

**PLANNING COMMISSION MEETING
JULY 8, 2004
MINUTES**

I. CALL TO ORDER

The meeting was called to order by Chair Heckerth at 7:00 p.m. Other Commissioner members present were Merrienne Hoffman, Gale Ousele, Bruce Lovelin, Joan Marti and Terry Jones. Commissioner member Charlie Swan was absent. Staff present were Lisa Phipps, Coastal Resource Planner and Tim Franz, Associate Planner.

II. APPROVAL OF MINUTES

January 8, 2004: On Page 5, paragraph 2, the sentence read “The area on the shown in red is the only area that will RR (Rural Residential)”. The sentence will be corrected to read “The area on the map shown in red is the only area that will be RR (Rural Residential).” On page 8, seventh line, the sentence read “However, the POTB did not receive any interest from any of the people off of Brickyard Road so they omitted was called sub area one.” The sentence will be corrected to read, “ However, the POTB did not receive any interest from any of the people off of Brickyard Road so they omitted this area which was called sub area one.”

Commission Lovelin made a motion to approve the minutes as corrected. Commissioner Hoffman seconded. The motion carried with five in favor, one abstained.

May 13, 2004: Page 2, second paragraph should read “no” conflict of interest. Commissioner Ousele made a motion to approve as corrected. Commissioner Hoffman seconded. The motion carried unanimously.

May 20, 2004: The names of the commissioners and staff in attendance needs to be added. On Page 5, paragraph 4, 5th sentence, change the word “determined” to “consider.” The corrected sentence will read “The Department of Fish and Wildlife and the Department of Forestry consider that all bodies of water are fish bearing until shown otherwise.” Commissioner Hoffman made a motion to approve the minutes with corrections. Commissioner Ousele seconded. Motion carried unanimously.

June 10, 2004: Commissioner Hoffman made a motion to approve the minutes as read. Commissioner Hoffman seconded. The motion carried with five in favor, one abstained.

III: OLD BUSINESS

A: Schedule workshop for Transportation Plan (TSP). Lisa advised the Commission that LCDC and ODOT were available September 2, 2004 for a workshop, or it could be scheduled for October. Commissioner Hoffman made a motion to have the Transportation Plan Workshop for Thursday, September 2, 2004. Commissioner Ousele seconded. The motion 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 Agriculture Water Quality Management Plan (SB 1010)* 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 Heckerorth explained that at the last meeting there was a lot of discussion but they were unable to make a recommendation to the County Commissioners. He stated the members did have contact with each other, however there was never a quorum. There was a letter from Charlie Swan to some of the members expressing his opinion of the draft. Chair Heckerorth stated that he and Commissioner Ousele did have a discussion regarding this letter. Chair Heckerorth stated when he reviewed the material again he got caught up in the specifics of each document. He gave thought to what the process should be for the Planning Commission. He also stated that the commission was presented with a draft and he felt at the last meeting they were trying to change that draft. He asked staff if was the job of the Planning Commission to change this draft or to review the document, see how it fits and provide recommendations on areas that they feel should be addressed. He asked if they were to present the BOC with something totally different then reviewed, or do they give separate recommendations of what they think should be changed in the original draft. Lisa answered she thought the best approach would be to address the recommendations for changes, however not incorporate them into the document as this was the document reviewed by the public. Lisa was a concerned that if the document is re-written it would create a new document that has not gone through the public process. She stated they could send the draft back to staff with recommendations, which would be brought back to the Planning Commission with an opportunity for public comment. Lisa said this would be her recommendation if the Planning Commission decided to move forward. Chair Heckerorth asked Lisa if the County Commissioners had the ability to incorporate recommendations made by the Planning Commission into the draft document. Lisa stated yes.

Chair Heckerorth stated he felt the discussion of the last meeting was all about how the Planning Commission was going to change this draft document and he wasn't sure that was their business. Commissioner Lovelin stated he also had the

