

TILLAMOOK COUNTY
PLANNING COMMISSION MEETING
MAY 6, 2004
MINUTES

I. CALL TO ORDER

Chair Heckerorth called the meeting to order at 7:00 p.m. Other Commission Members present were Gale Ousele, Bruce Lovelin, Joan Marti, Charlie Swan, Terry Jones and Merrienne Hoffman.

Staff present were Bill Campbell, Lynne Krueger and Bill Sargent, County Counsel.

II. APPROVAL OF MINUTES

Minutes from the April 8, 2004 meeting will be submitted for approval at the next meeting on May 13, 2004.

III. OLD BUSINESS:

Continuation of CU-04-03: A Conditional Use request to allow the expansion of the existing Bay Shore Recreational Vehicle Park by adding Tax Lot 3402 of Section 5DB, Township 2 South, range 10 West of the Willamette Meridian in the community of Netarts and zoned Netarts Residential Manufactured Dwelling (NT-RMD). The current recreational vehicle park located on property between Old Netarts Road and highway 131 and along Bilyeu in the community of Netarts. This property is designated as Tax Lot 2000 of Section 5AC, Township 2 South, Range 10 West of the Willamette Meridian, and Tax Lots 2700, 3300 of Section 5DB, Township 2 South Range 10 West of the Willamette Meridian, Tillamook, Oregon. Lighthouse Investments, applicant and Jack Clevinger, property owner.

Chair Heckerorth announced that he did not need to read the statement for Quasi Judicial hearing at this meeting because he had done so at the last meeting and this was a continuation of that meeting.

Chair Heckerorth did ask the members to declare any conflict of interest or exparte contacts.

Commissioner Hoffman stated that she had visited the site, walked around the park area including the community itself, and got a feel of the area in question.

Commissioner Ousele said she had also done a site visit while driving by the subject site.

Commissioner Jones stated he had also visited the site, drove and walked around the area and observed the sign in question. He also looked at the lot that is being used for storage. He noted that there is a light pole illuminating the intersection as well as the sign.

Commissioner Swan said he had looked at the entire area while on a site visit, but he had not talked to anyone.

Chair Heckerorth said he had several opportunities to talk to people. He said he had two significant interactions where he had to inform them that a decision has not been made. He told them that the public hearing was open to comments until April 22 at 5:00 PM and they could use the process to submit any material. Chair Heckerorth went on to say that he had contact with Ms. Carpenter who wanted to make sure that her submitted information had reached the members. He also made a site visit by walking through the park area.

Commissioner Lovelin stated that he had had no contact with the public, but had talked with staff.

Chair Heckerorth added that he had also discussed the hearing procedure with Lynne before this meeting.

At this time, Chair Heckerorth opened the meeting to public comment, but he cautioned that any testimony given had to deal with the new material (declaratory statements) and the site visits expressed by the members. He said all earlier testimony will be taken into consideration when making a decision.

Commissioner Lovelin asked if he should comment on his discussion with staff. Lynne answered that it was not considered *ex parte* contact.

Bill Campbell added that this type of conversation is not privileged, but it is part of the record and Commissioner Lovelin has a right to comment on it. He said the purpose of reopening the public hearing for comment was to enable the public to ask any questions with regards to declaratory statements and observations made by commission members. Mr. Campbell went on to say that Mr. Lovelin could declare any discussion with staff and it would be part of the record, and any result of these discussions can be part of the consideration in making a decision.

Chair Heckerorth wanted to make sure he understood Mr. Campbell's statement. He asked if a commission member made a site visit, and taking into consideration all information provided the previous meeting, and if there was something that became a question or raises a question about previous information, is that something that should be disclosed to the public before public comment begins at this meeting.

Mr. Campbell said that he believed it should be disclosed because a site visit and observations were made and there could be questions or conclusions drawn by those observations. He added that is why there is a declaratory statement when a site visit is made. Mr. Campbell noted that each commission member made a site visit on their own and not in a group, and any observations could be questioned by either opponents or proponents.

At this time Bill Sargent, County Counsel, interjected that it was his understanding that public testimony was closed at the last hearing. However, he noted that some additional testimony had been received and questions and there may be some inquires about what observations the members may have obtained because it could be additional evidence.

