

MINUTES

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

August 3, 2010
5:30 p.m.

PRESENT: Robert Noble, Chair; Tony McCown, Vice Chair; Lisa Arkin, George Goldstein, Nancy Nichols, Dennis Sandow, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Kent Howe, Jerry Kendall, Keir Miller, Lane County Land Management Division.

ABSENT: Steve Dignam, Lane County Planning Commissioner.

Mr. Noble convened the Lane County Planning Commission (LCPC) at 5:35 p.m.

WORK SESSION

1. (Deliberation—continued from May 18, 2010) PA 07-6215—Plan Amendment, from rural land to Rural Commercial land, and a Rezone from Rural Residential /RR-2 (LC 16.290) to Rural Commercial/RC (LC 16.291, for 12.3 acres of land located within the rural Community of Blue River. Map 1-45-28.2, tax lots 300 and 400' 16-45-29. tax lots 1600, 1700 and 1800. Applicant/Owner: Chris and Julie la Voie; Agent: James A. Mann, LLC.

Mr. Noble noted the public record had been closed and no public testimony would be accepted this evening. The issue would go the Board of County Commissioners (BCC) at which time the public would have an opportunity to participate.

Mr. Kendall distributed a map that illustrated the area being considered by the Planning Commission.

Mr. Noble said those commissioners who had not attended the May 18, 2010 meeting would have to determine whether they were adequately prepared to participate in this discussion.

Mr. Siekiel-Zdzienicki said he would not participate and would abstain from voting.

Ms. Arkin had not attended the meeting, but she had reviewed the material and would participate.

Mr. McCown had not attended the meeting but would likely not participate.

Mr. Kendall provided the staff report. He offered additional comments to those received during the open record period, as iterated in the Supplemental Memo dated July 28, 2010, to the Lane County Planning Commission from Jerry Kendall, regarding 1.) PA 07-6215 Plan Amendment and Zone change from “Rural” land to “Rural Commercial: land, and, 2.) Zone change from “Rural Residential/RR-2” (LC 16.290) to “Rural Commercial/RC” (LC 16.291, for 12.33 acres of land located within the Unincorporated Rural Community of Blue River. Applicants: Chris and Julie Lavoie.

Itemized comments with brief staff comments:

- Uncertainty of proposal plans: The application did not constitute “development” as defined in LC 16.090. Subsequent developments would require Special Use Permit review and Planning Director review.
- Traffic: This issue was resolved by both the Oregon Department of Transportation (ODOT) and County Transportation as of no further concern and being in compliance with the Transportation Rule.
- Noise: Noise was governed by LC 5, and was not a land use standard for the current proposal.
- Character of persons using the resort: Staff recognized that a person’s character was not a land use standard.
- Wetlands: No inventoried wetlands appeared on the subject property on the National Wetland Inventory maps provided by the Oregon Division of State Lands. No evidence had been provided regarding wetlands and the County therefore had no further responsibility.
- Buried Fuel Tanks: The applicant had supplied certification from the State Department of Environmental Quality (DEQ) that the tanks met the agency’s regulations.
- Quality of life/impact on property values: This assertion was subjective in nature. Without quantitative data from appraisers, this concern could not be future addressed.
- Use of “core” area for commercial use: Multiple parties had asserted that “community plans” called for location of commercial uses in the “downtown” area of Blue River, and on the opposite side of the river. Without documentation of such plans in the record, the assertion could not be explored further. No such conclusion could be reached by a review of the Rural Comprehensive Plan (RCP) policies.
- Community Sewer System: Multiple parties had commented on this topic, either objecting to the proposal, or to future taxes to support it. Staff asserted such a system, while mentioned, was not part of the current proposal. Planning Director Kent Howe understood the Eugene Water and Electric Board (EWEB) favored installation of such a system to better protect the watershed which was the source of drinking water for the metro area. He explained that economic revitalization of depressed former timber towns such as Blue River was supported by the Governor’s Office and the economic development agencies cited in submittals by Mr. Baker.
- RV Park: This item was not part of the proposal, although it was cited as a potential use. This use would require Special Use Permit approval.
- RCP Goal 2, Policy 11: See exhibit #105. Mr. Mann cited policy and responded to questions posed by staff and the Planning Commission. Staff accepted the response that the “tract issue” was not relevant, and there were no “tracts presently zoned for commercial activities” involved in this application. Mr. Mann’s reply was silent regarding whether or not the lodge structure was the “existing use” which justified the rezone to commercial. Staff said the lodge building was the “existing use”, thus satisfying the policy. Substantial interior modifications of the structure, changing its use from a former office to a combination office/inn, was viewed by staff as a separate enforcement issue. In response to a staff inquiry as to whether or not the Planning Commission had the option to split zone the tract, Mr. Mann stated the commission did have that option provided it was supported by evidence in the record. Staff concurred with Mr. Mann’s statement in final rebuttal, exhibit #109, that the proposal took advantage of the existing facility, and would not fit on the available small RC zoned lots in the “downtown core area.”
- Pond near Blue River Drive: Such a pond was not related to the current proposal. It would be referred to the County Roads staff for investigation.
- Loss of school district tax revenue: No evidence had been provided by any party, without which no further assessment could be made.

