person and the guidebook encouraged visitors to visit a ferry building designed for tourists. She believed Astorians felt like keeping the City authentic and real, and would bring in tourists because that is what makes people want to come and stay.

David Noren, 217 East Main Street, Hillsboro, stated he is a land use attorney and was contacted by George Brugh last week after attending the last Planning Commission meeting. He understood that many people had been working on the Riverfront Vision Plan for seven years and the Planning Commission has invested a lot of time in the process. However, people usually begin to hire lawyers when laws begin to be presented. The Planning Commission has been tasked with implementing the Plan, which is not law. Implementation of this Plan is what will become law. This is why the Commission is seeing lawyers now. This part of the process involves testing the proposed ordinance against the Comprehensive Plan, State Goals, and ultimately the Constitution. He said the Planning Commission should take more time to think about how to better address development and protection east of 30th or 28th Streets. He believed the Port's concepts of a plan district were useful and he encouraged the Planning Commission to take this or a similar approach. There are other mechanisms to allow for future review with flexibility for how areas might develop. A quasi-judicial master planning approach would address the major concerns and allow for flexibility. Supporters of the ordinance have talked a lot about protecting vistas, which is certainly part of the Plan. However, the Constitution does not allow the government to take property in order to provide vistas to the public. If the City regulates things to such an extent that there is no economically viable use left, then it has "taken" the property. At least some of the time, the City has gotten close to this. He did know whether there would be any viable economic use left if development were not allowed north of the River Walk. He believed restricting development over the water to 500 feet out to bank height would be so costly that it would not be economically viable, which would possibly be an unconstitutional taking. This is why lawyers get involved when the City begins to discuss these types of restrictions. He did not see anything in the Findings that reflect an analysis of the costs or economic viability of developing properties under the proposed restrictions. If the Planning Commission wants to be successful with this, it is important to take a look at the area one more time. He would like to work with the City's planning Staff and consultants and the Port to help the City come up with alternatives that he believes will continue to protect things and provide flexibility for considering specific proposals in the future.

Commissioner Fitzpatrick said he was surprised that he had not heard the term "taking" earlier and has been concerned about this since the very beginning. He asked Mr. Noren to expand on the definition of "a taking" so the other Commissioners and the audience could understand.

Mr. Noren stated that he was not an expert on the matter, but would try to explain. In general, the Fifth Amendment to the U.S. Constitution prohibits the government from taking private property for public use without just compensation. If property is "taken", due process of law is required. As these cases have evolved over the last 40 years or so through the U.S. Supreme Court, a couple of major concepts have evolved, which have to do with whether there is a relationship between a legitimate public purpose and the restrictions being imposed. He believed most people would agree that legitimate public purpose exists here. If the government is asking the developer to give something up in exchange for development, like a view or walking easement, then they need to be roughly proportional to the impact of the development. He noted that Mr. Ramis argued a case, Dolan versus City of Tigard, at the U.S. Supreme Court, so he would be the expert. If there is no economically viable use available to the property owner, the government has effectively taken the property. His concern with the proposed ordinance was the lack of Findings supporting the notion that property owners are being left with economically viable uses under some of the circumstances. Building something 150 feet wide and no taller than 28 feet, 500 feet out, might not be economically viable, meaning there is some risk that the regulation is unconstitutional.

Commissioner Fitzpatrick asked what the consequences of this would be.

Mr. Noren stated there were severable possibilities. It is difficult to anticipate the various paths of challenges to the ordinance. One path of challenge would be to appeal the ordinance, saying it is unconstitutional. Usually, this issue comes up when it is applied to a specific situation. He confirmed for Commissioner Gimre that the constitutionality of the entire document would be challenged, that is whether there would be no possibility of a particular property subject to the regulations developing in an economically viable way. He reiterated that it is difficult to anticipate the types of challenges to this ordinance because the ordinance applies to such a large section of the waterfront. However, he expected issues to come up if the ordinance is challenged and is appealed.

President Nemlowill asked City Attorney Henningsgaard to remind the Planning Commission what their role is when threatened with litigation. City Attorney Henningsgaard was unsure that anyone had threatened litigation at this point, alternatives were just being discussed. He asked President Nemlowill for clarification.

President Nemlowill asked if their decision on this hearing should be influenced by the idea of possible legal challenges in the future. She understood that any Planning Commission action could and has been appealed. City Attorney Henningsgaard stated this process has been ongoing for a long time. He and Staff, as well as the previous City Attorney, have attempted to steer this in a direction that would be lawful. Issues like takings are very fact-specific. It is possible that a decision made at this hearing takes all economic value out of a particular piece of property. However, the City has not heard any facts to that effect. Adjustments can be made to the ordinance if this were to occur. He believed the Planning Commission needed to make their best effort to effectuate the Riverfront Vision Plan.

