

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

November 18, 1999

The minutes of the proceedings of the regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, beginning at 7 p.m. with a work session in the Council Chambers and proceeding to a regular session at 7:30 p.m. in the Council Chambers at City Hall, 500 Central Avenue, Coos Bay, Oregon.

Those Present

Those present were Mayor Joanne Verger, Councilors Jeff McKeown, Don Spangler, and Judy Weeks. Councilor Miller was absent due to a Commission on Children and Families meeting and Councilor Benetti was absent due to a business commitment. Councilor Stufflebean was absent. City staff present were City Manager Bill Grile, Deputy Recorder Joyce Jansen, City Attorney Randall Tosh, Community Services Director Bill Finney, and Fire Chief Stan Gibson,

Appeal Hearing of Rezone of a Portion of the Water's Edge Subdivision

Mayor Verger and Councilors Spangler and Weeks declared exparte contact. Mayor Verger explained on September 14, 1999 the Planning Commission approved, with conditions, a request to rezone Phases 2 through 5 of Water's Edge Subdivision from R-2, Single Family & Duplex Residential, to R-5 Certified Factory-Built Home Park. In 1994 Water's Edge Subdivision was tentatively approved for five phases of development for a total of 99 lots. Only Phase 1 of the subdivision has received final plat approval and has actually been developed. Planning Administrator Laura Barron reported Mr. Steve Barbee, an adjacent landowner, appeared before the Planning Commission and spoke in opposition to the rezone. Mayor Verger moved Mr. Barbee has standing to appeal. Councilor Spangler seconded the motion which passed with Mayor Verger and Councilors McKeown, Spangler, and Weeks voting aye.

Planning Administrator Laura Barron reported the development is located on Lakeshore Drive and contains approximately 16 acres. The first hearing was held on August 10, 1999 and the applicant, Evergreen Development, submitted a cost comparison on mobile home placement in a park and on an individual lot. The applicant presented information the change in zoning for Phases 2 through 5 would be similar to homes in Phase 1; no RV or single wide homes would be allowed. Ms. Barron reported residents in Phase 1 feel they had been misled and were apposed to the change. The matter was continued to the September 14th Planning Commission meeting for review of covenants and deed restrictions and it is the city attorney's opinion that deed restrictions and covenants between the developer and the purchaser and have no bearing on land use decisions. The applicant's attorney, Jerry Lesan, cited ORS 198.480 that it is the City's obligation to make specific plans and to anticipate any existing mobile home parks in areas no longer zoned to allow them. Mr. Lesan commented the objective of compatibility is what is being reviewed, and the Planning Commission tentatively approved the rezone with two conditions. The first condition: the certified factory-built home park must be designed with substantially the same layout as previously proposed in the subdivision and two, the blowing sand problem must be resolved

Ms. Barron commented the Council must decide whether to open the hearing on the existing record or to open to new testimony. Councilor Spangler inquired if Evergreen Development is the same company who received approval for Phase 1, and were the people involved told the development would continue in the same manner for Phase 2 through 5. Ms. Barron responded to the affirmative to both questions. Councilor McKeown asked if a promise had been made by the developer and Ms. Barron stated yes. City

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Attorney Tosh noted this is a civil matter and LUBA states the appeal must be based on standards.

Ms. Barron reviewed the definitions of residential trailer as a structure constructed before January 1, 1962, a mobile home as a structure constructed between January 1, 1962 and June 15, 1976, and a manufactured home as a structure constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction. There was further discussion on the definitions of residential trailers, mobile homes and manufactured homes; zoning where the structures may be placed; and the difference between a subdivision and a manufactured home park.

Mayor Verger reported the Council must determine if only the facts prior to this will be considered or if new testimony will be heard. Councilor Spangler moved to receive new testimony. Councilor Weeks seconded the motion which passed with the Mayor and all Councilors present voting aye. Mr. Tosh noted testimony would be limited to errors as assigned: 1) the Planning Commission failed to adequately address the issue of compatibility; 2) the zone change affected Lot 24 of the Water's Edge Subdivision and according to the recorded covenants a two-thirds majority of the current landowners is required before any action can be taken; 3) the Planning Commission failed to address the existing areas already zoned for certified factory-built homes and that the displacement of the existing mobile home parks does not exist and therefore a zone change is not necessary to comply with the Comprehensive Plan; and 4) the applicant is currently in breach of an agreement dated July 25, 1995 by and between the City of Coos Bay and Evergreen Development.

