

**PLANNING COMMISSION MEETING
NOVEMBER 18, 2004
MINUTES**

I. CALL TO ORDER

The meeting was called to order by Chair Heckerath at 7:00 p.m. Planning Commissioners present were Chair Kurt Heckerath, Merriane Hoffman, Bruce Lovelin, Gale Ousele, Terry Jones and Joan Marti. Commissioner Charlie Swan was absent. Staff present were Director, Bill Campbell; Senior Planner, Lynne Krueger, and Associate Planner, Bill Holmstrom.

II. APPROVAL OF MINUTES: October 14, 2004

Corrections to be made were as follows: On page 14, in the fifth line down after "Mr. Campbell", the word "stated" needs to be inserted. On page 4, in the first paragraph, on the third line, the word "was" at the end of the sentence needs to be deleted. On page 6, in the fifth paragraph, on the fourth line, the word "table" needs to be changed to "tabled". On Page 7, on the third line, the word "her" needs to be changed to "their home". On page 7, in the second paragraph, on the 15th line, the word "could" needs to be changed to "good". On page 7, in the third paragraph, on the tenth line the word "statue" needs to be corrected to "statute". On page 7, on the first line, the word "is" needs to be changed to "his". On page 7, the third sentence needs to be changed to read "He stated this brings up the questions if the property can be used for public use". On page 7 under the testimony of Jan Fortin, in the first sentence the word "she" is to be deleted and in the last sentence "be not" needs to be corrected to "not be". On page 11 under the testimony of Delbert Duren in the second sentence the wording "responsible to" needs to be changed to "responsibility for".

Commissioner Lovelin made a motion the minutes be approved as corrected. Commissioner Ousele seconded the motion. The motion carried unanimously.

The public was advised that Nantucket Shores would not be addressed in this meeting, but was on the agenda for December.

III. OLD BUSINESS:

AP-V-04-04: An appeal of the Director's decision to deny a request to increase the allowed height from 17 feet to 20 feet to construct a single-family dwelling. The property is located on Beulah Reed Road in the

Community of Neahkahnie. The property is zoned Neahkahnie Urban Residential (NK-7.5) and designated as Tax Lot 5900 of Section 20CB, Township 3 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. Appellants, applicants and property owners Tom and Molly Clarey.

Chair Heckerth read the proceedings for a Quasi Judicial Hearing.

Staff handed out the applicable criteria.

There were no challenges to the Planning Commission.

There were no conflicts of interest or personal bias.

There were no Exparte Contacts however, Commissioner Jones did a site visit.

STAFF REPORT: Lynne Krueger, Senior Planner

Lynne handed out maps to the commissioners showing the parcel. She spoke about the original application submitted by the appellant/applicant. Lynne explained a design was not included with the application. However, it did include a Geo-Hazard Report that indicated that building within the first 75 feet would take the structure out of the velocity zone. The Geo-Hazard report recommended, but did not require, that they use velocity standards for the foundation.

Lynne explained that the upper level is an A-0 Zone with a one-foot depth, which means the structure needs to be two feet above the highest adjacent grade. Lynne stated that staff felt that two criterion that had not been met, therefore staff recommended denial of the variance.

Lynne stated that one criteria was number three, and that there would be an impact of views and that there were other alternatives. The second criterion, criterion four, which is that “..there is no lesser or no variance option”, and staff felt there were other options to consider. Lynne went on to explain the other houses in the area had met their 17-foot requirement except for one which has an 18-foot height. They had requested a one-foot variance with an original 1953 topo map, which indicated that at the time the house was constructed at 17 feet. However the removal of the septic system caused the ground level to settle making a height difference.

Lynne added that the variance request was not well supported by the neighborhood, and she noted that the member’s packet contained several letters of concern. She stated that staff had read the letters very carefully in order to get a feel of concerns and impact.

Commissioner Lovelin asked if any other height variances had been granted in this area. Lynne answered that one was the one she had mentioned earlier, and one that had gone before the state Supreme Court before it was

determined the variance would stand. She thought that there had been one other one, but it was not beachfront.

Bruce then asked Lynne if her site visit definitely determined the variance approval would impact the view of the neighbors. Lynne answered that when taking everything into account, it was determined that the impact would be significant.

Terry asked Lynne to explain the process of this variance. Lynne answered that staff denied a height variance application and the applicant then filed an appeal to that decision. That appeal is what is before the Commission this evening, and Lynne stated that staff's recommendation is still denial of the request.

APPELLANT AND APPLICANT:

Tim Ramis, 1727 N.W. Hoyt, Portland, Oregon, introduced himself as attorney for the appellants, Tom and Mary Clarey. Mr. Ramis handed out a packet of information to the members and said he would be referring to the information during his presentation.

