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BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINCOLN COUNTY, OREGON

Lincoln County Legal Counsel

ORDINANCE # 242

AN ORDINANCE AMENDING LINCOLN COUNTY ZONING MAPS ON PROPERTY IDENTIFIED ON ASSESSOR'S MAPS 12-11-18 AC, tax lots 200 - 700; 12-11-18 CA, tax lots 104 - 108, 110, 111, 200 - 1200, 2500, 2600, 2800, 3000 - 6800; 12-11-18 DB, tax lots 3700 - 6500, 9800, 10000, 11000, 11200 - 15900 from R-1 to R-1-A, and DECLARING AN EMERGENCY

WHEREAS a zone change was requested from R-1, to R-1-A on property located in Makai Divisions one and two, Thunder Bay Estates, and adjoining properties identified on Lincoln County Assessor's Maps 12-11-18AC, tax lots 200 - 700; 12-11-18CA, tax lots 104 - 108, 110, 111, 200 - 1200, 2500, 2600, 2800, 3000 - 6800; 12-11-18 DB, tax lots 3700 - 6500, 9800, 10000, 11000, 11200 - 15900; and

WHEREAS, on March 10, 1986, Lincoln County Planning Commission voted to recommend to the board approval of the requested zone change as requested by the Makai Homeowners Association; 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 as 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 R-1 to R-1-A on property identified on assessor's maps 12-11-18AC, tax lots 200 - 700; 12-11-18CA, tax lots 104 - 108, 110, 111, 200 - 1200, 2500, 2600, 2800, 3000 - 6800; 12-11-18DB, tax lots 3700 - 6500, 9800, 10000, 11000, 11200 - 15900;
3. That a copy of this ordinance be forwarded to the Makai Homeowners Association, the planning and development department, the assessor, and the 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 9th day of April, 1986

LINCOLN COUNTY BOARD OF COMMISSIONERS

Bob Deskins  
Chairman

R. D. Jantsch  
Commissioner

Alberta Bryant  
Commissioner

Lincoln County Legal Counsel  
Lincoln County Courthouse  
225 N. Olive Street  
Keppert, OR 97365  
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M I N U T E S

LINCOLN COUNTY PLANNING COMMISSION

March 10, 1986

1. CALL TO ORDER - Roll Call.

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

Paul Smud  
Dietmar Goebel  
Inez Palmer  
Roger Pattison  
Robert Wiens

David Gray  
Izetta Over  
Jim Webb  
Ernest Seaton  
Lisa Knudsen

2. APPROVAL OF THE MINUTES - February 24, 1986

Commissioner Over moved to approve the minutes as mailed.

Commissioner Gray seconded the motion

MOTION TO APPROVE MEETING MINUTES

OF FEBRUARY 24, 1986. #9-86

3. ITEMS FROM THE AUDIENCE.

No items from the audience.

4. PAST ACTION REVIEW FOR PLANNING COMMISSION

No past action for review.

5. UNFINISHED BUSINESS

No unfinished business.

6. ACTION ITEMS

No action items.

7. PUBLIC HEARING

7.1 Continuation of the land use plan/zone change request by Robert and Vonda Carter, Marilyn Gillham and Daniel Marvin, case file #2-LUPC-85.

Chairman Webb read the last paragraph in the March 3, 1986 memo from the Planning Staff which informed commission members who were absent from the February 10th Planning Commission meeting that they may vote, if they have reviewed the record and understand the issues involved in this case.

Chairman Webb continued reviewing the March 3, 1986 memo which contained pertinent information regarding placing a motion and the findings which must be made to support that motion.

After some discussion, it was determined that Commissioners Smud, Goebel, and Gray, would abstain from voting.

Chairman Webb asked Alice Markwardt to review this case.

