

**PLANNING COMMISSION MEETING  
JUNE 10, 2004  
MINUTES**

**I. CALL TO ORDER**

The meeting was called to order by Chairman Heckerath at 7:00 p.m.

Planning Commission members present were Terry Jones, Gale Ousele, Charlie Swan, Merrienne Hoffman, Bruce Lovelin. Member absent was Joan Marti.

Staff members present were Bill Campbell, Director of Community Development and Lisa Phipps, Coastal Resource Planner.

**II. APPROVAL OF MINUTES FOR MAY 6, 2004 and MAY 20, 2004:**

Regarding the minutes of May 6, 2004, Commissioner Lovelin referred to page 12, line 3 and the words “and on-site signage”. He said they were changed in the Findings to “for extra vehicles and boat trailers and on-site storage”. He did not remember saying “on-site signage”. The addition of the words “on-site signage” was at the suggestion of Mr. Campbell in his review of the minutes draft. There was some discussion regarding the meaning of “on-site signage” in relation to the motion.

Commissioner Lovelin made a motion to approve the minutes of May 6, 2004. The motion was seconded by Commissioner Swan. It carried unanimously.

Commissioner Swan made a motion to defer consideration of the May 20, 2004 minutes until the next Planning Commission meeting. The motion was seconded by Commissioner Ousele and it carried unanimously

**III. OLD BUSINESS:**

**Transportation Plan Workshop:**

Commissioner Ousele made a motion to schedule the Transportation Plan Workshop for July 8, 2004. The motion was seconded by Commissioner Hoffman and carried unanimously.

- A. **Signing of Order PC-04-01:** to expand Bay Shore RV park at Tax Lot 3402 of Section 5AC, Township 2 South, Range 10 W. Applicant Lighthouse Investments. Owner Jack Clevenger.

Commissioner Lovelin referred to page 6, Section F of the Conditions of Approval from the Staff Report and said this is where the words were changed to “on-site storage”. He said he thought they should be changed back to “on-site signage” and that will make it consistent with the minutes of May 6.

Commissioner Lovelin then noted that he felt 24 months was a generously long time to give an applicant to comply with conditions of approval regarding the sign in question. He referred to H. of the Conditions of Approval and said the applicant was given 90 days in which to construct a site obscuring fence on Tax Lot 3502, and he wondered why the difference in time.

Chair Heckerth asked staff if, at this time, the members could go back to the PC-04-01 document and change wording that has been discussed prior to this date. Mr. Campbell said the 24-month time limit is a standing provision of the Land Use Ordinance and part of the terms of the conditional use are not part of the motion. He added that the members could delete the 24-month time limit because it was not part of the discussion or mentioned in the minutes.

Commissioner Lovelin suggested the time frame be deleted because it was not part of the motion to allow 2 years. More discussion followed and Chair Heckerth wondered if, by deleting the 24-month time frame, would it give the applicant more time in which to comply. He also noted that the 24-month time frame was mentioned in D of the Conditions of Approval.

Commissioner Lovelin suggested the 24-month time frame be deleted from D as well because it was not part of the motion.

Mr. Campbell said that the time frame mentioned in D was also an ordinance provision and a condition of approval and part of staff’s recommendation. Chair Heckerth again asked if there was a risk if the language was deleted, and would it give the applicant more time to comply.

Mr. Campbell answered he did not believe there would be any risk, and he read a portion of Section 6.070 and 6.080 dealing with compliance and time limit.

More discussion followed.

Commissioner Lovelin made a motion to approve the Findings with two changes: 1) remove the words “and allow 24 months for compliance with conditions and start of construction” on page 6, lines 2 and 3; 2) Change “on-site storage” to “on-site signage” on page 6, Condition F.

Commissioner Ousele did not agree that there should be the removal of the 24 month time limit because the sentence was in the original staff report and the Commission has already recommended it and she did not believe it should be

changed retroactively. She said she thought it could be taken into consideration in the future proceedings.

Commissioner Lovelin amended his motion to adopt the Findings as prepared by staff with the exception of changing the word “storage” to “signage” on page 6, Condition F.

