

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 **ORDINANCE # 458**

4 _____
5 **Amending the Lincoln County Comprehensive Plan from Water Dependent/Water**
6 **Related to Dispersed Residential and a zone change from M-P (Planned Marine) to RR-10**
7 **(Rural Residential) on property identified as Tax Lot 207, Lincoln County Assessor's Map**
8 **11-11-27, and declaring an emergency.**
9 _____

10 WHEREAS by Order dated January 26, 2009 the Lincoln County Planning Commission
11 voted to recommend approval of a request by applicants Patrick and Sylvia White for a
12 Comprehensive Plan amendment from Water Dependent/Water Related to Dispersed Residential
13 and a Zone Change from M-P (Planned Marine) to RR-10 (Rural Residential) on property
14 identified as Tax Lot 207, Lincoln County Assessor's Map 11-11-27, File No. 1-LUPC-ZC-08;
15 and

16 WHEREAS after published notice in accordance with law, the Lincoln County Board of
17 Commissioners opened a public hearing on March 11, 2009, and at the request of the applicants
18 continued the hearing to March 25, 2009. At the hearing, the applicants were represented by
19 Attorney Joan Chambers. Testimony was received in favor and in opposition to the request.

20 WHEREAS at the conclusion of that hearing, the Board voted 2-1 to approve the
21 request. The approval was conditioned on the creation and filing of a restrictive deed covenant
22 acceptable to the county and applicants and the striking of references to commercial fishing from
23 the findings supporting the Board's decisions. Commissioner Thompson voted against the
24 approval, expressing his concern with the impact on surrounding Planned Marine uses and the
25 lack of sufficient Planned Marine zoned properties.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in **boldfaced** type.

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

2 **SECTION 1.**

3 1. The Planning Commission's recommendation is adopted, and the Comprehensive
4 Plan is amended from Water Dependent/Water Related to Dispersed Residential and the zoning
5 is changed from M-P (Planned Marine) to RR-10 (Rural Residential) on property identified as
6 Tax Lot 207, Lincoln County Assessor's Map 11-11-27 located approximately 4 ½ miles east of
7 Newport at the intersection of Yaquina Bay and Davis Roads. The subject property is more
8 particularly identified on the map in Exhibit "A", which is attached hereto and incorporated
9 herein.

10 2. That approval of this comprehensive plan amendment and zone change is conditioned
11 on the owners of the subject property recording the attached restrictive deed covenant as set forth
12 in Exhibit "B" in the Lincoln County Deed Records. This recordation shall be done without
13 further fees. The amendment and change shall not be effective until this recordation is
14 accomplished.

15 2. The findings and conclusions supporting these actions are adopted as set forth in
16 Exhibit "C" attached hereto and incorporated herein, which includes deletion of references to
17 commercial fishing.

18 3. Copies of this ordinance shall be forwarded to County Surveyor; County Assessor;
19 County Counsel, Lincoln County Department of Planning and Development, petitioners'
20 attorney, Joan Chambers, 4488 NE Devils Lake Road, Lincoln City, Oregon 97367; and to
21 petitioners Patrick and Sylvia White, 747 NW High Street, Newport, Oregon 97365.


22 4. Upon confirmation of the recordation of the restrictive deed covenant required under
23 paragraph 2 above, the Department of Planning and Development shall amend the official
24 county maps and shall forward a copy of this ordinance to the Department of Land Conservation
25 and Development.

1 **SECTION 2.**

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

DATED 15th day of April, 2009.

LINCOLN COUNTY BOARD OF COMMISSIONERS



DON LINDLY, Chair

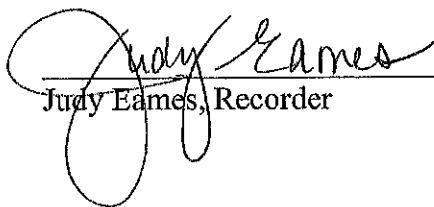


TERRY N. THOMPSON, Commissioner



BILL HALL, Commissioner

ATTESTED TO:



Judy Eames, Recorder

APPROVED AS TO FORM:



Wayne Belmont, County Counsel

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in **boldfaced** type.

