

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**

MEETING OF APRIL 23, 2018

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

OTHER COMMISSIONERS PRESENT

ANDRA BOBBITT
MARK ESTES
TERRY BUGGENHAGEN
JUDITH PELLETIER
PHIL SPULNIK
DICK CUTLER

COMMISSIONERS ABSENT

BOB PORCH

STAFF PRESENT: Planning Director Onno Husing, Permit Specialist Josh Bacher, Senior Planner Hui Rodomsky, Associate Planner Warren Clauss

1. CALL TO ORDER

With Commissioners present, a quorum was reached for the April 23, 2018 Planning Commission Meeting.

2. APPROVAL OF MINUTES

3. ITEMS FROM THE AUDIENCE

Robert Rubin stated he was attending to, once again, urge the **Planning Commission** to direct the **Planning Department** to require that Eckman Creek Quarry be subject to a conditional use permit, and asked if the **Planning Commission** had received any information from **Director Husing**.

Chair Johnson stated that **County Counsel** has consulted with **Staff**, and that it was his understanding the **Planning Commission** was not, from a procedural perspective, the appropriate place to review a staff finding on a matter that is not before the **Planning Commission**. **Chair Johnson**, again, informed **Mr. Rubin** that if he wants to appeal, he should appeal this matter to the **Land Use Board of Appeals (LUBA)**.

Mr. Rubin asked if **Chair Johnson** had looked at the statute or read the letter of findings.

Chair Johnson stated that they scanned it, and he agrees with the conclusions from **Staff** and **County Counsel**.

Mr. Rubin elaborated on the statute, stated that he is happy to go the **LUBA**, inquired if he can start that process, and requested an official memo.

Director Husing confirmed that **Mr. Rubin** should, if he feels inclined, should appeal the staff finding about the quarry to **LUBA**.

4. PAST ACTIONS REVIEW FOR PLANNING COMMISSION

Chair Johnson asked if there are past actions for review and **Director Husing** stated there are a number of things going on but, in particular, of interest to the **Planning Commission**, is the fact that the **Planning Commission** took action to hold another hearing on the Brian Booth State Park which will happen in the near future.

5. UNFINISHED BUSINESS

NONE

6. ACTION ITEMS

7. PUBLIC HEARING

7.1 Case File #01-TA-18: Cross Development LLC is requesting a goal exception to gain authorization to establish a 9,100-square foot Dollar General retail store at 1261 Salmon River Highway. Statewide Planning Goal 14 limits non-residential uses outside of Urban Growth Boundaries or acknowledged Goal 14 exception area to a building or buildings not exceeding 4,000 square feet of floor space. The subject property is outside of the Urban Growth Boundaries and acknowledged Goal 14 exception areas.

The subject property is located on the northeast corner of the intersection of State Highway 18 and N. Old Scenic Highway 101.

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

Commissioner Cutler arrived at 7:40 pm.

STAFF REPORT

Director Husing presented the **Staff Report** for **Case File #01-TA-18** joined by **Counsel Herbage**.

Director Husing reminded the Planning Commission that under Oregon's land use system there are 19 planning goals. Each of these goals touch upon different issues. These nineteen goals, **Husing** noted, serve as goal posts for administrative rules which, in turn, serve as the framework for Oregon's land use system.

Cross Development LLC, the Applicants, Husing noted, are seeking to gain authorization to site a Dollar General store at Otis junction. Otis Junction lies outside of the city within an unincorporated area of Lincoln County. **Husing** noted, "Under the state's administrative rules, in unincorporated areas, there is a 4,000 square foot hard cap on how large a non-residential structure can be. And, because **Cross Development** is seeking permission to exceed that size cap, to site a Dollar General Store at Otis Junction, the **Applicant** needs a Goal Exception for that."

Husing noted, "The burden of proof, to justify a Goal Exception, falls squarely upon the **Applicant**." "In this case," **Husing** noted, "The application before you is a reasons exception, and, reasons exceptions are, by design, sometimes difficult to prove factually." **Husing** continued, "To meet the criteria for a Goal Exception, **Cross Development** must provide substantial evidence on the record that this same use – a 9,100 square foot commercial store – cannot be reasonably accommodated at another location where a Goal Exception would not be needed." **Husing** continued, "From a staff perspective, we do not believe

that **Cross Development** provided you information to make such a finding. Moreover, in our judgment, the **Applicant** did not address this criteria even after we, the staff, in our letter of incompleteness to the **Applicant**, underscored that this criteria needed to be addressed.”

