

**CITY OF COOS BAY
PLANNING COMMISSION MINUTES**

Tuesday, March 13, 2007
6:00 P.M. CITY COUNCIL CHAMBERS

ATTENDANCE

COMMISSIONERS: Chairman Bruce Harlan, Commissioners Jim Berg, Chris Coles, Steve Donovan, Chris Hood, Jeff Marineau, Rex Miller

STAFF: Laura Barron, Planning Administrator
Debbie Erler, Code/Planning Tech

SIGNED-IN GUESTS: Hilary Baker, Crow/Clay Association, 125 Central Avenue, Coos Bay
David Koch, P.O. Box 1006, North Bend
Kyna Sturges, 830 Fenwick Street, Coos Bay
Dianne Crawford, 701 Prefontaine Dr., Coos Bay
Ann Collins, 67196 E. Bay Rd., North Bend
Jack & Dorothy Gillhoover, 783 Faymar Dr. NE Keizer
Charles Belknap, 960 Lakeshore Dr., Coos Bay
Howard Crombie, 500 Edwards Ave., Coos Bay

APPROVAL OF MINUTES

Approve Planning Commission minutes of Tuesday, February 13, 2007.

MOTION: Commissioner Coles - Approve Planning Commission minutes of Tuesday, February 13, 2007 as submitted revised.

SECOND: Commissioner Miller

VOTE: Unanimous **ABSTAIN:** Commissioner Hood

CCI/PUBLIC COMMENTS

PUBLIC HEARINGS

ITEM A: Variance (ZON2006-00104): Emmanuel Episcopal Church, 400 Highland Avenue, Coos Bay, OR 97420. The applicant is requesting approval to the off-street parking requirements for the use, "religious assembly," located at 420 Highland Avenue. This is a continuation from the December 12, 2006, January 9, 2007 and February 13, 2007 hearings.

Chairman Harlan asked if there were any objections to the Planning Commission hearing the item on jurisdictional grounds. He asked if the Planning Commission had exparte contact or conflict of interest to report.

Chairman Harlan and Commissioners Berg and Marineau declared a conflict of interest. Chairman Harlan turned the hearing over to Vice-Chair Coles.

Vice-Chair Coles opened the public hearing.

Laura Barron read the disclosure statement and updated the applicant's request which was continued from the December 12, 2006, January 9, 2007 and February 13, 2007 Planning Commission hearings. Mrs. Barron stated that the City received a letter from Emmanuel Episcopal Church requesting a continuance to the April 10, 2007 Planning Commission hearing.

Vice-Chair Coles closed the public hearing.

MOTION: Commissioner Hood - Approve one final continuance for Variance application #ZON2006-00104 to the April 10, 2007 Planning Commission hearing to allow the applicant additional time to secure off-street parking agreements and pursue adding three off-street parking spaces on site.

SECOND: Commissioner Miller

VOTE: Unanimous

ITEM B: Home Occupation (ZON2007-00020): Tina Amatisto and Imran Ali, 795 Patrick Street, Coos Bay, OR 97420. The applicants are requesting approval of a home occupation for a tow truck business at their residence at 795 Patrick Street.

Chairman Harlan asked if there were any objections to the Planning Commission hearing the item on jurisdictional grounds. He asked if the Planning Commission had exparte contact or conflict of interest to report.

Commissioner Miller stated he has prior knowledge of the situation through the Tree Board. He stated this would not affect his ability to make an impartial decision.

Chairman Harlan opened the public hearing.

Laura Barron read the disclosure statement and outlined the applicant's request. She stated a written statement was received just prior to the hearing from Mr. Koch, attorney for the applicants, which was provided to the Planning Commission. She stated Mr. Koch would be summarizing the written statement.

David R. Koch, attorney for the applicants, spoke on behalf of his clients. Mr. Koch read his written statement into the record (*Exhibit 1*) in support of the applicants' request.

Commissioner Miller asked what the billing address is for the business. Mrs. Amatisto stated they use a post office box in North Bend as a mailing address.

Commissioner Hood referred to Mr. Koch's statements about the noise levels from other sources in the area. He stated residents in the area have no control of airplanes, school buses, UPS or garbage trucks, but home occupations in residential zones can be controlled. He asked how many vehicles are on site at any given time.

