



Marion County OREGON

PLANNING COMMISSION MINUTES

PLANNING COMMISSION

George Grabenhorst - Chair
Mike Fischer - Vice Chair
Stanley Birch
Mike Long
Carla Mikkelson
Gary Monders
Michael Shrock
(vacant)
(vacant)

DATE: November 10, 2010
TIME: 6:30 p.m.
PLACE: Marion County Public Works

Present: Commissioners Grabenhorst, Fischer, Monders, Long, and Birch

Absent: Commissioners Shrock and Mikkelson

Chair Grabenhorst called the meeting to order.

1. Work session on possible amendments to the county rural zone code to allow events in the AR zone and review of a recent court case involving conditions of approval being directly related to impact of a proposed development and proportional in cost.

Sterling Anderson, Planning Director, provided background behind the purpose of the work session – to further discuss two requests to amend the zone code to allow events in the AR zone and include proportionate share requirements in the code. He stated that staff is opposed to allowing events in the AR zone as the primary purpose of the zone is residential. AR zoning is also used to meet housing demand goals and policies and uses in the AR zone shouldn't compromise the nature of the area. Mr. Anderson stated that some non-residential uses are allowed but on a very limited basis and usually on larger parcels and often related to farming. These uses are usually quite restricted through conditions of approval to keep the areas in line with the rural residential character of the zone. He continued that events would have a negative impact due to noise and traffic, especially in the summer months when other property owners are out trying to enjoy the area. Averaging two per week, as proposed, would be a fairly intense use during the short summer. Mr. Anderson further stated the AR zone is a small lot zone and conflicts with events even on just larger parcels would occur and the conflicts would be greater if they were allowed on small lots. Events would also conflict with farm uses nearby. Mr. Anderson added that the second major reason not to allow events is due to this issue being discussed by the state legislature. A task force has been formed to look at these issues in the EFU zone and the Association of Oregon Counties will have a proposal before the next session. This will cover how to allow events, what restrictions are necessary, are permits needed, standards to implement, etc. and will be tied to farm use. He concluded anything that comes out of the legislative session would be a model to use for allowing events in the AR zone.

Joe Fennimore, Principal Planner, provided a list of the number of parcels in the AR zone by size, as requested by the PC at the previous public hearing. Mr. Monders stated allowing events in the AR zone will pit neighbor against neighbor. He added most home businesses allowed in the AR zone aren't busy on weekends, whereas events will be mostly on

weekends. He also expressed concern that houses in the AR zone are not spread out enough to limit impact.

Jo Stonecipher, county legal counsel, stated part of the task force review is to determine how allowing events will enhance farming and keep commercial farm activity going. This request, for the AR zone, doesn't enhance viable farming at all. She also questioned why tie allowing events to a property having farm deferral as the request has nothing to do with farming? Mr. Monders replied the reason might be to limit the number of property owners that can comply. Ms. Stonecipher added why change the code to provide something for only a few property owners. Mr. Monders and Mr. Fischer both agreed with that comment.

Mr. Long asked if the PC could wait to see what happens with the legislature and when might that happen? Mr. Anderson replied it would be this summer. Ms. Stonecipher added staff can pass along proposed draft bills as they come out. Mr. Anderson added the wine industry is also coming out with suggestions and the Farm Bureau is wondering why there are so many special rules allowing for wineries and not other farm products. He stated the legislature is discussing current and proposed changes to rules just for wineries. Mr. Long asked if the specific property requesting this change produces wine? Mr. Anderson responded he was not sure. Mr. Long added perhaps requiring a minimum able to serve would exclude this property. Mr. Anderson explained the current regulations for the minimum necessary to qualify as a winery. The PC discussed what is required and how some small properties try to claim status as a winery, which is 15 acres. Mr. Anderson gave an example of a recent enforcement case where a property owner claimed to be a winery in order to hold events but had only 2 actual acres of crop.

Ms. Stonecipher explained the options for the PC making a recommendation to the board, decline to proceed, etc. The PC briefly discussed whether to table the request. Mr. Anderson suggested the PC wait to make any recommendation to the board until after the legislature comes out with regulations and then the issue could come back to the PC for review. A motion was made and seconded to decline to take any action on the request.

Mr. Anderson then reviewed the second request for adding wording to the zone code that offsite improvements require supportive findings showing proportionality. He reminded the PC that this was the result of a recent court case which actually reviewed the "takings" issue. He added the question is if this type of condition is subject to the same findings as taking of land. Ms. Stonecipher added court cases indicate offsite improvements are not the same thing as taking of land. This request has been put forward to the PC as a major change in state law but it is not and she provided examples. She stated there are protections in place already and most improvements are totally justified and the current board also views required improvements over impact.

Chair Grabenhorst asked if Ms. Stonecipher had reviewed the proposed regulations? She responded yes and the proposed wording would actually require much more work and could stymie development as people could use it to stop a project by saying findings in an approval weren't good enough. She feels the proposed wording doesn't maintain the status quo as it says but will require a lot of additional work. If staff requires certain improvements and an applicant disagrees the issue can be appealed. She concluded if it becomes a problem or the court case is interpreted differently the board can always change the code, but she feels the proposed wording would not protect anyone. Ms. Stonecipher also disputed the claim that other cities have already adopted this new wording. The PC briefly discussed how other jurisdictions handle this issue.

Cindy Schmitt, Public Works Engineering, submitted a list of points on this topic and explained staff try to use proportionality but sometimes it may exceed what an applicant feels is appropriate due to safety issues. She is concerned if the board implements a regulation saying “have to” that will limit staff’s ability to use reason and logic but will “have to” require a specific cost improvement in every case. Ms. Stonecipher concurred and gave other recent examples. Ms. Schmitt added so many projects require small sums that money is collected and pooled and “down the road” the necessary improvements are made. The requested language change would make it very difficult to mitigate cases. Mr. Anderson gave a few examples of instances where road improvements for big projects were used by opponents to stall projects.

Mr. Monders stated it appears such wording could be costly for both sides and the county. Mr. Anderson added the wording also applies to “all conditions of approval” which could include requiring building permits, limiting hours of operation for a business, etc. Anyone could challenge an approval based on that wording. Mr. Monders agreed that some would definitely use that to tie up projects. Mr. Monders asked if this has anything to do with SDCs and Ms. Stonecipher replied it did not.

Mr. Long asked how it currently works and Mr. Anderson explained an applicant gets a letter explaining the road improvement and site improvement requirements, how to do them and why. This can be appealed if there are issues that cannot be resolved. If there are questions with the requirements staff and the applicants can discuss it before a final decision is made. Applicants frequently talk with Public Works staff on recommendations and the final outcome is often based on additional information provided by applicants.

There being no further discussion, a motion was made to take no action on this request, as well. The motion passed unanimously, 5-0.

2. Adjournment.

There being no further business, the Chair adjourned the meeting.