

TILLAMOOK COUNTY PLANNING COMMISSION
September 25, 2008
MINUTES

- I. **CALL TO ORDER: 7:04 PM**

- II. **ROLL CALL:** Merrienne Hoffman, Terry Jones, Gale Ousele, Kurt Heckerth, Chair, and Kurt Mizee.
Staff present: Lisa Phipps, Long Range Senior Planner, Bradford Sheets, Associate Planner.

- III. **APPROVAL OF MINUTES:** none

- IV. **OLD BUSINESS**
 - a. **CONTINUATION OF ZC-07-03:** This is a request for an Exception to the Statewide Planning Goal 3 on a portion of the property (15 acres) to place a church and related uses in the Farm (F-1) Zone on the parcel designated as Tax Lot 2400 in Section 27 of Township 4 South, Range 10 West, Willamette Meridian, Tillamook County, Oregon. This request does not include a zone change. Applicant/Property Owner: Cloverdale Baptist Church/Lisa Phipps, Lead Staff

Chair read Quasi-Judicial procedures

Challenges: none

Conflicts & Biases: none

Exparte contacts or declaratory statements: Terry Jones did perform a site visit last month and today, parents are nearby neighbors.

STAFF REPORT

Lisa Phipps, Long Range Senior Planner, presented summary of the Staff Report. This is just the Goal Exception, labeled as a Zone Change due to the lack of a specific label for stand alone Goal Exceptions. This application does not include a Zone Change. The owner's, Cloverdale Baptist Church, are requesting an exception to Statewide Planning Goal #3, which is our Agricultural Goal, for the purpose allowing the construction of a church and parsonage. In the previous staff, report presented in July 2008 the request was for a much broader array of activities: gymnasium, ball fields, recreation center, and meditation center. It was a much larger project. Based on conversations with the applicant and ODOT, the request was modified and scaled down to the immediate needs which are the church and parsonage. The farm zone has changed substantially over last 16 years. Currently churches are not allowed on high value farm land, which is what all farmland in Tillamook County is considered. However, our Ordinance allows churches as a Conditional Use. Over the last few years we have run into a number of conflicts with our current Ordinance, which in many ways does not satisfy the current standards established by the State, and it is no longer in agreement with Goal #3. The property owner has applied for a Reasons Exception, which is to allow the church, which would then be subject to the Conditional Use process within our current Ordinance. There were a number of different approaches which they could have taken. In the end this one appeared to best fit the needs of the property owner. This is a large parcel, approximately 66 acres. The subject property is 15 acres. Upon approval, should the Board of Commissioners grant one, there would then be a number of other land use activities which would need to take place, including the Conditional Use process? There would be a partitioning of these 15 acres from the parent parcel of 66 acres, which would then allow them to sell that to adjacent property owners, primarily farm owners. The subject property is bisected by Hwy 101 causing the 15 acres to be isolated

from the parent parcel by a natural divide. In hindsight, if we were to go back and rezone these properties again the possibility could have existed that the 15-acre portion could have easily been owned by someone else during that time and we would have seen a slightly different approach to the zoning of that area. The subject property is on Highway 101 adjacent to Nestucca Valley Elementary School. All of the surrounding properties are zoned farm; however, there are numerous residential properties within the area. The property is not situated in an area of geologic hazards, but the area in general is identified on the DOGAMI bulletins. The site itself is modest in slope and has a high water table, which can be addressed through the building process. There is a small creek that runs through the property, called Clear Creek. There are standards that are applied to the riparian areas of Clear Creek and would be addressed during any Conditional Use or building permit process. The size of parcel is sufficient to allow for the current proposal of church and parsonage without impacting the resources on the site. All utility services are available to the property. Sanitation will be on-site, water will be provided by an on-site well. Electricity is available through PUD and the applicant has been working with ODOT to obtain a road approach permit. The Reasons Exception has a list of four criteria that must be addressed and are addressed in the Staff Report.

Ms. Phipps read aloud Staff Report Item III-B-2(a)

"The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a Goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource property."

When the subject property was purchased, churches were allowed as Conditional Uses. There was the understanding at the time that although there was land use processes involved, they would be able to build the church, and then the rules changed. Staff had to take that into consideration. Rules change all the time and we deal with that somewhat routinely through the Planning Commission. The property is zoned farm. It does currently receive farm deferrals. The factor that changes this request is that they aren't requesting a zone change; it will remain zoned farm. The applicant is just requesting that specific uses be allowed during this process. In modifying this request, the applicant has now limited the request to a 15000 square foot church and 3000 square foot parsonage. The applicant indicates that this will occur in phases. They are not required upon approval to immediately build a 15000 sq ft church, but by approving a Reasons Exception, this does allow the applicant the opportunity to go through the process. Obtaining an Exception is not a guarantee that they will be able to satisfy all criteria for other land use processes. This simply gives them the opportunity to pursue those processes.

The second criterion requires that the applicant look at alternative sites. In this instance the property owner did. They looked at the viability of a number of alternative sites in Cloverdale, both inside and outside the community boundary. The alternatives analysis is a bit subjective. However, the property is owned by the Cloverdale Baptist Church, the size of the request requires a parcel larger than most generally found within the community boundary. They did look at other residentially zoned properties, but size was a factor. Part of that is that they do have larger plans for the future beyond the church and parsonage that they are taking into account. Should they pursue something like that; another exceptions process will be required.

The third criterion is along the same lines as an ESEE analysis, when you look at the environmental, economic, and social and energy consequences of a proposed use. Based upon materials submitted, staff found that it could be reasonable expected that there would be no long term adverse impacts from this proposed exception. It serves the community, which is one of its primary functions. The church is currently located inside the community boundary. Its proximity will still allow those members of the community to continue to use the church. It will allow the church to grow. It can maintain all of its parking on site. The access is adequate and prior to the Conditional Use approval, should this be approved, they would need to show that they have an approved road approach permit from ODOT. Nestucca Valley Elementary School is adjacent to the subject property, which in many ways is going to be similar in the way that it is utilized. Typical negative consequences are things like the reduction in the resource values of the property, conflicts with neighboring properties, or costs that may be imposed upon public services. Most of site will remain open. The remaining 51 acres will continue to be maintained and

utilized as farmland. The subject 15 acres is currently limited to very little grazing. It is not suitable for timber harvesting. There is no significant increase on public services. Water and sanitation will be maintained on-site. PUD runs adjacent to the property, so no additional cost to the public. Fire service is also available to the area.

