

**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, September 22, 2016

Present: Chair Robert Lundy; Commissioners Joseph Bernt, Hank Johnson, Lisa Kerr, Janet Patrick, and Robin Risley

Excused: Commissioner Charles Bennett

Staff: City Planner Mark Barnes and Administrative Assistant Alisha Gregory

CALL TO ORDER

Chair Lundy called the meeting to order at 6:00 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Kerr moved to amend the agenda, hearing items (5) and (6) first; Risley seconded the motion.

Vote: Kerr voted AYE; Bernt, Johnson, Patrick, and Risley voted NAY; the vote was 1/4 in favor and the motion failed.

The agenda remains in the same order.

(2) Consideration of the Minutes for the Planning Commission Meetings of August 25, 2016

Bernt noted a correction on page six, “barring” should be “baring”. Kerr noted a correction on page two, paragraph ten should read, “.....effect on the due process rights of citizens on what is a very important issue.”

Motion: Bernt moved to approve the minutes of August 25, 2016 as amended; Kerr seconded the motion.

Vote: Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 4/0 in favor and the motion passed. Johnson abstained as he was not present at the August 25, 2016 meeting.

(3) Continuation of the Public Hearing and Consideration of CP16-01: Housekeeping Amendments, Zoning Ordinance and Comprehensive Plan

Chair Lundy introduced the item, stating this hearing has been continued from the August 25, 2016 Planning Commission meeting.

Barnes summarized his staff report.

Chair Lundy reviewed his notes and corrections to the proposed amendments.

The Commissioners discussed the proposed tree ordinance amendments at length. Johnson requested Vine Maple and Big Leaf Maple be added to the native tree list. Bernt requested to remove the sentence “Proof of violation...”. Kerr stated, in her opinion, the sentence should remain as it holds the property owner responsible.

Motion: Bernt moved to remove the sentence “Proof of violation...” from 17.70.020.M of the proposed amendment.

There was no seconded and the motion failed.

Motion: Kerr moved to add Vine Maple and Big Leaf Maple to the native trees listed in the proposed tree ordinance amendment; Risley seconded the motion.

Vote: Johnson, Kerr, Patrick, and Risley voted AYE, Bernt voted NAY; the vote was 4/1 in favor and the motion passed.

Motion: Johnson moved to keep the language in 17.70.020.E.2 unchanged in the proposed tree ordinance amendment; Risley seconded the motion.

Vote: Bernt, Johnson, Patrick, and Risley voted AYE, Kerr voted NAY; the vote was 4/1 in favor and the motion passed.

Consensus to leave 17.70.020.G as is, no change.

Motion: Kerr moved to recommend the City Council adopt the proposed amendments to the tree removal ordinance as amended; Johnson seconded the motion.

Vote: Bernt, Johnson, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy continued the public hearing for hardscape/softscape, PODS, slope density items to the October 27, 2016 meeting.

(4) Continuation of the Public Hearing and Consideration of CP 16-01, Specifically Regarding the Proposed Amendment or Removal of Chapter 17.40, Planned Development (PD) Zone in the Zoning Ordinance

Chair Lundy introduced the item, stating this hearing has been continued from the August 25, 2016 Planning Commission meeting.

Barnes summarized his staff report, noting that this item is being considered independently from the other proposed amendments per the Commissioners' request from the August 25, 2016 meeting. Barnes further stated the hearing was left open to both written and oral testimony. There has been no additional written correspondence received since the August 25, 2016 meeting.

Chair Lundy stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Lundy called for proponents.

Jan Siebert-Wahurmund, PO Box 778, Cannon Beach OR 97110, requested removal of the Planned Development (PD) Zone ordinance.

Chair Lundy called for opponents. There were none.

Chair Lundy closed the public hearing and moved to consideration.

Kerr expressed concerns with removing the ordinance as it may open up a possibility to loopholes in the future. She stated she is in favor of the proposed changes. Bernt stated hesitation with removal, noting that it may be useful to have the option of a Planned Development Zone in the future. Risley noted possible parcels that may be large enough to utilize this portion of the code. In response to concerns from Patrick that removing this portion of the code may limit the City when it comes to affordable housing development, Barnes stated that no current

affordable housing initiatives currently being discussed would utilize this portion of the code. In response to a question from Kerr regarding removal, Barnes recommended the Commission move forward with the proposed changes to address some of the problems evident with interpretation in the past. Barnes noted the Commission may choose to recommend the City Council remove it as a first choice, or adopt the proposed changes as a second choice. Barnes noted other tools within the ordinance that may allow "cluster development" separate from the PD ordinance.

Chair Lundy noted several amendments he would like the Commission to consider for making a motion.

Chair Lundy continued to the October 27, 2016 meeting.