Commissioner Hood asked Mr. Koch if he was satisfied with staff's proposed conditions. Mr. Koch stated that Mr. Ali needs to have available to him the flat bed and boom truck. He stated that the boom truck is necessary for certain types of recovery operations. Mr. Koch stated there are up to two other trucks on the site.

Commissioner Donovan asked how they are paid. Mr. Koch stated the drivers are paid on commission basis per tow and that they have the tow truck with them when they are on duty.

Commission Donovan asked if receipts for commercial washing have been provided. Mr. Koch stated the one of the proposed conditions of approval would be that anytime a flatbed or engine is washed it would be done at a commercial site. He stated washing the outside of the cab would be washed on site just as any other personal vehicle to keep it clean and looking professional.

Chairman Harlan asked Mr. Koch if it is his contention that the home occupation does not alter the residential character of the area. Mr. Koch stated the portion of the business that requires them to get a home occupation permit which includes the administrative functions; the parking of vehicles for their off-duty drivers; and the drivers picking up and dropping off the vehicles; does not alter the residential character of the neighborhood. He added that Mr. Ali being employed as a driver for the company and having his work vehicle at his home so that he can respond to calls, do not alter the residential nature of the area.

Commissioner Hood asked staff if a home occupation permit would be required if someone had a business at their home and one truck associated with the business that is parked at the home every night and came and went as the drivers do in this situation. Debbie Erler stated that any business that operates in the City of Coos Bay is required to have a business license and if that business is operated from a residential zone, a "Home Occupation" approval is also required.

Mr. Koch stated that the question is what portion of the business is being conducted in the home. He said the picking up of vehicles and towing them to their destination does not occur at the home. The impounding of the vehicles does not occur at the home and major repair of the vehicles occurs off-site. The dispatching of the vehicles comes in from an off-site dispatch center. The only time the calls would come to the home is if Mr. Ali as a driver is dispatched to a call, which is the same as any other driver may be dispatched from their home.

Mr. Donovan stated there are periods where the company vehicles are being stored on the site, when the other drivers are off-duty. Mr. Koch stated that is related to Mr. Ali's roll as a manager of the business and not a back-up driver. He stated that they acknowledge that practice needs to fit within the criteria. He added that Mr. Ali's own use of one of the vehicles as a back-up driver, starting it up in his own driveway and driving it to the job site, does not require a home occupancy permit any more than one of the drivers would need a home occupation permit to have the vehicles parked in front of his home or any other person that is employee on an on call basis.

Kyna Sturges, representing her parents Blair and Susan Sturges, read a letter into the record from her parents (*Exhibit 2*) indicating they have no problem with the business and that they are great neighbors and an asset to the community.

Howard Crombie, 500 Edwards Avenue, Coos Bay stated one of the key points Mr. Koch made is that Mr. Ali simply driving trucks to and from the residence is simply "the nature of the business". Mr. Crombie stated that operating a tow truck is the essence of operating a tow truck business. The administrative functions are important and he has no objections to that occurring inside the residence. He stated it is an artificial distinction to say that it is not part of the job to start up the trucks and back out and drive to the job site. The job site is where the impact of the business is felt and unfortunately that is everywhere from my master bedroom (that he can no longer use) all the way to the family room at the other end of the house. Not to mention the yard where you have to stop conversations when they start up the vehicles because of the engine noise. Mr. Crombie stated they are very good neighbors and he respects what they do for the community. The point at hand is not what their character is, but what is the nature of their business and what are the impacts to the neighborhood. He added Mr. and Mrs. Sturges' property is vacant; they do not live in the area and do not know what the impacts are to the other residents.