Yvonne Hughes, 1390 Jerome Avenue, Astoria, agreed with Ms. Oldenkamp. The Planning Commission is here to help create ordinances, which is supposed to be a holistic approach that is a benefit to the entire community, not just developers as their own entity. She used to work for Gill Martinez, a world renowned master planner. Developers go into a community creating plans that adhere to the policies and ordinances already in place. In real estate development, this is a high-risk game because lawsuits are bound to happen. She has not been in this community for as long as this process has been going on, but has been very interested in the Plan since she came to Astoria. She believed this issue needed to come to a closure. The Plan needs to uphold the original ideas of what is going to happen. No one can foresee what will happen in the future, but variances would allow for anyone to come in and change the Plan to fit what they want to develop or how they want to develop. Not allowing variances is critical. This should be done from a community approach, not just from a singular approach.

Ted Thomas, 398 Atlantic, Astoria, said he was recently corrected on the origins of the River Walk and the Greenway Area. The River Walk did not happen by accident and a lot of hard work and intelligent thought went into its construction. For the purpose of possible appeals, which Planning Commissions do face from time to time, he felt compelled to reiterate and clarify the point he made earlier. If Tom McCall Park were converted into building lots and skyscrapers were constructed, or if Central Park was parceled out and converted into taxable building lots, would the cities prosper? He questioned whether these cities could prosper from the taxes collected on the properties or is something more ineffable would be lost. He was sure that property values on Park Avenue and 5th Avenue in New York City would decline, as well as in Portland. After the River Walk was constructed, he was not surprised that he and the entire City of Astoria fell in love with it. The River Walk is the inspiration of the city, the jewel of the Columbia River, and its value is not in what it can be sold for. The River Walk is valuable to the entire community. Like Central Park, the River Walk increases the real value of all buildings and all land. You cannot go forward without capturing that value, at least in an assessment. This is why every plan should include a credible assessment of the economic impact, including the value of the river vistas from the River Walk, that does not arbitrarily discount the rightful love of the people of Astoria or the impact of the River Walk upon property values. He asked the Planning Commission to consider whether they had adequate information on the actual economic impacts to make this decision. If he represented the City in a future appeal, he hoped the City would have a water tight economic assessment.

LaRee Johnson, 1193 Harrison Avenue, Astoria, thanked the Planning Commission, noting that this was a critical point for Astoria. She appreciated that the Planning Commission was reading through everything and weighing everything. She has been a resident since 1991 and does not own any property on the River Walk. However, she is vested in the Riverfront Vision Plan because she appreciates the generations to come and hopes they get to enjoy what everyone enjoys now when they walk along the River Walk. She did not want

anything built on the north side of the River Walk, either on land or further out. She also supported no variances because variances are a way for the camel to get his nose in the tent. She appreciated Mr. Faber, Mr. Cantor, and Ms. Oldenkamp's comments, as they echoed many of her feelings.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said that if any change is made to preexisting regulations, a property owner can trigger a Measure 37 and 49 lawsuit. However, Planner Johnson stated in the *Daily Astorian* in 2006 that, "Astoria City Council decided from the start the City would continue life as usual after Measure 37 and continue to develop City Codes the way the City wants." She was on the Riverfront Steering Committee, which was carefully comprised of waterfront owners, people interested in development, and all types of people. The Committee was supposed to be well balanced to represent people who owned property on the water. This Riverfront Vision Plan came from a group of people who represented all of those interests.

Suzie Blackmore, 5241 Ash Street, Astoria, said she has been an Alderbrook resident since 1971. She remembered how industrial the City was when she moved here. There was fishing, logging, the Plywood Mill, dirt, grime, and noise out in the river. The waterfront is nothing like that anymore. From where she lives in Alderbrook, she wants to look down the river and see the big open expanse. She asked who had jurisdiction over the East End Mooring Basin. She also wanted to know if the Riverfront Vision Plan would override the Port's plan.

Planner Johnson explained that City Codes control what development occurs. This hearing is about developing the Codes that determine what can and cannot occur in an area. Anything over water is owned by the Department of State Lands with the upland property owners having first right of refusal to lease the area from the State. The property owner who leases the water adjacent to their land could develop over the water. The Department of State Lands and City Code would control what was developed.

