

1                                   **BEFORE THE BOARD OF COMMISSIONERS**

2                                   **FOR LINCOLN COUNTY, OREGON**

3                                   ORDINANCE # 452

4 \_\_\_\_\_  
5  
6 **Amending the Lincoln County Zoning Map from P-F (Public Facilities) to RR-10 (Rural**  
7 **Residential) on property identified on Lincoln Assessor's Map 8-11-32 as Tax Lot 301, Case**  
8 **File #02-ZC-PC-07 and declaring an emergency.**  
9 \_\_\_\_\_

10           WHEREAS on February 11, 2008, the Lincoln County Planning Commission held a public  
11 hearing to consider the request by applicant Kenneth Dimick (Agent Jeff Evans) for a zone change  
12 from P-F (Public Facilities) to RR-10 (Rural Residential) on property identified on Lincoln  
13 County's Assessor's Map 8-11-32 as Tax Lot 301, Case File #02-ZC-PC-07. The subject property  
14 is an ocean front parcel located west of Highway 101 directly across from the south entrance of  
15 Fogarty Creek State Park; and

16           WHEREAS the Planning Commission unanimously voted to recommend approval of the  
17 request and adopted findings, conclusions, and a final order on February 25, 2008, and forwarded  
18 that recommendation to the Board of Commissioners; and

19           WHEREAS there was no appeal of the Planning Commission's decision;

20           NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

21           **SECTION 1.**

22           1. The Planning Commission's recommendation is adopted, and the Lincoln County Zoning  
23 Map is amended from P-F (Public Facilities) to RR-10 (Rural Residential) on property identified on  
24 Lincoln County Assessor's Map 8-11-32 as Tax Lot 301, Case File #02-ZC-PC-07.

25           2. The findings and conclusions supporting this action are adopted as set forth in Exhibit  
26 "A" attached hereto and incorporated herein.

27           3. The Department of Planning and Development shall amend the official zoning maps and  
28 shall forward a copy of this ordinance to the Department of Land Conservation and Development.

1 4. Copies of this ordinance shall also be forwarded to the applicant and his agent; County  
2 Surveyor; County Assessor; Lincoln County Department of Planning and Development, and County  
3 Counsel.  
4

5 **SECTION 2.**

6 This Ordinance being necessary for the immediate preservation of the public peace, health  
7 and safety, an emergency is declared to exist, and this Ordinance shall take effect upon its passage.

DATED this 16<sup>th</sup> day of April, 2008.

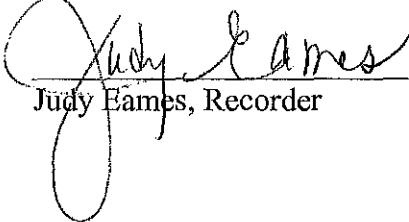
LINCOLN COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
TERRY N. THOMPSON, Chair

  
\_\_\_\_\_  
DON LINDLY, Commissioner

  
\_\_\_\_\_  
BILL HALL, Commissioner

ATTESTED TO:

  
\_\_\_\_\_  
Judy Eames, Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Wayne Belmont, County Counsel

BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

February 11, 2008

Applicant: Kenneth Dimick  
Agent: Jeff Evans

) Case File #02-ZC-PC-07  
) Findings, Conclusions and  
Final Order

**Nature of the Application:**

The applicant is requesting a zone change from P-F (Public Facilities) to RR-10 (Rural Residential).

**Relevant Facts:**

The following is a summary of the facts and testimony found to be relevant to this decision.

1. The subject property is an ocean front parcel located west off of Highway 101 directly across from the south entrance of Fogarty Creek State Park. The property is further identified on Lincoln County Assessor's Map 8-11-32 as tax lot #301.
2. The subject property is approximately 1.41 acres in size and is located between two pieces of property owned and maintained by the Oregon State Parks and Recreation Department, which has devoted the land for public use as Fogarty Creek State Park.
3. The zoning of the property is P-F (Public Facilities).
4. The Comprehensive plan designation is DR (Dispersed Residential).
5. No structures currently exist on the lot.
6. Details of the applicant's proposal can be found in the staff report and in evidence submitted which is by reference incorporated into the record herein.
7. A public hearing to consider the request was held before the Lincoln County Planning Commission on February 11, 2008. All interested parties were given an opportunity to testify.
8. Staff presented a brief review of the application. The applicant is requesting a zone

EXHIBIT

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change from P-F to RR-10. Staff explained it is the position of the applicant that the property was zoned in error. While analyzing the application staff examined two factors; the first being the applicants date of acquisition and secondly, the history of the zoning on the lot. The applicant obtained the property in 1964 at a time when zoning did not exist on the lot. In 1974 the parcel including surrounding property was zoned R-1. In 1980 with the adoption of the comprehensive plan the property changed zoning again to P-F. Staff explained that at that time it would have been against county policy to rezone a privately owned residential lot to a public facilities zoning. It is staff's belief that the lot was mistakenly identified as property owned by the Oregon State Parks and Recreation Department. Had the lot not been zoned P-F it is staff's belief that the parcel would have been zoned RR-2, consistent with the underlying comprehensive plan designation dispersed residential.