Husing stated, “And, again, from a staff perspective and a factual perspective, the border of the City of Lincoln City is only two or three miles away from OTIS junction. In addition, there are areas within Lincoln City zoned for commercial purposes where a 9,100 square foot commercial store would be an outright permitted use. And, those places, with that zoning, are within four miles – travel miles -- of Otis Junction. We have been clear with the applicant, from the start, given the facts on the ground, that we didn’t believe they could qualify for a Goal Exception.”

Husing noted **Lincoln County** received an abundance of letters from the public about this matter in opposition of the Goal Exception. **Husing** also noted Lincoln County received a letter from the **Department of Land Conservation and Development (DLCD)** staff stating they did not believe that the applicant had addressed the criteria.

Chair Johnson asked about the Staff Report focusing on key criteria, but, he inquired if there are other criteria that were not addressed during his staff presentation, or, he noted, maybe **the Planning Commission** does not need to hear about the other criteria.

Director Husing “Mr, Chairman, in this circumstance, the staff is recommends the **Planning Commission** concentrate your review and discussions on this key criteria. We recommend that because, frankly, everything else is not relevant if the applicant can’t or won’t address the key/threshold criteria. Think of it as the front door to the house. If you can’t get past the front door it doesn’t make any sense to talk about what should happen to the kitchen or the bedrooms.”

The **Planning Commission, Director Husing, and Counsel Herbage** regarding the application, the intersection of Highway 18 and N. Old U.S. Highway 101, the location of the commercial zoning on the property , the staff’s perspectives on the role, if any, the Cascade Head Scenic Research Act (CHSRA) plays in a review of the application (CHSRA does not apply to this application).

Chair Johnson asked for the **Applicant** testimony.

APPLICANT TESTIMONY:

Patricia Hill from **Adams Hill LLC** stated she is representing **Cross Development**, there on behalf of **Dollar General**. She asked the **Planning Commission** if they read through the whole Staff Report, and, if they understand it. **Ms. Hill** then said, “This is complicated, isn’t it?”

Commissioner Spulnik stated, “Yes, I read the packet. I spent about an hour reading the packet. I have been on this planning commission for decades. I have read at least 1,000 packets. What the staff says tonight and what you say tonight matters. Please proceed.”

Ms. Hill stated they are aware that they are up against the 4,000 maximum square foot maximum size requirement. Nevertheless, they were asking for an exemption from that requirement. She shared that other Counties in Oregon approved a variance or exemption from this state requirement. In effect, she noted, “We are asking **Lincoln County** to do the same, approve an exemption.” **Ms. Hill** stated, “The **Applicant** meets all of the state requirements. The staff believes the absence of city utilities is not a roadblock. That is not a relevant factor. **Ms. Hill** stated the owner/seller of the land supports the application, and residents of Otis support of this project.

Ms. Hill commented, “I think the **staff** is confused. The **staff** has only applied the state criteria. They failed to apply Lincoln County’s code.”

Director Husing then stated, “There is no confusion. The two administrative rules referenced in the written staff report and during our staff report this evening are the key criteria. The applicant did not address the criteria. The rules states there is a 4,000 square foot cap 9,100 square foot cap to a commercial building at that location. They want a 9,100 square foot building. Lincoln City, where buildings of that size are permitted outright, is only a couple of miles away. There is no confusion.”

Director Husing stated, “It is true that **Cross Development** received a Goal Exception from I think two other counties in Oregon for this purpose. I cannot say why or how that happened. But, the fact that that happened is not relevant to us in this proceeding. We can only provide you a recommendation based on our code, the administrative rules, and the facts on the ground at Otis Junction. We are obligated to carry out, faithfully, Oregon’s land use system.” **Husing** continued, “Look, perhaps those other situations were different, factually. Perhaps they prepared findings for those other locations that met the state’s criteria. I don’t know. I also understand maybe those other Goal Exceptions were not contested by the **DLCD** because of a lack of resources.” **Husing** continued, “I am quite certain, though, that a faithful application of Oregon’s land use laws to the set of facts before you would lead you to make a finding that you cannot justify a Goal Exception to site a 9,100 square foot Dollar General Store at Otis Junction.”