Commissioner Lovelin asked Mr. Sargent how his discussion with staff should be presented. Mr. Sargent answered that he did not believe there was anything wrong with discussing the issue with staff, and since comments had been made regarding their site visits, it would be appropriate for the public to make inquiry about that.

Commissioner Jones said he had obtained a copy of the plat map of the subject site because there had been comment that the tax lots in question were not contiguous and he wanted to check it out. He found that the street is a public right of way and the ownership goes to the center of the street and the public has the right to use the road, he felt that meant the lots are indeed contiguous.

Chair Heckerorth reminded everyone that at the last meeting he had brought up his concern of pedestrian travel that he felt was important because at times there is a great deal of pedestrian traffic on the road. He went on to say that he now feels that his concerns do not tie into this decision, but he felt it was a point that should be discussed. He added that he had talked to Lynne about his concern as well.

Chair Heckerorth went on to say that as he made the site visit, he wondered what a 'village appearance', as mentioned in the previous meeting, would be when it comes to the sign in question. He wondered what is acceptable and what is based on the goals and the Comprehensive Plan.

At this time, Chair Heckerorth opened the hearing to public comments. He cautioned that the testimony given needed to deal with statements made by the commission members regarding exparte contact.

Bill Campbell said that although Chair Heckerorth had stated that he had received phone calls at home regarding the hearing and he had informed the callers that the record was still open and could not comment, it would not be considered as exparte contact.

Bill Sargent agreed and added that if there was exparte contact, it would not have any affect on Chair Heckeroth's decision on this issue. He also agreed that the public testimony should center on the site visits that the commission members made and declared.

Jeannette Brinker, 2045 N.W. 135th. Avenue, Portland, OR., 97229, stated that she and her husband owned property in Netarts on Wilson Beach. She asked if she could comment on additional information which was submitted since the last meeting.

Mr. Campbell said he did not believe that was in the motion to continue. He thought the motion was specific to reopen the hearing to questions of the declaratory statements regarding the site visits by the commission members.

From the audience, Anthony Stamp stated that state law requires that people be given the opportunity to respond to new evidence submitted during that time in which the record remains open.

Mr. Sargent disagreed and said that because public testimony was closed at the last meeting, all testimony this evening must deal with the site visit made by the members.

Mr. Stamp responded by giving the number of the law, OSR977636 (c)(d)(e) dealing with the issue of public testimony.

Mr. Sargent said that there should have been a written request to respond to additional material submitted and received by staff.

Ms. Brinker then went on to state that if the members made a site visit, she would assume they observed lots 2700 and 3300 which were a part of the original RV park and established in 1969. She went on to say that staff is asking the members to increase the sites.

At this time, Chair Heckeroth stated that Ms. Brinker was getting off the subject and added that what she was talking about had already been discussed at the previous hearing.

Ms. Brinker went on to state that the members had observed the storage lot. As she continued, Chair Heckeroth again said the members were aware of her concerns and again asked her to direct her testimony to the site visits.

Ms. Brinker asked the members if, during their site visits, they noticed the surrounding acreage and the estuary on the other side and would they take that into consideration when making a decision.

Commissioner Jones answered that he had studied the sign quite thoroughly and tried to remember what the old sign looked like, and he thought it was parallel to the boulevard. He went on to say that he felt the residents behind the site, north and east, would see only the side of the sign as it sits now.

Ms. Brinker said the members should use their discretion regarding the size and location of the sign and to take the surrounding neighborhood uses into consideration.

Commissioner Swan felt Ms. Brinker was trying to testify again. Ms. Brinker said she was trying to go through her notes and pick out the issues on which she could comment.

Chair Heckerth said this was not a question and answer period, but testimony should pertain to the member's site visit responses.

At this time, Mr. Campbell said testimony should be constrained to questions of the member's declaratory statements regarding what they observed individually and that would be to the point of clarification about their observations and what they did and didn't see.

Ms. Brinker asked if all she could ask the members is 'did you see this or did you see that..' and not provide any comment or other questions.

Mr. Campbell answered that the questions must pertain to the declaratory statements the members made regarding their site visit.

Ms. Brinker said she had two or three questions regarding points that were raised at the end of the additional testimony, and she added that they were statements made that were incorrect. She asked if she could address those statements.

