



CITY OF NEWPORT  
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## **PLANNING COMMISSION MINUTES December 13, 2022**

### **1. CALL TO ORDER**

Chair Leyde called the Planning Commission meeting to order at 5:30 p.m. on December 13, 2022.

### **2. ROLL CALL**

Present (5): Chairman Brandon Leyde, Commissioner Anthony Mahmood, Commissioner Maria Bonilla, Commissioner Tami Fuelling, and Commissioner Michael Kermes.

Not Present (0): None.

### **3. MEETING MINUTES**

#### **A. November 15, 2022**

Commissioner Kermes motioned to approve the Planning Commission Meeting Minutes from November 15, 2022. Seconded by Commissioner Bonilla. Approved 5-0.

### **4. KELLER FENCE CUP APPLICATION**

Chair Leyde stated that tonight is not a Public Hearing. The Public Hearings for both Keller Fence and Mota's Motors were held on November 15<sup>th</sup>, 2022.

City Attorney Alissa Harrington stated there is a memorandum that has been prepared regarding the conditional use permit (CUP) standards and how they work in Newport and Minnesota. In the zoning code there is a list of what is allowed in each of the different zoning districts and what things must be reviewed by the city to see if there are certain conditions that need to be met for the use to be acceptable within the city. There are some general requirements in the state of Minnesota for CUP's. It allows the Planning Commission and/or the City Council to review an application to see if the standards in the city's ordinance and state statute are met on the face of the application or with reasonable conditions. The role of the Commission is to hear from the public, study the application, and ultimately recommend to the City Council whether the CUP should be issued or denied. If it is to be issued what kind of conditions should be put on that use to make sure the use complies with the city's comprehensive plan and is not a threat to the city's safety, health, or welfare. The city code lists several factors that are to be considered by the Planning Commission and then by the City Council. The Commission will have the option to either recommend approving the CUP's if they determine the application meets the standards or could meet the standards with reasonable conditions. The alternative is to recommend denying the CUP in which case they must make findings to show that the denial is not unreasonable, arbitrary, or capricious by stating legally sufficient reasons for the denial and specific supporting facts.

City Planner Nathan Fuerst stated Keller Fence's CUP request was reviewed on November 15<sup>th</sup>. Keller Fence is looking to acquire, combine, and redevelop four subject parcels to create a new base for their business operations. This is a B-2 general business zoning district. The future land use is mixed commercial and residential, and staff believes this is consistent with the comprehensive plan. The site is approximately 3.5 acres in size. The site plan includes an office for administrative operations, a warehouse for indoor storage for equipment, an area of exterior storage, and parking. The site plan includes the proposed fencing and landscaping plans. Planner Fuerst stated at the last meeting during the Public Hearing the main concerns were traffic impacts, and a resolution was cited limiting traffic on 7<sup>th</sup> Avenue. Staff located and reviewed resolution 2004-55 which regulates vehicles traveling on 7<sup>th</sup> Avenue between 2<sup>nd</sup> Street and the Glen Road interchange to a limit of 10,000 pounds gross vehicle weight. Staff noted that the Council clarified at the meeting this resolution was passed that deliveries, such as furniture and moving vans were acceptable. Keller Fence's fleet vehicles include ten F450's and two box trucks. Keller Fence would try and limit their delivery window to one day per week, which is typically on Fridays. Planner Fuerst talked through the proposed findings and the twenty-four conditions proposed by staff. The Commission can recommend approval, approval with conditions, or denial to the City Council.

Tim Dyrhaug, owner of Keller Fence, addressed the Commission. Mr. Dyrhaug stated the business has been in his family for thirty-six years, and he has owned it for eight years. Keller Fence is not a retail operation so they will not have a heavy amount of traffic. They are also not a large company and have forty-five employees. They have twelve trucks that go out in the morning and come back in the evening and that is typically between 7:00 a.m. and 4:00 p.m. and their weekend activity is limited. They are a small family-owned business, and their proposed building would be an upgrade to the site. They are a seasonal business that operates from April to December. Outside those months, their staff goes from forty-five employees to twenty employees for one quarter of the year. Their fencing will be stored behind an eight-foot-high fence, palletized, and kept in an orderly fashion. Chair Leyde inquired if Mr. Dyrhaug is confident that a semi-trailer can turn around in their lot. Mr. Dyrhaug stated yes as they had an engineer draft a traffic plan assuming the worst-case scenario with the largest semi. Commissioner Kermes inquired if they are mainly commercial or residential. Mr. Dyrhaug stated they are 80% commercial and 20% residential and use all types of fencing materials. Chair Leyde inquired if their proposed plan includes ample parking for staff. Mr. Dyrhaug stated the field staff would park in the back northeast corner of the site, and the office staff would park in the front parking lot. Chair Leyde stated the current CUP for the towing company has a restriction on vehicles going northbound so his opinion is the proposed condition number eleven would need to be updated to require all Keller Fence's fleet and delivery vehicles to go southbound.