(5) Public Hearing and Consideration of CU 16-04, Hospitality First, LLC, Conditional Use Request to Allow Development of a Two-Story 18 Unit Motel, 132 E Surfcrest

Chair Lundy introduced the item, noting the request will be reviewed against the criteria of the Municipal Code, Section 17.80.110, Conditional Uses, Overall use standards; and Section 17.82.060, Pre-existing Uses.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Lundy asked if any Commissioner had any conflict of interest. There were none. Chair Lundy asked if any Commissioners had any personal bias to declare. There were none. Chair Lundy asked if any Commissioner had any ex parte contacts. There were none. Chair Lundy asked if any Commissioner had made a site visit. Site visits were declared.

Barnes summarized his staff report, noting this application is unique considering the pre-existing use. Barnes gave a background on the pre-existing use ordinance and discussed the application in detail. Barnes noted a correction on pages 5 and 6 of the staff report, noting the proposed design is for one building, not multiple buildings.

Barnes noted additional correspondence located at the dais.

Chair Lundy stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Lundy asked if the applicant wished to make a presentation.

Patrick Nofield, PO Box 843, Cannon Beach OR 97110, representing Escape Lodging Co. (Hospitality First LLC), gave a presentation, giving a detailed history of the property and previously approved application for the Inn at Cannon Beach with an emphasis on a residential feel. Nofield distributed the original site plan for phase one of the previously approved application. Nofield noted that they would like to get away from the condominium feel and instead develop and extension of the Inn at Cannon Beach with and additional 18 units. He further noted that 65% of the property will be landscaping or walkways. In response to a question from Kerr, Nofield stated that him and his partners purchased the property after it had been rezoned with the hope they could continue to use the property as nonconforming. In response to questions from Lundy, Barnes reviewed the previous nonconforming use of the property, confirming that the property was "grandfathered" in. In response to Kerr, Nofield noted that the previous application was for eight townhouse units; this application is for 18 units. Each unit will be a one bedroom suite with separate living area. Nofield answered several design applicable questions asked by Johnson.

Chair Lundy called for testimony by proponents.

Herb Florer, PO Box 546, Cannon Beach OR 97110, gave testimony in favor of the application. Florer noted he and his wife reside across the street of the property, as well as own/operate a business across the street. He further noted that this project will be a welcome addition and fit into the current uses in the area.

Chair Lundy called for testimony by opponents.

Jan Siebert-Wahrmund, PO Box 778, Cannon Beach OR 97110, gave testimony, specifically noting concerns with increased water usage.

Chair Lundy called for staff response. Staff had no additional comments.

Chair Lundy closed the public hearing and moved to consideration.

Kerr noted that the criteria regarding if there is a need or demand is subjective. Kerr noted a potential negative traffic and water impact with this development. She also noted the property was purchased after the zone change. She further noted concerns with the development of additional hotels in Tolovana. In response to a question from chair Lundy, Barnes stated there is no definition in the Municipal Code for "demand" and it is a subjective criteria. Johnson stated a large impact on traffic since the development of the store Fresh Foods in Tolovana, and therefore agrees that further development may have a further negative traffic impact. Bernt stated that he does not see a development of this size making that much of a difference on traffic. Bernt further stated that during the summer months he has seen numerous "no vacancy" signs on local lodging establishments, so perhaps there is a need; in regards to excessive water use, Bernt stated that day-trippers and restaurants also impact water use.

The Commissioners discussed tourism and overnight lodgers at length, specifically if there is a "demand" for additional units.

Patrick stated that at some point there will be development on that property, and any development would impact water usage.

Motion: Bernt moved to approve CU 16-04 as presented; Patrick seconded the motion.

Risley suggested that possibly a condition should be considered to mitigate traffic impact and/or water usage. Chair Lundy stated the Warren Way intersection will be reconfigured and improved. Barnes stated that one strategic planning goal was to establish a transportation systems plan. That plan will look at overall traffic impact. The Public Works Department is currently performing a water study to look at current usage and projected usage. These may help inform development decisions.

Vote: Patrick voted AYE; Bernt, Johnson, Kerr, and Risley voted NAY; the vote was 1/4 in favor and the motion failed.

(6) Public Hearing and Consideration of AA 16-01, Cameron La Follette, Oregon Coast Alliance, Appeal of Administrative Decision Approving DP 16-03

Chair Lundy introduced the item, noting the request will be reviewed against the criteria of the Municipal Code, 17.46.060.A and 17.88.140-.150.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Lundy asked if any Commissioner had any conflict of interest. Risley stated she serves on the Oregon Parks and Recreation Commission. Patrick stated she resides in Breakers Point. Both Risley and Patrick stepped down, and did not participate. Chair Lundy asked if any Commissioners had any personal bias to declare. There were none. Chair Lundy asked if any Commissioner had any ex parte contacts. There were none. Chair Lundy asked if any Commissioner had made a site visit. Site visits were declared.