Alice Markwardt responded by explaining that this is a request for a plan and zone change. The land is zoned Timber Conservation currently, and the plan designation is Forestland. The request is to change the Comprehensive Plan designation to Dispersed Residential and the zone from Timber Conservation to Rural Residential, 5 acre parcel minimum size. To do this requires taking an exception to Goal 4 of the Statewide Planning Goals. At the last hearing, the staff report and criteria necessary for taking the exception were reviewed, then Mr. Bartoldus, who is representing the applicants, reviewed their position. As stated in the March 3, 1986, memorandum to the Planning Commission members, the first thing to be addressed is the exception to the Statewide Planning Goals. Is the exception justified - is the land irrevocably committed based upon existing adjacent uses, and existence of public facilities and services. Those criteria are set and must be addressed to justify an exception. The next thing to be determined is if the Comprehensive Plan should be changed, which is based upon the justification of the exception, which would mean a zoning error was made. With the zone change it is the same process, if the exception has been justified, and an error in the Comprehensive Plan was made, then the zone change would be recommended. The first issue which needs to be dealt with is the exception.

Chairman Webb summarized the previous discussion of this case (which took place on February 10, 1986) explaining that the public testimony has been taken, the public hearing portion has been closed, the Planning Commission members have discussed this, the vote was taken and resulted in a tie to neither approve or deny, then it was voted to continue to allow the applicant to submit findings, which has been done. Those findings were dated Feb. 28, and were sent along with a cover letter from Dennis Bartoldus.

Alice Markwardt added that the minutes from the Planning Commission meeting on February 10, 1986 do not reflect the letter of opposition sent by L.C.D.C. and their position remains the same on this case.

Commissioner Over mentioned that there was not a great deal of pertinent information contained in the February 28, 1986, mailing, and it is difficult for her to justify changing this land from Timber Conservation, even though there are many buildings in the area. Also, Commissioner Over noted that there have been no adverse comments received from any timber company on this request.

Commissioner Gray commented that even though he would not vote on this case, he would like to mention that when the Comprehensive Plan was being reviewed he felt that there was pressure to zone lands in a certain way so that the Comprehensive Plan would be approved. If the voting Planning Commission members do not want to make a decision on this case, he felt it should be referred to the Board of County Commissioners.

Commissioner Seaton stated that after he visited the site recently, he has not seen any information which would cause him to change his mind and he still feels that the correct land designation is Timber Conservation.

Commissioner Pattison said that the agent for the applicant has reinforced his case and he feels that the current zoning was made under pressure and is in error.

Commissioner Palmer stated that she felt all along that the current zoning was in error.

Commissioner Over asked her why she felt it was zoned in error, as there does not seem to be any justification for this change in zoning.

Commissioner Wiens stated that if the land was zoned in error, it should be changed, however, he feels that it was not zoned in error.

Commissioner Smud added that there is a lot of history which goes with that zoning and there has always been controversy in this area. The area is not suited towards Timber Conservation, as it is usually perceived. It is not really good tree growing country, and there are a lot of conflicts in the area. However, Timber Conservation does not just mean growing trees. But the property was really intended to be Rural Residential, a zoning which he has always supported.

Commissioner Goebel added that the findings submitted were alright, however, he does not feel that just because the property was RR-5 at one time, it doesn't mean that is a justifiable reason to change it back. The property is fairly close to a city and there are amenities to the area, and there seems to be a pattern of expansion in that area, but he is not certain that the applicant has really presented the case to justify the Comprehensive Plan change.

Chairman Webb stated that he was puzzled as the present zoning which has been in place four years has never been questioned previously and this is the only application filed to change the zone, also he felt that there has not been enough material presented to convince him that the area has been built and committed to residential use.

Commissioner Palmer made a motion that the Goal 4 Exception is justified based upon findings of fact to support this conclusion.

Chairman Webb questioned if Commissioner Palmer was making a motion in favor of the exception and she responded that she was. Chairman Webb then directed that the findings be outlined for this motion and continued clarifying that the findings would include that the property is irrevocably committed to non-forest uses and includes parcel size and ownership patterns, neighborhood and regional characteristics natural boundaries and buffers, physical development on committed lands, etc.