9. Staff explained the purpose of requesting the RR-10 zone designation in substitute of another residential zone was to comply with the requirements of OAR 660-004-0040(7)(i).
10. Jeff Evans, an associate with Davis Wright Tremaine acting as agent for Kenneth Dimick, gave testimony on behalf of the request. Mr. Evans summarized the need for the request based on the error in the zoning that took place in 1980 as summarized by the planning staff. Mr. Evans explained that he was aware of agency comments presented from ODOT and the Oregon State Parks and Recreation Department. He let the commission know he had addressed access issues with ODOT and was prepared to address additional concerns from the Parks Department at a later date, when or if the applicant is prepared to develop the lot. He stated that although these comments were important they were not relevant criteria required for the zone change that was laid out before the planning commission for this specific application.
11. There was no other oral testimony either in support or in opposition of the application.
12. There were no additional letters of concern submitted by neighbors or other agencies.
13. No party requested a continuance of the public hearing or for the record to remain open.

**Relevant Criteria**

**Lincoln County Development Code:**

- A. **Lincoln County Code, Section 1.1235 Quasi-Judicial Amendments:** A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that:

- 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
- 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
- 3) The zoning previously adopted for the area was in error; or
- 4) There is a public need for the change being sought.

**B. Lincoln County Code, Section 1.1377 Public Facilities Zone P-F: In a P-F zone, the following regulations shall apply:**

**(1) Uses Permitted Outright:**

The following existing uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facility intended for use by the public.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Beach front protective structures.

**(2) Conditional Uses Permitted:**

Expansion of existing facilities that would substantially increase overall capacity or the conversion of one outright use to another may be permitted when authorized in accordance with the provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699 and 1.1901 to 1.1999.

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facilities.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Conversion of one outright use to another outright use.

**C. Lincoln County Code, Section 1.1357 Rural Residential Zone RR-10:**

In the RR-10 zone the following regulations shall apply;

**(1) Uses Permitted Outright:**

The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) One single-family dwelling unit.
- (b) Farm and forest use.
- (c) A recreational vehicle or other approved temporary housing to be used for dwelling purposes, during the construction of a single-family residential dwelling unit for which a building permit has been issued. The use shall not exceed a period of one year.
- (d) Beachfront protective structures.

**(2) Conditional Uses Permitted:**

The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:

- (a) Cemetery.
- (b) Church, non-profit religious or philanthropic center.
- (c) Community center.
- (d) Day nursery, nursery school-kindergarten, day care center, or similar facility.
- (e) Governmental structure or use.
- (f) Home occupation.
- (g) Nursing home, retirement home or similar facility.
- (h) Golf course and ancillary uses, but excluding golf driving range, miniature golf course or similar facility.
- (i) Private school.
- (j) Public or private utility facility.
- (k) Radio or television transmitter or tower.
- (L) Transfer station.
- (m) Excavating, filling, dredging or wetland drainage.
- (n) Recreational vehicle on an individual lot.
- (o) Aquaculture facilities.
- (p) Mining.
- (q) Boarding of horses for profit.
- (r) Pilings, piers, docks, and similar in-water structures.
- (s) Heliports.
- (t) Recreational vehicle park.
- (u) Bed and Breakfast Inns.

**(3) Standards:**

Except as provided in LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999 the following standards shall apply:

- (a) Lot Size:  
The minimum lot size shall be 10 acres.
- (b) Yards, Special Setbacks:  
Yards and special setbacks shall be the same as required in an R-1 zone.
- (c) Height:  
No structure shall exceed 30 feet in height.
- (d) Lot Width to Depth Ratio:  
Lots shall have an average width to depth ratio not in excess of 1 to 6.

**Findings:**

The Commission Finds:

1. The Commission finds that the subject property was zoned P-F in error, as the P-F zone is not applied to privately owned lands.
2. The request to change the zone to RR-10 conforms to the Lincoln County Comprehensive Plan designation of Dispersed Residential and is in accord with the Statewide Planning Goals.

**Conclusions:**

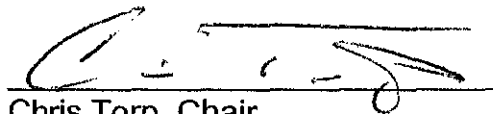
The record and findings support the conclusion that:

1. Substantial evidence in the record demonstrates that the subject property's current P-F zoning was assigned in error.
2. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Comprehensive Plan goals and policies.
3. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Statewide Planning Goals.

**Order:**

It is hereby ORDERED by the Lincoln County Planning Commission that Case File 2-ZC-PC-07 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the zone designation from P-F to RR-10.

This ORDER was presented to and approved by the Lincoln County Planning Commission on February 25, 2008.



Chris Torp, Chair  
Lincoln County Planning Commission