- Notice posting: Staff acknowledged the poster was placed one day later than the 14 days required by code, but this did not appear to be a fatal flaw. Additionally, a public hearing would be conducted with the BCC, affording another opportunity for comments.

Conclusion: The proposal appeared to meet the Plan Amendment/Rezone requirement of LC 16.400 and LC 16.252 as documented in the file record. Staff recommended approval of the request as proposed.

Mr. Noble called for deliberation.

Mr. Noble stated the policies which supported the possibility of the amendment passing were as ambiguous as the applicant's knowledge of what they would do with the property. The commission was charged with attempting to determine what would be the best decision for the entire block of five lots.

Mr. Kendall said if the commission approved the amendment for the entire property, Rural Commercial zoning would be required for the entire site. He concurred that it was unknown whether the business endeavor would prosper or fail.

Mr. Goldstein thought the commission would set a poor precedent to put a restriction that would inhibit the property owner's ability to get the money to do the project. He thought the commission would make a mistake and it would be a disservice to the property owner. He submitted the project should be approved in total or not approved at all.

Mr. Noble would concur with Mr. Goldstein if the property owner had a business plan that clearly demonstrated/explained what the project would look like.

Mr. Sullivan iterated he did not have a conflict of interest, although he had considered a similar project for this site. He had lived and worked near the property for 50 years. There were three parts of the proposal.

- Was the applicant meeting LC RCP and statewide goals?
- Was the transportation proposal in line with Lane County transportation requirements? It appeared the transportation proposal did meet those requirements with the proviso that the County have another opportunity to review the transportation aspects of the proposal because transportation appeared to be an issue in the bigger picture. Approval by the County would be a stumbling block for the project.
- Was there a business plan for the project? This was a challenge. Mr. Baker, who testified before the commission and could be considered an expert, was instrumental in bringing in the clinic, getting the water district in place, and working with ODOT. He wanted to do something proactively with the community. The other side of the issue was represented by a licensed appraiser, who commented on the values of the property if the project failed. However, Mr. Sullivan did not believe the Planning Commission was in a position to make a decision based on those two perspectives, although Lane County would be in that position if and when a Special Use Permit was applied for.

Based on Mr. Goldstein's comments regarding partial approval, Mr. Sullivan asserted the issue was whether the property owner complied with Lane Code, the RCP, and state goals. It appeared that the owner had satisfied these requirements.

Ms. Arkin appreciated Mr. Sullivan and Mr. Goldstein's comments. She got hung up on a fallacious underpinning that since there was a building on the site there was an assumption that it was commercial

and that put into motion other plans for rezoning several lots to commercial. The property owner had not offered sufficient evidence for her to support the proposal of going from public use to commercial use. Such use would possibly change the nature of the community because it increased commercial land by over 100 percent. She did not plan to support a motion approving this plan amendment. She would consider supporting a motion for tax lot 300 only.