concern they were modifying a document without input from the public. Commissioner Hoffman stated she felt the public did have the opportunity to comment and that these comments had been incorporated into the updated draft. She thought that through the process the commission was creating a document which included all input from the public and the commissioners. Chair Heckerth stated that the Board of Commissioners shouldn't be handed a draft that had been changed. They would be given the same draft with the Planning Commissions recommended on what should be changed. Commissioner Hoffman suggested having the original draft, but also incorporate all other recommended changes into a proposed finished product so if the Board of Commissioners approved it, it would be done. Chair Heckerth asked staff how they felt about this suggestion. Lisa advised they could send the document back to staff for the changes. She further advised that the Planning Commission could open it up for public testimony again before moving on to the Board of Commissioners. Lisa stated the Board of Commissioners had seen the recommended changes to this point as well as the original first draft and would still be working from these documents. She advised the commission that the Board of Commissioners could make additional changes and even if a new document was presented to the Board, the end result may not be a they had planned. Commissioner Jones asked Lisa how comfortable she was with the last draft sent out that incorporated the recommended changes. Lisa stated she felt quite comfortable with this document. Chair Heckerth stated he was not comfortable working off the modified draft. It made more sense to him to work off the original draft taking each item as they go through and making a motion for recommended changes as they went along. Commissioner Ousele stated they had a draft and they either agree or disagree with the document. If they don't agree they need to state why. Commissioner Ousele stated she did not think it was true to the process if the draft was approved subject to changes. She argued you are not accepting the draft, it is being changed. Commissioner Ousele had a concern that as individuals they were trying to re-write the draft. She does not feel that is the role of the commission. She felt they were here to support the public process. She agrees with Commissioner Marti that they need to validate the public process. Commissioner Ousele further stated any changes should be confirmed that they were part of the public input and not the opinions of individual commission members.

Chair Heckerth stated that they needed to identify how they were going to proceed. Lisa advised if they were going to go through the draft point by point, that instead of making a motion on each change it might be more appropriate to wait to make sure everything throughout the document is consistent. She further advised it was appropriate to make changes to the ordinance as they had a lot of public input up through June 3rd and that that this input has been addressed by staff in the recommendations staff made. Commissioner Hoffman stated if they go through this process they would be making a recommendation for approval and wanted to confirm that everyone was in agreement that the ultimate result would be an approval of the draft. Chair Heckerth stated if anyone had strong feelings that they were not going to recommend approval, a motion needed to be made

before time was spent going through the draft documentation. Chair Heckerorth advised the commission members if anyone wanted to make such a motion now was the time to do so.

Commissioner Lovelin stated he spent a lot of time reading Goal 5 and LCDC information and was wondering why the ordinance update is being done as a two step process. He further stated this ordinance covered such a small portion of land, possibly less than 1%. He said when we get to the second step and are looking at Rural Residential Lands there will be other criteria that will be used including the ESEE. He wondered why these lands should be treated any differently. He felt maybe those with homesteads on farm or forest land would be harmed by this ordinance and should be included with the rest of the county. Commissioner Lovelin stated he felt two ordinances should not be created. He didn't believe farm and forest should be separated from the rest. He wanted this document to go back to staff to create a single Riparian Ordinance for the entire county. Commissioner Lovelin would like staff to create one Ordinance that meets Goal 5 using the ESEE analysis for the entire county. Commissioner Jones stated he was also concerned the ESEE analysis was not be using for farm and forest.

Commissioner Ousele asked staff why non-farm and non-forest uses on farm and forest land was given over to Safe Harbor instead of using the ESEE analysis and who made this decision. Lisa explained the idea was brought up as result of a conversation with DCLD. She said it was brought to the Focus Group and at that time they agreed that this seemed like a good approach. Concerns were raised by the Focus Group during completion of the draft that perhaps this wasn't the best way to proceed. Lisa further explained that the inventory of the riparian areas of Tillamook County was very large and would not fit into the timeline for completion by June 30th. The ESEE analysis too generic and it became clear in conversation with DCLD that it needed further work. It is unknown what the Rural Residential Ordinance Amendment and the ESEE Analysis is going to look like. Lisa stated that when they were discussing the 2 phase approach they determined that if the ESEE Analysis process was applied, especially on the forest land, it would determine the Riparian areas were outstanding in comparison to the rest of the county. The greatest amount of protection would be wanted for these areas and it was felt Safe Harbor would be likely be applied. Lisa explained if you go through the ESEE analysis you have the option of saying Safe Harbor applies or it does not and a lessor ordinance can be created.

Commissioner Ousele asked if it was possible to defer decision on non-farm uses on farm lands until an application was made and then apply the ESEE analysis. Lisa explained yes, this could be done on a lot by lot basis but does open the issue of subjectivity. Lisa further explained we are obligated to come up with clear and precise standards for the ordinance and that this approach may not result in that.

Commissioner Jones stated he felt the last revision created by staff is fairly close to what he would like to see. He felt most of the revisions were the result of public comment. He stated he believed if they took a vote on the original draft today he would vote no however, he would like to go forward to create a draft to present to the Board of Commissioners and felt they could come up with something better than what 4.080 is now.

There was discussion between the commission members regarding how they should proceed. Chair Heckerorth asked Lisa if changes were made, would these be available for public comment through the process with the Board of Commissioners? Lisa confirmed this was correct. There was discussion regarding current public record and what would create new public record. There was discussion regarding Measure 56 notices. Lisa then assured the commission the Board of Commissioners would get copies of everything the Planning Commission has reviewed.