Mr. Crombie summarized his letter of March 7, 2007 that was previously provided to the Planning Commission and addressed issues raised by Mr. Koch's testimony. He stated the property is zoned Restricted Waterfront (R-W). He read the intent statement for the R-W zone. He said it is an artificial distinction to say that Mr. Ali is commuting from his house to the job site. The property is the job site for the trucks every bit as much as it is for the bookkeeping. He read Section 1 of the Home Occupation Ordinance and stated there has been several times during the last month that he has been awakened because of the tow trucks operating. He asked how many times he should be awakened in his own home because of the operation of these trucks. He read Section 2 of the Ordinance and stated he did not say during most of year 2006 but during a portion of the year 2006, two employees, the previous owner and Mr. Ali operated trucks out of this location. He said that he witnessed an employee washing the trucks with a pressure washer on the premises, so it is not just picking up the trucks and leaving. He stated he has worked around heavy equipment for over seven years and is trained that when you hear a back-up signal you pay attention and watch out. He asked again how many times should he be awakened so a commercial business can occupy a residence across the street from him. He stated the first flatbed arrived on the site in December of 2004. He stated that he is a tolerant person and has tried for years to accommodate their business, including moving his bedroom to the middle of the house. He stated their business has grown from one flat bed to two flat bed trucks, then the boom truck and they recently purchased a third flat bed truck and now they have five trucks. He stated when they proposed to remove two trees and applied for the home occupation permit, he decided it was his opportunity to voice his concerns.

Mr. Crombie added that he had informed the owners in early 2005 that the back-up signals were loud and asked if they could install an on/off switch. He stated that in May of 2005 he again informed Ms. Amatisto that the back-up signals sound like an alarm clock going off in my house. Ms. Amatisto stated that would be changing because they would be getting another backup driver. He stated he has issues with the submitted application which indicates only office work is conducted on the property. It does not address the operation of tow trucks or employees coming and going from the property and washing vehicles. The application asked about delivery to the property other than UPS or Postal Service. The application states that deliveries are made once every three months, but fails to address the tow trucks (intend for vehicle delivery) that come and go from the property on a daily basis at all times of the day and night. He stated other vehicles enter the neighborhood, like garbage trucks that come once or twice a week, and school busses that come twice a day during the school year and during normal hours. He stated they are a profitable business and they need to be located in a commercial zone. There are vacant commercial buildings and lots in the Empire area that could accommodate the business. He addressed the sound test conducted by the applicants and summarized his concern.

Commissioner Donovan asked if they back the trucks up to his property. Mr. Crombie stated they do not back-up on to his property.

Paul Pushkar, 605 John Avenue, Coos Bay stated he has lived in the area since June of 1998 and from where he lives he can hear the trucks very well. He said according to Mr. Koch they have four company vehicles on site, plus their personal vehicles and the vehicles from the drivers when they are on site, which adds up to over seven vehicles on site. He asked where it would stop. He concluded by stating that the airplanes are over a mile away when they fly over.

Jack Gillhoover, Keizer, Oregon stated he owns the property abutting the subject property. He has owned the property for over 30 years and he is retired and moving back to Coos Bay. He stated he is not against the administrative portion of the business being conducted from the home. He is against a 24 hour towing business being operated in a quite residential area. The changes made to the property have been extensive over the last ten years. The area was dug out by the prior owner which was Ms. Amatisto's brother.

Mr. Gillhoover stated his proposed building will be east and 20 feet higher than the Amatisto home, and there is no noise or visual barrier. He will be living on the site later this year and he is very concerned about the impact of their business. He also stated they plan to sell around six of the lots for additional dwellings. Mr. Gillhoover stated they contacted local realtors and confirmed that the operation of such a business would effect the valuation of surrounding property. He added that all businesses have a cost of doing business and they should park their commercial trucks in a commercial zone.

Daina Swanson, 517 N Marple, Coos Bay stated she has four rentals in the area and there is a park just down the road. The street is narrow and the visibility is bad. She is concerned about safety.

Charlie Belknap, 960 Lakeshore, Coos Bay stated he moved back to Coos Bay with this family. He stated he can hear the diesel engines from a long way away. He stated they are operating on roads that are not fully developed and are not intended for commercial traffic. He stated he and his wife are attorneys and attorneys have a way of making distinctions. He said according to Mr. Koch the applicants just want to do billing and other administrative functions and some tow vehicles. Then we find out from testimony that employees come in for their pay checks; tow trucks are dropped off and picked up at the site; trucks are stored on the site; trucks are dispatched from the site; trucks are power washed on site. He said that is exactly what a commercial business does. Mr. Koch stated the use is no different than a contractor or police officer bringing their vehicle to home and responding to calls. He stated the problem is that the person driving the tow trucks owns the business; the business is located in a residential zone; and that the person is operating a full blown business from the facility. Mr. Koch stated that because they are going to another location to conduct his business that it's O.K and it is like a police officer driving his vehicles home and responding to calls. Mr. Belknap stated that what it is really like is having the entire police facility located on site and police officers going to the facility getting in his car and driving off and going to work. The applicants want to operate a commercial business in the residential zone and residents in the area should not pay the price for their business. He requests the Planning Commission deny the request.

