

MINUTES

Lane County Planning Commission
Board of Commissioners Conference Room—125 East 8th Avenue
Eugene, Oregon

August 17, 2010
5:30 p.m.

PRESENT: Robert Noble, Chair; Lisa Arkin, Nancy Nichols, Dennis Sandow, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Kent Howe, Kier Miller, Deanna Wright, Lane County Land Management Division; Karl Morgenstern, Mike Van, Don Lemke, guests.

ABSENT: Tony McCown, Vice Chair; George Goldstein, Steve Dignam, Lane County Planning Commissioners.

Mr. Noble convened the Lane County Planning Commission at 5:30 p.m.

Commissioners briefly discussed a recent Register Guard article related to construction of critical structures in the flood plain. Mr. Howe confirmed staff had been contacted by Sacred Heart Medical Center at RiverBend staff, who wanted to make it clear that the hospital had not been developed in the flood plain, and had done appropriate elevation.

Mr. Howe explained there would be two Planning Commission vacancies on September 30, 2010, including the position held by Steve Dignam, who had reached the two term limit, and the position held by Bob Noble, who was completing the term of a former commissioner. September 3, 2010 was the deadline for submitting applications.

WORK SESSION

1. Training—Application of Goals, Statutes, Administrative Rules and Lane Code

Mr. Howe distributed a document entitled *APPLICATION OF GOALS, STATUTES, ADMINISTRATIVE RULES AND LANE CODE—Training for the Lane County Planning Commission—July 20, 2010*.

Ms. Arkin arrived at 5:45 p.m.

Mr. Howe reviewed the document and responded to commissioners' questions. He said the next training was scheduled for October or November.

Mr. Sullivan suggested that marginal lands training be reviewed at a future training.

The Planning Commission took a short break at 6:03 p.m.

2. Continued Background Report and Discussion: Proposed Drinking Water Source Area Protection Zone (LC 16.298)

Mr. Miller provided the staff report on proposed drinking water source area protection zone. He distributed a handout entitled *Commissioner Questions/Comments* which consisted of questions submitted to Mr. Miller following the August 3, 2010 Planning Commission meeting from commissioners for discussion at tonight's meeting.

Comments/Questions from Commissioner Arkin

- *(3) Definitions Hazardous Material—consider adding: (f) toxic substances identified by Senate Bill (S.B.) 737 Priority Persistent Pollutant List.*

Mr. Miller had consulted with Amy Chinitz, a member of the technical advisory committee (TAC). She agreed it was an interesting concept, but she had concerns related to quantities, noting that many of the pollutants identified in S.B. 737 were common household products such as soaps. She recommended development of a guidance memorandum listing the general categories of chemicals that could be included, listing those substances that would be exempted and in what quantities. This document would be available prior to the public hearing.

Mr. Miller said code revisions were still being drafted by staff and reviewed by legal counsel. Although this was the last scheduled Planning Commission work session on the draft document, he agreed to forward new draft code language to commissioners prior to the work session.

- *(6) Surface Water Protections Requirements—(b)(i) Commercial forest practices—Can staff get a legal opinion as to whether the county could require a 75 or 100 foot buffer of trees adjacent to any surface water protection zone?*

Mr. Miller consulted with County legal staff who said land use was narrowly restricted related to forest practices and was addressed through Planning Goal 4. Oregon Revised Statutes (ORS) clearly stated that local governments could not restrict rules and regulations regarding forest operations.

Ms. Arkin opined a long term goal should be to have more of a buffer between clear cuts and riparian areas.

- *(6) Surface Water Protections Requirements—(b)(viii) ROW vegetation management—Can staff insert language from House Bill (H.B.) 2212 Section 14, which lays out the State's requirements for the control of noxious weeds?*

Mr. Miller had consulted with Orin Schumacher Lane County's vegetation management coordinator, who directed Mr. Miller to the County's herbicide control policies, outlined in Lane Manual 15.510, which stated herbicide use was the last resort when the County was dealing with weeds. Mr. Schumacher was concerned this proposed language would circumvent the Roads Advisory Committee work and set up a standard that would override the existing herbicide control policies. Mr. Schumacher recommended that the Chapter 15 language be included in the surface water protections requirements language.

- *(7) Ground Water Protections Requirements Zone A Prohibited Uses—(a)(viii) In addition to prohibiting auto wrecking yards, would you consider adding : auto repair businesses; industries that store or manufacture hazardous chemicals; pesticide applicator businesses; confined animal feeding operations.*

Mr. Miller said auto repair business was already covered under Section (7)(a)(ii). He took note of suggestions from commissioners for making the language clearer. He added that most industries that stored or manufactured hazardous chemicals fell under (7)(a)(i), based upon the model language provided by the State. He asserted that there were exceptions in the ORS related to pesticide applicator businesses, prohibiting local jurisdictions from regulating certain categories of pesticides. Additionally, these businesses served the farming industry and it could be argued that these were businesses in support of the farming practices.