Ms. Barron read the public hearing disclosure and distributed the review criteria which consisted of: 1) the change in zone will conform with the policies and objectives of the comprehensive plan; 2) the overall change in the zone district will result in development which is compatible with development authorized in the surrounding districts; 3) the change will not prevent the use of other land in the vicinity; and 4) it is appropriate at this time to permit the specific type of development or change in zone into the area which had not previously existed.

Mayor Verger opened the hearing. Mr. Jerry Lesan, representing the applicant, submitted a document which will be known as Exhibit No. 1. Mr. Lesan reported there were four criteria required to be satisfied when the applicant appeared before the Planning Commission: 1) that the proposed certified factory-built home park would be compatible with the existing manufactured home subdivision; 2) the affect the zone change would have on Lot 24 of Phase 1 and the two-thirds majority requirement in the covenant; 3) the contention that when the Planning Commission considered other R5 land, they failed to consider probably displacement of existing mobile home parks that are now nonconforming uses; and 4) that the applicant has breached an agreement between the applicant and the City arising out of the approval of Phase 1 of Water's Edge Subdivision.

Mr. Lesan commented the agreement states Lot 24 was dedicated to the public, to be under City control and for use by the people of the subdivision, and lawn sprinkles would be installed. The record reveals the client discussed the matter with the City engineer and the City did not want the water system installed. Mr. Lesan stated this matter has nothing to do with the rezone decision and the only thing to be considered is compatibility and if there is enough areas for trailer parks. He further stated, if people feel they were defrauded, it is a civil matter and not for the City Council to decide. Mr. Lesan asked the Council to consider if the proposed use is compatible with the surrounding area. He noted complaints have only been received from those in the first phase, and the law does require cities to consider manufactured homes and allow areas for their placement. Mr. Lesan noted the City's R2 zoning allows placement of manufactured homes. Mr. Lesan reported the City's plan indicates 10 percent of housing is provided by mobile homes; less than 50 percent can afford to buy a stick-built home and 20 percent can afford a manufactured home. The inventory shows 208 spaces need to be replaced, based on projections for 2005, and the City has an obligation to make these types of place available. Mr. Lesan explained the developer does not plan to use single-wide trailers built up to 1976, RVs or travel trailers; the homes will be the same type of housing as in Phase 1. Mr. Lesan noted the park would allow cluster development, a recreation building, a laundry facility constructed

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in residential character, and a manager's dwelling. The lot layout, street design, and density will remain as originally designed. The difference between the subdivision and park is that the home owner in the park will not own the land. Mr. Lesan explained concerns were expressed about skirting for the homes and City ordinance requires the structure to appear permanent. Mr. Lesan stated in his judgement, this is a compatible use and will be essentially the same as a subdivision.

Mayor Verger inquired if there will be so little difference, why is there a need for a rezone. Mr. Lesan commented the cost for getting into a subdivision is substantially more and the ability to finance a subdivision home is more difficult. It is much easier to purchase the same manufactured home and place in a park. Councilor Spangler commented if the property is developed as a mobile park, the developer would continue to own the land and would make more money over the long-term; therefore, the rezone is a benefit for the developer. Mr. Lesan noted it is much easier for someone to buy the home and put it in a park. Councilor Spangler asked if at the time the developer applied for the subdivision, if there was an indication that eventually would make a mobile park. Mr. Lesan responded not at that time. Mayor Verger inquired if the developer had made an effort to inform those in Phase 1 about the proposed changes. Mr. Lesan stated he did not know, but he may have contacted several and discussed it with them. He did meet with Mr. Barbee after the Planning Commission meeting to indicate a willingness to negotiate. Councilor McKeown commented the applicant is willing to sign an agreement on the type of mobile homes allowed and the density of the park.