The motion was seconded by Commissioner Hoffman and carried unanimously.

Commissioner Ousele made a motion to authorize Chair to sign the Order PC-04-01 dated 6-10-04 as corrected. The motion was seconded by Commissioner Hoffman and carried unanimously.

**B. Continuation of OA-99-07:** Amends Section 4.080 with Section 4.085, Resource Area Riparian Overlay Zone which applies only to those lands zoned Farm (F-1), Small Farm Woodlot 20 (SFW-20) or Forest (F) and only for those activities that are not associated with normal farm practices as identified for exclusive farm use and the North Coast Basin Agricultural Water Quality Management Area Plan (SB1010) or forest practices as regulated by the Northwest Forest Management Plan or the Oregon Forest Practices Act, Section 4.080 applies to all other lands.

Chair Heckerth announced that the hearing had been closed to public oral testimony, but had remained open for written testimony until June 3 at 5:00 PM. He went on to say that this hearing was to discuss additional written information that was supplied and to ask questions of staff and ask questions in relation to pertinent written information if the party is present.

Mr. Campbell went over the instructions the Commission had given staff at the last meeting, May 20. They consisted of staff preparing and posting responses concerning questions raised regarding testimony. He said an addendum dated June 4, 2004 was prepared based upon recommendations contained in the body of testimony and evidence. He summarized by saying the members could ask questions of staff regarding the addendum.

Commissioner Lovelin complimented Lisa on preparing the staff responses. He asked if the June 4 addendum was related to the draft ordinance. Mr. Campbell responded by saying it is an addendum to the staff report and contains recommendations from staff based upon testimony and modifications. He added that it incorporates elements from direct testimony made by the public during the hearing. Commissioner Ousele asked where the bulleted items on the first page of the addendum would be incorporated. Lisa explained these would go under the reference to the Comprehensive Plan. These are the recommendations from staff as amendments to the Comprehensive Plan. Mr. Campbell went over the June 4 Staff report addendum and staff recommendations for addition to the proposed Comprehensive Plan Policy amendments.

Commissioner Ousele asked why we were recommending a different definition if both the ODF and ODFW both assume there are fish in streams unless their survey shows there are not. Mr. Campbell explained that the work with the Focus Group in regards to the inventory process was based on the reliance of factual information. The recommendation made by the County is that an intermittent stream only be regarded as fish bearing if it has been inventoried and therefore protected under the ordinance.

Chair Heckerorth stated he was not clear what the role of the Planning Commission is. He was not clear of the State Rules and Statutes which mandate this task. He needed to know what the parameters were of the State Law the Planning Commission is trying to meet. Mr. Campbell stated ORS 215 sets forth the requirements of Land Use Planning. He explained further there are provisions in this statute that require periodic reviews be done to update the Comprehensive Plan so it is consistent with any changes in State Law and Administrative Review. He went on to say there have been a number of extensions and revisions in the Periodic Review in the time frame of 1993 and 1994.

Mr. Campbell said one of the things that transpired during that Periodic Review time frame is that the LCDC provided grant money assistance to Tillamook County. One approach was to put together a draft ordinance, and Mr. Campbell said he had a copy on hand. He referred to Goal 5 (Natural Resources Scenic and Historic Areas and Open Spaces) of that ordinance, and read aloud a portion regarding protection of natural resources which would include riparian corridors. Mr. Campbell read that a Goal 5 update for Safe Harbor became effective on September 1, 1996 and is contained in OAR 660 Div.23. The specific provisions related to riparian corridors are contained in OAR 660-023-0090.

Mr. Campbell went on to read that the rules provide that the local jurisdiction may implement Goal 5 requirements related to riparian corridors. One would be the standard Goal 5 process that requires an inventory of riparian areas and assessment of their significance and adoption of a program to achieve Goal 5. Alternatively a jurisdiction may follow a Safe Harbor process by adopting a standard definition of significant riparian areas under OAR 660 23 090(5) and implementing the safe harbor provisions of sub part (a) of that same rule in order to achieve Goal 5.