Commissioner Ousele wanted to assure there was no further discussion regarding the ESEE analysis being done on the entire county. This would be a drastic change from what they had now. The question was raised if everyone was comfortable with the ordinance modification being split in two parts. If this was correct, they should move on. Chair Heckerorth asked what the timing was if they didn't support this and wanted to see a combined effort. Commissioner Marti stated she did not want to see their decision or opinions being effected as a result of deadlines. She would not make a rushed decision because previous deadlines had been missed. Chair Heckerorth was concerned there could be the imposition of an ordinance beyond their control if deadlines were missed. Lisa explained this could be a consequence that LCDC would consider if there is not an accepted ordinance or a process in motion to adopt an ordinance by the September hearing. Lisa confirmed all deadlines had been missed however, this was not from lack of attempt. She reminded the Planning Commission they have a responsibility to uphold the statewide planning goals and the OAR'S in regards to land use planning, so deadlines do mean something. Commissioner Marti agreed deadlines mean something, but they should not guide their decisions.

Lisa advised that if they feel the draft does not reflect the reality that they would like to see as a body or that they don't believe it is fair, they have the option to send it back to staff. They can make a recommendation of denial and that they would like to see an ESEE analysis of the entire county. Lisa further advised there would likely be some consequences from the state. She also cautioned the members it was unlikely they were going to see miraculous results through the ESEE analysis. It will be a timely process and it was possible the state would require Safe Harbor in the meantime.

Commissioner Ousele asked Lisa to explain some of the problems with the ESEE analysis. Lisa explained they did begin the matrix that accompanies the analysis and this portion went fine. It was when they broke down the zones and uses that

disagreement arose. Lisa advised some of the requirements by DLCD could be challenged. Commissioner Ousele asked who would do the ESEE analysis. Lisa stated it would be staff. She further stated she did not know how Mr. Campbell would want to proceed in terms of a focus group. Commissioner Ousele asked Lisa what the potential was for challenge of an ESEE analysis. Lisa answered the same as everything else that has gone through the process.

Lisa stated to the Planning Commission that it has been interesting to watch them go through this process and she commended them on the thoroughness of their process.

The commission discussed how they wanted to proceed and if they were going to move forward. It was suggested they first determine if it was acceptable by all that the amendment was being done in two pieces. Commissioner Jones stated that the economic analysis of land affected by this portion was very small. Lisa advised that economics was only one portion of the ESEE analysis. There was also social, energy and environmental factors that need to be considered. Commissioner Ousele read from #4 of OAR 660-023-0090, second sentence as follows "Local government may postpone determination of the precise location of the Riparian Area on lands designated for farm or forest until receipt of applications." It was determined the ESEE could be applied at the time of application. Lisa stated it would result in a site by site application. Lisa was asked if it would be site by site with Rural Residential also. Lisa stated she wouldn't know until it was done. Commissioner Jones stated he was concerned that a person wouldn't know what they could do with their property until they made an application and an analysis was done. He stated people should know what uses will be allowed prior to purchasing a piece of property.

Commissioner Marti again asked the commission if it was a fundamental problem that the ordinance has been separated into two parts. She stated this has not been answered and if it is the case there was no point in going forward with review and recommended changes. Commissioner Ousele asked if Phase II would be committed to the ESEE analysis. Lisa stated she thought the odds were very good the ESEE analysis would be used in Phase II.

Commissioner Lovelin stated he would like to send this back to staff, with a timeframe, that it come back as one piece. He did not see any logic in splitting the amendments up. Commissioner Jones suggested they spend the next couple of hours going through the document to see what recommended changes could be made. Chair Heckerth stated they have gone through this. If they went through it again and decided not to move on, it would be a waste of time. Commissioner Hoffman stated she felt a lot of people have put a lot of time in this and if they just say no it negates all of the hard work that has been done. Chair Heckerth commented the process had been going for a long time, however this Ordinance Amendment had not. He had expected this amendment to address RR land. He would like to see this be in one amendment with the same protective values for all

land. There was additional discussion regarding public process and deadlines. Commissioner Ousele asked how this first part came to be. Lisa stated the county has always looked at the entire county for compliance with Goal 5. The 2 phase arose in part because the RR represents more conflicts. It was determined two zones would be easier and allow the county to address the bulk of the land. After the December deadline was missed it was decided to impose the highest restrictions.

Chair Heckerth called a recess at 8:45 p.m.

Chair Heckerth reconvened the meeting at 8:50 p.m.