Exhibit "A"

Tax Lot 207, Lincoln County Assessor's Map 11-11-27, located approximately 4.5 miles east of Newport, Oregon at the intersection of Yaquina Bay Road and Davis Road and further described as:

Beginning at the Northwest corner of the land conveyed to the National Security Bank of Toledo by deed recorded August 16, 1955 in Book 178, page 342, Deed Records for Lincoln County, Oregon. Said point being North $88^{\circ} 42'$ West 119.62 feet and South $0^{\circ} 46'$ East 260 feet and West 950 feet from the 1/16th corner set on the North line of Section 27, Township 11 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence running South along the property lines of said land described in Book 178, page 342, 200.0 feet; thence East 250 feet; thence South 250 feet to the North line of a 30 foot public road described in Book 82, page 378, Lincoln County Records; thence North $88^{\circ} 32'$ West, parallel with the North line of said Section 27, to the Easterly right of way of Yaquina Bay Road; thence Northeasterly along said right of way to a point that is West of the point of beginning; thence East 110 feet more or less to the point of beginning.

Exhibit "B"

After recording return to:

Wayne Belmont
County Counsel
225 W. Olive
Room 110
Newport, OR 97365

This space reserved for recorder's use

Restrictive Deed Covenant

In reference to property described as Tax Lot 207, Lincoln County Assessor's Map 11-11-27, located approximately 4.5 miles east of Newport, Oregon at the intersection of Yaquina Bay Road and Davis Road and further described as:

Beginning at the Northwest corner of the land conveyed to the National Security Bank of Toledo by deed recorded August 16, 1955 in Book 178, page 342, Deed Records for Lincoln County, Oregon. Said point being North 88° 42' West 119.62 feet and South 0° 46' East 260 feet and West 950 feet from the 1/16th corner set on the North line of Section 27, Township 11 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence running South along the property lines of said land described in Book 178, page 342, 200.0 feet; thence East 250 feet; thence South 250 feet to the North line of a 30 foot public road described in Book 82, page 378, Lincoln County Records; thence North 88° 32' West, parallel with the North line of said Section 27, to the Easterly right of way of Yaquina Bay Road; thence Northeasterly along said right of way to a point that is West of the point of beginning; thence East 110 feet more or less to the point of beginning.

The parcel of land is hereafter referenced as the "subject property"

Lincoln County, Oregon, a political subdivision of the State of Oregon, has granted for the subject property a comprehensive plan map amendment from Water Dependent/Water Related to Dispersed Residential and a zone change from M-P (Planned Marine) to RR-10 (Rural Residential), Lincoln County Planning Department Case File # 1-LUPC-ZC-08. As a condition of that decision, Lincoln County requires that this restrictive deed covenant be recorded. This restrictive deed covenant is intended to serve notice to any and all subject property owners, and their heirs, assigns, lessees, occupiers and successors of any interest in the subject property, that nearby parcels of land

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So Approved and Accepted:

Grantee: Lincoln County

Chair

Commissioner

Commissioner

State of Oregon)
) ss.
County of Lincoln)

On this _____ day of _____, 2009, before me Bill Hall, Don Lindly, and Terry N. Thompson, all personally known to me, and personally known to me collectively as the Lincoln County Board of Commissioners, appeared before me and, after being duly sworn, each individually executed this instrument in my presence and acknowledged this instrument to be their free act and deed.

Notary Public for Oregon
My commission expires: _____

Exhibit "C"

BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

Applicant: Patrick and Sylvia White) Case File:1-LUPC-ZC-08
Represented by Joan M. Chambers) Findings, Conclusions,
) and Final Order

Nature of the Request

The applicant is requesting a comprehensive plan map amendment from Water Dependent/Water Related to Dispersed Residential and a zone change from M-P (Planned Marine) to RR-10 (Rural Residential).