Ms. Arkin said some states, including Oregon, had used land use laws to ensure that the storage of pesticides did not pose a hazard to drinking water.

Mr. Morgenstern stated the Eugene Water and Electric Board (EWEB) was currently studying the pesticide storage issue and would provide information for the Planning Commission.

Mr. Miller said animal feeding operations fell under ORS 215.253, which stated: “No State agency, city, county or other political subdivision of the State could exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone or within an established marginal land property in a manner that would restrict or regulate farm structures or that would restrict farming practices.” He said farm and forest practices were protected uses on property at the State level.

- *(d)(i) Planning Directors are not usually versed in hazardous materials and pollution prevention. This section should use the words “shall” instead of “may” regarding seeking consultation. The consultation should also include the DEQ’s Toxics Media staff.*

Mr. Miller said staff would recommend that the language be changed from “may” to “shall”, thus requiring that Planner Directors get recommendations from the State Department of Environmental Quality (DEQ).

- *(7)(e) Haz Material Management Plans and (8) Performance Standards—Ms. Arkin recommended that the plans be required for all uses, not just non-conforming uses where hazardous materials in amounts greater than 20 gallons will be stored, used or manufactured on site. A copy of the plan(s) should be stored at the Planning Department, not only “kept on the premises” and be a public document. Annual updates should be submitted to the Planning Department. Annual inspections should be verified, signed by the owner of the operation and stored on file at the Planning Department. She urged staff to consider providing an opportunity for the public to have the right to request a public hearing if there is a new use, modification, or an “increase of alternation of a non-forming use” in regards to an operation storing or using or manufacturing chemicals in Zone A (when they were non-farm and non-forest uses).*

Mr. Miller stated a hazardous material management plan had been proposed for any new use. Expansion of existing uses would be allowed and new uses would be prohibited in

Zone A. The expansions would trigger the need for the hazardous material management plan. He added language could be added to the proposed code that would require that a copy of the plan be kept on site. He said inspections was a bigger issue. There was not currently enough staff to conduct inspections, but language could be developed that would build funding for inspections into the fee structure.

Mr. Miller explained the draft language provided for Planning Director review. In the event that contentious issues arose, staff could require a hearing before the Hearings Official.

Comments/Questions from Commissioner Nichols

- *John Sullivan mentioned adding “protect private property rights” as a goal in the Drinking Water Protection Overlay Zone. If that were added as a goal, would it be on equal footing with “protect human life and health”? What would it mean for enforcement when there is a conflict?*

Mr. Miller opined Ms. Nichols was pointing out a possible contradiction, asking if one of the goals took precedent over the other. He asked for clarification from Mr. Sullivan.

Mr. Sullivan said his concern was how the public would accept the proposal and if the Board of County Commissioners (BCC) could adopt the proposal with the least amount of emotional conflict. Either the policy or statement of fact needed to be clear that the policy was not designed to curtail property rights. He suggested the language needed to be more formal than saying property rights would not be taken away if it was not necessary. This proposal would present major property rights issues.

- *These set back codes will conflict with other set back codes—especially the fire break ones which require removal of too much vegetation in some cases. As I recall there is also a 400 foot set back from F-1 zoned property which also tends to squeeze people up against creeks. These conflicts could be resolved with a general section which provides a way for a landowner to identify the least environmentally damaging area to locate development when it is impractical to meet all the standard set backs in the code. Some of the fire setbacks which make some sense in the Cascades are overkill for the coastal fog belt. Having a way in place that allows a landowner to use an expert to come up with the least damaging location for a home defuses a lot of problems that will occur with fire breaks, riparian set backs, and water safety set backs. This option needs to be part of the general code relating to all set backs, not just specific to the drinking water overlay.*

Mr. Miller said the proposed language said vegetation set backs could not conflict with required forestry set backs. He added there were often competing set backs for property lines, rights-of-way and roads, as well as forestry. This could be seen with narrow properties squeezed between the road and the river. The variance process provided an option that would allow a property owner to apply for a variance that would be evaluated by the Hearings Official.

- *How long do you expect a LUCS review to take?*

Mr. Miller said some application types were lengthy and expensive to process. It could be a streamlined process in some cases, and staff proposed using the LUCS process to do

so. LUCS reviews could take place at the front counter on a same day basis. More complex issues may require two to three weeks.

- *Some code questions: 3(e) 4—Is ORS 465.400 a code designation that is unlikely to change? If not, maybe another reference would be better.*

Mr. Miller said the County referenced specific ORS in the hazardous material definition. He agreed the citations changed over time, and staff needed to track those changes regularly and update the code periodically to reflect those changes.

- *Some code questions: (6)(a)(vii) and (viii)—why are public roads, utilities and trails exempt? They run for miles along creeks and rivers with a corridor of vegetation management including use of herbicides often very close to waterways. Are the issues related to these uses dealt with elsewhere? If not, can any of them be added to the code?*

Mr. Miller said the public needed roads, and hamstringing the County to where new public roads could not be built adjacent to a river would likely be a contentious issue. He added roads were not a regulated use, but public improvements had standards that needed to be adhered to.