Ms. Blackmore understood that if the Port chooses to develop the Mooring Basin, it would probably be accessible without having anything to do with the Riverfront Vision Plan. Planner Johnson responded no, any Code the City has in place would apply to the area. The City's Code applies to everything within the City limits, which includes out in the river. Therefore, any development in the City limits would need to comply with City regulations and State regulations.

Ms. Blackmore stated she was in favor of keeping the open space as much as possible. Any walls between the citizens and the river are a great objection to most of her friends and residents who love what they moved to Astoria to enjoy.

Chris Farrar, 3023 Harrison Avenue, Astoria, believed there had been many good comments made at this meeting. He thought the stretch of land from 16th Street past Pier 39 was to be an open space to allow residents to look out and enjoy the river. The river is a big part of Astoria and it defines the community. Coming down the Columbia was the whole idea of getting here in the first place. This is Astoria's history, and building on all of the natural stuff draws crowds of people. People do not come here to buy trinkets at fishermen's wharfs, which is an idiotic concept. He asked the Planning Commission not to put variances in the Code because there will be constant requests for variances. It is fair to the developers to let them know up front that Astoria is really strict and will not let them do much. The developers will figure out something that works. Let Astorians have their views of the river in this one area. Much of the town is very developed and he does enjoy walking in the developed area, but he would like some open space to see the river. This is long range planning. He urged the Planning Commission to try not to develop any more of anything near the river and keep it as open space. Open space is the best tsunami proofing the City can have for the community. A tsunami is so far in the future that the Planning Commission does not believe this is important, but it is something to really think about. A tsunami is going to happen; it is just a matter of when.

Tim Ramis, speaking on behalf of the Port, noted that the issue of the variance appeared to be coming up frequently. The variance is an important tool, but only in very marginal cases because it really only grants relief from small dimensional requirements. A variance is not really a tool of flexibility. The other problem with a variance is that, if opposed and challenged, it is likely the decision would be overturned in LUBA. From a developer or the Port's point of view, a variance can be a useful tool in a small number of cases. He urged the Planning Commission not to consider variances to be an important tool of balancing the regulations or somehow creating significant flexibility. A variance is often the graveyard of development projects. He referred to the slide shown during Mr. Hastie's presentation that was colored in blue and green. Mr. Hastie's evaluation had been that

the regulations in terms of general impact would provide protection of roughly 90 percent of the area, leaving 10 percent for major Port development referred to in the Comprehensive Plan. If the current regulations are at a 90/10 balance, the City has not struck the kind of balance that is working for the Port. This is why the Port has asked for the opportunity to include the plan district approach in the ordinance, so that the Port can talk with the City about what that balance should be in terms of specific buildings and development.

Commissioner Fitzpatrick noted that Page 3 of Mr. Ramis' letter stated "it was important to realize the consequences of failing to consider the public investment in the East Basin area. Under the current Marine Industrial zoning, the Port could develop a grain terminal, coal or oil terminal, LNG facility, cold storage or anything else that depends on a marine location." The letter states that "these are among the highest and best uses and the Zoning Code and Comprehensive Plan support these uses, acknowledging that they should be constructed regardless of their size and scope. The proposed amendment would render the Port's holdings essentially useless for these purposes." A member of the public commented that Mr. Ramis was aligned with LNG, to which Mr. Ramis rebutted he was not. Mr. Weston had stated that the Port has no interest in doing coal or LNG here. He confirmed that Mr. Ramis is currently representing someone who opposes LNG and asked Mr. Ramis if he represented LNG in the past.

Mr. Ramis answered no; his firm represents the government entity that denied the application. His job is to defend the government entity's position.

Commissioner Fitzpatrick said when he read the letter, LNG was a concerning issue for him. There have been letters to the editor that indicate people do not understand what the City is doing in this case. He recognized, and hoped people in the audience recognized, that the Mooring Basin could be used for many things. Portions of the property have no height limit at all, some have 60 feet and some have 40 feet height limits. So, when the City is reducing the height limits to 12 feet, they are taking something away, not suggesting that people should come in and develop. He was unsure if Mr. Ramis was using this as leverage, but he believed the uses listed in his letter were among the highest and best uses of the land, which really concerned him. He asked Mr. Ramis to explain why those uses were listed in his letter.

Mr. Ramis said he agreed with the Port Director, who indicated the Port did not have plans to pursue those uses. The point he was trying to make was that changing dimensional requirements so they do not fit the allowable uses means the City has made a policy decision to eliminate those uses by means of dimensional requirements. This may be the Planning Commission's purpose, but the Port's suggestion is that the design of the buildings is critical. A precise tool, like a master plan or plan district, rather than a blunt instrument, like saying everything must be 75 feet apart, is a more sensible way of getting at the dimensional requirements. He may have used a more dramatic example than needed, but at least he got people's attention. The City is risking wiping out potentially good uses, not necessarily uses the Port would choose at this point. Tightening the dimensional requirements eliminates uses.

