

TILLAMOOK COUNTY PLANNING COMMISSION

MINUTES

MARCH 21, 2002

I. CALL TO ORDER:

The meeting was called to order at 7:00p.m. by Chairperson Don LaFrance. Other members present were Kurt Heckerth, Gale Ousele, Anne Price, Joan Marti, and Charlie Swan. Member absent was Scott Hill. Staff present were Nadine Smith and Lynne Krueger.

II. APPROVAL OF MINUTES:

Joan made a motion to approve the minutes as corrected from September 13, 2002. Gale seconded the motion.

The Planning Commission voted in favor of approving the minutes from September 13, 2002. There were four approvals, no objections, and two abstentions.

On page 2, fourth line, there was a correction of the word "straightforward". In the context it was used, the word was spelled correctly as one word.

The Planning Commission voted unanimously to approve the minutes from December 13, 2001 with corrections.

The minutes from January 10, 2002 were unanimously approved with no corrections.

III. OLD BUSINESS:

There was nothing under old business to discuss.

IV. NEW BUSINESS:

Don read the oral statement regarding Quasi-Judicial public hearing procedures.

OA-01-12: Requesting approval to amend the Tillamook County Comprehensive Plan Ordinance #32 to adopt the new Urban Growth Boundary for the City of Rockaway to include property designated as Tax Lot 6100 of (Index) 29, Township 2 North, Range 10 West, WM, Tillamook County, Oregon. The property is located at the east terminus of NE 12th Ave. east of Lake Lytle

Estates Phase III. Neah-Kah-Nie School District No. 56, Ron Larson, Neah-Kah-Nie School District Board Chair, Simpson Timber Company, applicant and owner. (Lynne Krueger)

Lynne distributed copies of aerial photographs of the property Tax Lot 6100.

She stated that the City of Rockaway has gone through the process of a Goal Exception to approve the 40 acres of forest into their UGB for the purpose of a middle school. The property was zoned F-1 and went to R-2 to allow the school to be placed.

The Rockaway City Council and the Rockaway City Planning Commission have given their approval and like Tillamook County have met the 45-day requirement with DLCD.

Lynne said the Planning Commission needs to determine if there will be financial or administrative impacts to the County.

She concluded that at this point doing research, it does not look like the County would be impacted. Staff recommended that the Planning Commission recommend approval to the Board of Commissioners.

There were no questions for Staff at this time. Don asked for the applicant's presentation.

Ron Larson, Board Chair of the Neah-Kah-Nie School District went through the history of the application. The school district started actively searching for property in 1995. Finding a piece of property outside of a tsunami zone made a huge impact in locating an acceptable parcel.

Mr. Larson stated that they have gone through the Exceptions process, which is required by state law. He added that this is a joint application between Rockaway and Tillamook County.

Mr. Larson concluded by saying they have recommendations of approval from the Rockaway Planning Commission and Rockaway City Council as well as letters from all five cities in the Neah-Kah-Nie School District and various supporters. He noted those could be found in the application file.

There were no questions for the applicant.

There was no public comment.

Don asked if Staff had any further questions.

Lynne stated that DLCD has no opposition and feels that this is a good location for the school.

Anne made a motion to recommend approval to the Board of Commissioners for OA-01-12.

Kurt seconded the motion.

The vote in favor of the motion was unanimous.

AP-V-02-01: An appeal of the Planning Director's decision to deny a Variance Request to exceed the 24-foot height restriction for a bayfront parcel. The proposed height of the dwelling is 36 feet. The property is zoned Recreation Management (RM), Section 3.040 of the Tillamook County Land Use Ordinance. The subject parcel is located on Whiskey Creek Road, and is designated as Tax Lot 101 of Section 30, Township 2 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The property owners, applicants and appellants are Benjamin and Mary Lou Hathaway. (*Lynne*)

Don read the oral statement regarding Quasi-Judicial public hearing procedures.

There were no personal bias or conflicts of interest declared.

Gale had an encounter with a person who wished to comment on this issue. She said that she told them to come to the hearing and speak during public testimony.

There were no other contacts declared.

Lynne handed out aerial maps of the parcel, criteria, and comments that had been received since the packets for the Planning Commission had been mailed out.

Lynne briefly explained the history of the parcel. The parcel is located on Netarts Bay. It was the site of the original Netarts Store. The property is zoned RM (Recreational Management) and is approximately 4.4 acres.

There was an application for a Conditional Use in 1998 that was approved to site a home on the property. Lynne added that the Conditional Use identified the footprint and the findings did identify the 24-foot height restriction. Lynne noted that RM zones do not have standards for setbacks or height.

