

**MINUTES OF THE  
LINCOLN COUNTY PLANNING COMMISSION**

MEETING OF SEPTEMBER 25, 2017

**Chair Johnson** called the meeting to order at 7:30 pm and asked for roll call.

**OTHER COMMISSIONERS PRESENT**

BOB PORCH  
MARK ESTES  
TERRY BUGGENHAGEN  
JUDITH PELLETIER  
RICHARD CUTLER  
ANDRA BOBBITT

**COMMISSIONERS ABSENT**

PHIL SPULNIK

**STAFF PRESENT:** Planning Director Onno Husing, Permit Specialist Josh Bacher.

**1. CALL TO ORDER**

With Commissioners present, a Quorum has been reached for the September 25, 2017 Planning Commission Meeting.

**2. APPROVAL OF MINUTES**

**Commissioner Bobbitt** motioned to approve the minutes from August 14, 2017.

**Commissioner Buggenhagen** seconded.

**Commissioner Bobbitt** motioned to approve the minutes for August 29, 2017.

**Commissioner** seconded.

**Chair Johnson** asked for a vote on the motion; the Planning Commission voted to approve the minutes for August 14, 2017 and August 29, 2017. **Commissioner Estes** abstaining from the August 29, 2017 vote.

**3. ITEMS FROM THE AUDIENCE**

**3.1 Robert Rubin**

**Robert Rubin** signed in and introduced himself. He asked **The Planning Commission** to bring Eckman Creek Quarry under their jurisdiction.

**Chair Johnson** asked **Director Husing** to present staff perspectives on the matter. **Director Husing** deferred to **Mr. Rubin** for an opening statement. **Mr. Rubin** reminded **The Planning Commission** that the mission of Lincoln County is to provide essential public services legally required and locally desired in an efficient, effective, and respectful manner. Lincoln County code enforcement is complaint driven, and

an essential responsibility of the Department of Planning and Development is ensuring compliance with building codes. **Mr. Rubin** noted **Director Husing** has been waiting on DOGAMI to provide assistance. DOGAMI's mission is to provide earth science information and regulation to make Oregon safe and prosperous. The department also regulates surface mining. **Mr. Rubin** underscored DOGAMI makes no claims or expertise in laws or land use laws and therefore DOGAMI relies upon the Counties and State to enforce their code requirements. **Mr. Rubin** noted that on September 15, 2017, DOGAMI Deputy Director Ian Madin was quoted as saying "DOGAMI requires all permittees to have valid Land Use Approval in order to mine". On September 16, 2016, DOGAMI Floodplain Mining and Water Quality Reclamationist Vaughn Balzer was quoted, "DOGAMI does not enforce land use conditions of approval, unless those conditions have been incorporated into our permit conditions. Counties usually have their own Code Enforcement Person that enforce their codes". **Mr. Rubin** quoted DOGAMI Deputy Director Ian Madin on September 19, 2017, "When the permit area was expanded in 1989, the expansion plan was circulated to other agencies for review and comment. We have no record that the County responded. Had the County objected to the expansion on the basis of Land Use, the Permit for expansion would not have been issued. Since 1977, the County has been routinely copied with annually issued permits and site inspection reports, and we have no record of any concerns on their part about Land Use authorization."

**Chair Johnson** asked **Mr. Rubin** to summarize his commentary.

**Director Husing** responded that Lincoln County was not asking DOGAMI to make a Land Use decision in this matter. Rather, **Director Husing** stated, he was only seeking technical assistance from DOGAMI about the regulatory history of the quarry because those facts would have a bearing on the outcome of a land use decision made by Lincoln County. Director Husing underscored that DOGAMI's regulatory history of the property would enable Lincoln County staff to make an accurate determination of the land use status of the quarry. **Chair Johnson** agreed to put **Mr. Rubin** on the next agenda pending a report by **Director Husing** on the status of **Mr. Rubin's** research request.