Mr. Ramis stated that he has gotten involved in this appeal only recently and was not involved in the original variance request application. He said he wanted to show the members that it is his understanding that all criteria have been met and wanted to make sure that all facts are understood by the Commission members.

Mr. Ramis went on to say that the Clarey's have owned the lot for nine years, have rented a house in the area, have been active in the community all that time, and want to build a permanent one level residence on the beachfront on their property, even though most structures in the area are two-level.

Mr. Ramis stated that of the five houses in the area, two of them have permission to exceed the 17-foot height limitation. He said the plan is to get close to the 17-foot height as possible and have the same property right that others in the area enjoy.

Continuing on, Mr. Ramis asked the members to consider the two key points on which the staff report is based. The first being how high the foundation has to be on this lot, and staff concludes that the proposed 4 feet for this residence is excessive. The second point is that the staff report states that others in the neighborhood have been able to build within the 17-foot limitation with all the same constraints that the subject site has. Mr. Ramis said he disagrees with that assumption and went on to state that the constraints involved include requirement to elevate the foundation according

to the County Ordinance; prohibited from filling the lot as other properties have been able to do in the past; must meet the 17-foot height limitation; and because they are not on a hillside, they cannot take advantage of the features of the county code, but allow excavation in a 17-foot height limitation and build a two-level house.

At this time, Mr. Ramis referred to page 8 of his handout material that consisted of drawings of the building and foundation heights. He noted that since the foundation is 4 feet, the house itself will be 13 feet. He wondered if some relief could be obtained from the 13-foot envelope because everyone else has been able to build without the foundation limitation constraint. He added that this was the fundamental issue.

Mr. Ramis went on to say that since the four-foot foundation is part of the 17 feet height limitation, they were trying to get some of the 17 feet back with the variance. He explained that this would mean the request is to allow six inches of additional height over 80 percent of the roof area, and that would take the 13-foot building envelope up to 13 feet 6 inches. Twenty percent of the roof area would then go 16 feet. Again Mr. Ramis reiterated what the exact variance request consisted of, because he did not believe the application was quite clear.

Mr. Ramis then concentrated on the foundation requirement saying that staff states that the foundation is really required to be only be a couple feet high and that the four feet was just a recommendation. He referred to page 1 of his submittal which was a letter from the county stating that all recommendations in the Handforth Geo Report (HLB) must be met. He pointed out, and read aloud a portion of the Report pertaining to the foundation and the fact the need to elevate the house is unchanged from the original Report dated September 14, 1989. Mr. Ramis also read aloud a portion of the original Report regarding warnings of natural events in relation to the setback for construction. He said he did not think any prudent person would disregard the warnings or recommendations of the Report.

Mr. Ramis said staff stated that a variance is not a requirement or recommended by the Geologist, but now there is a letter saying that Handforth is recommending seeking a variance in order to comply with their recommendation.

Referring to his handout, Mr. Ramis turned to page 11 and showed comparisons of heights of other houses in the area. These heights ranged from 18 feet to 22 feet, and Mr. Ramis said they were not asking for anything more than what is already in the area. He stated that there is no house in the area that has been built within the requirements that have been imposed on the subject parcel. These houses, he said, would not be able to be built today under the current restrictions. Mr. Ramis went on to say that

the original plan was more extensive, but after meeting with staff, it was decided to minimize the plan. He noted that the chimney does not count as part of the structure height, and the request is for a height that would match the chimney height.

In conclusion, Mr. Ramis discussed the applicable criteria, and again said he felt the applicant had met them all. He added that there is no reasonable alternative and that 13 feet was just not adequate for a residence height.

Commissioner Jones asked if a topo was done on the subject lot and if so, what was the average grade. Mr. Ramis answered that 22.5 was the average height of the lot which, according to the Handforth Report, is an essentially flat lot. Terry then referred to Exhibit 6 pertaining to the elevations of the peaks, and asked how they were measured. Mr. Ramis said such data were gathered from county records.

Commissioner Lovelin said that the applicant said a 13-foot house was not reasonable while looking at other houses in the area, but can a 13-foot house be built and still be within the applicable criteria regarding height and the foundation. Mr. Ramis said he would have to go by what the county code says, but he added that it would be impossible to build a 13-foot high house and enjoy the same property rights as enjoyed by others. Bruce commented that codes change for good reason and that is why some of the houses in the area could not be built today, as mentioned earlier by Mr. Ramis, that were built when the codes were different. Mr. Ramis said that is why there is a variance process. Commissioner Lovelin then asked what the impact would be with a house without a variance. Mr. Ramis answered there would be less light, less energy efficiency, and less roof pitch.

Commissioner Hoffman was a little confused regarding what is necessary for a foundation height. Mr. Ramis explained that there is a regulatory requirement dealing with what would be needed to be safe as far as flooding is concerned, and according to the HLB Report, this foundation should be above 3 feet 6 inches high or even higher. There was more discussion regarding the recommendations of staff.

