

TILLAMOOK COUNTY BOARD OF COMMISSIONERS
Hearing Minutes October 8, 2014
Ordinance Amendment Request: OA-14-01

CALL TO ORDER: The meeting was called to order by County Commissioner Baertlein at 10:32a.m. County Commissioners Mark Labhart and Tim Josi were also present. Community Development staff present were Bryan Pohl, Director, Sarah Absher, Senior Planner & Joni Sauer-Folger, Accounting Clerk II- Tillamook County Department of Community Development.

I. William Sargent, County Counsel, explained the legal procedures. Commission Chair Baertlein stated the procedure for the hearing. Mr. Sargent called for a challenge to the jurisdiction to BOCC to hear the matter and if there were any conflicts of interest from the BOCC. Commissioner Labhart stated for the record that he was Chair of the Neskowin Coastal Hazards Committee for three years. Mr. Sargent then turned the hearing over to staff.

II. **Staff Report:**

Sarah Absher, Senior Planner, Tillamook County Department of Community Development gave the staff report regarding the series of proposed code amendments and amendments to the County Comprehensive Plan, specifically Goal the 14 and Goal 18 elements. Prior to beginning the presentation, Ms. Absher went over maps of the area and gave a brief background summary of the Neskowin Coastal Hazards Committee, the techniques used to alleviate coastal hazard areas, and a proposed plan.

Ms. Absher stated for the record that the purpose of the review and responses to the criteria located in Article 9 of the land use ordinance, are addressed in the staff report on pages 3 through 8. The applicable goal element sections that apply to this request are 7, 14, and 18. The Planning Commission heard this matter on July 10th and August 14th of this year. Copies of all previous reports and testimonies are also included in the packets. Ms. Absher then went through the proposal step by step, explaining the differences between existing and proposed changes and the concerns therein.

Ms. Absher explained the possible limitation of construction. Concerns of potential costs to property owners and possible insurance hikes were discussed in the committee, as well as impact on existing regulations and codes. The planning commission voted unanimously to recommend adoption of the proposal. They also felt the proposal could increase the cost for development to property owners and had suggestions to address concerns raised, which Ms. Absher explained.

Ms. Absher then moved on to explain the purpose and intent of the code. She reiterated that the intention of the code was not to prohibit development, though through previous testimony, there were those who felt that was not the case.

Commissioner Josi asked if there was any foundation in fact for the allegations, which Sarah addressed before moving on, stating that development could be limited as a result of this

proposal, but where it would be prohibited, it would not be as a result of the adoption of this code. She then explained the provisions already in place that could prohibit development of property. Ms. Absher went on to talk about exemptions and criteria for exemptions.

The next area Ms. Absher covered was the notification process. To stay consistent with other Type II permit reviews, all reviews would go out to agencies as well as property owners within 250-feet.

Ms. Absher pointed out that submittal requirements were outlined on page 4 and standards and criteria on page 5. She explained that for properties within the proposed overlay zone, the development standards and the report requirements of the Neskowin Coastal Hazard area permit would apply in lieu of a beach and dune hazard report or a geologic hazard report. However, these requirements would still apply for those properties outside of the overlay zone. She pointed out that page 6 specifically outlines the geologic report standards for investigation.

Commissioner Josi asked for clarification on where this language was listed, which Ms. Absher explained.

Ms. Absher went on to discuss site requirements and the modified language in the proposal regarding these requirements that also addressed residential density limitation. She read from the proposal in this section. Another addition to the proposal was a requirement of a letter upon construction completion from the engineering geologist certifying that construction has been completed according to requirements. Ms. Absher also indicated that currently a letter is required prior to submittal of construction plans from the project engineer or an engineering geologist certifying that plans conform to recommendations.

Ms. Absher addressed restoration and reconstruction of existing structures within the proposed overlay zone, as well as thresholds for compliance.

In conclusion, Ms. Absher spoke about suggestions to address stormwater and management for properties within Neskowin, as well as runoff and erosion.

There was a brief period where the Commissioners asked follow-up questions of staff.

Ms. Absher then stated that she spoke with several local insurance representatives in response to concerns raised regarding potential increased insurance costs for properties located within the proposed overlay zone. She shared her findings, stating that most agents concurred that adoption of these standards wouldn't directly impact insurance rates, however if replacement cost increased as a result of the new standard, there may be an insurance cost increase.

There were no additional questions or comments. Chair Baertlein opened the hearing to public comment.

CAC Presentation: Guy Seifert, Chair of the Neskowin CAC, spoke on behalf of the committee. He reiterated the significant community involvement in the process and went through the history of the area. He stated that the process has been very thorough and

extensive. He felt the direction the process was going was a great value to the community and the County. He also thanked Ms. Absher for her work and that of Community Development.

He then turned it over to David Kraybill, who spoke on the Neskowin area and the at-risk concerns. The engineering solutions provided in the study, such as strengthening the existing rip-rap, could extend the liability of the community in the hazard zone and were too expensive and not long term solutions. The hazard committee took the 25 recommendations and selected the most appropriate for the Neskowin community. These selections included using an overlay zone that correlates with the 100 year flood that correlates with the Department of Geologic and Mineral Industry (DOGAMI) maps. He mentioned that Newport and Lincoln City have already adopted the DOGAMI zones. The third recommendation is special building techniques that allow for the buildings to be moved off the lots or raised which. The fourth recommendation is a site standard. There are three land division standards: limiting creation of parcels that don't include a building site located outside the risk zone; limiting density; and limiting multifamily dwellings within the zone.