Mr. Campbell explained by continuing to read that the safe harbor provisions specified use restrictions in riparian corridors that provide options for variances and restoration in lieu of fully meeting the standards. He said jurisdictions are not restrained to apply either one option or the other. A jurisdiction may implement the safe harbor alternative in areas where it makes the most sense to do so, and undertake a more detailed inventory and analysis process in other areas.

Mr. Campbell continued to read that likewise, riparian resources determine the significance under the standard Goal 5 process, that may be affected by the use of the safe harbor option. He said they had elected to blend the two approaches, Safe Harbor and inventory.

Mr. Campbell went on to say that ORS 215 states that the county will, from time to time, review these plan to be updated through periodic review, which is mandated by the State of Oregon. He said the plan was adopted in 1984 and after several years, it was determined periodic review was necessary and one item to address was the Riparian Ordinance. LCDC determined that the 4.080 ordinance was not sufficient to provide the protection required under the rule.

Chair Heckerath wanted to make sure he understood that the intent of the Commission was to review the old ordinance and amend it to bring it up to the standards of safe harbor provisions where applicable.

Mr. Campbell explained that this should apply to only commercial forest zoned lands and commercial farm zoned lands, (F-1, F and SFW-20 zones). He added that the ordinance applies only to those uses that are not consistent with commercial forestry or commercial agriculture. He went on to say that the ordinance applies to approximately 98 percent of the county land. But as long as those zone uses are consistent with commercial forestry or commercial agriculture, they are not subject to the ordinance however, those uses are subject to the provisions of SB1010, the Oregon Forest Practices Act or other state and federal management plans.

Commissioner Jones asked how the ordinance would apply to the farmers and how staff would know when to apply the ordinance and when not to. He gave as an example of farming activities taking place within the 75-foot setback on the Nestucca River, and the property has a non-farm dwelling on site. He asked where the line would be drawn.

Mr. Campbell said each case would probably call for some level of interpretation. He explained that if the land, under private ownership, is engaged in commercial agricultural activity and using customary practices, they may farm within the setback and we are not going to worry about it. He continued by saying that under the provisions of Ordinance 4.080, we currently regulate activities in the agricultural and forestry zones, and there has to be an interpretation in almost every single case.

There was more discussion of what activity would be under SB1010 and what would be under this riparian ordinance. Mr. Campbell again explained about commercial forestry and commercial agriculture in relation to which category it would fall.

Commissioner Jones then asked if a 10 acre piece of property with 300 hundred foot of river frontage, that is zoned farm, but not used for farming would be under the new ordinance. Mr. Campbell answered that it would depend on the usage.

At this time, Commissioner Jones submitted two letters written to Larry Zweifel from Lisa Phipps, one dated July 5, 2000 and one dated September 20, 2000. The letters were notifying Mr. Zweifel that he had to restore vegetation on the riverbank that had been destroyed. The letters were made a part of the record.

Commissioner Jones gave another example of a farmer who was trying to clean up his river front area and was being contacted by ODFW before he could get it all cleaned up. Commissioner Jones was concerned that farmers might be harassed by the new ordinance.

Commissioner Swan said he was not impressed with the letter from Lane Shetterly and asked who he was. Mr. Campbell answered that he is the present Director of DLCDC. Mr. Shetterly is a former legislator from Polk County and a past member of LCDC.

Commissioner Swan said he could understand what staff is going through with trying to promote the riparian ordinance. He said he knew this was something the state required, but he also knew it was something the citizens of Tillamook County did not want. Commissioner Swan said he thought all the information and submitted material from the public was extremely well done and educational. He suggested the Commission send the ordinance on to the Board of Commissioners with a 'don't pass' recommendation and see where the chips fall. He again mentioned Mr. Shetterly's letter and said it was hard to understand without going over it many times.

There was discussion between Mr. Campbell and Commissioner Swan regarding the Shetterly letter and requirements of the county.

