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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF LINCOLN

ORDINANCE # 239

Lincoln County Legal Counsel

AN ORDINANCE AMENDING LINCOLN COUNTY ZONING MAPS ON PROPERTY IDENTIFIED ON ASSESSOR'S MAP 13-11-29 AC tax lots 104 and 105, FROM RR-5 RESIDENTIAL to RR-1-2 RESIDENTIAL, and DECLARING AN EMERGENCY

WHEREAS a zone change was requested from RR-5, Residential, to RR-1-2, Residential, on property located approximately two miles east of Waldport, directly south of Merten Park Sub-division, identified on Lincoln County Assessor's Map 13-11-29-AC, tax lots 104 and 105; and

WHEREAS, on February 24, 1986, Lincoln County Planning Commission voted to recommend to the board approval of the requested zone change for Ray Wells; and

WHEREAS no appeal of the Lincoln County Planning Commission decision has been made within the time provided by law;

Now, therefore, the board hereby ORDAINS a follows:

1. That the findings of the Lincoln County Planning Commission are hereby adopted and incorporated herein as if fully set forth;
2. That the Lincoln County Planning and Development Department amend the official Lincoln County Zoning Maps from RR-5 Residential, to RR-1-2, Residential, on property identified on assessor's map 13-11-29-AC, tax lots 104 and 105;
3. That a copy of this ordinance be forwarded to Ray Wells, the Lincoln County Planning and Development Department, Lincoln County Assessor, and Lincoln County Surveyor;
4. That this ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist and this ordinance takes effect upon its adoption.

DATED this 19th day of March, 1986.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Bob Watkins
Chairman

R. D. Jantz
Commissioner

Alberta Bryan
Commissioner

Lincoln County Legal Counsel
Lincoln County Courthouse
225 N. Olive Street
Waldport, OR 97165
Phone: 265-6611 ext. 308

M I N U T E S
L I N C O L N C O U N T Y P L A N N I N G C O M M I S S I O N

February 24, 1986

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Lincoln County Legal Counsel

1. CALL TO ORDER - Roll Call.

The meeting was called to order by Chairman Jim Webb. Commission members present were:

David Gray
Izetta Over
Jim Webb
Robert Wiens

Neil Imes
Inez Palmer
Phil Spulnik
Lisa Knudsen

2. APPROVAL OF MINUTES - February 10, 1986

Commissioner Over moved to approve the meeting minutes of February 10, 1986.

Commissioner Gray seconded the motion.

The vote was taken and passed unanimously.

MOTION TO APPROVE MEETING MINUTES
OF FEBRUARY 10, 1986. #7-86

3. ITEMS FROM THE AUDIENCE.

No items from the audience.

4. PAST ACTION REVIEW FOR PLANNING COMMISSION.

Oscar Granger responded that there was no past action for review.

5. UNFINISHED BUSINESS.

Oscar Granger mentioned the fact that two public hearing items have been postponed, the Makai zone change request and the Destination Resorts issue. According to state requirements, adoption of the Destination Resorts issue cannot take place without first mapping the area for consideration. With the present staff it would be impossible to have the area mapped within the required 120 day time period for the processing of a land use action.

6. ACTION ITEMS

No action items.

7. PUBLIC HEARING.

7.1 Zone change request by Ray Wells from RR-5 to RR 1-2, case file #3-ZC-85.

Chairman Webb introduced this case and called for a review of the staff report.

Kevin Harrison reviewed the staff report

Commissioner Gray asked Kevin Harrison where the Urban Growth Boundary for Waldport is located.

After some discussion, it was determined that the urban growth boundary is coterminous with the city limits. The City of Waldport has annexed most of their urban growth boundary.

Kevin Harrison added that this area was not designated urban growth boundary.

Commissioner Spulnik commented that only part of the urban growth boundary was annexed, the area east of the city limits on the south side of Highway 34.

Chairman Webb called for the applicant or his representative to state their case.

Eugene Wobbe, a professional land surveyor from Florence, approached the table and stated that he is representing Mr. Wells in this case. Mr. Wobbe complimented Kevin Harrison on writing a good staff report. With regard to substantial change, Mr. Wobbe felt that the annexation of Peterson Park (which was done since the zoning took place) indicated a substantial change in the area.

Commissioner Spulnik asked why the applicant did not request this rezoning of his property back in 1980 when there were numerous rezoning hearings.