Chairman Webb continued saying that he thought there was a motion made in favor of the exception of Goal 4, based upon the findings that:

1. The subject property is irrevocably committed to non-forest uses, due to existing adjacent uses.
2. The existence of public facilities and services.
3. The parcel size and ownership patterns of adjacent properties.
4. The neighborhood and regional characteristics.
5. Natural boundaries and buffers.
6. Physical development on committed lands and other relevant factors.

Commissioner Pattison seconded the motion.

Commissioner Goebel asked about the evidence shown to support the findings.

Chairman Webb responded that there was testimony given by the applicant on each finding.

Peter Idema suggested that the findings which were submitted should be referenced, that is, those entitled "Supplemental Information to Support the Zone Change Request of Robert and Vonda Carter and Marilyn Gillham". Those findings were to justify the exception.

Alice Markwardt added that those findings addressed the criteria, which were listed in the motion, that are the things the findings are needed for, and she continued describing the supplemental information to support the zone change request, a five page document, which is the only document that addresses the exception criteria, the other information is a listing of the facts.

Peter Idema suggested that Commissioner Palmer amend her motion to incorporate those findings.

In an effort to clarify the motion and proceed with this matter, Chairman Webb assisted Commissioner Palmer by reviewing the motion which he summarized as being in favor of Exception 4, based on the findings of fact found in the "Supplemental Information to Support the Zone Change Request".

Commissioner Goebel asked if the staff's findings of fact can be readdressed.

Alice Markwardt referred the group to the conclusions contained in the recent memorandum from the Planning Department staff.

The vote was taken and Commissioners Pattison and Palmer voted in favor and Commissioners Over, Seaton, Webb and Wiens voted against this motion, therefore, the motion failed.

Chairman Webb asked that since the motion did not pass, if the proposal was defeated and he was informed by Peter Idema that it was not, and another motion can be made.

Commissioner Over moved that the Comprehensive Plan change from Forestland to Dispersed Residential and the zone change from T-C, Timber Conservation, to RR-5, which was proposed and submitted by Robert and Vonda Carter and Marilyn Gillham be denied, since the facts supporting a change to the RR-5 zone were insufficient, as listed in our staff report.

Commissioner Seaton seconded the motion.

Chairman Webb summarized the motion to deny the applications of both the plan change and the zone change, due to insufficient facts to support the change.

The vote was taken and carried with Commissioners Wiens, Webb, Seaton and Over voting in favor and Commissioners Palmer and Pattison voting against the motion.

MOTION TO DENY LAND USE PLAN CHANGE AMENDMENT FROM FORESTLAND TO  
DISPERSED RESIDENTIAL AS WELL AS A ZONE MAP AMENDMENT FROM TIMBER  
CONSERVATION, T-C, TO RURAL RESIDENTIAL, RR-5, BY ROBERT AND VONDA  
CARTER AND MARILYN GILLHAM AND DAVID MARVIN. #10-86

Commissioner Gray asked that any fees involved in the appeal of this case be waived based upon the indecision of the Planning Commission during the past two meetings.

Commissioner Goebel informed him that the Planning Commission members do not have the authority to waive administrative fees.

Commissioner Over explained that there was no indecision involved on the part of the Planning Commission, and additional time was given to the applicant to submit additional information. The applicant can appeal this case to the Board of County Commissioners. Commissioner Over explained that the Planning Commission cannot just turn this request in to L.C.D.C. without any facts to back up this request.

Chairman Webb introduced the next public hearing item and called for a review of the staff report.

7.2 A zone change request by the Makai Homeowners Association from R-1 to R-1A, case file #1-ZC-86.

Peter Idema reviewed the staff report and explained that the staff's conclusion was that the zone map amendment would not conflict with any of the Comprehensive Plan goals or Statewide Planning Goals. In addition to showing that the change is in accord with the Comprehensive Plan Goals and the Statewide Planning Goals, one of three conditions must exist before the zone change can be allowed:

1. There has been a substantial change in the character of the area since the zoning was adopted which warrants changing the zone.
2. The zoning previously adopted for the area was in error.
3. There is a public need for the change being sought.