The last criterion is that the use is compatible with those in the general area. There is a large parcel to the southeast zoned Rural Residential. The rest of the properties around this parcel are zoned farm. However, there is the school directly abutting the subject parcel. The applicant is maintaining the farm zone. Any deviation from an approved Exception would require a new Exception process, so there is a great deal of control over what can occur on that site through the planning process. The church usage, according to Pastor Winesburgh, is primarily in the evenings and on weekends. The owner proposes to build the parsonage and the church, and we can assume that there will probably be a garage at the parsonage. In every zone accessory structures are allowed, sheds and those types of facilities. Given size of the parcel structures can be sited in a way to minimize any aesthetic impact.

Other Goal Exception Considerations:

This is somewhat of a variance process, but a bit more stringent in some ways. The criteria are stated in the staff report. Obtaining a Goal Exception does not guarantee any other Goal Exceptions in the surrounding area. Each case is based on individual merit and does not set precedence. Uses that are recommended in the staff report are limited to the church, parsonage and parking adequate to serve the church and parsonage.

Staff recommends approval of this Reasons Exception. It is somewhat unusual to place conditions on a Reasons Exception, however, in conversations with the Department of Land & Conservation Development it has come to light that there will be coming in front of you in the near future an Ordinance Amendment that will tie an Overlay Zone to a Goal Exception which will provide the same as the two Conditions of Approval in this case. It will apply an overlay that will state that whatever is approved in that process is limited to that Exception process. Because that is not yet in place we have established two Conditions of Approval:

1. The Exception is limited to the uses proposed, which are the 15000 square foot church, 3000 square foot parsonage and adequate parking as determined through the Tillamook County LUO.
2. Any changes to the types of intensities of these uses shall require a new Reasons Exception. ("Intensities" does not necessarily mean an increase; it can be a decrease as well. This clause was encountered in dealing with an issue in the North County on a project at Bart's Marsh in a Goal Exception obtained in the 1980's. This was where this definition was clarified.)

Commissioner Terry Jones asked if the term "accessory structures" should be added to language of Condition 'A'.

Ms. Phipps said that accessory structures are allowed in all zones. But, there is no problem inserting that term if you so determine.

Chair Kurt Heckerth asked if there was an opportunity for the applicant to comment on restrictions per state law modification.

Ms. Phipps said that the public has the opportunity to comment in these processes. Unlike the local level where there is more of an opportunity to be site specific, it would have had to been an extraordinary lobbying effort to exclude this one parcel. By maintaining farm zone the owners are still subject to all of the farm zone standards. That does have a set of challenges which come with it. Staff will continue to look through Administrative Reviews for certain activities. In addition, much of that may be eliminated in a Zone Change with a Goal Exception, but going through the Zone Change, process has its own difficulties. Especially in a place where we are cognizant of maintaining farm land, simply by leaving it in that zoning, that appeased some of the concerns that for example the TCCA Creamery may have had with this request. At some point, depending on the uses that are allowed through different land use processes, there may be a need to rezone in the future, but currently this was the process that seemed the most agreeable to the applicant.

Commissioner Gale Ousele: Often when we are allowing residences adjacent to farm land there are things that run with the property that prohibit complaining about farm practices. This isn't a zone change, but would that be a prudent amendment just on the basis of use?

Ms. Phipps said that would not be appropriate at this stage, but it will be during the Conditional Use process.

Chair Heckerth asked for additional questions. Chair asked for Applicant Presentation.

APPLICANT PRESENTATION

Vic Affolter 300 Marvin Road, Tillamook, OR. Mr. Affolter introduced the applicant, Randy Weinsburg, Pastor of Cloverdale Baptist Church. Referring to area map on easel, Mr. Affolter pointed out the 15 acre subject parcel and its proximity to Nestucca Valley Elementary School and surrounding operating farm land. The applicant's objective is to sell the unused 51 acres to nearby or neighboring farmers so that it may continue in farm use. He also indicated that it is bordered by farmland to the East and is separated naturally by Clear Creek, which was once dredged and excavated leaving 3 acres virtually useless. Mr. Affolter showed where the church and highway access is proposed. The site distance to the Northeast is approximately 2000 feet and to the Southwest is about 1000 feet.

Randy Winesburgh, pastor of Cloverdale Baptist Church, 22905 Sandlake Road, Cloverdale, OR, has been there just under 3 years. His father was pastor 18 years and was pastor when the church first started this project. Most of the attendees of the hearing are members who have attended 20 yrs plus. Prior to 1999 the church started planning a new building. Parts of current church are over 90 years old. Other parts of the church were add-ons and the part of the church are the original church building that was on Jenck Road which was disassembled and reassembled at the current location, then added to since then. My dad was pastor 18 yrs and kept good records showing that church has been looking to do this for many years and looked at many alternative properties, some of which were farm land. In 1999 the Oregon House passed a bill that allowed churches to build on farm property up to 5 acres. When the church found the subject property they were only looking for only 5 acres, but that wasn't going to be possible to partition 5 acres from it, but bought it with the intent of building on 5 acres. After going through the process of getting permission to build, the rules changed without our knowledge. A couple of years ago we talked to county planners and found that rules had changed. What we understand is changed is that a church could still build on 5 acres of farmland, but not high value farm land. We went for zone change originally, but found we needed to modify request to the Goal 3 Exception. I have known about this property and what was going on before becoming pastor. The church is planning for expansion, spiritually following the leadership of God to purchase this land, the decision was unanimous. We appreciate the help of planning to prepare this packet. We were told at one time that in order to preserve our... we had to show that we had use for all 15 acres, which is why the original letter & plan is so grandiose. The primary intent was to build a church house and a parsonage. When told we needed to show use of the 15 acres we started dreaming. Where I have no problem dreaming, we are looking at the immediate future of building a structure of 7500 sq ft in our first phase with adequate parking. When speaking with ODOT last Monday concerning our road approach, I was asked for more information. I told him that in the Goal Exception process Mr. Affolter has addressed all of the questions and he could get that detail from Ingrid Weisenbach at ODOT. I haven't heard from him since, so that is still in the process of gaining a safer access above and beyond the farm access.

