

APPROVED 10-2-91

MINUTES & NOTICE OF BOARD ACTION

LANE COUNTY BOARD OF COMMISSIONERS



This document, upon approval in a public meeting by the Board of County Commissioners, serves as official minutes of such meetings as required under the Open Meetings Law, ORS 192.650.

Pursuant to notice made by mailing agendas to news media, a selected list of jurisdictions and individuals in Lane County, a meeting of the Board of County Commissioners was held.

Questions should be directed to The Board Office Specialist 3, ext. 4203.

September 4, 1991
1:30 p.m.

REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

Harris Hall
Main Floor

Chair Jack Roberts presided with Steve Cornacchia, Ellie Dumdi, Marie Frazier and Jerry Rust present. Judy Haldeman, Recording Secretary.

10. COMMISSIONERS' ANNOUNCEMENTS

Dumdi announced that there would be a workshop given by U. S. West Communications on September 26 at the Red Lion - Gateway.

Cornacchia announced that he had received a call from Emerald Valley BMX and that their facility had been vandalized last night. He stated that this may heighten the need to move toward a leasehold on the property for BMX.

Cornacchia announced that Springfield Forest Products was one of four US plywood operations to receive a JAS designation which allows products to be sold in Japan with a quality level attached.

11. PUBLIC HEARINGS

- a. SECOND READING AND PUBLIC HEARING/Ordinance No. PA 1007/In the Matter of Amending the Rural Comprehensive Plan from "Forest Land" to "Marginal Land" and Rezoning from "F-2" to "ML" for Tax Lots 704 and 714, Map 19-02-10, and Adopting a Savings and Severability Clause (PA 4109-90/Ericsson)

Roberts read the ordinance into the record. Jerry Kendall, Planner, stated that this application centers around ORS 197.247(1)(a) which requires that the parcel not have been managed as part of a forest operation capable of generating \$10,000 gross timber revenue between the years 1978 and 1983. He stated that the original submittal was filed in December of 1990. The applicant hired a soil scientist from Cascade Earth Sciences in Corvallis; the soil scientist used the September 1987 data from Land Management and the application passed

as it could not generate over \$10,000 annual gross timber receipts. Staff used updated data as supported by ORS 197.245(5) as well as a Board of Commissioners Supplemental Order of September 1984 which allows usage of the latest soils data. Staff determined that over a 50-year cycle, the subject parcel would be capable of producing \$25,400 income and \$17,000 on a 100-year cycle; therefore, failing the first test. Kendall said that staff had interpreted the word "capable" as "potential". Mike Farthing, attorney for the applicant, contends that the parcel was not managed as part of a forest operation capable of grossing \$10,000 between 1978 and 1983.

Kendall commented that there was evidence in the record of the applicant having applied for forest land deferral on 80 of the 90 acres in 1974 and the applicant removed approximately 18,000 board feet of timber in 1990 and did precommercial thinning and slash burning. The parcel has been a member of the Willamette Region Tree Farm Family since 1982.

Roberts opened the Public Hearing.

Bill Teuscher, 36128 Enterprise Road, Creswell, testified that his property abuts the parcel in question. He stated that he had grave concerns about the water problems in this area and reported that one well got only 2 gallons per minute. He stated that the applicant does not live in the area and poor forestry management is not a reason to classify a piece of property. Timber has been taken off of this property in the past and he has not seen any trees planted.

Dan White, 83451 Lazy Way, Creswell, commented that the within 45 minutes to an hour with one sprinkler, the water runs out on his property. He stated that the aquifer must be looked at before this can be approved. He stated that the impact to the area has not been addressed. He stated that a local resident, Mr. Walton, had stated that the land has been clear cut twice in the past 60 years.

Mike Farthing, P. O. Box 1147, representing Robert Ericsson, emphasized that the Planning Commission had recommended approval of this ordinance. He stated that estimated soil ratings are being mixed with far more precise ratings and he stated that there are still good reasons to use the no rating for the Dixonville-Philomath-Hazelair soils. He commented that the interpretation of ORS 197.247 capability test is captured in 197.247(1)(b)(c) which talks about the 85 cubic feet per acre per year which the applicant has satisfied. He stated that the Planning Commission had stated that they did not believe that this particular site is capable of producing \$10,000 of income. He stated that the water concerns will be handled during the partitioning process and is not a criterion now.