The applicants are arguing that both an error was made in the adopted zoning and also a public need exists for the change. The basis for the error argument, according to the application, is that the developer of Makai II and Thunder Bay Estates requested a zone change from R-2 to R-1 in 1978 and that he would have sought an R-1A zoning, had he known that it existed. The R-1 is somewhat more restrictive than the R-2, however, after reviewing the staff report for this hearing and it was revealed that the request in 1978 by the developer of these subdivisions was not for a zone change at all, in fact, what he was requesting was a plan change. The plan designation on that property was Open Space and yet it had a residential, R2, zoning, therefore, he requested the plan mapping amendment to reflect the zoning, so the change was made to residential. An error was not made in the current zoning, so the argument for this zone change request cannot be based upon the zoning done in error argument, therefore, item #7 of the findings of fact, cannot be considered. The zoning was changed to R-1 in 1980 by the County when it adopted it's new Comprehensive Plan. At that time, much of the County was rezoned.

The applicant is also arguing that a public need exists to rezone the subject properties to R-1A, which they feel is demonstrated by the owners supporting the amendment. This was reflected in a recent questionnaire sent out by the Makai Property Owners which resulted in 123 owners responding that they were in favor of the zone change, while 8 owners responded that they were opposed. These results were included in a large map of the property used as a visual aid in this case. In the Makai Divisions I and II, 101 owners responded yes and 6 responded no. In Thunder Bay Estates, 17 owners responded yes and 2 responded no. Five of the adjoining parcel owners (the adjoining parcels are between Thunder Bay and Makai) responded yes and two owners responded no.

Peter Idema continued explaining that the County created the R-1A zone in 1976. The Planning Commission when approving that change, decided not to apply it legislatively, that is that they did not decide at that time which areas qualify for this designation, but rather they were requiring the property owners to petition for this change. These change requests would be reviewed individually. In most of the cases requesting this change to R-1A, the County has granted the change in an effort to recognize that residents in some areas do desire to restrict housing types.

Following are the developments which have been granted the R-1A zone designation:

Bayshore  
 Coronado Shores  
 Evergreen Ridge  
 Miroco

Roads End  
 Sandpiper  
 Seafarer  
 Surfland I

Most of these subdivisions and developments do have covenants restricting mobile homes, however, not all do. There are some developments in Roads End and Miroco which do not have restrictive covenants.

All eight of the previously mentioned R-1A zone change approvals were granted based upon the public need argument. However, there was one case where the Planning Commission denied a zone change request to R-1A, which was for Pacific Palisades. The majority of the property owners were in favor of this change and the development did have restrictive covenants that prohibited mobile homes, yet the Planning Commission determined that there was not a public need, and that this request conflicted with Goal 10, so they denied the request. There was a representative from the Mobile Home Association who testified at that meeting.

Currently, the County is required to approve a mobile home permit application for Makai Divisions I and II, and it would be up to the Makai Property Owners Association to enforce their covenants which restrict mobile homes, however, Thunder Bay Estates and the adjoining parcels do not have any protective covenants against mobile homes.

After Peter Idema completed his review of the staff report Chairman Webb called for the testimony of the proponents.

Mr. Kennard Palfrey, of the Makai Property Owners Association, congratulated Peter Idema on presenting a good staff report on this case. Mr. Palfrey explained that the Thunder Bay Estates and other parcels which were Thunder Bay Estates extensions are not part of the Makai Property Owners Association, and they should speak for themselves.