Ms. Phipps called recently asking about the size of the structures for her preparation of the staff report. We weren't aware that 3000 sq ft was legally binding. 3000 sq feet would be nice, but I have 5 children and they will do nothing but get bigger. We would like to have that more flexible, not just for me but for future pastors and their families. The Church building comes first. We currently are renting a home. Parsonages are commonly used to entertain visiting pastors, missionaries, small groups, etc. We would like to be able to make this larger if needed. We have been focusing on the church building up to this point and haven't given much time to the design of the parsonage. In conclusion, I graduated from

Nestucca High School and have been tied to this community since 1997 in one way or another through my family. Looking at this from a third person perspective, I think this would be good for the community. In talking to people in the community I have heard nothing but good things. There were many, who are not here tonight, who said that they would be willing to write letters of support.

Mr. Affolter: The Goal Exception process is not common for good reason. The applicable OAR says "The intent of the Exception process is to permit necessary flexibility in the application of the Statewide Planning Goals." The provision for an exception is similar to the Variance process at the local level. The same standards don't always apply to the same properties. The Goal Exception process is much more vigorous. It requires addressing some more demanding criteria and appropriately so. I continue to strongly support protection of farmland. There is some land in this zone that can be and should be considered for other uses through the rigorous Goal Exception process. That is what we are doing here tonight with both applications. What I have submitted, the applicant's submittal, and the information attached to the Staff report is the March 11 report submitted to the Department in which were changes regarding the decision to drop the zone change and go with the Goal Exception. The addendum dated Aug 15, 2008 regarding the ODOT issues. ODOT issues coming up delayed your hearing by a couple of months which I am ok with because I believe it is best to get the ODOT issues resolved up front as soon as possible. That is essentially to be in place as they go forward. We have excellent access to Highway 101, really good site distance, and the modifications that they made in their proposal were in response to ODOT concerns. I believe we have addressed all applicable criteria in the staff report.

Chair Heckeroth asked for questions.

Chair Heckeroth: Question for the applicant regarding the 3000 sq ft parsonage. If you were able to change anything, what changes would be considered?

Pastor Winesburgh: We had not given this that much thought since I have been focused on the church structure.

Lisa Phipps: this could be addressed as use versus size of the structure.

Commissioner Jones: Would you be satisfied with 15000 sq ft for church?

Pastor Winesburgh: we have looked at various church buildings and plans and 15000 should be more than adequate.

Mr. Affolter: In looking at this I think 15000 sq ft is the outer limits and gives them some room and possibilities. Main reason for the larger structure is for special events: weddings, funerals, that sort of thing. It did somewhat skew the numbers with respect to the other traffic it would generate way beyond anything I could anticipate but still within bounds.

Pastor Winesburgh: The original structure will be approximately 7500 sq ft, which will accommodate about 150-175 people in the sanctuary/auditorium with an expandable wall for weddings and funerals with attendance of approx 300, which gives the community, whether or not they are members of our church, an option for holding these kinds of events without having to use the school gymnasium. Our growing children's and youth ministry and the current facility we are in the walls are paper thin and during Sunday School classes the sound carries from one room to the next to the point of distraction. I believe that 7500 sq ft will satisfy our needs for many years. When I thought about how we would expand from the original 7500 sq ft to 15000 sq ft I came up with the shape of a cross. But I am very comfortable with 15000 sq ft being the outer limit for the church's needs. If the church grows to the point that they need more room I am sure that we will have no problem coming back for another Goal Exception.

Commissioner Ousele asked staff how the 7500 sq ft church affects Item B as far as types or intensities.

Ms. Phipps answered that it doesn't, they are talking about a phase approach. The Exception doesn't have any timeline associated with it. It doesn't expire. When they come in for their Conditional Use for Phase 1 that will be addressed.

Chair Heckeroth asked for public comment.

Ms. Phipps mentioned that Pastor Weinsburg brought up the notion of limiting the size of parsonage. The other ways to approach that is to say that the use of the parsonage will be limited to residential use only. Parsonage limits will not affect size just use and will prevent it from becoming a commercial use. At that point the size would not be limited. The grand plan will be that they fill the church phase 1 and move on to phase 2 to expand up to the 15000 sq ft. If it is your intent to limit to 15000 sq ft that should be fine. Exception never goes away until we deem it to go away.

Chair Heckeroth asked Commission is that is agreeable?

Commission unanimously agreed

Commissioner Jones asked if the size requirement should be removed.

Ms. Phipps suggested to limit the use to a 15000 sq ft church and the parsonage shall be limited to residential uses and adequate parking.

Commissioner Jones asked if the Commission should say on the church, "...up to 15000 square feet" so that they have the ability to build in phases as needed.

Ms. Phipps said that it will be something that will be implied. The reason for being specific is that with regard to the church, since that is the primary building, in this case the parsonage is somewhat of an accessory structure to the church. The goal for the applicant is to one day fill to capacity the church not only for Phase One but for Phase Two. I don't have a problem with using the language of "up to 15000 sq ft" except that the criteria is that, "any change in intensity" then that allows a whole bunch of changes in intensity if you use the "up to 15000..." wording. If that is your intent and you want to cover that base, I'm ok with that. I think it is alright, we'll find out. By having a 15000 sq ft. church in when they are going through their processes they will have more of a master plan concept to present as Phase One and Phase Two to be completed sometime in the future. The Exception never goes away until the County is requested to remove it.

Commissioner Jones: You compare this application to the Wheeler project, in that it wasn't as large as anticipated therefore the Exception had to be modified. That seems like a similar situation here. They will come in with plans for half, 7500 square feet, project instead of 15000 sq ft.

Ms. Phipps said that another way this could be approached is that the Commission could allow this to be done in phases within the Exception approval, up to 15000 square feet, phased as necessary, which allows applicant flexibility.

Chair Heckeroth asked if the parcel to the south belongs to the School District.

Commissioner Jones responded that the district bought that for administrative purposes. He has walked every square foot of it.