Chair Heckerth asked which way the 20 percent peak was running. Mr. Ramis answered it goes east to west.

Tom Clarey, 1905 S.W. Myrtle, Portland, identified himself as the property owner, appellant and to give testimony in favor of the application. He submitted a packet of pictures to the Commission members. They were pictures of surrounding houses, lots, and views from the subject site. Regarding Terry's questions, he said he hired HLB to do the survey work by surveying the ridge heights of neighboring houses. They also did the topo

work, which resulted in an elevation certificate that was presented to the county.

Mr. Clarey continued by thanking the Planning Commission for its time on this issue. He reiterated that he and his wife have been in the community for 9 years and want to continue to do so. He said he did not want to anger the neighbors by doing something that they would perceive as unfair or un-neighborly. Mr. Clarey went on to say that he had written letters to all the neighbors on two separate occasions offering and requesting to meet with them to review the design of his house plans. He added that he wanted to explain to them his frustration regarding the recommended 4-foot foundation, that would be included in the structure height. The meetings never occurred, but he said he is still willing to do that.

Mr. Clarey then outlined and identified the location (in relation to his property) and heights of the houses and properties in the 17 pictures he submitted to the members. The pictures also showed what the view would be like from other properties across the road from the subject site, regardless of what happened to his lot.

During his presentation of the pictures, there was discussion regarding the roof pitch, reduction of room sizes, hillside houses in the area, comparison of structure heights, the fact the subject site is beachfront property, and the ocean view from staggered lots.

Mr. Clarey wanted the members to see that other residences on the uphill properties would still have views even after the construction of his structure. He made it clear that the design on his proposed house would have a different roofline than the similar house shown on one of his pictures. This, he said, would insure surrounding lots of a continued view. He added that the rooms would be smaller in order to get a different roofline.

Mr. Clarey said he felt he was being fair in his request and wanted to be a good neighbor and continue to live in the area with a new home and without problems.

There were no questions from the Commission members.

Chair Heckerath opened the hearing to public comment. He announced that those who wished to speak had to fill out the green form supplied by staff. Chair Heckerath said he would not limit the testimony to three minutes, but he cautioned the audience that if their testimony became lengthy, he would cut them off.

Chair Heckerath asked that those giving testimony limit it to new information because any written testimony sent to the members earlier has

been read and taken into consideration. He added that all testimony be limited to the criteria.

PUBLIC TESTIMONY:

Ann Morgan, 37790 Reed Road, said she is approximately 10 to 12 blocks north of the subject site. She said the lot in question has always been wet and marshy and most of the community was surprised that someone was planning to build on it. Ms. Morgan went on to say that because no two lots are the same, it would be impossible to build a similar house like what's in the area now. She said it would be like comparing apples and oranges, as was mentioned earlier in the hearing. She felt that because the lot was an ocean front property, it would give Mr. Clarey an advantage. Ms. Morgan went on to say that the 17 foot height limit was designed to make the view as un-obstructive as possible. And it not just for the houses on the hill above the subject site, but for the people walking along the road and on the beach. She said that if they can have a 6-inch variance on 80 percent of the house, she did not see why they could not change the design to ask for a 6-inch variance and build the whole house that way.

Ms. Morgan then referred to criteria 4 regarding no reasonable alternatives requiring a lesser or no variance. She said a 6-inch variance would be a lot less and that would be one that she could understand.

Amy Bell, 1934 Lennox Court N.W, Olympia, Washington said she had additional information to present along with the letters she and her husband had previously sent to the Commission. She said they, along with her sister-in-law owned two properties across the street from the subject lot, one with a house and one vacant. Ms. Bell said she felt the applicant was turning a recommendation into a requirement. She said she heard staff say they were not requiring this type of foundation, but the applicant is saying it is required by the county, perhaps because of a 1989 letter regarding foundation height.

Ms. Bell said she felt a reasonable house could be built, within the height limits without such a big foundation. She then described her one-story house in Olympia that would fit into a 12 and one half (height) limit and she could not understand why the applicant could not build the same height house on the subject site. She said she thought all information the applicant was bringing forward regarding the lot, was available to the applicant when they bought the property. She mentioned the Geo Hazard Report and the height limit as part of this available information. Ms. Bell continued by saying she is bothered by the applicant basing arguments on the basis of what others have done in order for him to change the height limit. She felt that was a problem because pretty soon there would be no height limit at all if those limits can be changed.

Michael Woodin, 1934 Lennox Ct. Olympia, Washington introduced himself as Amy Bell's husband. He submitted some written information along with photos. These were made a part of the record. He indicated (on a map) where he would be on the beach and what he would see looking back at the properties. He noted that a couple of the houses have been there over 50 years and he has not heard of any home damage in the vicinity. Mr. Woodin went on to say there has been construction in the area for a long time. He said he determined that the existing homes with heights of 17 feet have little impact on the view from his sister's home across the street from the subject lot. He noted that a 3-foot height can make a lot of difference when it comes to view, and he could not see why the applicant would not stay within the height limit.