Mr. Campbell said that in terms of the motion that the Commission made, it was to continue the hearing to this date certain and to maintain an open record for 10 working days to 5:00 p.m. on April 22, and that they may make site observations. He went on to say the motion stated they would open the public hearing for questions or comments on their declaratory statements. The hearing would then be closed and the members would deliberate.

Mr. Campbell added that the staff report did not contain an analysis of the information presented, that information was presented by the individuals that felt so compelled to present that information within the open record time frame for the Commission's consideration and deliberation. Mr. Campbell said he believed it was understood by the Commission and the audience that that would be the procedure to follow this evening.

Ms. Brinker said she believed that there is additional evidence, statements and argument conclusion contained in ..”

Mr. Campbell interjected that the record remained open for the opportunity for additional information to be placed into the record that the Commission would take into consideration in their deliberation.

Ms. Brinker stated that (in other words) there was no chance to see that information in order to provide public input on it.

Again Mr. Campbell referred to the motion that was made on April 8.

Ms. Brinker said that was not her understanding.

Mr. Sargent agreed that the testimony should be on the site visit only.

Chair Heckerath stated that he did not want this hearing to get out of hand and out of the scope of the issue.

At this time Andrew Stamp, representative of Mr. and Mrs. Brinker, submitted a copy of a request for the opportunity to respond to new evidence.

In answer to Chair Heckerath’s question of the legality of the submittal, Mr. Sargent agreed the submittal should be accepted.

Mr. Stamp stated he wanted to refer to the site visit and the staff report together. He went on to say he wanted everyone to understand that the application is for tax lot 3402 and not for tax lots 3300 and 2700 where the RV park is located. He added that the storage lot is at a different location as well. Mr. Stamp reminded the members that the only lot to consider is 3402.

At this time, for the benefit of the record, Chair Heckerath read aloud Mr. Stamp’s submitted request as follows: “Dear Planning Commission. We hereby request the opportunity to respond to new evidence submitted in the record in the staff report, and Mr. Roan’s attorney’s letter dated April 21, 2004. ORS197.763(c) Sincerely, Andrew H. Stamp.”

Howard Pinkstaff, 9130 S.W. 15th. Ave. said he owns property at 2330 Bolton Avenue, Netarts, which is next to the lot on which the sign is located. He stated that he would like to offer a suggestion that would solve the whole problem.

Chair Heckerath had to caution Mr. Pinkstaff that his testimony could only address the comments made by the members regarding the site visit. He added that it would not be appropriate to accept testimony pertaining to Mr. Pinkstaff’s problem solving suggestion at this time.

There was no more testimony from the audience.

Chair Heckerath closed the hearing to public comments and opened it to Commission member's discussion.

Commissioner Lovelin said there were issues that came up at the hearing in April of which he was unaware. One of his concerns was the Netarts Community Plan, and he said he had asked Lynne to provide him with a copy of the Plan, which she did. He went on to say that he was surprised at all the effort that went into the Plan and that it took 5 years to complete and submit to the Planning Commission for approval.

For the benefit of all present, Commissioner Lovelin read aloud a portion of the Plan that described the Netarts Plan Policies. He added that Section 4.7 of the Plan addressed billboards and it stated that they shall be prohibited inside the Community Growth Boundary. He said he had asked Lynne if the Plan should be considered in the decision process and she had confirmed that it should. She also confirmed that the sign in question is larger than other signs in the community. Commissioner Lovelin said he felt the information he received from Lynne was consistent with testimony heard at the last hearing.

There was a discussion regarding the difference sizes in signs and billboards, where they are allowed and what ODOT will permit. It was noted that billboards are located off premises and other signs are located on premises.

Mr. Campbell stated that the question before the Commission is 'should you or should you not authorize the inclusion of the subject property into the Master Plan of the Netarts RV Park.' He added that it is not necessarily about the sign because that issue will come later, and the size of the sign is part of the mix of the determination. He reiterated that the first question is about the CU permit application for inclusion of the subject lot into the park plan, and the sign size will be an on-site sign if the request is approved.

Mr. Campbell told the members they could include the sign size in their motion if the request was approved. He added that he felt that until the decision was made, the discussion regarding the size of the sign was a bit premature.