Commissioner Ousele asked if the ODOT conditions need to be specifically mentioned on this because it is not a Conditional Use.

Ms. Phipps said that ODOT did mention that they wanted their conditions included in this process. When speaking with Ingrid they are part of the findings. I told her that in this Exceptions process it's really more about whether or not the applicant has justified reasons necessary to request an exception. You could include in the language, "...shall obtain all applicable permits, whether they are land use, ODOT or any

other agency related. That all takes place in the future land use steps. Bottom line is in order to acquire a building permit they are required to provide an approved Road Approach Permit. Virginia at ODOT was comfortable with that. Nothing can move forward without obtaining all other permits that are required.

Chair Heckeroth asked for confirmation that would come into play at a later date.

Ms. Phipps said that is how she viewed that, but the Commission does not have to agree.

Commissioner Jones said, for the record, it does about residential land to the SE, fairly large parcel.

Ms. Phipps confirmed that there is a sizeable parcel to the SE zoned Residential. It is stated in the staff report and will be brought to the attention of the staff.

Hearing closed to public comment

Chair Heckeroth closed hearing to public comment and opened Commission discussion.

Commissioner Hoffman: Everything I see seems to point in the same direction as staff's recommendation. The Exception process appears to have been created for just this sort of situation. I think we should support it.

Commissioner Mizee: I prefer this process as opposed to zone change because it retains the zone. As far as a benefit to the community, this serves it well, but also being out of the downtown Cloverdale, putting the cars in a parking area that can handle them versus spilling out onto the street is a good thing.

Commissioner Ousele: I feel like the scrutiny of all the criteria was really thorough by all parties and covers the necessary ground. I like that this is being left as farm land. It is a good move in this case.

Chair Heckeroth asked for discussion about changing language?

Commissioner Ousele: I like the phrase, "15000 square foot church, phased as necessary"

Chair Heckeroth added that there was also a change to the "3000 square feet."

Commissioner Ousele: ...and omitting the "3000 square feet" so that it would be "limited to the uses proposed in the request of 15000 square foot church, phased as necessary and a parsonage, the use of which shall be limited to residential uses."

Chair Heckeroth asked for additional discussion on this or any other issue.

Commissioner Jones was concerned about accessory structures, but indicated that it sounds like they are included.

Commissioner Mizee: Regarding the titling of this application as a ZC, is that just for cataloging or does that affect anything?

Ms. Phipps: The County does not have provisions in the Ordinance for what to call this. We could have called it a GE; however, we still call it a ZC even though it is only a Goal Exception because normally the Goal Exception accompanies a Zone Change.

Call for action

Chair Heckeroth asked for a motion if there is no further discussion.

MOTION

Commissioner Ousele: In the matter of Zone Change ZC-07-03, the request for an Exception to the Statewide Planning Goal #3 on the 15 acres, I move that we recommend taking that Exception to Statewide Planning Goal #3 on the basis of the staff report, testimony, ODOT report, subject to the following conditions:

- A. This Exception is limited to the uses proposed in the request of a 15000 square foot church, phased as necessary, a parsonage, the use of which shall be limited to residential and adequate parking for these uses as determined in Section 4.030 of the Tillamook County LUO.
- B. Any changes to the types or intensities of these uses shall require a new Reasons Exception.

Commissioner Hoffman seconded the motion

Ms. Phipps: Part of request is also at some point in the future to have the opportunity to partition the 15 acre parcel. That is in the request, the proposal they submitted. I wonder after listening to the spoken motion if that should that is included. Could you please read the first part of Condition A?

Commissioner Ousele: As amended the motion reads:

- A. This Exception is limited to the uses proposed in the request of a 15000 square foot church, phased as necessary, a parsonage, the use of which shall be limited to residential and adequate parking for these uses as determined in Section 4.030 of the Tillamook County LUO.

Ms. Phipps: You are limiting the uses and that doesn't really have anything to do with what they want to do with the land in terms of partitions or anything else.

Commissioner Heckeroth asked about the value after partitioning.

Ms. Phipps said that it would be of value at that time.

Commissioner Jones: Being that we're not changing zoning, 66 acres isn't large enough to be partitioned.

Ms. Phipps: This is a process that the applicants will need to work through. We are allowing them whether they keep all 66 acres or try to go through some other land use process, the 15 acres off the southern portion of the subject property will be able to have these uses applied to it whether they partition it or not. The applicant is aware that there are other processes necessary to make that partition process happen and there are no guarantees of approval.

Commissioner Jones asked if it would be appropriate at this time to set out a third Condition of Approval that they partition the property.

Ms. Phipps: They don't have to partition the parcel at all. They can own the whole parcel forever if they choose.

Commissioner Jones: Partitioning doesn't change ownership anyway.

Ms. Phipps: It allows the ownership to be changed. We can't force it.

Chair Heckeroth asked if it would be a requirement of the Goal Exception.

Ms. Phipps: No, not at all. Particularly because there is a manmade barrier running through the property already.

Commissioner Jones: Earlier on you addressed the intensities in Part B. Your statement was perfect, but I can't remember what you said.

Ms. Phipps repeated her previous remark, "Intensity can be an increase or a decrease in the use". That's what happened up north as an example of a decrease in intensity which caused them to have to go through a brand new process. The way that you have modified this allows them much more flexibility than the applicants in the example up north did when they went through this process, which is good, especially since funding and other issues is so uncertain.

Commissioner Jones: What my concern now is after we did change Condition A, then Condition B is in conflict.

Ms. Phipps assured Commissioner Jones that she didn't see any conflict.

Chair Heckerath asked if there was any further discussion of the motion.