Commissioner Fitzpatrick noted that Mr. Ramis said, "at this point," which leaves the door open for the future.

Mr. Ramis stated he knew of no plans by the Port for those uses.

President Nemlowill asked if the Port wanted to leave the door open for the proposed master planning process.

Mr. Ramis believed that the master plan process would be obligated to state which uses would be permitted. If someone wanted to preserve the opportunity for those uses, the master planning process would be the perfect time to advocate for them, otherwise they should not be listed. This is how a plan district is used. The City would be able to write precisely the kinds of uses it would allow in precise locations. He advocates the plan district because it is a better tool than the blunt zoning instruments typically used.

Veronica Montoya, 324 38th Street, Astoria, said she just found out about this hearing an hour before the meeting began and was not very prepared. There have been many good points made and she has learned a lot. She moved to Astoria about a year ago. Astoria is a gem of a city just the way it is. She was very concerned about the idea of building and blocking the river and possibly disrupting the wild life in the East Mooring Basin. Since she has been in Astoria and especially now that the dock is open, she has seen so many people enjoying visiting the sea lions. She would love to see the City embrace that as a tourist attraction. She hoped that residents would be

able to keep their City as it is because she has not seen anything so beautiful. Destroying or taking away from that beauty would damage Astoria's tourism and the City will just be like everywhere else, not special.

President Nemlowill confirmed there was no further public testimony and called for closing remarks from Staff.

Director Estes explained that since last fall, Staff and the Planning Commission have been working on developing this Code language that would implement the Riverfront Vision Plan while trying to find the balance for what is appropriate. Currently, there is an overwater area around the Maritime Museum with a maximum building height of 45 feet. Everything from 21st Street to the east has no maximum height restrictions for overwater development. This set of Code provisions attempts to provide protections identified in the Riverfront Vision Plan and respond to some of the feedback and direction from the Planning Commission at the last meeting to allow more development around the East End Mooring Basin. The Code must meet the intent of the Riverfront Vision Plan and comply with the Comprehensive Plan. The City has received a lot of testimony from interested parties over the past few months that has affected the Code language currently being presented.

Planner Johnson reiterated that the proposed Code does allow uses along the waterfront, both over water and on land. The shore land has not changed dramatically, so there would be no loss of use on land. The only use being reduced is the CR zone proposed in the area between 30th and 32nd Streets. The City is not taking away the residential use, but is limiting the use to single family and two family dwellings. One of the comments indicated that limiting the size of buildings is a way of limiting the types of uses that could exist. This would need to be played out to see what could or could not be developed within those parameters. However, those uses are not prohibited and the zone does allow 150-foot wide buildings with any depth. This would allow square footages large enough for development. If the Planning Commission decides to move forward, Staff needs direction on the following:

- Do you want to limit the height on the shore north of the railroad tracks to top of bank?
- Do you want to allow variances from the height restriction?
- Do you want to allow restaurants?
- Do you want to allow handrails on walkways or roads to extend above the bank?
- Do you want to allow a variance from the 500-foot distance requirement?
- Should Staff do further research on the recommended plant species before the City Council meeting?

Mr. Hastie reiterated that Staff has had many meetings with the Planning Commission and there has been a lot of public testimony. Staff has been trying to strike a balance and from his perspective, the City is pretty much there. This may not be what every single person in the room wants, but it is certainly heading towards a balance. The Planning Commission has a lot of Code amendments in front of them. The issues that the vast majority of the audience members have spoken about are on overwater development. Other than a few details, he believed 90 to 95 percent of the Code amendments have not generated opposition or testimony.

President Nemlowill closed the public hearing and called for Commission discussion and deliberation.

President Nemlowill said she attended the workshop where Team Astoria came up with the idea for the Riverfront Vision Plan. At that time, there were 17 waterfront condominium proposals being discussed in Astoria, which created a lot of fear. It seemed important to have an area of the waterfront and views of the water that were truly protected from development. Overwater uses, the way buildings were constructed, and public access when building over the water were also important parts of the Riverfront Vision Plan. This is her ninth year on the Planning Commission and this is probably the most challenging decision she has ever had to make. There has been great public testimony in the eight meetings the Planning Commission has had to discuss implementing the Civic Greenway Area of the Plan. She wanted the public to know that she has listened to everyone. She believed the Staff Report did find balance. Her favorite part of the Riverfront Vision Plan is in the Executive Summary, which does not specifically pertain to the Civic Greenway Area, but states "the goal of continuing to plan the future of Astoria for Astorians" and "promote physical and visual access to the river and encourage a mix of uses that supports Astoria's working waterfront and the City's economy." If this is not balance, what is? Even though cities update their comprehensive plans, she did not believe the Planning Commission could ignore the fact that the current Comprehensive Plan states that major Port development would be encouraged at the existing Port docks and at the East End Mooring Basin. Therefore, she believed it made sense to have more development in that area. Her responses to Staff's questions and other recommendations were as follows:

- No variance in the areas that would limit development below bank height.