Mr. Woodin referred to criteria 3 regarding preserving the rights of adjoining property owners. He read a portion of the staff report that noted the lot adjacent to the subject site would be impacted by the applicant's building of a house. That adjacent lot belongs to Mr. Woodin. He noted that the staff report also stated that the applicant's house will be higher than some of the trees on the lot. Mr. Woodin said the chimney on the proposed house would create an even more impact on the view of other properties. In calculating the foundation and height limits, he thought the applicant could build a house within the limitations. He thought it was unfortunate that so much time had to be taken for such an appeal.

Bruce asked if Mr. Woodin and Ms. Bell would be the most affected by the construction of a residence. Mr. Woodin agreed and said the applicant said so in their application. Bruce asked Mr. Woodin if he believed 17 feet was the limit or is there any variance? Mr. Woodin answered he believed it was a "slippery slope" and added that he had talked to Mr. Clarey about a 6-inch variance, but had then received notice that a 3-foot variance had been applied for. He described the letter he had received regarding a meeting to discuss the issue, but he said he did not want to negotiate.

Bruce then asked Mr. Woodin if his property value would decline with the construction of a house on the subject site. Mr. Woodin answered that realtors had told him that it would. He again described how the new house would impact his view, with the peak running east west in front of their house and with a chimney as well. In conclusion, Mr. Woodin said he felt a vacant lot has the same rights as a lot that already has a house on it.

Mike Stapleton, 37750 Treasure Hunter Lane and 16960 NW Park Ct. Beaverton, said one of the houses in the submitted pictures was one that he had just completed building. He spoke of the east-west view and added that his property is four lots up from the subject site and identified it on the plat map. His view is partially blocked by a large house with a flat top, but it

was there when he bought his property. The lot in question was designed to have a 17-foot height restriction, which is similar to what he has on his lot. He added that he has a 12/3 pitch on his house in order to have a two-story house. Mr. Stapleton described some of the houses in the area as being one-story houses with no daylight basement. Mr. Stapleton said there were many restrictions on his building lot as well, and he had to make adjustments.

Charles Lostrom, 37755 Beulah Reed Road, Manzanita, owns lot 4100, and said he has been a custom homebuilder in the area for 11 years. He is now a licensed real estate broker in Manzanita, and deals with real estate every day. He noted that there is always criteria when building on the beachfront, such as velocity zones, height restrictions, deed restrictions and foundations. He described the concept of building and disagreed with the Engineer's Report that stated this house has to be a certain design. He added that it would be possible for the foundation to be at least 6 inches lower even though the engineer recommended it be 4 feet high, thinking 6 inches would not make a difference.

Mr. Lostrom went on to say that every 3 and 6 inches makes a difference, and in this case, the house could get out of proportion beyond what the ordinance allows. He then described his residence on lot 4100 as a 13-foot high house, said it could be used as an example, and stated that he felt there are other alternatives to the design of the house in question.

Mr. Lostrom submitted two photos of his residence and they were made a part of the record.

In conclusion, Mr. Lostrom again said he felt the applicant's house could be built within the 17-foot height restriction. He recommended the Commission affirm the staff report and deny the applicant's request.

There was no more public testimony.

Chair recessed the hearing at 8:50 PM. He cautioned the audience and Commission members not to discuss this issue while on break.

Chair Heckerth reconvened the hearing at 8:55 PM.

REBUTTAL:

Tim Ramis, representing the applicant, requested that the record be kept open for seven days in order to submit additional material. He added that he would then provide written comment on the new material.

Mr. Ramis continued by addressing the question of setting a precedence by allowing this small variance. He said he believed the answer would be in

the criteria for the test relating to view, which is an issue that has been brought up frequently this evening.

He went on to say the test is where there is an unreasonable obstruction and he believed a 3-foot variance is not unreasonable compared to a request of a 25-foot house. He added that he disagreed that this could create a snowball or slippery slope effect. Mr. Ramis noted that there is no absolute protection of view in the county code. He added that the standard says that this code is essentially a balancing act between giving folks who ask for the same property right as others enjoy. In this case, a 17-foot building envelope balanced against a standard of whether the view is being obstructed to an unreasonable degree. That is why the code says “unreasonable obstruction”.

Mr. Ramis went on to say that most of the roofline would be screened by vegetation that is already there and will not be all that visible. He again stated that the request is very minimal. He stated that he felt this was a test of whether the request is reasonable and he felt it was. He said no one has been able to show a single example of another house that has been built to these regulations and these constraints in this location.