Mark McKenzie, residing at 999 7<sup>th</sup> Avenue, addressed the Commission. Mr. McKenzie stated there was missing information at the last Public Hearing regarding the truck ordinance on 7<sup>th</sup> Avenue so the Public Hearing should have been pushed out. Mr. McKenzie went door to door and not one person he talked to had been informed about the meeting, so the city needs to do a better job informing the citizens. Mr. McKenzie wishes Keller Fence well but does not want them in Newport. Mr. McKenzie stated Council Member Marvin Taylor informed him the City Council was discussing rezoning the west side of 7<sup>th</sup> Avenue to residential. Mr. McKenzie believes the trucks are the biggest issue as 7<sup>th</sup> Avenue is not wide enough and he does not understand how this is consistent with the future vision of Newport. He believes this will cause his taxes to go up and his property value to go down.

Doris Kessler, residing at 636 5<sup>th</sup> Avenue, addressed the Commission. Ms. Kessler stated she is worried about the light coming out of the business and the forty-five employees generating additional traffic with the school kids. Ms. Kessler lives in a residential area and does not want more lights in that area where she believes homes should be. She wonders where the library visitors will park as they need to use both sides of the street. Ms. Kessler feels the communication is lacking from the city as she was only informed about this meeting from a flyer a resident put on her door.

Landon Kucera, residing at 940 6<sup>th</sup> Avenue, addressed the Commission. Mr. Kucera stated he is new to Newport as of two years ago and feels this meeting is very informative. He is concerned about the traffic as his driveway is on 7<sup>th</sup> Avenue and he does a lot of backing into his driveway with his trailer and boat, so he does not want more traffic. He also does not want his home value to go down.

Chad Rheault, residing at 675 10<sup>th</sup> Street, addressed the Commission. Mr. Rheault stated he submitted a letter but will reiterate it for the record. He was attracted to Newport several years ago as he thought this would be a great community with walking trails and the intention for foot traffic. He is worried that once the city opens the floodgate for allowing semis to go north and south there will be no turning back and property values will go down. Mr. Rheault stated he was concerned that not everyone impacted by the semis on 7<sup>th</sup> Avenue was notified about this potential business. Commissioner Mahmood inquired about the semi concern as Keller Fence does not have semis and they would only have one semi a week for deliveries. Mr. Rheault stated if you allow one semi, you have said to all businesses this is allowed. Chair Leyde stated we need to focus on this application, and fortunately this application does not bring semis north on 7<sup>th</sup> Avenue.

Pauline Schottmuller, residing at 97 10<sup>th</sup> Street, addressed the Commission. Ms. Schottmuller stated there was a promise made from previous Councils that 7<sup>th</sup> Avenue was not going to become a truck route. Ms. Schottmuller is concerned with the health and safety as the trucks will be operating when kids are walking and biking to the library. Ms. Schottmuller is concerned with the noise of the ten F450 vehicles as she owns a F350 diesel which is very loud. Ms. Schottmuller is concerned with the backup alarms as she is sensitive to percussive sounds which she has dealt with for years with the gun club. She stated backup alarms are anywhere from 97 to 112 decibels and recommends the city should include a measurable condition for sound standards. She stated that people are outside trying to enjoy their decks, yard, and garden during the summer months which coincides with Keller Fence's busiest season. In her opinion, health and safety is being compromised. Commissioner Mahmood inquired how many decibels the train puts off for the 10-15 trains that go by in a day. Ms. Schottmuller stated there is a difference between train noise and percussive noise. Commissioner Mahmood believes the backup sound was addressed in the staff's recommended conditions. Planner Fuerst stated the staff proposed a condition that would require broadband alarms which are more of a muted tone that still achieves the goals of safety.

A gentlemen stepped up to the podium and stated that truck traffic will increase on 7<sup>th</sup> Avenue and he believes the police should enforce it.

Peter Salazar, residing at 501 6<sup>th</sup> Street, addressed the Commission. Mr. Salazar stated the refinery and the tow company use 7<sup>th</sup> Avenue to drive back and forth. He is concerned with the increased traffic as it is already busy on 7<sup>th</sup> Avenue.

Chair Leyde stated he agrees that conditions need to be set so you can enforce a CUP when there is an issue. He feels all truck traffic needs to be routed south. Chair Leyde stated he still has the same traffic concern that the residents have. Commissioner Kermes main concerns are with enforcement, health, safety, and traffic. Commissioner Bonilla's main concern is safety as kids catch the bus a little after 7am. Commissioner Fuelling stated she understands the concerns, but also sees the benefit of a new business if the concerns are addressed through appropriate conditions. Commissioner Mahmood stated he would love to see a new business and thinks they would be a good fit in Newport. He also feels for the residents and understands their concerns.