Don Laiche, contractor for the Mr. and Mrs. Gillhoover, stated he asked if they could remove 10-feet of fencing or the trees so that he could access the Gillhoover property.

Mrs. Gillhoover stated she agrees with everything stated.

Mr. Koch stated there is one point that needs to be made above all else and that is that if it they were not doing bookkeeping and administrative functions in the home, a home occupation permit would not be required. If all that was occurring on site was Imran living there, employed by the company as a driver and being dispatched out of his own home to a job site using a work truck that he has parked at his home, a home occupation permit would not be required. The home occupation is required because the bookkeeping and accounting functions that occur in the home, which by all accounts no one is opposed to, and the parking, pick-up and drop-off of vehicles on the property, which occur during normal business hours. A lot on the comments was regarding the noise of the trucks.

Mr. Koch said since the applicants have learned of Mr. Combie's concerns a couple weeks ago they started pre-positioning the trucks by backing them on to the property so that if Mr. Ali was dispatched at night they would not need to back out. For at least the last couple weeks they have not backed the vehicles. Mr. Koch stated that the impound yard at Ken Ware is fenced, but they should not have to park company vehicles at the impound yard, because they have no impact to the neighborhood. He was at the property today and there were three tow trucks and four vehicles including his own. It is an important distinction between the different functions of this business. The towing and impounding of vehicles occur off-site. The dispatching and repair of vehicles occur off-site. If the home occupation permit is denied, Mr. Ali will still be a driver for the company and would still have company vehicles on site to use at all hours of the day and night. He asked that the Planning Commission focus in on those issues.

Commissioner Berg asked Mr. Koch if he is suggesting that moving the bookkeeping function and the leaving the rest of the business and the issues concerning the neighbor is the solution. Mr. Koch stated that the neighbors are opposed to the home occupancy permit. He stated that if you deny the home occupancy permit it would not solve their concern regarding Mr. Ali being a driver for the company and being dispatched from the site to a tow job any hour of the day or night, because that would still occur and does not require a home occupancy permit for the tow truck.

Commissioner Marineau stated that if he was a driver for the company, he would not necessarily have three vehicles parked on site. Mr. Koch stated that he would have three vehicles parked on the site which would include the smaller vehicle, large flat bed and large boom truck.

Commissioner Hood stated that the fact that the business is located there is cause for the trucks to come and go from the site on a regular or semi-regular basis for different reasons, so we are not talking about one individual, one tow truck, who works for another company that parks a vehicle on site when he is on-duty and leaves occasionally. We are talking about centralize business that is the hub of the activity and these vehicles come and go from the site on a regular basis. So saying that his is the same as a police officer or someone that works for a company bringing a vehicle home is mixing apples and oranges. He stated that if any individual has three of four trucks parked at his property and they come and went in these various trucks at different time of the day or night, it is going to cross that line and force them before us at some point for a home occupation use. He added he is having a hard time not seeing this as a commercial enterprise.

Mr. Koch stated he understands the points that are being made. He stated the point he wants to make here is that the reason we are before you is not that Imran's activity as a tow truck driver anymore than the activities of the other primary drivers having a tow truck at their home and being dispatched from their home. He stated the City's code does not require a home occupancy permit for that. The volume of activity that occurs for the dropping-off and picking-up of activity occurs during normal business hours and only about four to twelve times a month.

Chairman Harlan closed the public hearing.

Chairman Harlan stated there is a lot of detail on both sides of the issue. He said the intent of the home occupation ordinance is to insure that home occupations do not interfere with other residents or alter the residential character of the area. He thinks the business has already altered the character of the neighborhood. If it were just the inside administrative and bookkeeping functions of the business there would not be an impact on the neighborhood.

Commissioner Marineau stated he would hate to live next to this environment in a residential neighborhood. If this was happening in a commercial zone and there was a residence next door that would be an entirely different situation, but this is a quiet residential neighborhood. He stated it is the level of activity that he has a problem with, but to suggest that this isn't a business being operated out of the residence is ridiculous.