Commissioner Lovelin asked what the 7-day extension request meant to the Commission. Lynne answered that the applicant would have 7 days to review all new testimony, comment in writing which will be given to the members, and a decision can be made at the next meeting or at a later meeting. This will also allow the public to submit additional information as well.

Commissioner Lovelin said the word “seriously” had been used regarding view obstruction. He asked Mr. Ramis if he felt the Commission had to decide if the structure would seriously obstruct the view when making a decision on the appeal.

Mr. Ramis said he should have used the word “unreasonably” obstructive rather than seriously. He again stated that there is not absolute view protection. He added that the question to the Commission is whether this 6-inch variance over 80 percent of the house and 3-feet over 20 percent is so serious an obstruction that it would call it unreasonable.

There was more discussion regarding view impact.

Commissioner Lovelin stated that Clarey’s knew what they were buying and knew the height limitation from the Geo Hazard Report.

Mr. Remis answered that all zoning codes have a variance provision, and if other people have been allowed to build at the 17-foot height level, it is not unreasonable to believe a variance is there for some flexibility.

Mr. Clarey added that he is a builder and is familiar with LCDC and zoning codes. Before he bought the property, Mr. Clarey said he met with the county, went through all documents available at the county, reviewed the letter from Lynda Willard, met with the people who did the Geo Tech survey, met with Ron Larson from HLB, had people visit the property, applied for a fill permit, investigated the property going back to 1994, copied the file of lot 6100 regarding a variance which was granted, and he relied on all that information when buying the lot. He said he knew what he was buying after all the research he did and he said he believed he would be granted the same rights as other variance applicants in the area.

Commissioner Lovelin got a sense that there are other alternatives, and he asked Mr. Clarey what he thought about that. Mr. Clarey responded by saying that everyone wants as much view as they can get. He disagreed that a 3/12 pitch is a good pitch to build on the oceanfront. He then discussed the wind velocity and the fact a 3/12 pitch may not be adequate for the 90-mph winds that can occur on the beach. Mr. Clarey described what his original plan was in comparison to what he decided upon in order to be a good neighbor. He said he did not think it was fair to ask him to build a flat top roof as an alternative because of the potential problems that can occur.

Mr. Clarey said he wants equal rights and he said he believed he has compromised and believed the 4-foot criteria was in fact a 4-foot criteria. He went on to say that Lynne had told him that he was in the A-O zone, but if he pulled his property back and built only in an A-0 zone, he could build at 24 and one half feet above. He said if that was the case, he wouldn't need a variance at all. He asked Ron Larson for an opinion and he disagreed with Lynne, and that he could not build at that height, and Mr. Larson wrote a letter to that effect.

After more discussion, Mr. Clarey again said he was asking for only what he felt was fair and reasonable.

Commissioner Jones did some figuring and stated that Mr. Clarey's house would be 39.5 feet and would be 1 ¼ feet higher than the house to the south, and 2 feet higher than the house to the north. He added that Mr. Clarey then wanted to add another 3 feet. Mr. Clarey said the house would be measured from existing grade and also 4 feet of that would be foundation. There was more discussion regarding the house height. Mr. Clarey stated that he would have to put in pilings at great cost to him.

There were no more questions from the members.

Lynne said a lot of the difference in the majority of the houses in the area and the proposed plan is that they are not in a flood zone and the Clarey lot is. This lot also has an access to a velocity zone and does have the A-O zone. Lynne went on to say that the portion of the ordinance dealing with the 17 and 24 was specifically designed for the purpose of height and view.

Lynne said there are no regulations at this time that encompass anything on tsunamis and none of the houses in the area would survive a tsunami. She addressed the statement made by Mr. Clarey that she and Mr. Larson disagreed on building on a portion of the lot. She referred to the staff report to clarify her statement that he could build in the A-0 flood zone, which was on the east side of the lot. She also discussed setbacks. She said she had not seen the letter from Mr. Larson until this evening, but she had talked to Mr. Larson and asked if the applicant would need a variance. He had indicated to her that it did not, but had apparently thought it over and the letter indicates that it does.

Lynne then referred to the 1989 report from Lynda Willard which states that all recommendations contained in the HLB report are to be met and should be constructed to the new standards. The house should be built as far east as setbacks allow. Lynne suggested that the 2-year old GH report would have to have an addendum even though there isn't much change in the lot. This low area is what creates the flood zone.

Lynne discussed measuring the house and said every elevation is usually measured to the highest peak for the average. So, when looking at the 80 and 20 percent, and the highest peak is at 20 feet, then the house height will be 20 feet.

After more discussion of height and the fact there is an alternative, Lynne said staff recommends denial of the appeal as indicated in the report.