Mr. Palfrey moved to Makai 5 years ago. As a former Coast Guard member, Mr. Palfrey has lived in many various communities of the country and felt that Lincoln County has done a good job of land use planning. Many of the homes in Makai are of high quality and they have a good road district. One year ago a mobile home was placed in Makai with an approved mobile home placement permit issued by Lincoln County. There are 33 lots designated for mobile homes in a special section of Makai, currently 28 of those lots are occupied with mobile homes. To uphold the covenants and restrictions against mobile homes, the property owners discovered it was necessary to hire an attorney and go to court, which was too costly for the association to do, therefore, they are requesting this zone change which is based upon public need. The results of the property owners survey reflected that 84% of the owners were in favor of the zone change request.

Mr. Walter Schendel of Thunder Bay spoke next explaining that when he bought his lot he was shown the covenants which included lot size information, etc. and he was under the assumption that his rights were protected under the Makai covenant, and he wants to be protected against mobile homes.

Mr. Robert Dunn, a resident of Makai, approached the testimony table to explain that originally there was a golf course which went broke and was purchased by a developer who vacated most of Thunder Bay, and sold lots on Makai sales contracts and under the covenants and restrictions of Makai. Thunder Bay residents would like to be included in the zone change request.

Commissioner Palmer asked if a zone change request were granted, would it apply to Makai, as well as Thunder Bay and the adjoining lots, and she was informed that it would be.

Rosalie Johnston of Thunder Bay Extension spoke next saying that she thought that there were protective covenants in place when she purchased her property. She has made a considerable investment in her property and does not want mobile homes next door.

Mrs. Delbert Schlueter of Makai spoke next reviewing her previous efforts to protect against mobile homes during which she discovered a lack of standards regarding the condition, age, appearance, etc of mobile homes. Since there is a special section for mobile homes at Makai, there is no hardship being placed on mobile home owners. She also mentioned that the other 8 developments who were granted the R-1A zoning do not have a special section for mobile homes.

Commissioner Goebel asked staff how the granting of this zone change request would affect the County's Comprehensive Plan.

Peter Idema responded that the only housing goal which might apply to this type of a request is Goal 10, which states to provide opportunities for a variety of housing choices, including low and moderate income housing to meet the needs of the desires and financial capabilities of all Lincoln County residents. The County does provide a lot of that type of housing, in that single-wide mobile homes are allowed as a conditional use and double-wide mobile homes as an outright use in all of the residential areas. In the rural residential areas single-wide mobile homes are an outright use, along with double-wide mobile homes. There is no conflict or violation of the policies to remove some areas. Lincoln County is much less restrictive than the cities, who have more of a requirement to provide affordable housing, as the purpose of the Statewide Planning Goal is to provide for the housing needs of residents within incorporated areas. Through the interpretation of the goals, it has been determined that they are required to allow mobile homes in some areas of the city, but they can regulate the types of mobile homes, the types of roofs, siding, etc. Some areas can be restricted and still meet the overall objective of the goal.

Pat Brooks, of Makai, spoke next explaining her housing situation at Makai and how concerned she is about having mobile homes in her neighborhood and the effect they might have on her property value.

Chairman Webb called for any opponents of this case and Peter Idema read letters of opposition from property owners Leonard Opal and Marcia Story.

After the public testimony portion of the hearing was closed, Chairman Webb began asking the Planning Commission members for their opinions on this case and Commissioner Smud stated that the deed restrictions for Makai Divisions I and II are consistent with the intent of the R-1A zone. The developer made opportunities for a variety of housing by providing an area especially for mobile homes. The majority of the residents of Thunder Bay and the adjoining property seem to be in favor of the change, however, he was concerned for the two owners in that area who are opposed to the proposed zone change and how it might affect their future development plans.

Chairman Webb pointed out that those two owners who objected did not write a letter nor did they attend and testify at this hearing.

Commissioner Gray, who is a resident of a planned unit developmen, voiced his concern that the deed restrictions and covenants of his property would not protect his property rights, but he felt this zone change request seems logical and all propert owners in the area should be included in the zone change request.