Gary Fromm introduced himself as the owner of the property. He stated that when he bought the property, he did his due diligence, and discovered the property is mixed use. He elaborated on the plot and zoning of the property.

Chair Johnson asked for other testimony in favor of the application, and testimony opposed to the application. He stated the **Planning Commission** has received plenty of written opposition.

PUBLIC TESTIMONY

Laura Doyle introduced herself as a property owner in Otis, and the Treasurer of the **Salmon Drift Creek Watershed Council**, stakeholders in the **Salmon River Estuary**. She stated there is a general lack of information for what is going on in the **Salmon River Estuary**, as in 1976 that land was identified as protected wetlands within the **Cascade Head Scenic Research Area (CHSRA)**. **Ms. Doyle** asked for her letter to be entered into the record, and read the letter.

Commissioner Spulnik asked **Ms. Doyle** to point out the wetlands area on the map in relation to where the store would be located.

A brief discussion ensued between the **Planning Commission**, **Ms. Doyle**, and **Mr. Fromm** regarding the 1976 estuary and wetlands management plan, a structure on the property, **Mr. Fromm’s** survey of the property, restoration of the wetlands, and the people of Otis not supporting the application. **Ms. Doyle** distributed 3 pamphlets to the **Planning Commission** that she requested be entered into the record.

Debra Nicholson stated she is in opposition. She referred to 40 year old land use laws that established the Urban Growth Boundary, so they know where urban development can occur, and where it cannot. She concluded by stating that Lincoln City has at least 5 grocery stores, and hopes that the **Planning Commission** will not undermine area grocery stores.

Tom Gory elaborated on his family history in Otis. He is part of community to protect the estuary. He would like to appeal to the County and **Mr. Fromm** to work together and protect the estuary, and he supports **Director Husing** and the **Staff Report**.

Chair Johnson asked for any other opposition that is different.

Commissioner Estes asked if anyone from Cascade Head Research would testify.

Jack Doyle identified himself as resident of Otis that lives on Cascade Head, which is under the protection of federal legislation that set aside that special area. He stated there is not an exception to an act of Congress and approving the Goal Exception even from a Planning perspective may be a violation of the federal Scenic Research Act.

Debbie Wilkins stated she represents the **Hebo Ranger District**, is not officially in support or opposition, and that she is a Federal official. She elaborated on the federal process and the law that was passed that created the **CHSRA**. Any changes in that use would initiate the **Hebo Ranger District** to tell people they are staying in compliance or are out of compliance. **Ms. Wilkins** concluded by stating that the Goal Exception is the front door, and, a discussion about a Dollar General Store and CHSRA would happen with the **Applicant** if and only after they got through the front door.

Mark Nicholson introduced himself, and he and **Debra Nicholson** have owned a home in the Otis **CHSRA** area since 2000. He stated that when they all bought our homes, they were aware they were living under certain restrictions of **CHSRA** and there has been a few examples where people do not adhere to the **CHSRA** restrictions, and, **Director Husing** is aware of those.

Chair Johnson asked for **Applicant** rebuttal, and they elected not to provide any rebuttal.

A brief discussion occurred between the **Planning Commission** and **Director Husing** regarding the options to deny the Application, keeping the record open, or tabling it.

Chair Johnson asked if there was a request to keep record open, and there was none.

Chair Johnson closed the hearing at 8:45 pm and elaborated on the choices to proceed with the input of **Director Husing** and **Counsel Herbage**.

Chair Johnson asked for a motion, and **Commissioner Buggenhagen** motioned that the **Planning Commission** deny the application and adopt the **Staff Report's** analysis why a Goal Exception to Statewide Planning Goal 14 to construct a 9,100 square foot store has been disapproved.

Director Husing asked that the **Planning Commission** instruct the **Staff** to develop findings.

Commissioner Bobbitt seconded the motion.

Chair Johnson asked for more discussion on the motion. None was offered.

A vote was taken by the **Planning Commission** to deny **Case File 01-TA-18**, and all were in favor to deny **Case File 01-TA-18**.

8. PLANNING COMMISSION CONCERNS

9. ADJOURNMENT

Chair Johnson adjourned the meeting at 8:51 pm.

Respectfully Submitted,

Joshua B. Bacher

Lincoln County Permit Specialist