In review of the Variance application, Staff determined that the application did not support the request and criteria and was therefore denied. The staff report indicated that the materials supplied did not meet the criteria.

Lynne added that the primary information from the applicant was the ability to place a certain type of structure on a property. Lynne explained that a Variance does not take design into account when addressing the criteria. She noted that out of the four criteria, Staff did feel that the application met the third criteria.

Lynne stated that this is not an issue about views gained or lost.

Kurt asked if there had been an Extension of time done for the Conditional Use.

Lynne said that there had been.

There were no further questions for Staff at this time.

Ron Larson, HLB & Associates, spoke on behalf of Benjamin and Mary Lou Hathaway.

Mr. Larson addressed the reasons why his clients believed the Variance should be granted.

Regarding the issue of setting precedence, Mr. Larson felt that one needed to understand the expression of "setting precedence". When looking at the criteria, he explained one could craft the information and look at the point of view of setting precedence. However, there are specific and unmatched conditions pointed out in the findings, Mr. Larson concluded, that should not be considered as setting precedence.

Mr. Larson said the Planning Commission should look at the "reasonableness" of Variances. He stated that it was the Planning Commission's job to define "reasonable". Mr. Larson added that his clients could build a building 24 feet in height, but that there was also this process called a Variance process.

Mr. Larson put up a site plan map of the area. He pointed out the road and different areas of the property, including where the house would sit. He said this was a tall, two story Victorian style building and for that reason, the building is not at grade. The garage is one story and is only 22 feet in height. The main ridgeline of the roof is at 28.6 feet in height. Another ridge is 31.4 feet in height. The turret, which is an architectural feature, is at 35.5 feet in height.

Unfortunately, Mr. Larson stated, Tillamook County's Ordinance does not compensate for buildings not drawn on a flat plane.

Mr. Larson disagreed with the fact that there is no control over this. He explained that there is control because a Conditional Use has already been applied for. He added that his clients are open to whatever conditions could be crafted to address the situation and would agree to an amendment of the existing Conditional Use if the Variance were approved.

Mr. Larson addressed the four criteria for a Variance.

Regarding the first criteria, Mr. Larson stated this was the type of structure his client would like to build on a 4.5-acre parcel limited to one house. His client feels this is a “reasonable” request and is an effective substantial property right that should be allowed.

Addressing the second criteria, Mr. Larson explained that a Variance is reasonable to occur because of the large estate type two-story home with a smaller footprint to limit the number of trees removed. In the middle of that, Mr. Larson added, there is a property right that can be reasonably expected to occur.

Mr. Larson did not contest Staff’s determination of the third criteria because Staff had concluded it had been met.

For the fourth criteria, Mr. Larson said his clients could build a ranch-style home with a flat roof pitch but that style is not what fits or is reasonable to expect on a piece of property that is 4.5 acres in a RM zone.

Mr. Larson reiterated that “reasonableness” is open to interpretation and that it was the job of the Planning Commission to determine that interpretation.

Charlie stated he had gone to the site. He confirmed that the homes to the east and south were at a higher elevation than the proposed site.

Mr. Larson said he had not done any exact measurements but felt that was something that could be assumed.

Charlie asked if Mr. Larson had been involved in the Conditional Use request.

Mr. Larson stated he had.

Mr. Hathaway, property owner, applicant, and appellant wanted to speak also.

Mr. Hathaway explained that there is a culvert on the property that overflows and that part of the reason for the Variance is because they have to get up above several feet to prevent flooding.

Mr. Hathaway expressed his frustrations with this property, stating that they have been through a lot of grief with this property. They have put in a septic filtration system and a \$30,000.00 ozone treatment plant so that chlorine would not be dumped into the bay. He feels that they have done a judicious job and that this house would be a good addition.

Mr. Hathaway concluded by saying that they could build a long “wiener dog house” to meet the 24 foot height limitation with a very narrow footprint, however he would like to leave as many trees as he can.

Don asked for a show of hands as to how many were interested in speaking during the Public Comment portion of the hearing. He asked that each person limit his or her presentation to five minutes.

Allison Asbjornsen, board member of the Oregon Shores Conservation Coalition and a citizen of Tillamook County, felt that height limitation is an important aspect of Land Use laws and that it needs to be supported and enforced.

Chuck Beasley handed out copies of his letter. He stated that he is in opposition to the appeal and supports Staff’s decision. He suggested that this Variance could be precedence setting if “reasonableness” is substituted for the criteria.

Mr. Beasley also pointed out that others have been able to meet the building height limitations from Neskowin to Neahkahnie and that design choice is not justification.