Mr. Sandow agreed with Ms. Arkin, asserting he had a difficult time seeing the historic use of the property being considered commercial. There had been considerable testimony around quality of life issues without quantitative data, and the commission needed to determine what the best source of information to determine quality of life and changes in communities was. He did not think the lack of quantitative data invalidated the quality of life concerns expressed by people who testified before the commission. He added if per capita income was not considered in the economic revitalization equation, the community of Blue River would continue to struggle. He was suspect that this project would help bring the community back to being more prosperous. The proposal was incomplete without sufficient economic data to support a plan amendment.

Ms. Nichols said when the site was purchased, it was residential although lot 300 looked like a commercial building. She did not see wholesale rezoning of rural properties to commercial as a good economic driver. She understood the concern of the neighbors with the change to a commercial use when the property did not have enough money. She thought the commercial looking part of the site should be zoned what it looked like and what the existing buildings had represented for 70 years. She was comfortable matching the zoning to the historic use.

Mr. Goldstein did not think the concept of government not being involved in commercial activities had merit. He cited examples of State and federal parks that contracted with food and aquatic craft vendors, and operated as commercial enterprises. He thought a recreational vehicle (RV) park would be a financial benefit for the Blue River community. He saw a lot of potential in the project and hoped the permitting process would ensure the quality of the project.

Mr. Noble opined there was no right or wrong answer related to existing use as a commercial application. As the former manager of the Eugene Airport, he had experience with a commercial use on land designated government and education. It was therefore difficult for him to envision that land designated as public land could not be considered for commercial purposes. He understood that the current owner of the site was using the facility for lodging, which was a commercial venture. However, the lack of information about policy compliance for the rest of the site and for the potential venture the applicant stated he may or may not undertake, was somewhat suspect, especially since some of the testimony addressed the ability and manner of the current operation. He was inclined to allow continued use of the lodge, cabins and lot 300 as a commercial operation. He suggested the property owner could return to the commission when he had developed a business plan that would illustrate that the proposal would show a benefit to the community, through installation of a sewer system and development of a traffic impact analysis. Until that was done, it seemed out of place. He was not convinced beyond the one site that this was an appropriate application.

Ms. Arkin, seconded by Mr. Sandow, moved that the Lane County Planning Commission not recommend approval of PA 07-6215.

Ms. Arkin, seconded by Mr. Sandow, further moved that the Lane County Planning Commission recommend approval of a plan change to commercial for tax lot 300 and a zone change for tax lot 300 to Rural Commercial.

Mr. Sullivan agreed with the motion. He said the applicant had failed to connect all the pieces on the highway. There was no mention of how the school tied in with the track and how the proposal would improve the site.

Mr. McCown understood that approving tax lot 300 would allow the property owner to walk through the process to approve the adjoining property of the tract held under common ownership. He opined the motion would require only that the property owner to go through the process again without additional scrutiny.

Mr. Kendall understood that the Planning Commission felt the application did not provide sufficient evidence to pass the original proposal. Unless the proposal contained additional information when it was resubmitted, it did not sound like the Planning Commission would approve rezoning the other four tax lots to commercial.

Ms. Arkin stated the property owner wanted to make an investment in a property with some facilities that loaned themselves to commercial uses. Although the property owner had not made an adequate case for rezoning all of the properties, she could agree that an economic opportunity existed, and the property owner would have time to show it could be successful.

Ms. Nichols said the existing use had been closer to commercial than residential for 70 years, and the zoning should reflect the commercial use.

The motion that the Lane County Planning Commission not recommend approval of PA 07-6215 to the Board of County Commissioners passed unanimously, 5:0:2, with Commissioners Noble, Arkin, Nichols, Sandow, Sullivan voting in favor of the motion and Commissioners Goldstein, and Siekiel-Zdzienicki abstaining.

The motion that the Lane County Planning Commission recommend approval of a plan change to the Board of County Commissioners to commercial for tax lot 300 and a zone change for tax lot 300 to Rural Commercial passed unanimously, 7:0:1, with Commissioners Noble, Arkin, Goldstein, Nichols, Sandow, Siekiel-Zdzienicki, Sullivan voting in favor of the motion and Commissioner McCown abstaining.

The Planning Commission took a short break.