- No variance from the 500 feet distance requirement.
- No eating and drinking establishments should be an allowable use in the Civic Greenway Area. The Riverfront Vision Plan says that maritime related uses consistent with Astoria's working riverfront, such as docks, piers, and marinas should be encouraged, as well as associated uses that provide jobs and maintain a historic connection to the river. She clarified that she was referring to restaurants over the water in the A-1 and A-2 zones. These are not appropriate uses over water in the Civic Greenway Area.
- Bank height for anything north of the railroad tracks would be appropriate.
- Home stays should not be allowed in the cluster housing development because the residential area is meant for working Astorians that live here year-round.
- Staff should do more research on the recommended plant species.
- She was undecided about handrails above bank height and wanted to consider other Commissioners comments.
- She supported forwarding the proposed Code amendments to City Council with the provisions she listed.

Commissioner Pearson thanked everyone who testified. This is a passionate topic for everyone involved. He reiterated that this process began in 2008. City Council approved the Riverfront Vision Plan in 2009 and the Planning Commission has been tasked with building the Code to match the vision that was approved. There are many details to this, but the Plan covers large areas. He believed the proposed amendments were a good compromise and he commended Staff and the consultants for their work. He believed 35th through 39th Streets was a different area compared to overwater versus 16th through 35th Streets. There should be latitude in this area and he believed Staff made a good attempt to include this in the amendment. A master plan at the Port could be a great working document, which he would like to see. This is the last two hours of a six year process and the Planning Commission has been tasked to bring this to City Council. Therefore, he believed it should be up to City Council to decide if the Planning Commission should consider a master plan by the Port as a proposal. He did not believe implementing the Riverfront Vision Plan could be stopped for something like a master plan. He supported the amendments as they have been proposed. He believed variances have always been a useful tool for planning departments, community development, and different projects. Variances are certainly not a free pass by any means, but they can allow some flexibility in the details. Therefore, he supported variances. Bank height north of the railroad tracks should be left as is, only limiting overwater development to bank height.

Commissioner Fitzpatrick said he was conflicted for a number of reasons. He agreed that the Planning Commission is very close to finding the right balance. There has been a lot of input and work done and some good progress had been made. The Civic Greenway Area covers a large area and we are down to arguing about one specific area. He agreed with much of what Commissioner Pearson and President Nemlowill said. He opposed variances as he has been involved in too many situations where the variances were taken advantage of. He would love to see absolutely no development between 16th Street and the existing developments because the public has indicated they do not want to see development in this area. He fell in love with Astoria in 1967 and he looks back and thinks that Astoria was a crappy place then. He understood why people 20 years ago would question why he wanted to be in Astoria. However, people understand today. Astoria has only improved; therefore, from a selfish standpoint, he would not like to see anything developed in the area. He was surprised that the word "taking" had not been brought up prior to Attorney Noren speaking. He walks along the River Walk almost every day, but does not always go past Safeway. Since this has started, he has tried to spend more time in the area. From the Maritime Museum several blocks to the east, if he were to testify or be hired as a consultant, he could not see that there would be a taking if the City did not allow anything over riverbank height. The area currently has a 45-foot height limit and he questioned whether the City has taken any value away by limiting the height to the riverbank. He stated he would feel confident testifying that no value had been taken. He is not an attorney, but has been hired in other areas for this area of expertise. He was concerned about what would or would not be allowed in the area of Mr. Brugh's property, the Port and Mr. Holcom's property because if he were consulting a client on this, he would say his client would lose. Therefore, he is very comfortable limiting certain areas of the riverfront and is very uncomfortable placing certain restrictions on other portions, specifically 35th through 39th Streets. 31st Street was mentioned at a previous meeting, and then someone mentioned 29th Street, and then 28th Street. Therefore, he understood the concern that the Planning Commission keeps creeping backwards. He did not like the sound of trinkets and agreed with Ms. Oldenkamp's statement. One of the things he likes about Astoria is that it really does not have any trinket stores. He believed this was because there is no need for them and he hoped that Astoria did not end up with trinket stores. It is true that local people in San Francisco do not go to the Fisherman's Wharf and he would not go to a trinket store in Astoria. He has seen similar situations in other small towns where the visitors love places that the local people do not. He was