Commissioner Swan stated that the Netarts Community Plan was not approved until 1999 and he wondered what document preceded the plan pertaining to the RV park, since the park has been at this location for 25 years.

Commissioner Marti said the first step would be to decide on the CU request. Commissioner Jones agreed and added that the question of the sign and the light could be a condition of approval.

Chair Heckerath reminded the members to discuss tax lot 3402 only.

Commissioner Swan noted that the subject lot would be used for the same thing it has always been used for.

Commissioner Lovelin said he thought previous testimony indicated that most of the people in the area did not care whether the lot would be part of the park or not, but they did not want a big sign or overnight parking. Commissioner Hoffman agreed.

Commissioner Jones stated that one of the issues the members should consider is whether the inclusion of the lot into the park would adversely affect the surrounding properties. He thought that if the parcel was later sold and someone built a house, it would be a much more harmful to the surrounding area than the proposed use.

Commissioner Lovelin reminded everyone that one nearby resident had testified he did not want access or egress from a certain street, but he had no objection to the use of the subject lot.

There was a short discussion regarding previous testimony and concerns raised during the testimony.

Commissioner Marti asked what would become of the property if the applicant lost the lease. Lynne answered that there could be a condition of approval that indicates that if, for some reason, the agreement ceased and Mr. Roan no longer has control over the parcel, it will go back to being a separate parcel and no longer part of the park plan.

Mr. Campbell added that the lease is for use in conjunction with the park, and under the lease, Mr. Roan has the right of use and control of the site. The property owner, Mr. Clevenger supports the use and the application request because without his support and approval, the application could not go forward. He agreed with Lynne and added that if the lease ceases to exist, the use of the property will end and the sign on the property would be removed since it would no longer be used as part of the park.

Lynne also made it clear that the inclusion of the lot would not change the density of the park, because it would be for signage and temporary overflow parking only. There would be no additional RV spaces added. She said the applicant could only have temporary uses as long as he leases the lot and does not own it.

There was a discussion regarding overflow parking that was planned for the subject lot. Commissioner Jones said he would not want to see boat trailers left overnight or for storage use. Commissioner Marti said overnight use for boat trailers could be reasonable if the RV spaces did not have room for them. Lynne said the use is designed for day parking for fishermen who have RVs and

overflow parking. She again said there will be no overnight parking nor will tents be allowed.

Commissioner Lovelin suggested a motion be made to approve the request then go on to the conditions. The consensus was to continue discussion before any motion was made.

Commissioner Lovelin continued by referring to the petition containing 112 signatures. He read the title of the petition for the benefit of all present as: "Regarding the CU permit application for a 76 square foot advertising sign on the Netarts Bay for Netarts RV Park and Marina." The petition also mentioned three points of adversity with the sign that included its unusual size, un-compatible with the Netarts area, and it would not be compatible with a village appearance. He added that he felt the residents who signed the petition took the community plan and took it one step further, and the concern seems to be the size of the sign. It was noted that the existing sign is 144 square feet in size.

There was a lengthy discussion regarding the sign, and member's comments included: the proposed sign would be smaller than the present sign; there are other signs in the area advertising the park and marina; square footage of other signs in the community; the fact the residents want a sign with a village appearance; the applicant will lower the new sign to the ground and reduce the square footage.

During this discussion, Chair Heckerath stated that the applicant has a perfect right to have a sign on the property and a condition of approval could be the size of the sign, but he had no idea what that size might be.

Discussion continued regarding the sign in question. Further comments by the members included: the theory that if the sign were smaller it would alleviate the concerns of the petition signers; to allow the sign size according to regulations and the community plan; the fact that if a smaller sign was allowed, another sign could not be erected in order to make up the present sign square footage; the sign will not be a prime focus on the road unless a person is looking for it; how to suggest the sign appear more village friendly;

During this portion of discussion, Mr. Campbell said that in terms of standards, there is a limitation in terms of sign square footage. However, he said, the Netarts plan, even though it mentioned a village appearance, does not provide much guidance beyond that particular statement. He added that it leaves a wide possibility of interpretation, and does not suggest any type of theme to be used. This, he went on to say, is apparent throughout Netarts where the signs are all of different character.