**Chair Johnson** asked for any more items from the audience.

**Cindy George** signed in and introduced herself. **Ms. George** stated she informed **The Planning Commission** that she was coming up on a deadline with her medical facility during the last meeting, and then she was informed that the meeting of the Planning Commission was cancelled/postponed. She expressed her concerns that that meeting had been postponed because she wanted to share concerns with the Planning Commission and those concerns were time-sensitive. **Ms. George** stated she did get a judgment from Lincoln County for a \$1,000 zoning code violation and also a \$74,000 legal bill. She noted that her business was closed and now her only recourse is to file a tort claim against Lincoln County and file an appeal with the Court of Appeals. As **Ms. George** explained to the Planning Commission before, she visited Planning Department prior to signing the lease on the facility. Ms. George stated she was told by staff at the Planning Department that a marijuana dispensary was an outright permitted use at that location because of the zoning of the subject property (Commercial-Tourist). She shared that she went back through documents, and she was served a search warrant by Lincoln County back in 2014. She stated the search warrant represented that she had misled Lincoln County about what activities were occurring at the property to County Officials. **Ms. George** stated she has never failed to disclose that she told the staff at the Planning Department that she was preparing to establish a medical facility in that building at that location. Later, she noted, when she applied for a Land Use Compatibility Statement (LUCs) to put an OLCC-authorized marijuana facility at the subject property the staff at the Planning Department would not sign the LUCS saying a marijuana dispensary at that location was in compliance with the Lincoln County Development Code. **Ms. George** stated she was not provided information explaining how to appeal a public hearing decision. After that she filed with Land Use Board of Appeals but LUBA stated the matter was not under their jurisdiction.

**Ms. George** drew attention to the economic goals of Lincoln County. She stated that Lincoln County, because of their actions, took a business that was producing \$650,000 in revenue and put it out of business. Adding to the other facility that was there at that location, which was \$300,000, yet zoning violations are still happening. Georgia Pacific Mill, she shared, is going on 7 years on an expired permit. **Ms. George** said she was accompanied by an attorney, David Gould, to explain to **The Board of Commissioners** how her business fit with an outright use for the Tourist Commercial zone. They urged **Commissioner Doug Hunt** to recuse himself because he had a financial interest in the next door property. **Ms. George** stated that **Commissioner Hunt** and **Commissioner Terry Thompson** voted down **Going Green West** to stay in that Tourist Commercial zone. She feels she was never supported as a medical facility in Lincoln County. **Ms. George** referenced an article entitled, "Legal Pot Dealers Find a Home in the Oregon Cannabis Coast" from the Statesman Journal and she provided a copy of what she represented to the **Planning Commission** as the "illegal" search warrant. **Ms. George** stated the next door neighbor in the building was never approached for zoning violations or a non-conforming use. **Ms. George** concluded by stating that the gardening center next door, 41 Olalla Road, inquired if they needed a business license and an individual working for **Lincoln County** replied that the business was an outright permitted use.

**Chair Johnson** asked **Ms. George** if she was asking **The Planning Commission** to ask the **staff** to review the decision they made.

**Ms. George** replied yes and she wanted to know if **Staff** followed their own rules, if it was a pre-existing non-conforming use, and that she went to **Lincoln County Planning** on February 10, 2014 before any of this started. **Ms. George** stated the only thing that was required by law, at that time, was operating 1,000 feet from a school and 1,000 feet from another dispensary. Five days prior **Ms. George** claimed she learned there was a legal decision by the **State of Oregon Legislative Council** that Counties could not supersede State law. **Ms. George** stated that everything she did was within the law and guidelines as written.

**Chair Johnson** asked **Director Husing** to comment. **Director Husing** asked **Jerry Herbage** to respond.

**Jerry Herbage** introduced himself as **Assistant County Counsel** and he stated the matter is in litigation and therefore it would not be appropriate for **The Planning Commission** to revisit this matter at this time.

**Chair Johnson** again asked for comments from **Director Husing**.

**Director Husing** stated it would not be appropriate for the **Planning Commission** to review this matter. He noted **The Planning Commission's** task is to administer the Land Use code and take up legislative amendments to Lincoln County's land use code. **Director Husing** noted code enforcement is not an activity that falls under the purview of the Planning Commission.

**The Planning Commission, Director Husing, and Ms. George** discussed the next opportunity to review and potentially amend the County ordinances related to marijuana anticipated to occur during early 2018.

**Chair Johnson** requested that the minutes reflect that **The Planning Commission** is concerned about the issues being raised by **Ms. George** and will stand ready to deal with any issues appropriate to be handled by the **Planning Commission** brought to the **Planning Commission** by **Staff**.

**Ms. George** stated her concerns related to the timing, the short notice, of the availability and revisions of **The Planning Commission** meeting minutes and audio recordings.