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

Mr. Miller provided the staff report. He explained this was the third of four Planning Commission work sessions. The Land Management Division (LMD) had drafted a “drinking water protection overlay zone”. If adopted, the new ordinance would codify standards for the protection of drinking water source areas, including both surface waters (rivers and lakes) and certain community ground water systems. He said the Planning Commission was being asked to review the proposed overlay zone language prior to deliberations and possible adoption during the upcoming Post Acknowledgement Plan Amendment (PAPA) process. He noted the draft Drinking Water Protection Overlay Zone Rural Comprehensive Plan (DWP-RCP) ordinance was included in the agenda packets for this evening’s meeting. A technical advisory committee (TAC) had assisted with development of the proposed ordinance. He introduced

TAC members who were present at the meeting: Larry Six, McKenzie River Watershed Council; Amy Chinitz, Springfield Utility Board (SUB); and, Karl Morgenstern, Jesse Heuser, Eugene Water and Electric Board (EWEB).

Mr. Miller offered a PowerPoint presentation on the Proposed Drinking Water Source Area Protection Zone which presented examples of similar ordinances in place around the country. Staff had reviewed other adopted ordinances in developing the proposed ordinance for Lane County. Additionally, the University of Oregon (UO) Community Planning Workshop and EWEB had given the Planning Commission a presentation on studies of current ordinances around Lane County. They did an indepth review of best management practices and model ordinances from around the country. Staff was also reviewing the model ordinance language developed by the Oregon Department of Environmental Quality (DEQ). The proposed ordinance was part of a larger strategy to protect drinking water as well as an effort undertaken by the drinking water utilities and water service providers, and the County. There was a considerable amount of education and outreach undertaken by the utilities. Additionally, the water utilities developed specific source water protection plans. He reviewed a draft DWP Overlay Zone Map, which identified both surface and ground water protection areas. The draft map maybe viewed at: <ftp://ftp.lanecounty.org/gis/outgoing/DraftSourceWaterProtectionZone/DrinkingWaterSourceAreas.pdf>.

Mr. Sullivan asked that the minutes reflect that the Minutes Recorder, Wade Hicks, left at 7:30 p.m. The digital recorder continued to record the meeting.

Mr. Sullivan noted the proposed language in the DEQ model ordinance exempted existing heating oil systems. He asked what could be done to protect the Willamette and McKenzie Rivers from contamination from an a damaged tanker. Mr. Morgenstern explained the State designated the McKenzie Highway as a state highway and freight route. Lane County would have to go through a State process to make any changes.

In response to a question from Ms. Arkin, Mr. Miller said the proposed ordinance would apply to rural Lane County, outside of the Eugene/Springfield urban growth boundary (UGB), and outside the city limits of the small cities but within their UGBs.

Responding to a question from Ms. Nichols, Mr. Miller explained the specific language for government use was limited to emergency use storage and handling hazardous materials by government agencies and disaster relief organizations for the public good.

Mr. Miller summarized the ground water standards, noting they included a prohibition on uses and a requirement for hazardous material management plans for certain uses. He next reviewed the surface water protection area. Surface water protection areas were defined as those that were 200 feet inland from the ordinary high water level of the perennial streams that lead to an intake for public water systems. It was important to note the ordinary high water level was not actually mapped, but had to be done on a site by site basis. At the present time, this was addressed through the riparian regulations. If there was a development proposal on a site, the County surveyor visited the site and determined where the ordinary high water level was located based on a review of bank characteristics and other criteria.

Commissioners offered suggestions for clarifying the proposed language for presentation at the upcoming public hearing.

Mr. Miller reviewed the revised hearing schedule for commissioners. He explained the commission have one additional work session scheduled on the proposed drinking water protection overlay zone.

Mr. Sullivan asserted staff had done an incredible job in developing the proposed language for a very complex issue.

Mr. Noble suggested that the Planning Commission e-mail questions for Mr. Miller's response at the next work session. Planning Commissioners offered preliminary comments recorded by Mr. Miller for inclusion in his response at the next work session.

The meeting adjourned at 8:10 p.m.

*(Recorded by Wade Hicks,
Transcribed by Linda Henry)*