- *Some code questions: (7)(a)(l)—Should this state where this list of specific hazardous material can be found?*

Mr. Miller noted this was defined in Section 3.

Comments/Questions from Commissioner Sandow

Mr. Miller said he provided Mr. Sandow with an electronic copy of the current draft of proposed amendments and a copy of the slide show from a previous meeting as requested by Mr. Sandow.

Comments/Questions from Commissioner Sullivan

Mr. Sullivan stated Mr. Siekiel-Zdzienicki comments captured his concerns, adding Mr. Sullivan's points could be used as examples of Mr. Siekiel-Zdzienicki's concerns.

- *In the staff memo dated July 20, 2010, "Surface water..." As an owner of EFU, timber land, and residential all on the same piece of ground, on the river, I know that I will be treated differently on each of the bullet points. My concern is with the statement that "most new development AND vegetation removal is STRICTLY PROHIBITED..." What does this broad statement mean.Then apply it to 6(b)i-vii.*

Mr. Miller appreciated Mr. Sullivan's comments from the perspective of a landowner. He would provide examples that the public would be able to understand at the public hearing.

- *In the General Section of 16.298 there is no mention of "protecting private rights" in the purpose of the document. I believe this is an issue in this and other documents that bothers the public.*

Mr. Miller noted this was covered under Ms. Nichols' comments.

- *Last paragraph on 1st page. “removal of vegetation” Again, we need to be very clear if this applies to new development or includes all existing property. If you float the McKenzie you can see that no one is in a position to do this.*

Mr. Miller said the TAC had discussed creating an inventory of the properties along the river to be able to identify what occurred after the ordinance was enacted. In response to a question from Ms. Arkin, Mr. Miller explained there was an exemption provided for enhancement project such as removing invasive vegetation from the river banks.

Mr. Sullivan said it would be important to identify what properties had grandfathered rights prior to adoption of the ordinance.

- *Definition of “Designation of Drinking Water Source Area”. what about the common situation of both major rivers where the water runs off the hills under the highway in a culvert into a ditch that runs through residential, timber and farm areas and then dumps into the river? This is a potential major source of contamination from chems and spills.126 along the McKenzie River is one of our greatest risks to the public water. I realize this is a state highway but one tanker accident and we will be in a major hurt. Little LC can do about it, but something on the record with DEQ would be something I hope the BCC explores.*

Mr. Sullivan suggested using this comment as an example of Mr. Siekiel-Zdzienicki’s concerns.

- *I believe more time needs to be spent on the graphic example you showed regarding the amount of “land attached” in the 200 foot set back. Here in lies the emotional aspect of the argument regarding the setback.... “water is the gold standard of the 21st century” going forward....but the public feels “not in my backyard”.*

Mr. Sullivan suggested using this comment as an example of Mr. Siekiel-Zdzienicki’s concerns.

- *When it comes to “rolling it out to the public” less dependence on reading the PowerPoint and more on conversation with examples will go a long way helping people and developers understand this is not invading their property rights. As for the BCC, not attending these work sessions is going to make your presentation just that much harder. Not a criticism just a fact.*

Mr. Sullivan suggested using this comment as an example of Mr. Siekiel-Zdzienicki’s concerns.

Mr. Sullivan commended Mr. Miller and the TAC for doing an outstanding job on the code revision project.

Comments/Questions from Commissioner Siekiel-Zdzienicki

- *Make sure that everything is clearly explained, with drawings if need be, for the average homeowner.*

Mr. Miller noted this topic had been discussed earlier during the meeting.

- *Is the containment of hazardous materials going to be done by the “honesty system”, where the filling out of paperwork is the only inspection, since there is no money for enforcement?*

Mr. Miller noted this topic had been discussed earlier during the meeting.

Mr. Noble asked if realtors would be advised of the changes, and how prospective property buyers would learn of restrictions on properties they were considering for purchase.

Mr. Miller said those challenges were encountered regularly with the current regulations. Rural land use issues were complex and staff often observed that people bought property unaware of the restrictions on the property. There was an educational component that needed to take place with the proposed changes that needed participation by the local real estate industry.

Mr. Noble suggested that methods be developed to incentivize the compliance process to recognize people for doing the right thing.

Mr. Siekiel-Zdzienicki suggested staff include an explanation of overlay and emphasize that zoning was not being changed in the final document. He asked if the drinking water protection overlay zone would be countywide for all watersheds.

Mr. Miller said the water protection overlay zone would apply to public surface and ground water systems outside of Urban Growth Boundaries with the exception of the City of Springfield’s well area and the City of Florence.

Commissioners thanked Mr. Miller for his work on the project.

The meeting adjourned at 7:45 p.m.

(Recorded by Linda Henry)