**Chair Johnson:** asked for any other items, and there were none.

**4. PAST ACTIONS REVIEW FOR PLANNING COMMISSION**

NONE

**5. UNFINISHED BUSINESS**

NONE

**6. ACTION ITEMS**

NONE

**7. PUBLIC HEARING**

**7.1 Case File #01-TA-17:** The Planning Commission will consider a text amendment to the Lincoln County Comprehensive Plan and Land Use Code to update farm and forest ordinances of Chapter 1 of Lincoln County Code as part of Multi-County Code Update Project sponsored by Oregon Department of Land Conservation and Development.

The Lincoln County Board of Commissioners initiated the amendments with Resolution #17-22-3B.

**Chair Johnson** asked Staff to summarize the changes talked about and then there will be testimony.

**STAFF REPORT**

**Director Husing** presented the **Staff Report** for **Case File # 01-TA-17** and he was joined by **Jerry Herbage, Assistant County Counsel**. **Director Husing** stated that **Counsel Herbage** did a terrific job of reviewing the draft ordinances. The draft ordinances were prepared by the **Angelo Group**, a consulting firm hired by the Oregon Department of Land Conservation and Development (DLCD). It takes a lot of work to amend the code and the impacts upon property owners, can be profound. **Director Husing** noted that we are only looking at the part of the County’s Development Code that involves resources lands, the AC and the TC zoned properties. He underscored the proposed changes to Lincoln County’s code reflected in the draft only includes changes to law or administrative rule that have already been made. **Director Husing** noted that Lincoln County is already obligated, under state law, to follow these changes in statute or administrative rule.

**Chair Johnson** noted the draft code language before the Planning Commission is “their” code language (the State of Oregon’s language).

**Director Husing** agreed and stated, again, that if Lincoln County adopts the proposed code amendments for TC and AC zoning the County’s Development Code and state law and state administrative rules will then be aligned. Referring back to earlier actions undertaken by the Planning Commission regarding the **Brian Booth State Park** issue, **Director Husing** asked the Planning Commission to recall that when Oregon State Parks staff looked at our Land Use Code, they saw that Lincoln County’s code language in the Lincoln County Comprehensive Plan was highly restrictive when it came to establishing parks on TC and AC zoned lands. It was also discovered, at that time, that Lincoln County had not amended its ordinances to place them in alignment with two sets of state administrative rules. And that’s why

Lincoln County amended our code to create an option for a Public Parks Master Plan, to bring our code into alignment with state law.

**The Planning Commission, Director Husing, and Counsel Herbage** discussed if the **State** is requiring **Lincoln County** to adopt these amendments and if the Planning Commission needed to review the proposed amendments line-by-line. **Counsel Herbage** and **Director Husing** stressed the core value of making the proposed changes to the County's code is that both Planning staff and members of the public will then have all the required land use regulations contained in a single document. At present, because the County's code is in some cases not aligned with state law, the Planning Staff must remember to apply additional state statutes and administrative rules as they administer the code. **Director Husing** noted that having the County's code aligned with these state rules will help the County administer the land use regulations more accurately.

**Chair Johnson** asked if there are things in here really changing the code?

**Director Husing** replied that it is a mix. Most of the proposed code language proposed by the Angelo Group were things he was already aware of. An advantage, though, of bringing the code up to date is that when a citizen wants to examine the code, they will not encounter those Administrative Rules. For people who want to go read the code, having the code aligned with state requirements means they will see all the requirements. The regulations will all be in one place rather than in a series of separate documents.

**Chair Johnson** asked if anything else was needed from the Staff Report.

**Director Husing** replied that under our county code, among other things, **The Planning Commission** is being asked to make a determination that these proposed amendments are consistent with State Land Use Goals. Husing noted, that under these circumstances, these proposed code amendments are, by definition, consistent with State Land Use Goals, because that's the central objective of this exercise – to align Lincoln County's code for TC and AC zoned land with state law.

**Counsel Herbage** remarked that this code amendment process was done under a DLCD grant. He worked personally with **Matt Spangler** and also had a meeting including **Director Husing**. Counsel Herbage also worked with **Tim Murphy** from DLCD Farm and Forest.

**Chair Johnson** asked for an item from the audience.

#### **PUBLIC TESTIMONY**

**Pete Roina** signed in and introduced himself. He stated that it does not feel like this is a time sensitive issue. He would want it color coded, what is just for alignment and then what is new. He offered that **The Planning Commission** has a huge responsibility that the citizens receive great information.