Ray Wells responded that he was very busy operating his business in Florence at that time and since then there has been a major change in the area. Mr. Wells also asked what the zoning was in the Merton Park Subdivision, and he was informed that it is still zoned RR-5. Mr. Wells continued saying he purchased 5 lots from Mr. Merton. These lots are located directly north of his property and give him privacy. Mr. Wells continued explaining that he assisted in the installation of an 8" water line from the tower, and the water line was installed to the City specifications. Due to the proximity of the city limits Mr. Wells feels that there has been substantial change and his request for a zone change is not unreasonable.

Commissioner Over asked Mr. Wells how many lots he plans to make out of the 12.59 acres.

Ray Wells responded that the actual number of lots has not been decided yet, but Mr. Wobbe will determine the best use for the land, and in order to protect the property value of the Wells residence, the lots may even have to be as large as 3 acres.

Chairman Webb called for any letters of opposition.

Kevin Harrison stated he had received two letters of concern. One of the letters was sent from California by Betty Laurs, owner of tax lot 103, who requested the case hearing be postponed until her husband, who is out of the country, can return and give his response. She is especially concerned about any change in road easements, utility easements, septic tank permits, and any unrestricted access or use of their property should the surrounding land be subdivided and developed.

The other letter was submitted by Ted Stephens, owner of tax lot 102, who is not within the 250' surrounding area and did not receive a notice of this hearing. Mr. Stephens is concerned about his road access, which is presently inadequate to handle any increased traffic that might possibly be generated if the zone change request were approved. Kevin Harrison mentioned that the staff has discussed this problem with Mr. Wells and informed him that if this land is partitioned, any access roads would have to be brought up to County standards. This can be worked out in the future and should not be part of this consideration.

Mr. Wells added that Mr. Stephens uses his private, paved driveway to his house about 90% of the time.

Chairman Webb announced that the testimony portion of the public hearing was closed.

Commissioner Gray asked Mr. Wells why he did not include tax lots 128 through 134 in the rezone request. Mr. Wells explained that these lots were to be kept vacant as they provide a privacy buffer for his residence.

Lisa Knudsen stated that the area under consideration is flat, and the roads are kept up by the local road district and community residents.

Commissioner Palmer stated that she was not familiar with the area, but the request sounded reasonable.

Commissioner Imes asked about the public notice sent to Mrs. Laurs, and Kevin Harrison explained that the notice was sent the required 10 days prior to the hearing. Commissioner Imes then stated that he would have not a problem with justifying this request.

Commissioner Spulnik stated that Merton Park was thrown into the RR-5 zoning when the largest lot in the subdivision is 1 1/2 acres. The Merton Park Subdivision should have been zoned RR 1-2. The land is generally level. He could recommend approval on the basis of a significant change with the close proximity of the city limits, or on the basis of the area being zoned in error. But to use the error in zoning basis, one should consider the total area zoning.

Commissioner Over voiced her concern that if the Commission were to consider this request on the basis of the land being zoned in error, what about the surrounding property?

Kevin Harrison responded that this case brought staff's attention to the area, and if the zone change is approved here, then Merton Park should be zoned R-1, and some of the other parcels to the east may also qualify for the RR 1-2 zoning as well. This area can be put on the agenda for the plan update.

Commissioner Over asked where Betty Laurs obtains access to her property and she was informed by Mr. Wells that she enters through his property, but she can build a separate entrance in the future. After some discussion it was determined that Betty Laurs can have seclusion if this request was granted, as her land has never been cleared.

Commissioner Spulnik added that if Betty Laurs is opposed, she has 15 days to appeal the decision. Kevin Harrison added that she will be informed in writing as to the Planning Commission's decision.

Commissioner Gray added that it seemed like a reasonable request. At the time much of this area was zoned, there was pressure to put a lot of land in the RR-5 zone. Perhaps this land was zoned in error.

Commissioner Spulnik responded that he felt that the main reason this land was placed in the RR-5 zone is that the area surrounding the Wells property to the south and east is all 5 acre lots, however, to the north there are 75' X 100' lots. So the land was placed in the RR-5 zone and nobody came and requested a zone change at that time.

Commissioner Wiens had no comment on this case.

Commissioner Webb stated that he felt the request was reasonable, he didn't feel that the zone change would have a dramatic effect on the neighborhood.

Ray Wells added that he was considering approximately 4 to 6 sites including the existing dwelling.