Commissioner Lovelin wanted to discuss purpose and need and said two methods had been discussed to adopt programs to protect natural resources and riparian corridors. They were ESEE inventory analysis process and the Safe Harbor process, and he said they were not constrained on which process to pick. Commissioner Lovelin said it was sort of determined that safe harbor was the process chosen and he wondered why couldn't we go with the inventory process because it can be very site specific. He mentioned that the inventory process had been detailed in the OAR's at great length.

Mr. Campbell said it is site specific and went on to say that the modification of the Administrative Rule in 1996 introduced the provision of Safe Harbor. The reason that those changes were affected by LCDC was because jurisdictions had not had success in completing the Goal 5 inventory process. He went into detail and explained the process and the amount of time it would take to go through the

inventory on each body of water in the county. It would be very time consuming and would be an extensive process.

Mr. Campbell had mentioned the ESEE process regarding water bodies and Commissioner Lovelin wanted to know if that was the process to be done in phase 2 regarding Rural Residential. Mr. Campbell answered yes. Commissioner Lovelin said the question is whether they want to go with the safe harbor process with revisions, or do they want to table it and push it into the ESEE process.

Mr. Campbell said the inventory element was completed by the Director's Focus Group who did a matrix to apply the ESEE analysis to the other zones. Commissioner Lovelin confirmed with Mr. Campbell to do this process with farm and forest is too massive of an effort. Mr. Campbell stated that to do an inventory for every river and stream within Tillamook County is a staggering task. Mr. Campbell further stated those areas of the County that are subject to other regulations are appropriate for safe harbor. Mr. Campbell explained the current Ordinance 4.080 was deemed deficient which is why it was the Task 10 periodic review to update Riparian Goal 5 provisions, and was added to the work plan. Only those activities that are non-farm and non-forest in nature would be subject to the County Ordinance. The others are categorically exempt and subject to our Forest Practices Act and to the North Coast Basin Plan under the Dept. of Agriculture. Mr. Campbell explained that a residence on a farm is allowed as part of a farm activity. He further explained how an additional structure might be allowed under a health hardship. Commissioner Ousele clarified her understanding that right now under Section 4.080 the county is regulating Farm and Forest land use of the riparian setback and that under the proposed ordinance 4.085 the only time the county would regulate farm and forest land riparian areas is if there is an application for non-farm or non-forest use. Mr. Campbell confirmed this is correct.

Commissioner Lovelin referenced F-4 of the Public Workshop draft that addresses the removal of vegetation upon the consultation of staff regarding views and vistas. He was concerned that if you have an existing house overlooking a stream, they would have to let blackberries grow or be under the administration of the Planning Staff. Mr. Lovelin saw this as an expansion of administrative control to maintain a vista on a stream. Mr. Campbell stated this would be a reduction of administrative control. Commissioner Jones asked if when the inventory process is done for the remainder of the lands would it be an amendment of 4.080 or would another section be added. Mr. Campbell stated it would be an amendment of 4.080.

Chair Heckerth stated he was unclear in the vegetation clause of Section F-4 as stated by Commissioner Lovelin, how this would apply under this Ordinance since it is currently regulated under the Forest Practice Act or under the Dept. of Agriculture. Lisa gave an example of the reason why removal of blackberries for a vista would be regulated. If you removed all the blackberries, bank stabilization

and erosion control need to be addressed to ensure that re-vegetation with native shrubs and trees would take place. This regulation applies to any activity that is not covered under SB 1010, the Forest Management Plan or the Forest Practices Act and is a non-farm or non-forest use. There were more examples given and discussion followed regarding when administrative review would be needed under Section F-4. Lisa explained to the Commissioners this is not about a structure. This is about the use and if it is covered under SB 1010, the Forest Management Plan or the Forest Practices Act, it will not be regulated by the ordinance proposed.

Commissioner Swan had a concern that under Section F one member of the staff would have the control of decision. Under the current staff he believes this would be ok, however, the leadership role is subject to change and will not always be the ones making the decision. Commissioner Swan suggested the wording be changed to read that if the applicant is turned down it could be sent to arbitration with one member of the Planning Commission, the applicant and someone from staff.