**Chair Johnson** asked for any other testimony.

**Cindy George** stated she would like to back up what **Mr. Roina** said. There was language in the new code for what can be done with a donated piece of land. **Ms. George** asked if there is something that has been planned that is not revealed to the public. If there are changes to the current law, it should be clearly stated, not just a cleanup of the code. Ms. George raised concerns that changes to land use codes are happening all over the **State of Oregon** and those changes are affecting people all across the **State**.

**Chair Johnson** asked for a comment from anyone else. He does not see changes to the reality of what the code has said.

**Chair Johnson** asked for objections to closing the hearing.

Another brief discussion ensued between **The Planning Commission, Director Husing, and Counsel Herbage** regarding spraying, a separate layer of law, and code enforcement.

**Chair Johnson** closed the hearing at 9:05 pm and requested deliberation. He stated that it seemed to him that it was a useful exercise to make the Lincoln County code consistent with state law.

**Commissioner Buggenhagen** moved that **The Planning Commission** adopt the direct code amendments to recommend to the **Board of Commissioners**.

**Commissioner Cutler** seconded the motion.

**Chair Johnson** noted that it was moved and seconded.

A vote was taken by **The Planning Commission** to approve **Case File #01-TA-17**, and it was unanimous.

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**7.2 Case File #02-TA-17:** Text amendment to the Lincoln County Code, Chapter 1, Land Use Planning, Bayshore Dune (Foredune) Management Plan and Strategy (Bayshore Plan).

The Lincoln County Board of Commissioners initiated the amendments with Resolution #17-15-3B.

**Chair Johnson** noted that he kept seeing “80” and asked if it is a misprint.

**Director Husing** stated that it will be corrected for the record.

**Chair Johnson** asked for the **Staff Report**.

#### **STAFF REPORT**

**Director Husing** presented the **Staff Report** for **Case File # 02-TA-17**. He explained that he produced a 7 page **Staff Report** for two reasons. First, he wanted to provide **The Planning Commission** with the information they needed. Second, he wanted the staff report to serve a public educational function to help property owners in Bayshore understand where things presently stood with the Bayshore Dune Management Plan (BDMP). **Director Husing** drew a map of Bayshore and pointed to the areas of Bayshore on the south end experiencing profound sand inundation. He stated that a local construction company, in the past, used to haul the sand away from the road for free. But, when the BDMP was adopted, during 2012, when the line delineating the out boundary of the sand system was placed on the east side of NW Oceania, sand removed from the road had to be brought back to the beach. The purpose of the code amendment is to move the line from the east side of NW Oceania to the West side of NW Oceania so sand on the roadway, which is often contaminated with asphalt and gravel, can be taken off the peninsula and not be returned to the beach.

A brief discussion ensued between **Chair Johnson** and **Director Husing** regarding moving the eastern boundary, costs involved, support from the community, and taking the sand away to be used as fill material.

**Chair Johnson** asked for public testimony.

**Pete Ronia** asked that **The Planning Commission** strongly consider this, and thanked **Director Husing** for putting the packet together. He identified his home on the map, and shared that he moved to the community in 2015. **Mr. Roina** bought a tractor and found 2 opposing laws stating that he could only pick up sand and move it around because contaminated sand cannot be placed back onto the beach. He

explained that he gets assessed for the road district in Bayshore but those funds are not going to clean up the sand. The Waldport mail carrier, UPS, and garbage collectors will not travel down that road.

**Chair Johnson** asked if there were more questions on the **Staff Report**, or for more testimony. There were none. The hearing was closed at 9:42 pm for deliberation.

**Chair Johnson** asked for a motion.

**Commissioner Estes** moved to adopt the direct code amendments to recommend to the **Board of Commissioners**.

**Commissioner Buggenhagen** seconded the motion.

**Chair Johnson** noted that it was moved and seconded. All voted in favor unanimously.

A vote was taken by **The Planning Commission** to approve **Case File #02-TA-17**, and the vote in favor was unanimous.

## **8. PLANNING COMMISSION CONCERNS**

**Director Husing** stated that the Planning Department was hoping to hire another planner soon to replace Joshua Shaklee.

## **9. ADJOURNMENT**

**Chair Johnson** adjourned the meeting at 9:45 pm.

Respectfully Submitted,

Joshua B. Bacher

Lincoln County Permit Specialist