extremely concerned about seeing LNG and coal as one of the highest and best uses and he was still trying to understand why that was included in Mr. Ramis' letter. However, he was willing to give the benefit of the doubt. The document uses the word marina considerably. He understood what a marina meant because as a child, he would go to a marina on weekends to go sailing. He was concerned about others' definition of a marina, but to him, a marina is an active place where you can rent kayaks, buy supplies for fishing, and buy snacks. He wanted to define what was meant by marina and associated uses. He agreed with President Nemlowill that Astoria is for Astorians and he understood the passion from those who spoke about the amendments. The Plan states it is expected that large amounts of overwater development will not occur in the Civic Greenway Area due to the amount of public control in areas such as the historic train depot, Mill Pond, and East End Mooring Basin. These areas represent about 75 percent of the overwater area in the Civic Greenway Area. He believed this meant at least 75 percent of the area is expected to be left in its current state, so the Planning Commission is really working on 25 percent. He did not agree that the Plan was saying no overwater development whatsoever; it says that 75 percent of the area will not have a certain level of overwater development and another portion will. There was discussion of the City working with upland property owners to work around their leases of the space overwater so that landowners would be compensated. He has not seen any mention of that in the proposed amendments. He did not want the Planning Commission to put something in front of City Council, have it approved, and then have lawsuits. He did not believe the City or the Port could afford a lawsuit and believed it was important to come up with something that works, that is fair, and does not get the City in trouble. He believed the Planning Commission was getting close, but was unsure if the current proposal worked.

City Attorney Henningsgaard responded that the taking clause refers to taking private property. All submerged and submersible lands are owned by the State of Oregon and are not private property. The restrictions placed on those properties would not result in a taking.

Commissioner Fitzpatrick clarified that he said earlier he was only speaking about on land, but when he began talking about taking, he was not specifically talking about that.

Vice President Innes believed the proposed amendments were livable. She had hesitations about the area from 35th to 39th Streets. She would like to believe the way it has been proposed would work, but some heavy questions have been raised. She wanted to finalize this with as much protection as possible for what the Planning Commission has learned that everyone wants to have in this Plan. If that means not allowing variances, then let's omit variance from both the bank height restriction and the 500 foot distance requirement. She was not in favor of restaurants over the water. Handrails above the bank really appealed to her because she is older and needs handrails. She wanted to know if Staff could begin researching the handrail issues by referring to ADA principles first. Director Estes stated handrails would be required. If the height of the dock was the same height as the riverbank, the handrail would be above the riverbank. The trestle going out to Pier 39 is one example of this. It would be difficult and challenging to build handrails above bank height. Staff recommended handrails be allowed above bank height. Vice President Innes clarified that she was suggesting handrails be above bank height.

Planner Johnson confirmed for Commissioner Norgaard that bank height restrictions for overwater development were being proposed from 16th to 41st Streets. Director Estes displayed an image on the screen and explained that in the areas shaded green, any overwater development could only be the height of the adjacent bank. The blue area, 500 feet from the bank, could be higher.

Vice President Innes said with regard to the plant species, the City should use the most affordable expertise available. It is one thing to put in the plants and trees the City is hoping for, but maintenance needs to be considered. This is such a huge production, so the City should try to get the area as well planted as possible. She favored bank height development north of the railroad tracks.

Commissioner Norgaard thanked the public for speaking as he has learned a lot at this meeting. While he has not been part of this process from the beginning, he takes this and all of the comments very seriously. Everyone seems to say that this process has been going on for so long and we should just get it over with. He understood that the Planning Commission needed to send this to City Council. However, the Planning Commission wants to do this right the first time. He agreed that railings should be allowed above bank height. He has lived in Astoria his whole life and he believed a lot of effort was put into the Riverfront Vision Plan. He agreed with protecting the views between 16th and 41st Streets, but between 35th and 39th Streets, he would not mind seeing some development, including a restaurant. He worked on his dad's boat through the 1980s when the waterfront was

not the greatest looking, but it meant something to him and he has good memories. He is wondering if it is his job to restrict a property owner's building heights and distances.

President Nemlowill stated she respected what Commissioner Norgaard was saying. She understood that he did not want to tell other people what to do with their property. However, she believed this was his job as Planning Commissioner, which is tough.