Relevant Facts

1. **Lot Size:** 5 acres.
2. **Property Location:** The subject property is located approximately 4 ½ miles east of Newport at the intersection of Yaquina Bay and Davis Roads. It is further identified on Lincoln County Assessor's Map #11-11-27 as tax lot 207.
3. **Zoning Designation:** M-P (Planned Marine)
4. **Plan Designation:** Water Dependent/Water Related.
5. **Surrounding Land Use:** Following Yaquina Bay Road is a mix of land uses including marine related businesses predominantly along the riverfront, and rural residential homes.
6. **Topography & Vegetation:** The subject property contains varying topography from relatively level to steeper slopes and is covered in native trees and vegetation.
7. **Existing Structures:** None.
8. **Utilities:** The following utilities are proposed to serve the subject property:
 - a. Water: On-site water.
 - b. Sewer: On-site sewage disposal.
 - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:** Environmental Bulletin 81 of the Yaquina River Section indicates the subject property is located in an area containing landslide topography. In addition, the north side of the subject property borders an inventoried major marsh identified as Site #13 (North Yaquina Bay Wetlands) in the Lincoln County Comprehensive Plan. The applicant is advised that pursuant to Lincoln County Code Section 1.1381(5),(b),(C), development proposed adjacent to a major marsh or significant wildlife habitat shall be located no closer than 50 feet from the marsh or habitat area.

10. **Public Hearing:** The public hearing was held before the Lincoln County Planning Commission on Monday, December 8, 2008. All interested parties were given an opportunity to testify.
11. **Applicant's Attorney:** Applicant's attorney Joan M. Chambers presented testimony in support of the appeal. Patrick White and Sylvia White also spoke in support of their application.
12. **Opposition Testimony or Letters:** No testimony or letters in opposition to the application were presented to the Planning Commission.

Relevant Criteria

1. **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.
2. **Lincoln County Code, Section 1.0190(10) Water Dependent/Water Related Plan Designation:** The water dependent/water related designation is intended to recognize the unique values of certain coastal shore land areas consistent with the priority of uses set forth in the coastal shore lands policy element. This designation shall apply to shore land areas which may be suitable for a mixture of water-dependent and water-related uses. Uses which are consistent with the designation of the adjacent coastal water body and are water-dependent or water-related, as defined in the Lincoln County Estuary Management Plan, are primary.
3. **Lincoln County Code, Section 1.0190(11) Coastal Shorelands Plan Designation:** Coastal shorelands is an overlay designation which applies to areas within the Coastal Shorelands Boundary, as defined in Coastal Shorelands policy element. Within this designation when such uses are found to be consistent with the additional policies of this designation.
4. **Lincoln County Code, Section 1.0190(3) Dispersed Residential Plan Designation:** Dispersed residential areas are located on marine terraces and valley floors. Residential use densities shall be as necessary for on-site sewer disposal and water supply. Uses such as forestry, farming and rural residential subdivisions, and existing public recreation facilities, quarrying, sanitary land fills, government uses and similar uses may be included by County review.
5. **Lincoln County Code, Section 1.0185(8)(b) Public Facilities Policies;**
Dispersed Residential:
 - (A) Dispersed Residential areas are committed to residential use and shall be defined on the basis of population and as areas having a historic land use pattern of low density settlement with few if any public services and facilities either existing or planned.
 - (B) Those public services and facilities considered appropriate for Dispersed Residential areas shall be limited to existing services and facilities and those services and facility improvements that are needed for the maintenance of the existing low density residential uses.
 - (C) Water systems shall be individual or approved community water systems. Sewerage shall be by means of individual on-site subsurface disposal, community drain fields or spray irrigation of effluent disposal systems. Dispersed Residential areas shall be served by rural fire protection districts where available. Where rural fire protection districts are not established, special performance standards shall be applied to ensure adequate protection of the surrounding natural resources.

6. **Lincoln County Code, Section 1.1368 Planned Marine Zone M-P:** In an M-P 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) A use permitted outright in the adjacent M-W zone. (2) **Conditional Uses Permitted:** The following uses and their accessory 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) A conditional use permitted in the adjacent M-W zone. (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) **Yards:** All yards abutting a lot in a residential zone shall be a minimum of 20 feet. (b) **Setbacks:** No structure shall be located closer than 30 feet from the right-of-way of any State Highway or any collector or arterial street. (c) **Height:** No building in the M-P zone shall exceed a height of 45 feet. (d) **Fencing:** Outdoor storage abutting or facing a street or highway or a lot in a residential zone shall be screened with a sight obscuring fence.
7. **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 to 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-I 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

1. **Background:** The subject property was originally zoned RR1-2 (Rural Residential) and had a plan designation of Dispersed Residential when the Lincoln County Comprehensive Plan was adopted June 30, 1980. The property was at that time part of a larger tract under one ownership which included several tax lots- 204, 207 and 400 on Map 11-11-27. Tax lot 204 was developed with several boat slips and a small accessory building. The former owner, Mr. Cassell, dba La Paz Enterprises, intended to expand the marina and develop a recreational vehicle park on the upland parcel across Yaquina Bay Road (tax lot 207- the subject property). As a result, Mr. Cassell sought to obtain a zone change from Rural Residential to Planned Marine, for the purpose of carrying out the proposed plan. In 1982, the zone change was approved on the basis that there had been a substantial change in the character of the area during a time when the fishing industry was viable and the demand for such facilities was feasible.