Chair Heckerth stated a decision needed to be made. Commissioner Ousele stated her opinion was the Ordinance should be uniform across the county. Commissioner Hoffman stated she didn't disagree however, she wanted to acknowledge all the work and input they have received. Commissioner Hoffman stated this draft is treating farm and forest different from the other zones. Her opinion was that to understand the logic of this Phase they need to know the other piece. She thought this ordinance was not necessary until they knew how the other part comes together. She further suggested recommending this go back to staff.

Lisa asked the commission to refer back to the updated staff report dated May 13, 2004. Lisa explained there were five bullets regarding the criteria for 9.030. This is the review for an ordinance amendment and they needed to identify which criteria they felt had not been addressed adequately or appropriately. She suggested, based upon their discussion, the recommendation could be based upon the intent of land use patterns within the county. Commissioner Jones stated they didn't know the pattern as they were only looking at part of it.

Chair Heckerth asked if they were in the process of creating a motion stating the criteria had not been met. Commissioner Lovelin stated he thought they needed to make a motion that required an action directing staff with a timeframe for completion of creating one Ordinance Amendment. He further stated everyone knew they had a Goal 5 responsibility. Lisa stated the meeting with LCDC is scheduled for September and that this probably would not be a workable deadline. There was discussion regarding sanctions and the possibility of Safe Harbor being sanctioned.

Commissioner Lovelin asked Lisa what the status was for completion of a Comprehensive Ordinance Amendment and what would be a reasonable timeframe for completion of one amendment. Lisa explained that in terms of the inventory we have a paper inventory, that all the riparian areas in Tillamook County have not been visited. The inventory is to be based on information that is available. She stated that at the very least ground truthing was going to be necessary. She said there was a rough matrix draft. She felt November was a very ambitious goal. Lisa explained to the commission the process that would be involved and that six months might be possible however, staff is not is not fully

devoted to this one task. She further explained that the ultimate decision would be Mr. Campbell's in terms of process.

There was lengthy discussion of what the process for completion of this task would be and how the commission could word a motion. Lisa suggested if they make a recommendation of not accepting this proposal to state why it does not meet the criteria.

There was discussion among the Commissioners on how they wanted to structure and word the motion. After much consideration a motion was put together.

MOTION:

Commissioner Marti moved to recommend to the County Commissioners denial of OA-99-07 based on the following criteria having not been met: The intent of provisions being amended and the affect of land use patterns within the county. Specifically segregation of farm and forestry zones from the rest of the county could result in unequal protection of riparian areas throughout the county. The proposed ordinance fails to demonstrate how separation of farm and forestry from the rest of the county supports the over all intent to improve protections for riparian resources.

Commissioner Lovelin seconded the motion. The motion carried unanimously.

The commission went on to discuss reading a statement at the Board of Commissioners meeting on July 28th.

It was suggested a motion was also needed to direct Staff to continue to work towards what the commission wanted to see accomplished and the timeframe for completion.

After additional discussion and consideration wording was formed for a second motion.

SECOND MOTION:

Commissioner Lovelin moved to recommend to the County Commissioners to direct Staff to continue preparation of a Goal 5 Management Plan and Ordinance consistent with OAR 660-0230-0000 through 0090 which is applicable to the entire county. We recommend completion of this Periodic Review Task 10 for Planning Commission review at the April 2005 regularly scheduled meeting.

Commissioner Ousele seconded the motion. The motion carried unanimously.

After determining the motions the Commissioners went on to discuss the statement they wanted read at the Board of Commission meeting on July 28th. The members were very concerned of the need to convey to the Board of Commissioners that they were

supportive of a Riparian Ordinance and of the commitment that has been put into this process.

After additional discussion and consideration the Commission agreed on a statement to be read at the Board of Commissioners meeting on July 28th as follows:

As a Board we feel the protection of riparian resources to be very important. We appreciate all the hard work of staff and community members and support the continued efforts to complete a countywide Riparian Ordinance.

It was agreed Commissioner Marti would read this statement at the Board of Commissioners meeting.

It was further agreed that the commission members that were available would attend the Board of Commissioners meeting July 28th.

IV: NEW BUSINESS:

There was no new business

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

Commissioner Ousele made a motion for the Chair to sign appropriate orders, if necessary. Commission Hoffman seconded. Motion carried unanimously.

There was no discussion regarding Administrative Decisions.

VI: DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT:

Lisa commended the Planning Commission for all their hard work and considerations given to this task.

Lisa advised the commission that the Beltz Farm had signed an extension and would be coming up sometime in December.

There was no further discussion. The meeting was adjourned at 10:40 p.m.

APPROVED:

RECORDING SECRETARY:

Kurt Heckerth-Chair

Pat Affolter

Dated: _____