Chair Heckerth said he is not clear on the 2-foot foundation versus the 4-foot foundation. Lynne explained that based on which elevation Mr. Clarey chooses to build, it will depend on where the foundation will be and which height it will be. She added that technically Mr. Clarey has to build no closer than 23 feet because that is the breaking point between velocity and A-O zoning. Even then, she said, it would be a 3-foot high foundation.

Chair Heckerth asked if the implication of that foundation took into consideration debris coming off the beach. Lynne answered that in a sense it does. She went on to explain that instead of a stem wall foundation, a piling foundation is being recommended simply because of strength.

Commissioner Lovelin wanted to know what Mr. Clarey's setback would be compared to his neighbors. Lynne again said the Geo Hazard Report specifically says he should go as far east as he can to the setback.

Chair Heckerath began to ask a question regarding the 17-foot height restriction in relation to the Community Plan, and Lynne interjected by saying the 17 and 24-foot height limit is a specific ordinance that was created years before the Community Plan.

Commissioner Hoffman asked if the residences across the street have a 24-foot height. Lynne answered that they all have a 17-foot height for 500 feet.

Commissioner Jones asked Mr. Campbell if he would be willing to write a letter similar to what Lynda Willard did, and basically say Mr. Clarey does not need to build at 26 feet elevation, but can build at 24. Lynne answered that staff is not advocating that he needs to build at 26 feet elevation. A short discussion followed regarding hazards and velocity.

Commissioner Jones said that his understanding of the 1989 Geo Hazard Report, the house must be at 26 feet elevation no matter where he builds on the lot. At this time, Lynne read from Lynda Willard's letter regarding the fact that the recommended regulations for this lot were current in 1989 and could be changed in the future. In essence, current regulations would have to be taken into consideration when building.

There was discussion regarding some changes that have taken place since 1989 regarding building codes and regulations, construction and seismic standards, Geo Hazard Report requirements. Lynne added that Lynda Willard's letter and the Geo Hazard Report were good for two years without an addendum, and there has not been an addendum except for the one received this evening from Mr. Larson. She said the addendum states that there has not been any change on the subject site.

Commissioner Lovelin stated that the applicant seemed to have some assurance that a variance could be granted because of all the research he had done. Lynne interjected that each variance is rated and discussed separately from all others. She agreed with Mr. Ramis when he said his client did not start the 'snowball affect' or set a precedence. She then spoke of other variances granted in the area of the subject site.

Commissioner Lovelin mentioned the objectivity of a variance request and said it seemed to come down to the judgement of a staff planner to decide if a variance is granted even with the applicable criteria. Lynne answered that it comes down to the applicant and how they address the criteria. She noted that this application was not very thorough.

More discussion followed regarding property grade, setbacks, flood and velocity zones, and building site.

There were no more questions of staff.

Chair Heckerorth closed the meeting to all testimony.

It was noted that the hearing will be left open and all additional information has to be submitted by November 29, 2004 at 5:00 PM. No new material will be accepted, but anything discussed this evening can be submitted. Discussion between the Commission members will be at the next meeting on December 9, 2004.

Commissioner Ousele made a motion to continue AP-V-04-04 until December 9, and leave the record open until November 29 at 5:00 PM.

The motion was seconded by Commissioner Lovelin and it carried unanimously.

ORDINANCE AMENDMENTS: OA-04-02, OA-04-03, OA-04-04:

OA-04-02 adopts the Transportation System Plan into the Comprehensive Plan and updates Goals 11 and 12 of the Comprehensive Plan.

OA-04-03 modifies the Land Use Ordinance to support provisions of the Transportation System Plan.

OA-04-04 modifies the Land Division Ordinance to support provisions of the Transportation System Plan.

Staff handed out applicable criteria to the audience.

Chair Heckerorth read proceedings for Legislative hearing. There was no challenge to the Tillamook County Planning Commission to hear this matter.

There were no conflicts of interest or personal biases declared by any member of the Commission. There was no ex parte contacts declared by any member of the Commission.

Bill Holmstrom, Associate Planner told the members that this was very similar to what they had discussed in the workshop. He said the document has been cut down in size and add some flexibility. He added that Chapter 7, the plan in their packets, is really the heart of the plan and what needs to be considered for approval. The rest is supporting material and data for the copulation of the plan.

Bill noted that the changes to the text of the Comprehensive Plan are in Exhibit B and C and the Changes to the Land Use and Land Division

Ordinances are in Exhibits D and E. He explained that staff decided to take out the parts of that chapter that deal with specific project lists and maps because they will be changing over time. Bill reminded the members that this project has been going on for two years from when the lists were first compiled. The project lists will be reviewed every couple years to keep them up to date.

Bill went on to say that by doing this they will not have to go through the legislative process each time a project needs to be taken off the list. This will be adopted by reference of the TSP (Transportation System Plan).