Mr. Steve Barbee commented the issue of compatibility is very important and the developer misrepresented how the subdivision would be developed. At the Planning Commission hearing it was mentioned that land already zoned R5 and R6 is being developed by Shore Pines so those trailer parks being phased out will have a replacement. There are also 11 acres zoned on LaClair Street for a mobile home park as well as other areas in the city. Mr. Barbee reported nearly 50 percent of the residents in Phase 1 were not notified for the proposed change and were denied due process.

Councilor McKeown commented the developer is willing to accept conditions on the type of homes allowed and no increase in density; if these items are taken care of, what are the objections. Mr. Barbee responded the addition of the laundry facility and recreation room is not compatible for R2 use. Councilor Spangler inquired what it would take to make the mobile park compatible and Mr. Barbee said the development should continue the way it was originally planned. Mr. Barbee commented those in Phase 1 of the development are concerned about their property values.

John Kollodge, 956 Stillwater Drive, commented the difference between the subdivision and the park is that in the park the homes are not permanent. Steve Burchik, 935 Stillwater Drive, said it was his understanding that Phases 2 through 5 would be the same as Phase 1, and he was never notified of Planning Commission hearings on the zone change. Mr. Burchik also expressed concern about the sand erosion on his property. Al Peterson, 905 Stillwater Drive, commented on the difference in setting up in a mobile home park where the homes are set up on blocks rather than a permanent foundation and in a park there are no standards for skirting. He reported the agreement between Evergreen Development and the City has never been enforced, he did not receive notice of Planning Commission meetings, and the Council owes it to the citizens to clean up this matter.

Mr. Lesan explained Ticor Title had been hired to get a list of the property owners and notices were mailed, and it was discussed at the Planning Commission meeting to make sure everyone was notified. Mr. Lesan commented City ordinance requires skirting to look permanent, there will be no single wide trailers in the park, and the matter of decrease in property values is only an opinion.

There being no further comments, Mayor Verger closed the hearing. Mayor Verger expressed concern about installation of the water system. Mr. Grile reported it is not required until Phase 2 has been developed. Councilor Spangler commented the issue is not the water system, but compatibility. The developer came to the City with a plan and then changed the design; the City must be sensitive to citizens.

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Mr. Grile commented it is a complex issue and some factfinding is necessary. He suggested the city attorney prepare an analysis of the case as the citizens are not represented by legal counsel. Typically the findings of fact would be drawn up by the prevailing party and presented to the Council for approval. If the matter is appealed to LUBA, the Council may or may not defend the decision as written up. Mr. Grile commented if the Council reverses the Planning Commission the Council could reopen the hearing and allow for a continuation to provide more evidence to substantiate the Council's conclusion. Mr. Tosh recommended Mr. Barbee be directed to prepare the findings. Councilor Spangler cautioned the Council should not try to second guess LUBA and should make their decision on the evidence presented. Councilor Weeks inquired if the decision would be made at this meeting and Mr. Tosh responded they did not have to make the decision now. Mr. Grile recommended making a tentative decision, instruct someone to prepare the findings, and bring back to the Council for adoption. Mayor Verger suggested Mr. Barbee prepare the findings of fact.

Councilor Weeks moved to approve a tentative decision to reverse the decision by the Planning Commission and deny the applicant's request to rezone from R2 to R5. Councilor Spangler seconded the motion which passed with Mayor Verger and Councilors Spangler and Weeks voting aye; Councilor McKeown voting no. City Attorney Randall Tosh reported the 120 rule requires the findings of fact be adopted by the City Council within 120 days the application is deemed complete. Mr. Barbee suggested the City prepare the findings of fact due to the limited amount of time because of the holidays. Mr. Tosh responded two weeks is a reasonable period of time to prepare the document. Mr. Lesan suggested setting the date for the next council meeting on December 7, 1999, and Mr. Barbee agreed. Mayor Verger moved to have Mr. Barbee, the appellant, return with the findings of fact on December 7, 1999. Councilor Weeks seconded the motion which passed with the Mayor and all Councilors present voting aye.

Adjournment

There being no further business to come before the Council, Mayor Verger adjourned the meeting to December 7, 1999 at 7 p.m. in the Council Chambers of City Hall.

Joanne Verger
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Joyce Jansen
Deputy Recorder of the City of Coos Bay
Coos County, Oregon