Mr. Beasley touched on three important elements of the Variance criteria. He stated that there have not been any topographic or hazardous characteristics known to exist on this property or have been shown to exist. Mr. Beasley’s second point was that there needs to be a level playing field for everyone particularly others similarly situated in that area. His third point was that a hardship that exists on a property should not be self-created.

Mr. Beasley referred to his attachments (1a, 1b, 2a, and 2b). Mr. Beasley pointed out that there were two designs submitted with two different heights, which is substantial evidence that a house design could comply with the property.

Mr. Beasley also brought up the issue of the water drainage that the applicant had briefly discussed. He felt that that information should be fully developed and some analysis performed to justify the increased height.

Charlie asked Mr. Beasley if he was opposed or in favor of the Variance.

Mr. Beasley reiterated that he was opposed.

Norm Myers, a licensed appraiser working in Tillamook County, felt that the house would be attractive and would enhance the area. He felt that the purpose of the height restriction was to protect surrounding property values. He said that the house would not block anyone's view because it would be sitting down below the road and the surrounding trees would exceed the height of the house.

Lee Hanson stated he lives one-half mile to the north of Dr. Hathaway's property. He said that most of the homes are of traditional style and practically all are over 24 feet in height. If this is the trend, he added, Tillamook County should think about changing the height limit on houses that do not block the view of other homes, especially in RR zone cases.

Mr. Hanson feels that this house would be a great addition to the community.

Lee Helgeson thanked the Staff for doing an excellent job. He supported the denial of the application because he felt this would set a bad precedence.

Mr. Helgeson thought that this application was like trying to "park a log truck in a single family garage". Additionally, Mr. Helgeson felt that an increase in height of 24-28 feet could be reasonable, depending on the circumstances, but that 36 feet was not reasonable.

Mr. Helgeson said that this was a self-created circumstance and that the Variance does not meet the review criteria.

Rob Trost lives north of the property, next door to Lee Hanson. Mr. Trost feels that the 24-foot height restriction is a flawed policy and appears to be fairly arbitrary, particularly in RR zones. He added that one size does not fit all and there needs to be some flexibility for individual properties in RR zones. He encouraged the Planning Commission to "think outside of the box".

Vic Affolter stated that he was testifying as a citizen who was concerned about the integrity and applicability of Land Use Ordinances. There are four applicable criteria that need to be met. Mr. Affolter added that this is not about what one feels would be good or bad.

Mr. Affolter felt that all of the criteria, including the third, had not been met. Regarding the third criteria, Mr. Affolter explained that relevant development standards of the numerated section 4.005 are inconsistent with that because the extent of approval would change views.

Regarding the first criteria, Mr. Affolter felt that there were no circumstances attributable to this property which would justify a Variance. Additionally, the

Conditional Use request from 1998 explicitly states that all applicable setbacks and 24-foot height restrictions shall be met, he stated.

Regarding the second criteria, Mr. Affolter said a Variance is not necessary to accommodate use and therefore it is not needed to argue what is "reasonable". He added that the applicant admitted that any numbers of structures could be built to conform to the 24-foot height restrictions.

Mr. Affolter felt that the applicant is asking the Planning Commission to assume that large estate style homes should be permitted on this property. He stated that there is nothing in the Land Use Ordinance that justifies such assumption.

Mr. Affolter expressed his concern about how this issue affects the integrity of the Ordinance and how the reach of this request greatly exceeds the grasp of the Ordinance. He noted that the applicant knew the height restrictions before applying.

Mr. Affolter concluded by saying that if people feel the 24-foot height restriction is too onerous, the only way to address this issue is through amending the current Ordinance.

Charlie asked Mr. Affolter if he was opposed to the Variance.

Mr. Affolter stated he should have mentioned that in case it was not clear. He stated that he was opposed.

Loten Hooley also felt that the height restriction was a concept to protect property owner's views. He felt that different lots needed different interpretations. He stated he was for the Variance.

Janet Stahl thanked Staff for their recommendation and read her letter from January 26, 2002 that had been submitted in opposition of the Variance. She felt that this hardship was self created and asked that the Variance be denied.

George Kirkham felt that a Variance, in this case, would be precedence setting because it is not in keeping with the Rural Residential classification and zoning requirements. Mr. Kirkham felt that the house was ostentatious. Additionally, Mr. Kirkham said that by allowing this Variance, it would affect other properties in the County and there is a different character in Tillamook County that has been established. He concluded by saying the application should be denied.

Joan Cutuly is a resident in Netarts who agreed with the arguments that had been made against granting the Variance. She felt that the public should be able to count on public officials to help maintain what already exists.