Commissioner Norgaard said this was a difficult decision to make because everyone must agree on something that will be set for future generations. He believed the proposed amendments demonstrated a balance while implementing the Riverfront Vision Plan. He originally agreed that the 500-foot distance requirement was appropriate. But after listening to comments, he began to question the requirement. He agreed with Commissioner Pearson that a master plan from the Port would be interesting to see. He believed the Port and the City could work together and still preserve what is out there. He has faith that people in the City would put the right plants in the right places.

Commissioner Gimre thanked everyone who testified. What makes Astoria great is that everyone is involved and everyone has an opinion. The bottom line is that everyone loves Astoria. He understood there was consensus in support of what was proposed between 16th and either 30th, 31st or 32nd Streets, which he supports as well. He agreed no variance from the bank height should be allowed. He supports no variances from 16th through 30th Streets, but did favor variances from 31st through 39th Streets. Development is a dirty word sometimes, but if it done right, it does bring people to the waterfront. If there is a way to get people to the river or out on the river, people will go to the furthest point out on the river. He was not opposed to restaurants and believed any development would be done tastefully. He had faith in those who would request the variances and was not afraid of what would be done. The recommended plant list needs a serious look. There are currently 30-, 40-, or 50-foot high alder trees along the riverfront and he did not want more plants like these planted in the area. The City should be very restrictive on the height of the plants. He wanted to see a master plan from the Port, but they seem to be a little late to the game. Waiting another year to come up with a master plan is late at this point. The Port's job as a public entity is to create economic stimulus. He was unsure if the current Code was too restrictive to allow the Port to do what they have proposed. He was not in favor of LNG or grain terminals and doubted if anyone in town would be. However, he personally believed it would be good to have the cruise ships dock off the East End Mooring Basin. He reiterated that he supported no variances from 16th to 30th Streets and variances allowed from 31st to the east side.

President Nemlowill said the section being discussed was from 35th to 39th Streets. She asked if Commissioner Gimre was suggesting a change to Staff's proposal.

Planner Johnson confirmed that Commissioner Gimre supported no variances to 31st Street, but allowing variances from 31st Street on, not that he was opening up development from 31st Street. Mr. Brugh's property begins at 31st Street and the Port's property begins at 33rd or 34th Street and extends east. She confirmed that Commissioner Gimre agreed with Mr. Noren's comments.

Commissioner Gimre stated he was not suggesting a change to the allowable overwater bank height restriction between 31st and 35th Streets. He just wanted to allow variances in this area. He confirmed for President Nemlowill that he did not support variances between 16th and 35th Streets, but did support variances from the 500-foot distance restriction for overwater development between 35th and 39th Streets. He also supported a variance from the bank height restriction starting at 31st Street.

President Nemlowill did not understand how Commissioner Gimre's proposal would work. She asked how variances could be allowed from bank height, which is a non-numeric value, in some areas but not others. Planner Johnson stated this could be written into the Code to clarify if variances were allowed.

Commissioner Easom thanked everyone who participated in this process. He believed limiting overwater development was appropriate between 16th and 31st Streets. However, limiting such development between 31st and 40th Streets would not support what the Riverfront Vision Plan says about Port development and economic development. He agreed with Commissioner Fitzpatrick that the definition of a marina was important and eating and drinking establishments in conjunction with marinas is quite common; they make marinas more viable in some ways. He did not agree with the proposed height limit between 31st and 41st Streets and he believed the recommended plant list needed more work.

President Nemlowill stated that currently, the area between 31st and 41st Streets does not have a height limitation for overwater development. She asked if Commissioner Easom wanted this to remain as is in the Code.

Commissioner Easom clarified that he did not support unlimited height and the proposal for height limits in this area needed some work. He suggested a 28-foot height limit with the possibility for a variance to 45 feet between 31st and 41st Streets.

Planner Johnson confirmed the Planning Commissioners' position on the key issues as follows, noting the majority consensus:

- Four Commissioners opposed allowing variances between 16th and 31st Streets for the bank height restriction for overwater development.
 - The Commission was split on whether to allow height variances between 35th and 39th Streets for overwater development.
 - Two Commissioners supported allowing variances between 31st and 39th Streets.
- The entire Commission supported allowing overwater handrails above bank height.
- The entire Commission supported conducting more research on the recommended plant list.
- The Commission was split on whether to allow variances to the 500-foot distance requirement for overwater development.
- Three Commissioners supported making the shore north of the railroad tracks at bank height; only one Commissioner supported keeping the shore at the water level.
- Three Commissioners supported allowing eating and drinking establishments associated with a maritime use over the water, two Commissioners did not, and two Commissioners supported allowing them even without maritime association.