Mr. Campbell elaborated that neither the standards nor the Land Use Ordinance dictates what size or design a sign should be. He said the Commission can limit the size of the sign under the county sign code

Commissioner Ousele said she did not think the community's desire to have the sign meet the 'village appearance' standard should be ignored by the members simply because it was not spelled out in the Community Plan.

Mr. Campbell and Mr. Sargent agreed and Mr. Sargent added that he did not believe the Comp. Plan should be ignored either. Mr. Campbell said the members would have to reach a consensus on interpretation of sign regulations, and that they would have to determine how that will figure fairly into the decision the members will have to make.

Another lengthy discussion followed with comments consisting of: suggestion that the sign should be 4 X 8 feet; the fact the sign would be visible from the road no matter the size; the fact the applicant proposes a 76 square foot sign and lowered to the ground and it would be unlit; possible foliage to protect resident's view from up above; possible landscaping; existing vegetation on the subject lot is attractive; day use versus overnight parking for motor homes; possible use of unsightly vehicles on the subject lot; overflow parking for those using the marina, the park or guests of those using the park; definition of 'day use'; length of time a guest can stay at the park, which is 6 months.

Chair Heckerorth recessed the hearing at 9:00 p.m. and reconvened at 9:10 p.m.

Chair Heckerorth said it has been suggested the members define the issues on which they needed to concentrate. He listed the following concerns: signage, surfacing the subject parcel, types of vehicles allowed, day use versus overnight usage, curbing, and access and egress on Bilyeu Avenue.

During discussion it was determined that tax lot 3402 will be used for day use parking and overflow parking use in conjunction with the RV park and can include extra vehicles, boats and boat trailers. No overnight camping will be allowed.

Regarding the surfacing of the subject lot, Lynne said it is in a flood zone and there is proper drainage. She added that perhaps surfacing would not be the best idea, but the members have the ability to make the decisions as to whether or not it needs to be surfaced.

Mr. Campbell added that when looking at overflow parking and surfacing, should curbing be a factor as well. He said testimony had been given at the previous hearing indicating the lot should not be paved, so the members have a choice of deciding if it should be surfaced with paving, gravel, grass or waive the standards entirely.

Lynne explained that if gravel was required, it would require a Development Permit for fill because the lot is in the flood zone. She also explained that the members can waive any of the concerns and list them in the findings of the decision.

After more discussion it was the consensus of the members to waive the screening, curbing and surfacing and require that the lot remain in the condition it is now with a grass surface.

Lynne said the issue of access and egress on Bilyeu Avenue is a Public Works issue and required a road approach permit.

There was more discussion regarding the sign and Commissioner Swan said he did not believe a 4 X 8 foot sign would constitute a hardship on the applicant. Commissioner Lovelin said if it was only 32 square feet it should be elevated. Commissioner Jones agreed. More discussion followed pertaining to the present, applicant's proposal and suggested size of the sign.

Chair Heckerorth recessed the hearing at 9:44 p.m. and reconvened at 9:47 p.m.

The members continued discussing the subject of the signage. After a great deal of deliberation it was the consensus of the members to agree with the applicant's proposal of 76 square feet at ground level at the same site for the sign.

Conditions of approval were discussed and it was decided that the conditions in the staff report should also be in the motion. Mr. Campbell stated that the conditions of the 1979 CU permit were established by the Planning Commission. There was no authority under the Ordinance because there was no direction in that approval that established a period of review by staff, or for those terms and conditions to be satisfied by the applicant in a specific time. He went on to say that subsequently the authority for review of that CU rests with the Planning Commission since they listed those conditions.

Mr. Campbell said one condition that had not been satisfied was the screening of the storage lot. He continued by saying the testimony by the applicant on April 8, indicated that he had the boundary line surveyed and he was planning on ordering materials for the screening. Now it is the Planning Commission, not staff, who will make a determination as to whether to include the screening of that lot as a condition relevant to the review of the 1979 CU permit. Mr. Campbell said the Commission can also decide to set it aside and whatever the decision, it should be done as a separate motion.