Commissioner Jones stated he did not like the sections E or F and suggested they be removed completely. Commissioner Lovelin stated he would like to go one step further and suggested rejecting the proposal completely. He stated they could go through the document piece by piece; however he did not feel that staff had made a good enough case for that to be done. He stated that there was testimony that this came at the end of a 60-month process and that this is a moving target. Commissioner Lovelin stated if this document were altered, none of the public would have an opportunity for comment on the changes.

There was discussion given and opinion expressed that the State mandate was not approved of in the first place. There was much discussion between the Planning Commissioners of how they wanted to proceed regarding review of the documents with suggested changes, if any. Also discussed at length was the agreement and concern regarding the responsibility of the Planning Commissioners giving a recommendation to the Tillamook County Board of Commissioners. It was decided the commission would go through each item of the draft and the addendum to the draft making comments on any changes they would like to see as they went along. Commissioner Ousele asked what would happen to Tillamook County if it was decided to reject the ordinance and Comprehensive Plan Amendments and Tillamook County stated we were not going to revise our current documents. Mr. Campbell explained the LCDC meets quarterly and Commissioner Josi is a member of this board. The next meeting is in September. Tillamook County and the review task are on the September agenda. There will be a consideration of sanctions. If we go forward and 4.085 is adopted there could still be sanctions as 4.080 is not complete. There could be pressure to complete the inventory process. If there is no action, Mr. Campbell stated based upon what has happened in other jurisdictions that Safe Harbor may be imposed. Mr. Campbell further explained there were other sanctions that could be considered, withholding of luxury taxes is one type of sanction. There was

testimony from petitioners at the hearing in January stating they felt Tillamook County should be required to repay the grant funds of \$56,000.00.

Chair Heckerorth clarified for understanding that the current provisions of SB1010 and the Forest Practice Act do not comply with Safe Harbor provisions or State Rules and Statutes. Mr. Campbell confirmed that this is correct. Lisa Phipps stated that neither SB101 or the FPA are required to comply with Safe Harbor. Commissioner Lovelin stated he did not think Tillamook County needed these protective measures. Commissioner Hoffman stated there was a mandated law requiring this be done. Commissioner Swan stated the thing that makes this so difficult is because there does not seem to any point in the entire process. Commissioner Lovelin stated he did not want to be doing the State's dirty work.

Chair Heckerorth called a recess at 9:00 p.m.

Chair Heckerorth reconvened the meeting at 9:10 p.m.

Commissioner Ousele asked if lands designated as farm or forest use was the same as land zoned for farm or forest use. Mr. Campbell answered yes. Commissioner Ousele then clarified if lands under these designations were not being used, they would not fall under the amended ordinance until use of the land was applied for under a specific non-farm or non-forest use. Mr. Campbell confirmed that this is correct.

Commissioner Lovelin asked what additional burdens would be place on staff for site specific inventories as land use applications were received. Lisa stated this is a process already in place and did not see how it would increase the role of staff.

Commissioner Lovelin asked Mr. Campbell if periodic review applied to farm and forest land rules. Mr. Campbell stated it applies to all 19 rules of the Statewide planning goals.

Commissioner Lovelin asked how long the Director's Focus Group had been meeting. Mr. Campbell answered over one year. Commissioner Lovelin asked if the changes made could go back to the Directors Focus Group for further review. . Mr. Campbell explained the Directors Focus Group was highly recommended by the Tillamook County Board of Commissioners for the service to focus on engaging in the inventory process. Mr. Campbell further stated nothing really new has been brought to the table in the last two months that has not been thoroughly discussed. Mr. Campbell stated if the entire process was started over, or if it went back to staff or the Directors Focus Group it probably would not make any difference in the general acceptance of riparian protection.