Commissioner Goebel stated that he had no problem with granting the zone change request, but he was surprised that the homeowners who do have protective covenants did not take stronger action on their own behalf to have those covenants enforced but apparently they were hindered by the financial burden. Commissioner Goebel felt that perhaps they would like the County to resolve their financial problem for them, and he would like to take this request out of the financial burden aspect and view it from what is the best use for the land. By granting this request, the Planning Commission is not limiting any housing opportunities in the County, as there is a special area for mobile homes, etc. Commissioner Goebel stated that he would not address a request for financial gain as far as a zone change goes, however, he is in favor of this request, as it is the best use for the property.

Commissioner Wiens stated he felt the intent was there when the subdivision was established to have mobile homes separated from the conventional homes. The lack of deed restrictions for Thunder Bay was an oversight, he felt and the zone change request should be approved.

Commissioner Palmer felt the applicant presented a good case, and the property owner survey was well done and she is in favor of the request.

Commissioner Seaton confirmed that all property owners were informed and stated that he was in favor of the request.

Chairman Webb expressed his feelings regarding the events which led to this zone change request and stated that he is in favor of the request. Chairman Webb urged both the Makai residents and the Thunder Bay and adjoining lot owners to unite and incorporate into a more cohesive homeowners association group.

Commissioner Gray made a motion to approve case file #1-ZC-86 submitted by the Makai Property Owners Association for a zone change from R-1 to R-1A based upon the conclusions of facts 1 through 6 in the staff report.

Commissioner Smud seconded the motion.

Commissioner Goebel asked for a clarification of Makai Homeowners Association, if this group includes Makai I, Makai II and Thunder Bay and adjoining properties, etc, so that there is no confusion later.

Commissioner Gray agreed and amended the motion to reflect that this request was submitted by the Makai Homeowners Association, which is representing property owners in Makai Divisions I and II, Thunder Bay Estates, and the owners of seven adjacent lots.

Peter Idema asked Commissioner Gray if he wanted to include in his motion the conclusion that there is a public need for the request.

Commissioner Gray responded that he would amend his motion to include the public need based upon the findings of facts #1 through 6 for this request.

The vote was taken and passed unanimously.

MOTION TO RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS  
APPROVAL OF A ZONE CHANGE FROM R-1 TO R-1A WHICH WOULD  
PROHIBIT THE PLACEMENT OF MOBILE HOMES ON ALL LOTS SO  
ZONED, EXCEPT FOR TEMPORARY USE WHILE BUILDING A  
CONVENTIONAL, FRAMED STRUCTURE. #11-86.

Before leaving the public hearing the applicants from Makai voiced their appreciation of the assistance and information provided by Peter Idema, Senior Planner.

8. PLANNING COMMISSION CONCERNS

No Planning Commission concerns.

9. ADJOURNMENT

The meeting was adjourned at 9:00 pm.



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

RECEIVED  
APR 1 1986

DATE:                      March 28, 1986

TO:                         Board of County Commissioners

FROM:                     Oscar R. Granger   
Secretary  
Lincoln County Planning Commission

SUBJECT:                 Zone Change in Makai Divisions One and Two, Thunder Bay Estates and  
Seven Adjoining Properties

Lincoln County Legal Counsel

On Monday, March 10, 1986, the Lincoln County Planning Commission voted to recommend approval to the Board of County Commissioners for a zone change from R-1 to R-1A on 147 tax lots. The lots are identified on Lincoln County Assessor's Maps: 11-12-18AC, tax lots 200 - 700, map #12-11-18CA, tax lots 104 - 108, 110, 111, 200 - 1200, 2500, 2600, 2800, 3000 - 6800, map #12-11-18DB, as tax lots 3700 - 6500, 9800, 10000, 11000, 11200 - 15900.

Attached is a copy of the minutes of the March 10th Planning Commission hearing 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 the Planning Division.

Thank you.

ORG:sk

Enclosure

cc: Legal Counsel ✓