Barnes summarized his staff report noting the Commission should determine whether Oregon Coast Alliance's application meets the requirements of 17.88.150.B: "A statement of the interest of the person seeking review." Barnes added the application is for remedial dune grading behind the vegetation line.

Chair Lundy called for a short recess at 7:51pm.

Chair Lundy reconvened the public hearing at 7:55pm.

Chair Lundy stated the appellant should establish an interest in the matter, however that is not currently noted on the City's appeal form. Since it is not currently noted on the form, the appellant should have a chance to state her interest.

Barnes noted additional correspondence located at the dais.

Chair Lundy stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Lundy asked if the appellant wished to make a presentation. The appellant was not present.

Chair Lundy called for testimony by proponents.

Jan Siebert-Wahurmund, PO Box 778, Cannon Beach OR 97110, gave testimony in support of the appeal, noting additional information should be required.

Chair Lundy called for testimony by opponents.

Bruce Francis, PO Box 246, Cannon Beach OR 97110, on behalf of Breakers Point Homeowners Association, gave testimony against the appeal, noting agreement with the approval, the findings of fact, and the six conditions of approval. Francis asked the Commissioners to uphold the staff decision. In response to a question from Johnson, Francis reviewed the remedial dune grading plan to be taken place on BPHOA property. In response to an additional question from Johnson, Francis stated that the grading will be completely done by hand, no heavy machinery will be used.

Frank Patrick, 255 Torreyview Drive, Portland OR gave testimony against the appeal noting the remedial dune grading is to take place in front of two units only and a small amount of sand would be graded. He stated the amount of sand is approximately the size of a child's sand box and located strictly on Breakers Point property. He further stated concerns with whether or not ORCA has legal interest required to file an appeal of the original decision. Patrick noted the area to be graded does not involve the estuary in any way and the movement of sand will be done by wheelbarrow, not heavy machinery.

Chair Lundy asked for any further comments.

Jan Siebert-Wahurmund asked staff who wrote the Findings of Fact. Barnes stated that he wrote the Findings of Fact.

Chair Lundy asked for staff response. Barnes stated he had no further comments.

Chair closed the public hearing and moved to consideration.

Kerr noted that the application appears to be asking that future applications include additional requirements in the future; that the appeal is not to overturn the approval of DP 16-03. Kerr led a discussion regarding the implementations of additional requirements and information on dune grading applications. Barnes stated that the application was for the appeal of the denial and that is what is being voted on. Kerr expressed the need to "tighten up" the City ordinance. Kerr led a discussion regarding the current dune grading ordinance. Lundy remarked it

would helpful if the appellant was present to ask for clarification. In response to a question from Lundy, Barnes stated that an applicant may amend their appeal application after submission. He further stated the appellant did not choose to withdraw their appeal. Kerr noted that some people may use an appeal as a catalyst for change and to bring it to the attention of the decision makers. In response to a question from Lundy regarding procedure, Barnes stated the Commission may choose to deny, modify, or approve the appeal of the administrative decision. Barnes stated the Commission may choose to give staff direction regarding amendments to forms or ordinance language. Kerr recommended a motion to deny the appeal and ask staff to consider ORCA's recommendations. In response to a question from Lundy, Barnes stated the majority of the language considered for this permit is located in the Ocean Management Overlay Zone section of the Municipal Code. Barnes stated that as early as next spring the City will begin considering broader policy changes for dune grading and sand management. Kerr stated that ORCA's recommended amendments should be considered.

Kerr stated DP 16-03 appears to be approved based on current criteria, however, changes to the language and requirements should be considered.

Motion: Bernt moved to deny AA 16-01 and uphold the administrative decision to approve DP 16-03; Kerr seconded the motion.

Vote: Bernt, Johnson, and Kerr voted AYE; the vote was 3/0 in favor and the motion passed.

(7) Authorization for the Chair to Sign the Appropriate Orders

Motion: Risley moved to authorize the chair to sign the appropriate orders; Patrick seconded the motion.

Vote: Bernt, Johnson, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

INFORMATIONAL ITEMS

(8) Ongoing Planning Items

Barnes thanked the Commissioners for attending recent training, noting there will be additional trainings in the future. Commissioners discussed the training.

(9) Good of the Order

Johnson noted concerns with rearranging agenda items. Risley noted that many people attend the meeting based on the approximate times presented and may miss their opportunity to testify if the agenda is amended. In response to Commissioner discussion Barnes stated staff will email a draft agenda to the Commissioners for review prior to publishing.

Bernt raised questions regarding tree removal permits being denied for the Christian Conference Center. Barnes stated the building permit has yet to be issued for the project. Staff can not allow the trees to be removed until the building permit is issued.

ADJOURNMENT

The meeting adjourned at 8:54 p.m.

Administrative Assistant, Alisha Gregory