Commissioner Swan suggested going over the draft and trying to make a determination if the Planning Commission could come to a general consensus. After much discussion regarding definitions, it was determined the commission had no recommendation for changes. There was review and much discussion

regarding setback requirements. The Planning Commission went through the Draft and the additional recommendations and no consensus was reached regarding any changes. Lisa asked Chair Heckerth if they were going to backup and have a vote for consensus of discussed changes. She explained that suggestions and ideas are being given; however, for any changes to be made by staff the intent needs to be clear. There was discussion between the commission members regarding what the process was going to be. Commissioner Ousele asked if it was the tendency of the Planning Commission to throw out the whole document or to make changes. She further asked for clarification as to what recommendation was to be made to the Board of Commissioners. Commissioner Lovelin stated for all the work that has gone into this he is uncomfortable about making changes. He further stated he does not concur with this additional protection.

Chair Heckerth asked if they went through each item would the result represent a true recommendation of the commission. It was agreed there was a need to make some type of recommendation to the Board of Commissioners. Commissioner Hoffman stated an incredible amount of work was put into this and she would be offended if it nothing was done with it. Commissioner Swan made a motion the Planning Commission recommends this does not pass. Commissioner Jones stated he thought it was their job to represent the public and work with the staff to come up with a recommendation. He does not believe it is the position of the Planning Commission to say they will not pass this. Commissioner Jones further stated he thought something should be sent to the Board of Commissioners.

Commissioner Lovelin stated there were six major public comments that needed to be considered:

1. That this is a taking of private property rights
2. That the ordinance is unnecessary as there are already adequate laws regulating farm and forest lands.
3. The ordinance results in higher utility costs
4. Existing homes will be impacted by this ordinance
5. Additional regulation means higher costs and hurdles for the landowners.
6. This will restrict land owner and organization voluntary efforts and may potentially create greater flooding.

Commissioner Ousele stated there are also additional comments supporting the ordinance and these need to be represented also.

Chair Heckerth stated they needed to define the process. What did they want to do? Commissioner Swan stated more time was needed to go through everything in order to reach any agreement. Chair Heckerth asked if everyone agreed on the Staff recommended changes. Chair Heckerth stated if the commission were to provide a recommendation to the Board of Commissioners more time would be needed.

Commissioner Ousele asked if they were trying to work with this ordinance or were they trying to determine if Tillamook County should comply with the State. Commissioner's Hoffman and Ousele agreed they did not see not doing anything as an option. Commissioner Jones stated he thought with a few changes they could come up with an ordinance that is better than the one provided. Commissioner Jones stated too much time had been put into this and he wanted to work on it.

Commissioner Lovelin commented he believes a regulatory prescriptive approach to riparian setbacks is wrong. He expressed that the appropriate approach is voluntary action and we are doing that. He thinks we should tell the State about our voluntary actions and see if it works. He thinks the ordinance is too broad brushed. Lisa agreed that our county has a great voluntary effort going on. She stated however, that there is an ordinance in place and these efforts still continue. She said this is not a brand new ordinance but a modification of the existing ordinance.

Chair Heckerth suggested making recommendation to the Board of Commissioners that they need more time and were not ready to make a formal recommendation and that at this time they are not comfortable with making changes. Mr. Campbell went over what some of the options were for the commission.

There were additional comments and questions from the commission to staff regarding exparte contacts.

There was discussion among the commission about dates for continuance.

Commissioner Swan motioned that since the commission could not make a recommendation at this time that the commission continues this discussion at the July 8<sup>th</sup> meeting. Commissioner Jones seconded. Motioned passed unanimously.

The Commissioners agreed they would all come back with a version of the changes they wanted made.

The Commissioners directed Staff to incorporate the additional recommendations into a single document and email it to everyone.

**IV. NEW BUSINESS:** There was no new business.

**V. AUTHORIZATION FOR CHAIR TO SIGN APPROPRIATE ORDERS, IF NECESSARY.** Commissioner Ousele motioned and Commissioner Swan seconded authorization for Chair to appropriate orders. Motioned passed unanimously.

**VI. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT:**

Mr. Campbell stated the department is very busy.

**VII. ANNOUNCEMENTS:** There were none

**VIII. ADJOURNMENT:** The meeting was adjourned at 10:55 p.m.

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Curt Heckerth-Chair

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Pat Affolter-Recording Secretary

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Date

Final/approved/G;pcommiss/minutes/2004/6-20-04