Motion carried 5-0

BREAK 8:12

Meeting resumed 8:23

V. NEW BUSINESS

- a. **ZC-07-04:** A Zone Change request and Statewide Planning Goal Exception (Goal 3) to rezone the subject property from Farm (F-1) to Rural Residential (RR-10) zoning. The subject property is 1.68-acres in size and is a legally created parcel. The property is accessed off of Bewley Creek Road and is designated as Tax Lot 2102 in Section 18, Township 2 South, Range 9 West of the Willamette Meridian, Tillamook County, Oregon. Thomas P. and Susan K. Reiger are the applicants and owners/Brad Sheets, Lead Staff

Chair read Quasi-Judicial procedures

Challenges: none

Conflicts & Biases: none

Exparte contact: none

STAFF REPORT

Bradford Sheets, Associate Planner, presented staff report. Here tonight to consider the Goal Exception first and then a Zone Change on a Farm zone property, F-1, in the EFU or High Value Farmland zone for Tillamook County. As was indicated the applicants are Mr. & Mrs. Reiger. They are also the property owners of this 1.6 acre triangular parcel. Referring to map on easel: the cross-hatched clear area is F-1 farm zone, dark green area are forest zone lands and the pinkish areas are RR-2 zoned area. Tax Lot 2102, subject parcel, abuts Bewley Creek Road on the Northeast and Northwest property boundaries and abuts Rural Residential zone to the Southwest. This parcel has high value farm soils on it. Applicant has applied for a land irrevocably committed to other use exception or committed exception. This parcel was rezoned to F-1 from A-1 zone in 1982 and previously had a non-farm dwelling on it. It has been previously developed. It is not indicated in the Oregon Dept. of Geology and Mineral Industries maps that it is an area of landslide topography and staff's investigation of the Federal Insurance Rate Maps it was not in a flood zone; it was in a Flood C zone, but in our Ordinance there are not additional requirements for development in that zone.

To rezone a property that is currently zoned as resource, be it farm, forest or SFW-20 zone, it must go through and Exception to the Statewide Planning goals, in this case Goal #3 of the Agricultural Zone. Mr. Sheets read the applicable OAR 660-004-0028:

“(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.”

“(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- (a) The characteristics of the exception area;
- (b) The characteristics of the adjacent lands;
- (c) The relationship between the exception area and the lands adjacent to it; “

Looking at map, there is a great deal of farmland surrounding the subject property, and it abuts Residential 2-acre zone. Bewley Creek crosses Bewley Creek Road at the northeastern property line and runs somewhat parallel to the southern property line and then southward off the subject property. This is high value farmland soil on the subject property. The area in general is rural in nature some is developed for agricultural use; there is also residential and commercial use. The applicant owns the subject parcel as well as the property across Bewley Creek Road, indicated in Exhibit #1 as Tax Lot 2101 where their current residence is located. There are no structures on the subject property, the applicant does conduct some retail nursery sales on the property across Bewley Creek Road, Tax Lot 2101, but the property in question is not developed, it had been developed for residential purposes in the past, but that was for a non-farm dwelling in the farm zone. That gives you a general overview of what is going on and the relationships amongst the properties. The subject property is not farmed at this time.

Another criteria gets into whether this property could be used for farm use as defined in ORS 215-203: the propagation and harvesting of forest products as specified in OAR 660-003-0120 and the forest operations for forest practices as specified in OAR 660-06-0025 2a. All of those section of the ORS and OAR in Exhibit #3 of the Staff Report. The subject parcel is 1.68 acres in size. In evaluating this property and looking at its proximity to Bewley Creek Road staff found that it was impractical to pasture commercial livestock on this property given the creek and setbacks to Bewley Creek. Given all of the other setbacks the forest products and development for forest uses seem impractical as well. As far as farm use and forest use the proximity to roads, the parcel size, the useable area, really isn't practical for those uses.

A conclusion that an exception area is irrevocably committed shall be supported by the findings of fact which address all of the factors of Section 6 of this rule. By statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable Goal are impracticable in the Exception Area. This is a committed exception that is being requested. Existing adjacent uses for Section 6 the properties surrounding subject property at the Southwest corner are developed for residential use in the RR-2 zone, the property to the Southeast is being used in commercial dairy production, and the large tract to the Northwest is in Christmas tree production. The applicant's property across the street is being used as a retail nursery operation. Existing public facility and services: this parcel had a previous dwelling, existing on-sanitation, water service and permitted road approach. Regarding parcel size and ownership patterns of the Exception Area and adjacent lands, the subject property is surrounded by a quite a large tract of farmland. There is a tract of RR-2 acre land to the Southwest and really doesn't abut forest land in any of those areas. Neighborhood and regional characteristics: it is rural in nature, there are dairy farms lining Bewley Creek Road, but there are also strips of RR zone properties throughout that stretch from Hwy 101 south on Bewley Creek Road to the subject property. Manmade features or other impediments separating the Exception Area from adjacent resource land: such features or impediments include, but are not limited to roads, watercourses, utility lines, easements or right-of-ways that effectively impede practical resource use of all or part of the Exception Area. The owner is requesting for that single parcel,

Tax Lot 2102, to be for the Exception and Zone Change. It is abutted by Bewley Creek on both Northeast and Northwest property lines and Bewley Creek does run through the southern portion of the property. Bewley Creek and its associated Riparian area create a physical barrier. The Riparian areas on either side of Bewley Creek create a buffer to a possible connection and farming of the subject parcel. Given that it is a corner lot, there are many challenges to farming a 1.68 acre parcel. There are both manmade and natural impediments separating the subject property from adjacent resource lands. Other relevant factors are that the property was previously developed for residential use and has existing septic, water and road approach. Its impacts on other farming activities would be limited. The applicants have submitted all necessary information and evidence, Exhibit #2. Staff found that the findings of 6a-g demonstrate that the limitations of the subject property for agricultural and forestry uses due to size. The utilities to serve the subject property either currently exist on the subject property or can be acquired. Staff concludes that impacts to adjacent properties, neighborhood in general and regional area of approving a Goal Exception are negligible.

Staff concludes that

- Bewley Creek Rd and Bewley Creek itself will act as a buffer from impacts to the remaining resource zone properties.
- Proposed RR-10 zone for the subject parcel has requirements to preserve and protect adjacent resource lands.
- Given its proposed absorption into the RR zone and status of the surrounding properties is unlikely to cause further parcelization of adjacent farm zone properties based on the current Oregon Administrative Rules pertaining to agricultural lands.
- Based on findings of fact, an exception for lands irrevocably committed to other uses is valid.

Other Goal Exceptions considered: In considering the approval of this Exception and Zone Change, this will have no bearing or set precedence on the surrounding farm zoned properties in this area. Regarding the parcelization portion of this, under current farm and forest rules it is challenging to get a residence on these lands, therefore this will not be a catalyst for further zone changes or exceptions .