Chair Leyde motioned to recommend denial of the Keller Fence Conditional Use Permit due to criteria concerns for health, safety, and traffic. Seconded by Commissioner Bonilla. Approved 3-2 (Mahmood, Fuelling).

Chair Leyde recessed the Planning Commission Meeting at 6:58 p.m. on December 13, 2022.

Chair Leyde resumed the Planning Commission Meeting at 7:07 p.m. on December 13, 2022.

## 5. MOTA'S MOTORS CUP APPLICATION

Planner Fuerst stated Mota's Motors CUP at 1545 7<sup>th</sup> Avenue was discussed at the last meeting on November 15<sup>th</sup>. The parcel is about 5.6 acres in size, the zoning is MX-3 general mixed use, and the future land use is mixed commercial/residential. The requested use is automotive services and car specialty services (not including body repair or major repair). Planner Fuerst read definitions from the city code.

Attorney Harrington stated the city code needs to be looked at following the canons of construction as they are defined in Minnesota Statute acting as if the ordinances are the statutes and the Council is the legislature. Attorney Harrington explained the process when something is ambiguous and how they do legislative interpretation in general and statutory construction. Commissioner Bonilla inquired if Attorney Harrington could clarify the Commission's role. Attorney Harrington stated when the Commission is reviewing a CUP they are acting in a quasi-judicial role. They need to look at what the law is and take the facts and apply the law to the facts.

Planner Fuerst provided example definitions from communities around the metro area for major and minor automotive repair as well as car specialty services. The applicant has requested a car specialty services shop that performs unique customization, modification, and performance enhancements of current and classic vehicles and occasionally motorcycles but not body or major repair. The Planning Commission needs to discuss the proposed use and determine its findings whether it is permitted within the city code and then discuss findings to support their position. Planner Fuerst stated the applicant is not proposing any interior or exterior alterations that would change the existing conditions which are non-conforming. For parking, the applicant has not provided a site plan detailed enough to demonstrate the proposed parking areas will contain sufficient parking or meet design criteria. The traffic visiting the site is not anticipated to be considerable for this use. This site has six access points which can be concerning from a safety perspective. During the Public Hearing on November 15<sup>th</sup>, the main concerns heard by staff were accuracy of the land use that is proposed by the applicants, compatibility of the land use, traffic impacts, screening and existing nonconformities that are present on site. Staff has proposed findings for the Commission that would support a denial of this request because even with mitigating conditions, many concerns would still exist. Planner Fuerst explained the basis for discussion should the Planning Commission deny this request. Staff also proposed several conditions should the Planning Commission decide to approve this request. Attorney Harrington clarified that the current building is an allowable non-conformity that does not have to be changed at this point to be approved. There needs to be factual findings to base a denial.

Commissioner Bonilla stated at the last meeting the owner showed the Commission façade plans and inquired if those were presented to the city. Attorney Harrington stated the two-story building plans had to do with a completely different project and does not have anything to do with this CUP request. Commissioner Kermes inquired if they recommend approving this CUP with conditions, does every condition, one through twenty, need to be met for this CUP to move forward. Attorney Harrington stated if the Commission moves to recommend approval with conditions, they can decide which of the findings and which of the conditions would be included in that recommendation. Commissioner Mahmood inquired if this CUP would be restricted to the three stalls on the site plan. Planner Fuerst stated yes, there was a discussion that the use would be very limited in terms to their location within the structure. Attorney Harrington stated conditions three and four limit them to their current location proposed on the site plan.

Commissioner Mahmood inquired if the city could work with this business owner to help him get this place into compliance so he can do business in Newport. Attorney Harrington stated there has been communication with the owner and this is not the basis of the decision at hand.

City Administrator Joe Hatch stated his information is available on our website and he is happy to talk to anyone, including current business owners. He knows we need to balance the needs of the community, the neighborhoods, the residents, and the businesses. He believes there are great opportunities in Newport.

Chair Leyde motioned to recommend denial of Kube, LLC's Conditional Use Permit request to allow automotive services and car specialty services due to staff's preliminary findings as listed in the staff report. Seconded by Commissioner Fuelling. Approved 5-0.

**6. COMMISSION REPORTS**

No Commission reports.

**7. ADJOURNMENT**

Chair Leyde motioned to adjourn the Planning Commission Meeting. Seconded by Commissioner Kermes. Approved 5-0.

The Planning Commission Meeting was adjourned at 7:56 p.m. on December 13, 2022.

Respectfully submitted:  
Jill Thiesfeld,  
Administrative Assistant II

Signed: \_\_\_\_\_  
Brandon Leyde, Chairman