Commissioner Lovelin wanted to discuss the updating of the TSP. Bill explained that the TSP document itself will be legislatively adopted if the Commission recommends that, and that is the framework. He went on to say that it will stay the same for the most part with few changes. The part that will be taken out will be specific projects and as time goes on those will be updated.

Commissioner Lovelin stated that the Commission will recommend the ordinances, and there are references in those ordinances to the TSP and if that is so, he wanted to know if the TSP a static document for all time. Bill answered that it was.

Bill went on to explain that the TSP, Exhibit A-1 in the staff report, is being adopted legislatively and will only be changed through the actions of the County Commissioners. Commissioner Lovelin asked if it was possible to be specific when saying "TSP" to put the date of the TSP.

Bill said the problem with that would be they would have to go back in all the ordinances when they do make a change in the TSP.. And Commissioner Lovelin stated that that was the point and he would definitely want to do that because future bodies would not want to allow changes to be made in a study plan that somehow might get 'shoehorned' in.

Bill said that would not happen because the TSP is as ironclad as the rest of the ordinance which is part of the Comprehensive Plan. He added that the only part that is being omitted is the project lists and the rest of chapter 7 cannot be changed unless it goes before the Planning Commission and the Board of Commissioners.

Bill Campbell referred to the first paragraph of Chapter 7 and said it states right there that Chapter 7 is the main body of the plan and the rest of the document consists of analysis and other references. He went on to say that the project lists should be taken out of the plan and attached as an Appendix to the Comprehensive Plan and that the list is reviewed and prioritized for finding on an annual basis. Mr. Campbell said this would mean that every

year when the list is looked at, the Planning Commission and the Board would have to go through a formal Ordinance Amendment process to update the list if it was kept in the body of the amendment.

Mr. Campbell continued by saying staff thought it would make it a lot easier to separate the list out of the appendices of the plan which enables it to be updated annually.

During continued discussion, Bill Holmstrom reiterated what Mr. Campbell had explained regarding the adoption of the TSP into the County Comprehensive Plan. He stated again that it cannot be changed without going through a process with the Planning Commission and the Board.

Commissioner Hoffman asked what STIP meant (page A-1-1). Bill explained that it stood for State Transportation Improvement Program. Bill said all acronyms will be listed for review.

Chair Heckerorth referred to page A-1-17, Water System, and asked if the word 'port' identifies a certain size boat ramp, and wondered why the smaller sized systems are not identified in the plan. Bill explained that there are three official Port Districts in the county which are the Port of Garibaldi, Port of Tillamook Bay, and the Port of Nehalem in Tillamook County. There are three boat launch areas described in the plan as well and they include Garibaldi, Pacific City Boat Launches and Nehalem.

Bill thought this is something that should be clarified for easier reference.

Mr. Campbell stated that the only Port that has marine navigational services in Tillamook County is the Port of Garibaldi. He added that the Port of Nehalem serves to maintain navigation in the channel.

There was discussion regarding different boat launches and their differences with Ports. Bill said this element of the plan focuses on commercial marine transportation, even though boat access is important, it would fit more into the recreational concept than transportation.

Mr. Campbell explained the three Port's functions and the four elements of transportation contained in the TSP. These consist of highway, rail, marine and air, and they all have to be addressed in the TSP.

Some discussion followed regarding some boat ramps and their locations.

It was noted that the TSP is about transportation, and boat ramps are not considered as modes of transportation. However, Bill said there can be changes made at a later date where the boat launches can be incorporated in the plan.

There was a brief discussion pertaining to making some minor changes in the plan at this time. Commissioner Lovelin said he was not comfortable doing that because there has been hundreds of hours spent on getting the plan to this point. He added that there are some changes he would like to make regarding priority, but he did not feel it should be done at this time.

Bill said he did not hear these concerns at the workshop.

Some of the concerns were discussed and they included: bicycle parking-Exhibit D, page 1, Section 4.030 (13): (a) change the 'four or more spaces' to 'five or more spaces; insert the words 'be encouraged to' after the word "shall" and strike the word 'provided'; Exhibit C, page 6: b-change the letters 'PUD' to the word 'utilities'; Exhibit A, page A1-12, Sidewalks-why would there be sidewalks along Hwys 101 and 131? Suggestion to strike the specifics and say 'by adding sidewalks along high traffic routes within unincorporated communities'; Same Exhibit, page A1-13, Widening Projects, paragraph 1-add 'Three Capes Scenic Route' to Hwy 101 and Brooten Road; Same section, paragraph 2 – add 'This route should be enhanced over time to provide bike lanes' to the last sentence; Exhibit C, Goal 12, a – delete 'TSP' at the end of the sentence and add it between 'plan' and 'has' on line 1; Same exhibit, d, line 1 – the word 'should' will remain; Same Exhibit, d under General transportation Policies – change the word 'sidewalk' to 'pedestrian ways', and add "pedestrian and bicycle connectivity and circulation" after the word 'provide' and eliminate the words 'sidewalks' through 'standards'.