Commissioner Coles stated she is concerned that it took two years for the residents to complain about the activity and she does have a problem with the gravel road not intended for commercial traffic.

Commissioner Donovan stated that sound levels of 85 decibels or more are a concern for DEQ and that protection is required. According to the sound test, standing next to the truck was 79.9 decibels.

Commissioner Miller stated his business is just down the block for Mast Brothers Towing, which is in a commercial zone. He said the business began very small, but has now grown to a fleet of trucks. There are apartments in the neighborhood and the residents complained about the noise of the back-up signals, but because it is in a commercial zone it is allowed. In this case we are talking about a commercial business in a residential zone. He stated that there are heated arguments monthly around the impound lot. He stated every business needs to find a suitable place to conduct business. He stated there are two fenced lots around his business that store vehicles and they do not have problems.

Commissioner Hood stated he has a 5:30 a.m. wake up call every Friday from the garbage truck's back-up signal. He stated the back-up signal is only one aspect of the neighbors concerns. He said the number and size of vehicles and as well as the noise from the after hour calls. He said people expect to have peace and quite in a residential neighborhood and a business of this nature is just not appropriate.

The Planning Commission discussed the Revised Staff Report and proposed conditions. It was suggested that only the bookkeeping portion of the business be approved; or that the entire application be denied and the applicants can re-apply for a home occupation permit for the bookkeeping portion of the business. The Planning Commission discussed what Mr. Ali, as a driver for the company, would be allowed to do on site. It was discussed that as any other driver for the company he would be allowed to keep one vehicle on the property. The Commission discussed similar types of home occupations that involve a driver and company vehicles. They discussed that all the businesses are subject to the same criteria and that the intensity of the business and how it affects the surrounding neighborhood would be a deciding factor. The Commission discussed the need to update the Revised Staff Report's Statements of Fact and Findings to reflect the testimony given at the hearing.

MOTION: Commissioner Hood – Close the hearing to new testimony and evidence and direct staff to update the Statements of Fact and Findings based on the evidence and testimony submitted during the public hearing that support the Planning Commissioners determination that the Home Occupation is a disturbance to the surrounding residents and the Planning Commission is not in favor of the Home Occupation. The revised Staff Report will be reviewed by the Planning Commission at the April 10, 2007 hearing for a final decision.

SECOND: Commissioner Coles

VOTE: Unanimous

ITEM C: Architectural Design Review (ZON2006-00002): Jay Eastwood, Eastwood Homes, 116 NE Steiger Street, Grants Pass, OR 97526. The applicant is requesting approval of an Architectural Design Review for two (2) condominium buildings, or apartment buildings, and a commercial building in the Waterfront Heritage zoning district. The property is located at 1360 N Bayshore Drive, south of Ivy and north of Hemlock Avenues, the northern part of the former Central Dock.

Chairman Harlan asked if there were any objections to the Planning Commission hearing the item on jurisdictional grounds. He asked if the Planning Commission had exparte contact or conflict of interest to report.

Chairman Harlan opened the public hearing.

Commissioner Coles stated she is employed by Red Lion which is across the street from the proposed development, but that would not affect her ability to make an impartial decision.

Commissioner Berg stated he is acquainted with the applicants and has seen preliminary drawings of the project, but it would not affect his ability to make an impartial decision.

Laura Barron read the disclosure statement and outlined the applicant's request, which included a recommendation from the HDRC. Mrs. Barron read into the record a letter dated March 13, 2007 from Tomas Guevara of Oregon Department of Transportation (ODOT) (*Exhibit 1*). Mrs. Barron stated that based on the submitted letter she would recommend a Conditional of Approval that *"All local and state access permits must be obtained prior to development."*

Hilary Baker, Crow/Clay Architecture, 125 W Central Avenue, Coos Bay stated she is a member HDRC and did not participate in making the recommendation. Ms. Baker outlined in detail the project as submitted including construction material, color scheme, interior and exterior design, number of commercial and residential units, landscaping and off-street parking.

Chairman Harlan asked if there would be water access to the boardwalk and restaurants. Ms. Baker stated that would be something the owners would take into consideration.