This report was prepared in two phases. It will be up to the Planning Commission to determine how to address, however, the Goal Exception must be approved before the Zone Change can be approved. Mr. Sheets asked the Planning Commission if they would prefer to pause for discussion of the Goal Exception or continue on with the Staff Report for the Zone Change and consider all at the end.

Chair Heckeroth: suggested that the Goal Exception be discussed and approved before moving on to the Zone Change.

Commissioner Jones: suggested that Mr. Sheets continue on with the Zone Change and make two separate motions in the proper order.

Chair Heckeroth: A couple of questions. Is the applicant is asking for the change to a RR-10 because that it is the only option?

Mr. Sheets: Yes. The current size of the parcel, 1.68 acres, does not meet the RR-2 acre zone or the RR-10 acre zone. But, we have this Rural Residential zone. It's the only zone available for farm converting to residential. This is a legally existing parcel, substandard in size for the Farm zone. All of the Ordinance requirements as far as Rural Residential zoning are exactly the same.

Chair Heckeroth: Was this partitioned at some point? How did this parcel come into being?

Mr. Sheets: I believe so.

Chair Heckeroth: Where I'm leading is, it looks like it's been taxed historically as residential land.

Mr. Sheets: It has, it doesn't have a farm tax deferral.

Commissioner Jones: this used to have a house on it

Mr. Sheets: It did have a non-farm dwelling on it at one time

Commissioner Jones: And for some reason it was removed and they can't replace it?

Mr. Sheets: It has been removed. As far as replacement is concerned I'm not aware of that. This Goal Exception and Zone Change would allow for them to do in relation to a non-farm dwelling is it gives them the opportunity to place a dwelling on the parcel and not be subject to administrative reviews for future development.

Chair Heckerath: Are there time limitations for replacing a dwelling in the same footprint?

Mr. Sheets: In the current zoning the owner has the ability to apply for another non-farm dwelling.

Ms. Phipps: I believe the question was why couldn't they go forward with that type of application?

Mr. Sheets: At this point the dwelling has already been removed, so the requirements for a replacement dwelling are a roof, walls, power, water...

Chair Heckerath: so there is too much removal?

Mr. Sheets: It is already gone. During my site visit I found no traces of even a foundation. The septic system is there.

Chair Heckerath: For some reason at some point it appears that there was a change. It sounds like the taxation should have been changed, but it wasn't

Mr. Sheets: I can't speak to the taxation...

Commissioner Mizee: The applicant is asking for a zone change, but they are being taxed on residential land that they are asking to be changed. It sounds like they are just trying to bring the Land Use zoning in line with how they are paying their taxes.

Commissioner Ousele: On Page 7, C, both a & b. The part giving me trouble is in the middle of "a". "only if development, example given physical improvements such as roads, underground facilities on the resulting parcels...., can the parcels be irrevocably committed". Then in "b", "Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. Several contiguous undeveloped parcels, including parcels separated only by road or highway under one ownership, shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment".

Mr. Sheets: The first part of "a", I would look at that as: If development on resulting parcels and other factors make unsuitable their resource use... I don't believe that development is the only barrier here. Operating a commercial farming operation on that parcel or developing for forestry uses are other reasons. Physical improvements such as roads, underground facilities are only part of it, not all. The parcel's placement and proximity to the road is part of it, but size and proximity to Bewley Creek and the riparian setbacks for that, as far as using it for commercial farm or forestry uses really makes it challenging.

Commissioner Ousele: I understand that and agree with you on this particular parcel. I feel that these are the directions put forth on how to proceed and finding both to be blockades still.

Mr. Sheets: It is part of the total picture of Section 6. It is that they do own the property across the road and operate the retail nursery there, but as far as strict application of farm uses, I don't find those.

Commissioner Jones: What I envisioned when Measure 37 came about some people for example had 20 acres and went out and built roads and underground utilities, etc, in anticipation of development and then apply for a zone change. I think that's what they are trying to say is not an applicable way to develop property, and that's not what has happened here.

Mr. Sheets: If you turn to Exhibit #3, Chapter 215 of the ORS, it does include horticulture as a farm use. The applicant has a couple of greenhouses that they conduct retail sales out of. The parcels are connected in that the applicant owns both properties. But, as far as the use of the subject parcel for commercial farm use, I see it as separate. I also think that similar to what Commissioner Jones was pointing out, it's also trying to limit parcelization in the farm zone. The last phrase states that "the presence of several parcels created for non-farm dwellings are an intent of commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception." We have these parcels and the commercial aspect is challenging at best on the subject parcel and to develop portions of it, yes, there are streets and the water lines, etc. But, there is also the land itself. That is what I think that the section as a whole is trying to outline the use for us. On "b" where it says "small parcels and separate ownership are more likely to be irrevocably committed if the parcels are developed clustered in small groups..." they are considered as contiguous ownership but I don't think that excludes the land from going through the process of irrevocable commitment.

Commissioner Hoffman: That section is extremely confusing.

Commissioner Ousele: I agree, we don't have to get stuck on that wording, but it may come up later.

Commissioner Hoffman: The part that puts me more at ease is on page 9 in lower portion of the Findings section, beginning with "the subject parcel..." It talks about the timing and history of the zoning. It looks like it had once been the intent to have it zoned residential.

Commissioner Ousele: I agree and think that what is being requested is reasonable. I am just getting stuck on what I feel is being presented as our instructions.

Ms. Phipps: with regard to the portion of subsection C,"a", which is part of your question if I understand correctly, and this actually did happen, "past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the Exception Area. I understand that is where you are having some challenges. Only if the development on the resulting parcels or other factors make unsuitable their resource use can the parcels be considered irrevocably committed. At that point is where the justification on Page 9 comes into play. When that parcel was being zone it was all one parcel. The partitioning process legally took place, it was separated from the parent parcel. That process was not know to staff at the time. It is clear, particularly given the way that the site sits that unless the property owner had requested it, it's highly unlikely that staff would have still suggested that a 1.68 acre piece remain as a farm zone. As a result, because of the shape of the lot, the natural resource constraints on that lot, it makes that a very unsuitable piece of property to stand alone as a farm operation. That takes you into Subsection B which talks about the contiguous nature of parcels. What that says is that the mere fact that a small parcel exists is not in and of itself justification, but taking into account all of the other factors is how you come to support in this instance Staff's recommendation that it does in fact meet the criteria.