Commissioner Lovelin made a motion, based on the staff report, findings of fact, conclusions and written testimony to approve Conditional Use CU-04-03 with the following conditions: 1. The sign shall be placed in the same location on Tax Lot

3402 as the current sign and be at ground level, unlit and not exceed 76 square feet; 2. Tax lot 3402 will be used for day use and overflow parking in conjunction with the RV Park for extra vehicles and boat trailers, and on-site signage with no overnight camping; 3. Access will be limited to Bilyeu Avenue only; 4. To waive screening and curbing impervious surface requirements and include staff recommended conditions of approval A, B, C and E from the staff report that includes: A) all state and federal and local applicable permits shall be obtained prior to expansion or alteration of the Recreational Campground, B) All recommendations of the Tillamook County Public Works Department for access to the park shall be met, C) All required Clear Vision areas are to be maintained per Section 4.010 of the Tillamook County LUO, E) This approval shall be void two years from the date of approval unless all of the conditions are met, or an extension is requested from and approved by the Planning Department.

The motion was seconded by Commissioner Jones and carried 7 – 0.

Mr. Campbell again explained that the one condition of the 1979 CU request regarding screening of the storage site had not been met and it was suggested it be taken under consideration at this time in order to satisfy that condition within a specified time frame. He said the park operator has indicated that he will meet and satisfy that condition.

Mr. Campbell wanted to make sure everyone understood that this was not a condition for which Mr. Roan was responsible, but a condition that was not satisfied by a prior owner.

Commissioner Ousele made a motion the Planning Commission enforce the condition of the storage lot as required and approved in 1979 and the work to be completed within 90 days.

The motion was seconded by Commission Lovelin and carried 7 - 0

IV. NEW BUSINESS

None

At this time Chair Heckerorth thanked everyone for their patience in this matter.

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

Commissioner Swan made a motion to for Chair to sign appropriate orders. The motion was seconded by Commissioner Ousele and carried unanimously.

Administrative Decisions: AR-04-05, AR-04-06, AR-04-07, CU-04-04(a), GH-04-04, GH-04-05, GH-04-06, V-04-01(a) and V-02-02(a).

There was no discussion regarding the above Administrative Decisions.

VI. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT:

1. Mr. Campbell told the members that the Department's budget was approved by the Budget Committee, with out significant changes and should be approved by the Board in late June.

At this time, material regarding the Transportation System Plan was given to the members for their review for the meeting next week, May 13.

2. Mr. Campbell said a public meeting had been held the evening before regarding the Riparian Ordinance. The Planning Commission will hear the issue on May 20. Information pertaining to the meeting was also included in the material given the members. He went on to say that there were approximately 20 people in attendance and it was a very positive meeting where many questions and comments were received. Mr. Campbell added that the meeting was televised and could be seen on local television as well as draft material can be obtained from the county web page.

3. Mr. Campbell told the members that they will be reviewing the Comprehensive Plan element that will consist of a text narrative and policies as well as a draft ordinance. He added that they will be applying the ordinance a two-part process and he elaborated that the first part will apply to commercial forest and commercial farmlands only. He said these lands are exempt from county land use ordinances for riparian protection if they are being conducted in conjunction with commercial forest or farm uses. It is only those non-farm or forest uses that will be affected by the ordinance.

Mr. Campbell explained that the second part will occur through the summer and early fall which will be the more complex ESSEE analysis of the rural residential lands and the other zones in the county. By going this way, he said, 98.5 percent of the county land area will be addressed in part I, and a little bit less than 1 percent of total county land area in part 2.

Commissioner Jones asked why these regulations had to be addressed if the farm and forestlands do not fall within county regulations. Mr. Campbell answered that if it is non-farm or non-forest uses, that fall under the Land Use Ordinance, and he gave as an example the Forestry Interpretative Center and relocation of a power line.

4. Mr. Campbell said there had been a request for an interpretation of the height limitations in Pacific City. He explained that the determination was that the lot in question was not a bay front lot because it was near Bob Straub State Park and was not subject to a 24-foot height limitation.

At this time, more material was given to the members for their review.

VII. ANNOUNCEMENTS:

Commissioner Lovelin and Chair Heckeroth said they appreciated Mr. Sargent's presence at the meeting and thanked staff for all their hard work.

VIII. ADJOURNMENT:

The meeting adjourned at 11:30 PM.

Kurt Heckeroth, Chair

Date

Barbara Legoo, Acting Recording Secretary