Norm Myers wanted to add that when applying for a loan (the land/building ratio), if the value exceeds 30% of the land, the borrower needs to justify why that is so. He added that the bank prefers the land value to always be 30% or less when there is a large parcel.

Allison Asbjornsen reiterated that she is only concerned about the height, she was not questioning the design.

There was no further public testimony.

Don asked for the appellant/applicant's rebuttal.

Mr. Hathaway said he was pleased to see that Mr. Affolter was there that evening.

He clarified that the property was zoned Recreational Management, not Rural Residential.

When inquiring about the property, Mr. Hathaway said he called Community Development and spoke to Lynda Willard. He wanted to know what he could do with a piece of property zoned RM. Mr. Hathaway stated that Ms. Willard told him this type of land could be used as a primitive campsite.

Mr. Hathaway reiterated that he had no plans to build a home on this property, saying "I need a home like I need another hole in the head".

He offered Mr. Affolter time for rebuttal.

Continuing, Mr. Hathaway said that shortly after he purchased the property, he put in little grills and picnic tables. He was issued a stop work order.

He said he was told that some of the outhouses and picnic tables were too close to the bay. He decided to do a coastal delineation. He removed the four campsites that were too close to the bay front. Additionally Mr. Hathaway said he had to burn down the outhouses that had been there since the 1920's.

Mr. Hathaway added that he also had to do a wetlands delineation.

Mr. Hathaway addressed the issue of a letter that he stated he had never received from Community Development. He said the letter was sent out to all property owners in RM zones stating that they would lose the RM zoning if they did not notify Community Development and request to keep the zoning.

Mr. Hathaway said that Mr. Affolter could not produce the letter nor could County Counsel, Mr. Sargent. According to their legislation and laws, Mr. Hathaway

added, the notification had to also be published in the local paper. Mr. Hathaway said he went to the *Headlight Herald* and looked through their microfiche files. He stated he was unable to find a copy of the notice.

He concluded by saying he sued the County and Mr. Affolter told him to build a house. Mr. Hathaway reiterated that he had purchased the property for a campsite.

Next he went to the site map. He pointed out the forestlands to the east. He stopped to look at the Planning Commission and told them, "I have no delusions by the way about you, about what you are going to do tonight. I already know".

He went on to discuss the chlorinator he implemented. He stated that he was a physician and knew what effect chlorine would have on the bay, thus his reason for the expensive implementation.

He said that he "wanted to build a house that doesn't look like a piece of crap" and concluded by saying that he could "build the best looking crappy house you've ever seen at 24 feet." And added, "I could do it and get by with it, but I'm not going to".

Mr. Hathaway said he was done and thanked the Planning Commission.

Charlie felt it was obvious that there was some sort of hassle going on between Mr. Hathaway and some of the Staff. He asked Mr. Hathaway if he was deliberately doing this to make a fuss.

Mr. Hathaway said he was not.

Mr. Affolter asked for time in the rebuttal since Mr. Hathaway had offered.

Mr. Hathaway asked him to please do so.

Mr. Affolter said he came to testify as a citizen, not as the previous Planning Director. He noted that he did not even mention that in his public testimony.

Mr. Affolter told the Planning Commission that he was not going to discuss what Mr. Hathaway had just discussed because it was not germane to the Ordinance.

Mr. Affolter did say that he was not involved with the letter Mr. Hathaway had spoken about.

Mr. Affolter reiterated that the only thing relevant about this Variance is meeting the criteria.

He ended by addressing what Mr. Hooley had stated, “that it shouldn’t be difficult to get a Variance”. Mr. Affolter disagreed, saying that it is and should be difficult to get a Variance and is not something people should take for granted.

There was no further comment from Mr. Hathaway or Mr. Affolter.

The rebuttal was closed.

Public testimony was closed.

Lynne pointed out that if there were an amendment to the existing Conditional Use, it would entail another decision and possibly public notification.

Nadine added that the Conditional Use could not be amended at this hearing.

Don confirmed that it would take another application.

Lynne said it comes down to suitability. The Conditional Use was approved because Mr. Hathaway was able to meet all of the criteria, she explained.

Lynne also wanted to clarify for the record that the property is zoned Recreation Management and is located in a flood zone “B”. She added that there is no need to regulate how high the house is built up other than what building codes require.

She noted that they also have no control over the trees on the property and could not control what happens with those trees even if the applicant is willing to amend the Conditional Use.

Joan clarified that Mr. Hathaway explained that the elevation of the house is due to the water from the culvert. She added that the height that is listed is actual structure, not from grade.

Lynne said that the height is measured from the ground and up as it is there today.