The RV Park was never developed and the small marina was eventually abandoned. The tract

was disaggregated and sold to separate parties and the waterfront property is now developed with storage units. In addition, a number of the marine or fishing related businesses used to justify the zone change in 1982 have since closed or been torn down, and there has been a significant downturn in recreational fisheries. Now, the basis for the requested zone change is reversed, that is that there has been a substantial change in the character of the area as a result of a declining recreational fishing industry and closure of businesses.

2. Approval Criteria: The Lincoln County Code provides that an amendment to the comprehensive plan designation and zone map amendment may be authorized provided that in this case, two standards are met. The first requires that the change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and secondly, as the applicant has demonstrated, there has been a substantial change in the character of the area since zoning was adopted which warrants changing the zone.

On the first criterion, the subject property has a plan designation of water dependent/water related as a result of the amendment done in 1982. Water dependent/water related uses are those which are consistent with the designation of the adjacent coastal water body as defined in the Lincoln County Estuary Management Plan. The Estuary Management Plan indicates the subject property is in Management Unit 14- Development. Development management units are designated to provide for navigation and other identified needs for public, commercial, industrial water dependent uses, consistent with the level of development allowed by the overall Estuary Classification. Such areas include deep water areas adjacent to or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal or dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary. Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

Prior to the rezone, the property had a plan designation of dispersed residential acknowledged under the County Comprehensive Plan. The property was not originally included in the inventory of properties considered for water dependent/related uses. In addition, the waterfront property was disaggregated from the upland subject property several years ago, making the property disconnected from any water related activities. Dispersed residential areas are located on marine terraces and valley floors. Residential use densities shall be as necessary for on-site sewer disposal and water supply. Dispersed Residential areas are committed to residential use and are defined on the basis of population and as areas having a historic land use pattern of low density settlement with few if any public services and facilities either existing or planned. As noted in the application, testimony and evidence, the predominant surrounding land use pattern is rural residential development. Services are limited to individual on-site sewage disposal and water systems.

On the second criterion, the applicant has demonstrated that there has been a substantial change in the character of the area since zoning was adopted which warrants changing the zone. The character of the area has changed as a result of the decline in the recreational fishing industry. In addition, this property is no longer a part of the waterfront property which was used in part as the basis for a zone change to M-P in 1982. Now, the subject property is rural upland property consistent with surrounding neighboring properties. In 2000, the Land Conservation and Development Commission amended Oregon Administrative Rules governing the creation of new rural residential areas. The Rules now require an RR-10 zone designation for newly created rural residential zones unless an exception to Statewide Planning Goal 14 (Urbanization) is taken. Lincoln County amended its land use code in 2006 to reflect this legislation. The applicant is not proposing to increase density and thus, a zone change to RR-10, is appropriate.

Conclusions

- 1) The record and findings support the conclusion that the applicant's request for a comprehensive plan map amendment from water dependent/water related to dispersed residential and a zone

map change from M-P (Planned Marine) to RR-10 (Rural Residential) is in accord with the Lincoln County comprehensive plan goals and policies and any applicable statewide planning goals.

- 2) The applicant has demonstrated that there has been a substantial change in the character of the area since zoning was adopted which warrants the change in the comprehensive plan map and zoning map designations

Order

Based on the above conclusions that the record as a whole demonstrates that the application for a comprehensive plan map amendment from water dependent/water related to dispersed residential and a zone map change from M-P (Planned Marine) to RR-10 (Rural Residential) meets all applicable approval criteria and should be approved, the Planning Commission does hereby recommend that this order and application materials be forwarded to the Lincoln County Board of Commissioners for its approval and adoption of the appropriate ordinance amendments to implement these recommended comprehensive plan map and zoning map amendments.

This ORDER was presented to and approved by the Lincoln County Planning Commission on January 26, 2009.

Cris Torp, Chair
Lincoln County Planning Commission