Oscar Granger added that it is important when considering this request in terms of substantial change exactly where the change has occurred. Peterson Park has existed prior to the rezoning. The closest RR 1-2 zone is approximately 1/2 mile from this property. If a decision to approve this request were appealed, this might be construed as a spot zone, which is a special zone designated to benefit a certain property that is surrounded by a different zoning. Oscar Granger urged Commission members to keep this in mind when considering the findings and conclusions which are used in making the decision on this request.

Commissioner Spulnik responded that if spot zoning were a problem, then the zoned in error theory might apply. The Merton Park area should have been zoned R-1.

Oscar Granger added that if Merton Park were zoned R-1, it would have provided better continuity with the zone change request. If Merton Park would have been included in the zone change request, as a parcel of higher density to abut this RR 1-2 against, instead of it being isolated amongst the RR-5 zone.

Commissioner Gray made a motion to approve case file #3-ZC-85, filed 12-23-85, with a hearing date of 2-24-86 by Ray Wells to approve the zone change from RR-5 to RR 1-2, based on the following reasons:

1. There was an expansion of the City of Waldport city limits in close proximity.
2. The pattern of development has been to smaller lot sizes in the area with an average size of .84 acres.
3. There is availability of public service with the city of Waldport water line installation which encourages development of the area.
4. There is no need for a buffer zone, due to the fact that the parcel is within 1/4 of a mile of a T-C zone.

Chairman Webb asked if Commissioner Gray would want to adopt the staff's findings of fact as part of his motion.

After some discussion, Commissioner Gray incorporated the following findings of fact:

1. The applicant, Ray Wells, is requesting a zone change from RR-5 to RR 1-2.
2. The subject property consists of two tax lots, identified on the Lincoln County Assessor's Map #13-11-29AC, as tax lots 104 (6.38 acres) and 105, (6.21 acres). The total acreage of the property involved is 12.59 acres.
3. The subject property contains a stored mobile home, a site built house, and a 48' X 50' metal storage building/shop. The house was built in 1976.
5. City water, and electrical services are available to the subject property.
6. The applicant contends that the zoning previously adopted for the area was in error because of the proximity of developed lands, the provision of public water, the absence of an adjacent T-C zone, and access by both public and private roads.

Commissioner Over seconded the motion.

The vote was taken and the motion passed unanimously.

Chairman Webb reviewed the motion by saying that it has been moved and seconded to recommend approval to the Board of County Commissioners of this zone change request on the basis that the present zoning was done in error. Those who submitted written testimony have 15 days to appeal this decision

**RECOMMENDATION TO BOARD OF COUNTY COMMISSIONERS TO APPROVE A ZONE CHANGE REQUEST
FROM RR-5 TO RR 1-2 BY RAY WELLS, CASE FILE #3-ZC-86. #8-86**

8. PLANNING COMMISSION CONCERNS

Commissioner Gray inquired as to the status of the Destinations Resorts issue and the involvement of the County Surveyor with this project.

Oscar Granger explained that Tom Hamilton was working on a separate project to reestablish missing government corners. The Destinations Resort issue progress is dependent upon the mapping of the area under consideration which needs to be performed by our staff.

9. ADJOURNMENT

The meeting was adjourned at 8:17 p.m.



DEPARTMENT OF PLANNING
AND DEVELOPMENT

Public Service Building
210 S.W. Second Street
Newport, Oregon 97365

(503) 265-6611

Building Division On-Site Waste Mgmt.
Ext. 251 Ext. 253
Code Enforcement Planning Division
Ext. 292 Ext. 292

MEMORANDUM

RECEIVED
MAR 12 1986

Date: March 12, 1986
To: Board of County Commissioners
From: Oscar Granger, Secretary
Lincoln County Planning Commission
Subject: **Ray Wells-Zone Change (3-ZC-85)**

Lincoln County Legal Counsel

On February 24, 1986, the Lincoln County Planning Commission voted to recommend approval to the Board of County Commissioners a zone change from RR-5 to RRI-2 on property located approximately 2 miles east of Waldport, directly south of Merten Park Subdivision, and which can be reached via Lancy Lane. The property is identified on Lincoln County Assessor's Map #13-11-29 AC as tax lots 104 and 105.

Attached is a copy of the minutes of the February 24th. Planning Commission meeting pertaining to this action. Because no appeals have been filed, a public hearing is not necessary. If the Board concurs with the action of the Planning Commission, an Ordinance directing the proposed changes must be prepared for the Board's signature.

After approval by the Board, a copy of the Order must be sent to the applicant, the County Assessor's office, and to the Planning Division.

Thank you.

Enclosure (6)
cc: Legal Council

og/mw