Commissioner Jones: Referring to Page 9 item G they purchased the property in its current condition, they did not partition it.

Chair Heckerth asked for add'l questions.

CONTINUATION OF STAFF REPORT

Brad Sheets presented a summary of the Zone Change portion of staff report.

Chair Heckeroth asked the Planning Commission for questions, there were none.

APPLICANT PRESENTATION

Vic Affolter represented the applicant, Tom & Sue Rieger. This is a simple request. In regards to reforms to the Land Use Planning process I'd like to see a simpler process for situations which don't adversely affect the resource land and reserve the longer process for those requests which really require significant attention. I'll leave it up to the Planning Commission to determine which category this application falls into. If you can confirm that you have read the applicant's submission I will not go through it in detail.

There are a couple of differences between this and the previously presented application. We decided to request a zone change with an exception for reasons that hopefully are obvious. This is a different type of exception, and Irrevocable Commitment as opposed to a Reasons Exception. As a clarification, in Tillamook County essentially all farmland with a slope less than 20% is designated by state law as high value based solely on soil type which is determined significantly in part by slope..., without taking into consideration any other factors like parcel size, natural features, etc. Some land is designated as high value that anyone who's a farmer would say that it doesn't really seem to qualify. But, the Goal Exception is designed to help sort out this type of situation.

TAPE #2

Referring to the map on the easel Exhibit #1. Mr. Affolter gave a brief history of acquisition and zoning of the subject property and the commonly owned adjacent retail nursery. In 1980-1981 staff at that time of which I was a part was looking countywide at rezoning thousands of parcels. It was a very challenging process. When this parcel was evaluated, then owned by Tom & Sue Rieger, the current owners, it was part of a 140 acre contiguous ownership. For that reason this was proposed to be in the farm zone. This was a timing issue. The BOCC took final action on that in June 17, 1982. Being done countywide these proposals and evaluations weren't being performed a month or days before, in some cases it was a year or more prior. On May 14, 1982 Tom and Sue Rieger acquired the subject parcel and the adjacent parcel. Had we know that we would have proposed this parcel for inclusion in the Rural Residential zone. There is no question in my mind about that. This could have gone that because they were using this as a retail nursery and the propagation is all within the greenhouses, the farm zone makes some sense. But it's because of the pattern of development here there are 19 parcels in this group as large as 8.77 acres. Given the nature of this being totally surrounded by the road and Bewley Creek it is isolated from adjacent farm lands. Bewley Creek has 25 foot riparian setbacks. When you take into account the road, Bewley Creek, the riparian setback you have less than an acres of usable land for any purpose. To try to farm that in conjunction with anything else would probably be a bad idea with respect to impacts to Bewley Creek. The logistics for doing that doesn't make any sense. Just simply stated it is not a farm parcel. As part of a larger farm ownership the zoning that was proposed back in 1981 made sense. But that changed and we, the county staff, were not aware of that change when the Board took final action on the zoning for that area. I don't want this to sound personal, but I think this is a very important that you understand how this got included in the farm zone. If you look at it, useful portion is less than an acre, surrounded by natural and manmade physical features. Probably the only real use for this parcel is putting a house on it, and doing so is not going to adversely affect the surrounding resource land. The adjoining properties to the north and east are owned by the owner's brother and cousin. The Northwest side is buffered by the road. The only land that is adjacent without natural or manmade barriers is the residential lot, Tax Lot 2601, the creek swings around them. In both the applicant's report and the staff report all of the applicable criteria are addressed. If at any point you find that you cannot justify a Goal Exception and Zone Change just based on the parcel size alone, the report talks about "Other Factors" making it unsuitable, so it's a combination, parcel size is just a piece of it. All of the other factors that have been mentioned, the surrounding features, the isolation from other farm land, the adjacent creek, all of that adds up to say that this is not a farm parcel, it is a residential parcel. This parcel has been assessed at market value; they have never asked for or had a farm assessment. They have always

regarded it as a residential property. There was a residence on the property at one time which was removed awhile back. There are and have been utilities on the property. There is a septic tank that will possibly need replacing.

Chair Heckeroth asked for public comment and staff questions or comment. There was no public comment or staff comment.

Chair Heckeroth asked if the property tax is based on the zoning.

Lisa Phipps said that residential property can have a farm deferral if it is being used for farming purposes.

Chair Heckeroth asked why they would be paying residential tax on the subject parcel when it is zoned for farming.

Lisa Phipps said that is an issue with the Assessor's Office.

Tom Rieger, applicant, said that his brother had lived on the subject property unaware that it was zoned F-1 while his mother owned the property. His brother moved his mobile home off the property and asked Tom & Sue Rieger if they wanted to buy the property, which they did and kept it for their kids. When the new bridge went in 3 years ago, the applicants asked if the subject property was still a buildable lot and they were told that they could put a home on it. Two years ago the applicants' son wanted to put a home on the property, so the applicant went back to the Department to check into it and they were told no, it's zoned F-1 and that is the reason for this application.

Vic Affolter added that the applicants have always regarded the subject property as a residential property.

Hearing Closed to Public Comment

9:30 Being there were no further public or staff comments or questions the Chair closed hearing to public comment. Opened the floor for Commission discussion: Goal Exception first and then the Zone Change.

Commissioner Hoffman asked staff for clarification of "Land Irrevocably Committed to Other Uses". It tends to sound like there has to be something already going on the property to make it eligible for the exception.

Chair Heckeroth asked Staff to assist in answering Commissioner Hoffman's question.

Commissioner Hoffman indicated that the question stems from statements made in the applicant's report on Page 3 under Findings #3 in bold, "It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals." Then skip down to, "...for exceptions to Goal #3 or #4 local governments are required to demonstrate that only the following uses or activities are impracticable: Farm use as defined, propagation or harvesting of a forest product or forest operations." The conflict is that one sounds like it has to already be doing something. This part sounds like it can't be employed that way because of its inherent characteristics. Does this bit trump the other?