Joan added that with a four-foot foundation there is twenty feet to build up.

Lynne said that was correct.

Don asked if there was any further discussion.

Anne asked for a moment to read the additional letter Lynne had given them.

There was a ten-minute recess to give the Planning Commission members time to read the additional letters. It was stated that the hearing could not be discussed by Planning Commission members during the break.

The hearing was called back to order at 9:00 p.m.

Charlie said he thought this was a tremendous piece of property and hated to see any good piece of land put to waste by a “dumb regulation” or a “poor interpretation of that regulation”. He felt that the house was an impeccable choice for the property and the house would not impact any other properties.

Charlie also thought that all of the criteria had been met once the word “reasonable” was used and that the past history with the Staff and the owner should not affect the Planning Commission’s decision.

Charlie concluded by saying, “I don’t want to pick somebody’s shirt they are going to wear and I am not going to tell a property owner what type of a house he can build”.

Kurt disagreed with Charlie, saying he agreed with Staff’s decision. He felt that allowing the Variance does not honor the original Conditional Use because of the similar use. He added that it is the Planning Commission’s obligation to examine and see if the application meets all of the criteria. He wanted to know how there could be no reasonable alternative.

Anne felt that a big part of the reason they are involved in Land Use decisions was for the “long haul”. She added that these are not rules or decisions that are to be made and then changed. She explained that they couldn’t predict what surrounding future neighbors would want to do.

Anne concluded by saying she agreed with Kurt and feels that there are plenty of reasonable alternatives that would not require a Variance.

Gale also agreed with Staff because she did not feel that all of the criteria had been met.

Don said that the standards for granting a Variance are much higher than those for granting a Conditional Use. He felt that the criteria were very clear.

Don also thought that the Planning Commission had an obligation to make decisions that are hard to appeal, explaining that if they were to make a motion to approve the Variance, they would have to include reasons in that motion as to how the criteria are met.

He addressed the statement in public testimony about “thinking outside of the box”. Don said there is a legislative process where a proposal could change code. He thought that it was not appropriate to change the code through a Variance decision.

Regarding the comment made about the 24-foot height limitation being arbitrary, Don thought that anything other than a 24-foot height would be arbitrary because it would not be following what the Ordinance states.

Don ended by saying that all of these things need to be taken into consideration when making a motion.

Charlie felt that the Variance met all the tests for approval of 8.010. Charlie said this was an economic hardship and that not permitting Mr. Hathaway to build this home would be unreasonable. He added that “a super piece of land should have a super home, not something run of the mill”. He ended by saying that this was a reasonable alternative and that forcing a person to build a home that is out of fashion for the times is not reasonable.

The motion failed for lack of a second.

Anne moved to deny AP-V-02-01 on the grounds that it had not met the review criteria for a Variance.

The motion was seconded.

Don stated the motion was moved and seconded to uphold the Planning Staff’s decision based on the criteria not being met, Staff’s report, and the public testimony heard that evening.

The Planning Commission voted five to one. Anne, Gale, Joan, Kurt, and Don all voted to uphold Staff’s decision and deny the appeal. Charlie opposed.

V. **AUTHORIZATION FOR CHAIR TO SIGN APPROPRIATE ORDERS, IF NECESSARY.**

The motion was moved and seconded. The vote was unanimous.

VI. **DISCUSSION ITEMS:**

ADMINISTRATIVE DECISIONS:

AR-02-01, CU-01-31(a), DP-01-29, DP-02-01, ET-02-02, EX-02-01, EX-02-02, EX-02-03, Corrected Notice EX-02-03, GH-01-32, Corrected Notice GH-01-32, GH-01-34, GH-01-36, V-02-01(a), AR-01-15, AR-01-16, AR-01-17, CU-01-30(a),

CU-01-32(a), DP-01-13, DP-01-22, DP-01-24, DP-01-25, DP-01-31, DP-01-33, ET-02-01, V-01-10(a).

There was no discussion by the Planning Commission on any of the above items.

VII. PLANNING DIRECTOR'S REPORT

Nadine introduced William Holmstrom the newly hired Assistant Planner and Tim Franz the newly hired Associate Planner.

Nadine added that nothing is scheduled for April, however in June all of the Community Plans will come before the Planning Commission. The communities are Cape Meares, Tierra Del Mar, Hebo, Beaver, Cloverdale, Mohler, Siskeyville, Falcon Cove, Idaville, Barview, Watseco, and Twin Rocks.

VIII. ADJOURNMENT

There being no further business, Don adjourned the meeting at 9:18 p.m.

Don LaFrance, Chair

Sarah Absher, Recording Secretary

Date