There was discussion between the recommendations of change. Mr. Campbell noted that the Transportation Planning Rule is from the federal government to the state, because the state transportation funding relies upon the federal dollar. This means the county gets its recommendation from the state and federal governments and must comply in order to get the federal funding. He also said that after this goes through the ordinance process at the county level, it has to be reviewed by and approved by LCDC.

Commissioner Lovelin wondered if there was going to be an Advisory Committee of some sort to look at and advise transportation issues. Bill said it was not something that is happening now, but it would be a great idea. Mr. Campbell said the citizens who worked on this plan were pooled together from the Road Safety Advisory Committee, County Transportation Committee, and Northwest Area Commission on Transportation, all appointed by the Board of Commissioners.

At this time Commissioner Ousele made a motion to continue the hearing past 11:00 PM. The motion was seconded by Commissioner Lovelin and it carried 5 – 1.

Regarding the sidewalks along Hwys 101 and 131, Mr. Campbell said this deals with the planning provisions and the requirement plan for Netarts area, and this would be a priority project. So, this may not really include the highway. He said it would also include parking provisions, however.

Commissioner Lovelin referred to Exhibit B, page 1, Transportation, paragraph 2, and noted that the word 'generally' was changed to 'shall', and he asked if it actually meant any real change or departure from where they are now. Bill did not think so.

Chair Heckerath opened the hearing up for public comment. There being none, Chair Heckerath closed the hearing to public comment.

Bill thanked the members for all their help in getting this Ordinance Amendment to this point. Bill was complimented on his work as well.

Commissioner Ousele made a motion, based on the staff report, findings of fact, conclusions and public testimony for Ordinance Amendment OA-04-02, OA-04-03, and OA-04-04 in the matter of changes to the Comprehensive Plan, Land Use Ordinance and Land Division Ordinance to adopt and support the Transportation System Plan, to recommend approval of OA-04-02, OA-04-03 and OA-04-04 with the changes indicated above, to the Board of Commissioners.

The motion was seconded by Commissioner Hoffman and carried unanimously.

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

Commissioner Marti made a motion for Chair to sign appropriate Orders, if necessary. Commissioner Ousele seconded the motion and it carried unanimously.

Administrative Decisions: AR-04-15, AR-04-16, CU-04-11(a), CU-04-12(a), DP-04-10, DP-04-13, DP-04-14, DP-04-16, GH-04-16, GH-04-19, GH-04-25, GH-04-30, and MP-04-04:

Chair Heckerath referred to DP-04-13, and asked why spruce could not be used instead of cedar regarding stabilization along stream banks. He noted that DP-04-14 states that ODF may request a post construction site visit to further assess impact of this activity on fisheries resources. He felt this could mean that ODF could just say the system would not work.

Mr. Campbell answered that these were just recommendations. It was also noted that Lisa Phipps, Coastal Resource Manager, works with Fish and Wildlife on what kind of protective measures they would want.

IV. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT:

Mr. Campbell gave the members a form dealing with Measure 37 that had been submitted at the AOC conference in Portland. Because the measure passed, he said it was the desire of the state to have a process in place by December 2, 2004 for people to apply for compensation. Mr. Campbell did not believe there would be any constitutional challenges. He added that there are some areas in the measure itself that will no doubt be tested judicially. He went on to explain that one of the areas is that, in terms of compensation, it applies to the succession of family ownership. Waivers typically apply to the present owner, he added, and if there is a break in that lineage with the present owner, compensation would not be given.

Mr. Campbell said he would be discussing with the Board, whether the compensation process will be done by ordinance, Board order, or resolution, and he noted that different counties are doing it differently. He went on to say that regarding the forest and agriculture lands in Tillamook County, we use Administrative Rules. That means that if the office receives a claim for property on these lands, it will be referred to the state, and they might as well file with the state in the first place.

Mr. Campbell then discussed the issue of claims being submitted in incorporated cities. Commissioner Lovelin asked about waiver versus compensation. Mr. Campbell answered that there are probably some limited areas where compensation would apply, but he believed the Board will probably say that they will not do compensation. The waiver applies through the present owner.

More discussion followed and Commissioner Lovelin asked that staff email the members notice of decisions, articles and information that comes out. Staff agreed to do so.

Commissioner Lovelin then asked if Measure 37 will dominate staff's time. Mr. Campbell answered that he felt it will call for a shift in how staff will do things in processing claims. He added that this is not a land use action, and it will be something for the Board to decide if they want to delegate.

VI ANNOUNCEMENTS: None

VII ADJOURNMENT:

Chair Heckeroth adjourned the meeting at 12:10 AM.

Kurt Heckeroth, Chair

Pat Affolter, Recording Secretary

Date