Brad Sheets: What the County has to do is look at Goal 3 and 4 and the criteria and assess all of the criteria, take it all into consideration for the parcel as it is. It needs to be looked at with a fine toothed comb and at the same time look at all the different processes happening on the property. It's different from some other applications where if one of the criteria is not met it is turned down. We are looking at the property as a whole. "it" states that "It shall not be required that the local governments demonstrate that every use allowed by the applicable Goal be deemed as impossible." We are looking at all the different factors that need to be assessed and analyzed.

Commissioner Hoffman: If we were to hang our decision on the part that says “local governments are required to demonstrate that only the following uses or activities are impracticable,” would we be within the law?

Brad Sheets: I believe so. The findings of fact show that the size of this 1.68 acre parcel with Bewley Creek, the riparian setbacks, the road itself and the setbacks from the road brings the size of the usable portion of the parcel to use it for farm or forest uses is impracticable.

Chair Heckerath asked if there is any further discussion.

Commissioner Mizee: It boils down to, you can farm in setbacks, but that isn't always available so in a worst cast scenario long term it's not a viable option for farming. If you look at the diagram there might be 2500 sq ft. which you can't hardly turn a tractor around on. It's just not practical.

Commissioner Hoffman said she thought it makes sense to grant the Exception and then go ahead to approve the Zone Change since there is substantiation in both the Staff Report and the Applicant's submittal.

Chair Heckerath agreed with Commissioner Hoffman.

Commissioner Ousele agreed as well.

Commissioner Mizee asked if the Commission is approving this in two motions or one?

Lisa Phipps suggested that this be addressed in two parts.

Chair Heckerath agreed with presenting two motions.

CALL FOR ACTION

Chair Heckerath asked for further discussion on Goal Exception, there was none.

CALL FOR MOTION

MOTION:

Commissioner Hoffman: In the matter of the Goal Exception contained in ZC-07-04, based on the Staff Report, other written and oral testimony and the findings of fact, I move that we recommend to Board of County Commissioners the approval for a Land Irrevocably Committed to Other Use Exception.

Commissioner Jones seconded the motion.

Motion carried 5-0

Chair Heckerath asked if there is any discussion regarding the Zone Change.

Commissioner Ousele asked if it matters if it is a text amendment or map amendment? Both phrases are used in the Staff Report.

Lisa Phipps said that it will be both a text amendment and map amendment. ...amendments to comp plan text and map

CALL FOR ACTION

Chair asked for a motion

MOTION

Commissioner Ousele: In the matter of Zone Change ZC-07-04 Map and Text Amendment, I move that we recommend to the Board of County Commissioners approval of the Map and Text Amendment on the basis of the Staff Report, Findings of Fact, testimony and applicant's submittal.

Commissioner Mizze seconded the motion.

Commissioner Ousele amended the motion to reflect that this Exception and Zone Change are limited to the subject parcel, 2S09-18-TL2102, as proposed in the request.

Commissioner Mizze seconded the amended motion.

Motion carried 5-0

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

Commissioner Ousele moved to authorize the chair to sign appropriate orders, if necessary.

Commissioner Jones seconded the motion

Motion carried 5-0

VII. Administrative Decisions: V-08-02(a), AR-08-05(a), AR-08-06(a): no discussion.

VIII. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT

Lisa Phipps: The Commission was sent an email today asking whether or not the Commission was comfortable with the change of venue for the Aspen Village LLC request hearing on October 9th. It's been met so far by email with positive response, although both Commissioners McFarland and Lovelin requested that the applicant be comfortable with this decision as well. I don't know the answer to that at this time. Mr. Parker wanted me to ask the Commission since he was not able to attend and ask this himself.

Commissioner Ousele said that she thinks it's a great idea for the Planning Commission to move around and hold meetings in the communities where there are hot topics. This probably lengthens the meetings, but also helps the Commission to do their job better, helping people understand the process.

Commissioner Hoffman added that it helps get more people involved considering the 35 mile drive from Pacific City to Tillamook that older citizens either don't want to make or find it unsafe to make that trip. It brings the process to the people in a really positive way.

Commissioner Heckeroth will be attending and have no problem with it.

Commissioner Ousele added that if this was a meeting moved to the North County, which is further for her to drive, she would still think it is a good idea.

Commissioner Heckeroth will be gone for 2nd meeting in October.

Commissioner Ousele will be gone for both meetings in October

Lisa Phipps: A lot of the things we were planning on bringing to you are beginning to become a little less clear about the timelines. The Zone Change in Neskowin that was heard back in August of this year, as we discussed in the September 10th meeting, the applicant has requested the ability to incorporate the Conditional Use process so that the Master Plan is actually being reviewed at the same time. They are going in front of the Neskowin CPAC on October 4th. I think we will have a clearer picture of where that's coming, but I expect that to show up at the start of next year. I would be surprised if we get to hear it this autumn. The Goal One improvements are hopefully going to be brought before you at the first meeting in December. That is incorporating all of the processes that brought about the CPACs. We are very busy right now. There have been a lot of meetings. We seem to have a lot of projects that are taking up a lot of time but aren't necessarily getting permits completed. We have a lot of larger issues looming, a subdivision that you should have heard three months ago is still sitting on the burner waiting to come in front of you at the applicant's request. Nantucket Shores Phase IV, which I believe is the last phase. You are going to be hearing another subdivision in Tierra Del Mar which, if you would like to hold the meeting down there it would not be a bad idea. There are some really challenging issues coming up in front of you. Tonight we are pleased with the two issues in front of you because overall they were fairly straightforward even though complex processes. The issues themselves appeared to be very straightforward from the staff's perspective.

For the record, the Planning Commissioners are not required to ask the applicant any questions. If you have procedural questions the appropriate person to ask is the staff person. Your question wasn't appropriate nor would the response that he gave you have answered your question.

Commissioner Hoffman asked if there was only one meeting in December.

Ms. Phipps said that as a rule November and December generally have only one meeting unless we have to call a special meeting for some time sensitive issues.

IX. ADJOURNMENT: 9:55 pm

Kurt Heckerth, Chairman

Melinda Pickering, Recording Secretary

Date