Commissioner Josi asked for clarification on what the Planning Commission had approved. Mr. Kraybill addressed that stating that Ms. Absher had outlined based on the Planning Commission recommendations. He added that the Neskowin CAC has adopted all of those recommendations with the exception of the recommended removal of density limitations.

Mr. Kraybill went on to state that the fifth recommendation is for bluff backed hazard areas where the CAC recommend a 50 times the annual erosion rate plus a 20 foot buffer zone. The sixth recommendation is for stormwater runoff and requires the Oregon Department of Environmental Quality (ODEQ) Best Management Practices (BMP) be put in to place for construction. He explained that these minimize cuts and fills and limit stripping of vegetation and grading so that the smallest area practicable is disturbed at any one time and that stormwater be directed away from the bluff faces and foredunes. The last recommendation is regarding substantial improvements. In conclusion, Mr. Kraybill stated the CAC didn't expect the impact to be extensive in the short-term.

Mr. Sievert then added that this was the process of a focused committee spending several years with numerous departments and agencies involved, as well as citizen involvement. Mr. Sievert felt the CAC spoke for the community.

Commissioner Josi apologized for leaving early, as he had another meeting, and stated that there would be no decision made today.

Gale Ousele: Ms. Ousele is a member of the hazard committee from its inception and is also a member of the Tillamook County Planning Commission. She stated that the proposal was not trying to prohibit development, but prudent management. She also said that property rights were important, but public safety was equally important.

Dan Trinci: A real estate developer and property owner in the area, Mr. Trinci stated that he'd never been invited to a meeting or been notified about meetings being held, nor had anyone he'd spoken with. He felt a bit mystified about how the process worked, and why there wasn't

the opportunity for oral testimony. He asked the BOCC to think for a minute about how nice it would be to be invited to a meeting if you owned property in the area. There had been much confusion caused by the proposal. He had suggestions on possible paths the follow with geotech reports, and basic report information, which he felt was extensive and sufficient. He read part of a report as example. He stated that he thought there was a very good plan in place and didn't see why there was a need for what he felt was a convoluted change. He also thought that the proposed change would definitely limit land use and property rights. He was confused over parts of the proposal such as 'movable'.

There was discussion between Mr. Trinci and Commissioner Josi over the importance of professional reports.

Vic Affolter: Mr. Affolter stated that he had strong connections to the Neskowin area. He said he had great respect for the community based effort with this issue, especially erosion. He spoke about history of The Capes and what went wrong there based on geologic reports. He also spoke about the process and that there had been no consideration of the financial impact. He called attention to two letters in the packet: one from a Neskowin resident that stated that she was impressed with the community involvement. The other letter was from Laren Wooley at DLCD stating his view of the process.

Bridget Intlekofer: As an existing property owner, Ms. Intlekofer addressed the difficulty in rebuilding after a tragedy under stricter measures. With a permit requirement, she felt that it would cause insurance rates to go up and financial hardship. She highlighted that the substantial improvement clause was too vague. She's worried about existing property owner's rights and the possible class action law suits that might result from the adoption of this ordinance.

Bill Bush: Mr. Bush stated that he lives on South Beach Road and in the overlay zone and is a former member of the Neskowin Coastal Hazards Committee and a member of the Neskowin CAC. He stated that he agreed with the amendment and felt that it didn't create the hazard – the hazard was already there and was mapped by DOGAMI 15 years ago. He described the difference between a geologist and a certified geologist. He also addressed coastal risk reduction and the definition of 'risk'. He discussed steps to mitigate damage from storm events. He stated that he was very sensitive to property rights, but in the situation along the coast, what one homeowner does on their property can have consequences to others.

Staff Rebuttal

Ms. Absher addressed the notification process concerns and the mailing that went out. She clarified what was included in the mailing. Commissioner Labhart asked approximately how many property owners were noticed. Ms. Absher stated that the notice was mailed to all property owners or interested parties, also posted in the Headlight Herald.

Ms. Absher spoke about the proposed revisions and that the language would need to be modified to reflect density limitations for properties within the Neskowin R-1 zone; and that residential uses listed conditionally in the Neskowin R-3 zone would remain unchanged. Commissioner Labhart asked what the staff's feeling on the density issue, and Ms. Absher felt

it would address density concerns by limiting the density in the area by allowing only a single family dwelling.

Ms. Absher responded to the overlay concern that Mr. Trinci had regarding why the overlay zone included the bluff backed hazards; explaining that the overlay zone included all identified hazards in the area. Ms. Absher explained that the reason Cannon Beach and Seaside were left out of the study due to no information being available at that time. Ms. Absher added that the overlay zone would require additional reporting for development on properties that don't currently require a geologic hazard report or a beach and dune hazard report.

Ms. Absher also talked about the affidavit that Mr. Affolter had touched on, which is required to be filed and recorded with the County Clerk.

Commissioner Labhart asked Counsel to give an opinion on if this was a 'takings' (Measure 49). Counsel stated that he worked with Ms. Absher extensively, and that the notice was done properly.

Commissioner Labhart addressed the complaint of no knowledge of the process. He stated that he felt it was the most publicized process in his career, and described the various meetings and the amount of people attending. Copies of the plan were made available.

The meeting was recessed until October 29th at 10:30am.

III. ADJOURNMENT OF HEARING: Chair Baertlein adjourned the meeting at 12:35 pm.

Bill Baertlein
Bill Baertlein, Chair

12/10/2014
Date

Joni Sauer-Folger
Joni Sauer-Folger, Accounting Clerk II

12/10/2014
Date

Cara Mico
Cara Mico, Associate Planner

12/10/2014
Date

Sarah Absher
Sarah Absher, Senior Planner

12-10-2014
Date