Gary Thompson, 775 Brookside Drive, testified that he was a forest industries consultant and stated that he had looked at the property to see what it had been capable of producing. He stated that he did a sample of the property to see what trees had grown on the property prior to harvesting and developed volumes from that information. Based on what was standing on the property, he determined that this particular piece of property was not going to generate the required volume over the time frame. He commented that this site is not doing what the soils should be doing and he did not know why though he stated that it may be due to overgrazing and soil compaction.

There being no one else present who wished to testify, Roberts closed the Public Hearing.

Cornacchia commented that in his reading of the statute ORS 197.247(1)(a), the verb is "was managed" not "capability". Jim Mann, Planning Supervisor, commented that the test is what was managed and what was that capable of producing. Rust commented that soil rating is the best way to evaluate forest lands because soils do not change and they are the best indication of the capability of the land. He stated that management varies widely between landowners and he could not imagine the Legislature writing a statute that allowed the County to reward poor or no management as a way of getting out from under the forest zoning requirements. He stated that there was ample indication that the spacing was not right, there was no replanting, there was grazing, the soil was compacted from grazing, there was no thinning and in spite of that, in 1990 18,000 board feet of timber was taken from the property. The property was enjoying all of the benefits of the forest deferral program.

Roberts commented that there was a fixed snapshot of time to base the management upon and the statute says that during this period of time the property was managed such that it could be capable of producing a certain amount. Roberts commented that his understanding was that this property was not being managed for timber production. Rust restated that there was a timber deferral being taken during this snapshot of time and this alone would indicate that forest use was the predominate use of the land.

Cornacchia commented that the statute is an income test and the Legislature has said that it is not going to use the soil as the sole determining factor. He stated that he would not require people to actualize the complete potential of their land before they can come and get a zone change. Rust commented that he was basing his decision on the statement from staff that "the above soils are potentially capable of producing \$25,400 annual gross income - 50 year cycle" and the May 28 memo from the Oregon Department of Forestry which states that "based upon the soil information that is available for this site, the Department of Forestry has demonstrated that the parcel is capable of an annual gross income more than \$10,000 based upon a fully stocked unmanaged stand". Cornacchia

commented that neither of these analyses occurred with actually looking at the land; but were based upon estimated site indexes and a map. Dumdi said that she concurred with Cornacchia that the information must be applied to what is actually on the ground and that she did not think that land use decisions should be based on maps and theoretical tables.

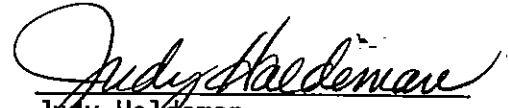
MOTION: To accept the Lane County Planning Commission position and their findings to amend the Rural Comprehensive Plan from forest land to marginal lands. Cornacchia MOVED, Dumdi SECONDED. Roberts said that this motion would overrule the planning staff recommendation and grant the applicant the zone he wanted. Roberts commented that he would cast his vote in favor of the motion, but he does that with some unease because he has a feeling that LUBA may very well disagree with the conclusion. He stated that he is concerned about the issues raised by the neighbors, but he agreed with Cornacchia that the Board did not have the ability to make the decision based on those criteria. He stated that the Board needed to look at the issue of the marginal lands qualifications as they have been expressed here. He stated that the whole capability issue has not gone out of the window because the Board did not agree with staff on their conclusion. He stated that in his reading of the statute, the question is, was this being managed for timber production and was that timber production capable of producing the income. From the evidence before the Board, he would conclude that it was not.

Stephen Vorhes, Assistant County Counsel, suggested that the Board expand on the proposed findings and take tentative action on the ordinance today. Roberts stated that the findings should be narrow so that the Board does not make a decision in one case which has implications that have not been thought through on other properties. Mann commented that this does represent a different direction on evaluating marginal lands and he would suggest that the findings, in addition to dealing with the site specific issues of this application, express generally what the policy direction and interpretation of the Board is so that the department can advise other applicants. Roberts asked the maker of the motion and the second, if it would be acceptable to have the motion be for tentative action. Cornacchia and Dumdi concurred that tentative action would be appropriate. VOTE: 4-1, Rust dissenting. This item will come back to the Board the first week of October for Third Reading and deliberation. Vorhes suggested that the record be left open until September 18 for additional written materials and information on the legal arguments on the interpretation of the statute.

12. OTHER BUSINESS

None.

There being no further business, this meeting adjourned at 3:24 p.m.


Judy Hayden
Recording Secretary