Commissioner Miller stated the plant choice is good for this area. He stated the plans reference a berm, but does not give an elevation and he would like to have more detail prior to construction. He added that while the plant list is detailed, he had a problem determining which plants applied to which symbols on the landscape plan.

Brian Genovese, JRH Transportation and Engineering, outlined the traffic study conducted for the proposed project. Mr. Genovese summarized the written report, previously submitted. He stated the Hemlock Avenue crossing was one of the main issues for the City of Coos Bay and ODOT. He outlined the site plan as it relates to access and internal traffic flow. Mr. Genovese stated they are proposing to relocate or redirect Front Street to go through the middle of the development to allow for parking on one side and buildings on the other (so that the roadway splits the development). This will allow a longer throat distance for the recreated Hemlock crossing, which currently exists as a public railroad crossing. Hemlock is currently being used by traffic from Front Street.

Chairman Harlan asked about a stacking area for north bound traffic. Mr. Genovese stated that because of the existing location of the tracks there would not be a stacking lane for north bound traffic. Mr. Genovese stated there are two trains a day with twenty-five or fewer cars, traveling about eight miles an hour. He stated that ODOT Rail is suggesting that the tracks be moved two-feet east to allow for the crossing gate.

The Commission further discussed internal traffic flow, number of off-street parking and landscaping issues with Mr. Genovese, including extending landscaping to include the Front Street area as it enters the development of the south. Mr. Genovese discussed signaling the access and the issues related to Koosbay Boulevard signal. He stated the proposed access can operate reasonably well with the spacing provided by the Koosbay Boulevard signal.

Ms. Baker stated the development is very large and the buildings may be phased. She asked the approval be for an extended period of time to allow for the phasing.

Chairman Harlan closed the public hearing.

Laura Barron stated Front Street will be rededicated, which may involve vacating Front Street and realigning Hemlock Avenue.

Robert Sasanoff, Chairman of the Historic Design Review Committee, stated he was not aware that Front Street was proposed to be relocated and he is concerned about preserving the existing Front Street for pedestrian traffic. He understood that the long term plan for the waterfront area is to have a continual walking path from the Mill Casino to the south end of Coos Bay. The HDRC has discussed the development similar to Central Avenue. The Cities wanted the connection along the waterfront where possible. He discussed alternatives to vacating Front Street. He stated that HDRC stated they had concerns about the large parking lot and they would like to see something to break up the expanse of parking lot.

Commissioner Marineau asked about a path through the berm area. Mr. Genovese stated the public right-of-way of Front Streets end at the north end of the subject property. He stated research determined that the Front Street right-of-way along the subject property is city right-of-way. Mr. Genovese stated it is their intent to make the development a pedestrian environment and provide access from all sides. He stated they can provide a pedestrian trail along the highway and continue it to the north end of the development as well as public access on the east side of the development along the water. He stated a dock with public access from the water is being considered.

The Planning Commission discussed Front Street right-of-way. Mr. Genovese stated ODOT will not allow Front Street to be developed for vehicles because of the railroad. The existing Hemlock Avenue access is grandfathered. Mr. Genovese stated the Front Street right-of-way can be kept and developed with landscaping with a pedestrian walkway.

MOTION: Commissioner Coles - Affirm the Historic Design Review Committee's recommendation and approved the architectural design of the proposed two (2) 4-story condominiums for a total of 60 units and a 2-story commercial building containing a total of 43,400 square feet structures for Architectural Design Review #ZON2006-00002 and grant a 2-year time limit to commence the authorized construction, Subject to the following Conditions:

1. Soften the edge of the parking lots along Highway 101 with landscaping;
2. Public pedestrian access to/and along the waterfront is required and must be situated to tie in with adjacent future development;
3. The Planning Commission must approve the landscaping and irrigation plans prior to issuance of building permits; and,
4. Access permits to Highway 101 must be obtained prior to issuance of building permits.

SECOND: Commissioner Marineau
VOTE: Unanimous

ADJOURNMENT 10:00 p.m.

Bruce Harlan, Chairman
City of Coos Bay
Coos County, Oregon

ATTEST: _____
Debbie Erler, Codes/Planning Tech
City of Coos Bay

APPROVED AS SUBMITTED APRIL 10, 2007

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