President Nemlowill asked if the Commissioners supported sending Staff's recommendations to City Council.

Commissioner Fitzpatrick said he was not in favor of sending the recommendations to City Council as is because some people have spoken in favor of and some people have spoken opposed to the recommendations. He was in favor of continuing to fine-tune the proposed amendments. He agreed that this process had gone on for a long time, but did not believe this was the time to cut it short and say we need to be done because it is late.

Commissioner Norgaard supported forwarding the proposed amendments to City Council with the changes as stated by Planner Johnson. He also supported the variance from the 500-foot distance restriction for overwater development and more research on the plant species list.

Commissioner Gimre stated he would not send the recommendations to City Council as currently written. Commissioner Easom agreed.

Staff proposed that the Planning Commission make a recommendation concerning the on-land provisions only and hold back the overwater section of the Code for further discussion and deliberation. The overwater portion of the recommended Code amendments could be continued to the next meeting. There seemed to be a consensus by the Planning Commission on all other parts of the recommended amendments. The public hearing is closed, but the Commission could continue discussion and deliberation on overwater development to the next meeting.

President Nemlowill questioned how the Planning Commission could move forward on the overwater issues right now. Some Commissioners have expressed their ideas for 31st Street, but she has not heard how those ideas apply to the Riverfront Vision Plan. She asked if Staff would amend the current proposal based on a few Commissioners' idea of bringing the Blueway Zone to 31st Street.

Staff explained that the Planning Commission could discuss the entire waterfront at the next meeting and forward everything else, like the Compact Residential zone, design guidelines, landscaping, setbacks and stepbacks, to City Council. There does not seem to be much opposition from the Planning Commission to any of the on-land development recommendations. At the next meeting, Commissioners would need to state how their individual proposals would comply with the Riverfront Vision Plan.

President Nemlowill stated she would be happy to continue that discussion. She did not believe the City was at a point where that discussion should change what is being proposed right now.

Motion by President Nemlowill, seconded by Vice President Innes, that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff Report regarding the proposed amendments for the on-land portion of the Civic Greenway Area of the Riverfront Vision Plan and continue the discussion of the overwater portion of the Civic Greenway Area of the Riverfront Vision Plan to the next Planning Commission meeting on July 22, 2014 at 6:30 p.m.

An unknown person in the audience interjected that the Planning Commission wanted to make changes to the height limit north of the railroad tracks, which was not included in Staff's recommendations. Planner Johnson stated this would be part of the future discussion.

President Nemlowill noted that the person was talking about land.

Attorney Noren asked if public testimony had been reopened.

President Nemlowill believed the area north of the railroad tracks was land and agreed with the unknown person in the audience and withdrew the motion.

Mr. Hastie believed the Planning Commission could adopt provision on land up to the railroad tracks and continue the discussion for provisions pertaining to overwater and the area on land to the railroad tracks. He has not heard any debate on the rest of the on-land recommendations.

President Nemlowill asked what benefit would come from dividing the recommendations, noting this would be the first time these recommendations would be divided.

Mr. Hastie explained that the Department of Land Conservation and Development (DLCD), who funded this grant, needs to decide whether or not they will approve funding for the next phase of this grant. The DLCD has been very concerned about making progress on this. If the Planning Commission cannot move forward on something, the funding could be jeopardized. The proposal is to move forward on the recommendations the Planning Commission agrees on and continue discussion on the recommendations the Planning Commission has not agreed on.

All of the Commissioners supported recommending to City Council the Code provisions that would apply to the on-land portion of the Civic Greenway Area to the railroad tracks and that discussion of Code provisions north of the railroad tracks be continued to the next Planning Commission meeting.

Motion by Commissioner Pearson, seconded by Commissioner Fitzpatrick, that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff Report and recommend to City Council the Code provisions that would apply to the on-land portion of the Civic Greenway Area of the Riverfront Vision Plan to the south side of the railroad tracks, and continue discussion of Code provisions north of the railroad tracks to the next Planning Commission meeting on July 22, 2014 at 6:30 p.m. Motion passed unanimously.

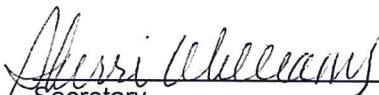
Staff confirmed that the next Planning Commission meeting would be July 22, 2014 at 6:30 pm.

REPORTS OF OFFICERS/COMMISSIONERS: None.


ADJOURNMENT:

There being no further business, the meeting was adjourned at 10:58 pm.

ATTEST:


Secretary

APPROVED:


Community Development Director /
Assistant City Manager