

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.

March 4, 1992	REGULAR MEETING	Harris Hall
1:30 p.m.	BOARD OF COUNTY COMMISSIONERS	Main Floor

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

13. COMMISSIONERS' ANNOUNCEMENTS

Dumdi announced that there will be a meeting tonight on tax coordination in Harris Hall at 7:00 p.m. Jim Johnson, County Administrator, will attend this meeting at the designation of the Board.

Dumdi requested Jef Faw, Director of Finance and Management, to prepare an analysis of the costs or interest differences between Lane County and L-COG issuing the bonds for the Schaeffer Building. She would also like to know whether the revenues from the building are pledged for repayment, compared to pledging County general funds. She would like to have the discussion reopened when this information is available; the Board concurred. Johnson will schedule this on the Agenda as soon as possible.

14. PUBLIC HEARINGS

- a. SECOND READING AND PUBLIC HEARING/Ordinance 2-92/In the Matter of Approving the Transfer of Land Described as Assessment and Taxation Map No. 17-03-30-34, Tax Lot 400, Located at 2nd and Lincoln in Eugene, From Lane County to St. Vincent de Paul Society of Eugene, Inc., for the Public Purpose of Low-Income Housing Development.

Dumdi read the ordinance into the record. Teresa Wilson, Assistant County Counsel, recommended that there be a policy drafted within the next six months regarding the transfer of tax foreclosed property under the new statutes. She recommended that this be part of the motion. Dumdi opened the public hearing. There being no one present who wished to testify, Dumdi closed the public hearing. MOTION: To adopt this ordinance. Rust MOVED, Roberts SECONDED. VOTE: Cornacchia, Dumdi, Frazier, Roberts and Rust AYE.

- b. SECOND READING AND PUBLIC HEARING Ordinance 3-92/In the Matter of Amending Ordinance No. 15-91 Entitled "In the Matter of Modifying District Boundaries for Election of County Commissioners," to Correct the Last Paragraph of Said Ordinance Which Should Have Stated Ordinance No. 17-81 was Being Repealed Rather than Ordinance 11-79 Which had been Previously Repealed in Ordinance No. 17-81 and Adoption of an Emergency Clause.

Dumdi read the ordinance into the record. Bill Van Vactor, County Counsel, stated that this ordinance corrects a mistake in the redistricting ordinance, which inadvertently repealed the prior ordinance that had been repealed 10 years ago rather than the one that was in effect. Dumdi opened the public hearing. There being no one present who wished to testify, Dumdi closed the public hearing. MOTION: To adopt this ordinance. Roberts MOVED, Rust SECONDED. VOTE: Cornacchia, Dumdi, Frazier, Roberts and Rust AYE.

15. APPEALS

- a. ON THE RECORD HEARING/ORDER 92-3-4-13/In the Matter of the Appeal of Gordon Howard from a Hearings Official Decision Denying the Request for Placement of a Dwelling, BP 0191-92, Limited to Arguments Concerning the Interpretation of the Meaning of "Dwelling" and "Single Family Dwelling" in Lane Code Chapter 16.

Dumdi stated that this hearing was on the record, limited to those issues raised in the appeal and argument was limited to those persons designated by the Board as participants in the appeal. She identified the record for this hearing (see material on file). Dumdi called for ex parte contacts. Roberts, Cornacchia, Dumdi, Rust and Frazier incorporated their previous disclosures by reference to the meeting of February 12, 1992, when the Board decided to hear this appeal. Cornacchia and Roberts met with Dale Riddle and Aaron Jones on an entirely separate issue and did not discuss this appeal. Dumdi commented that she met with Steve Olienyk, but did not discuss this issue.

Jim Mann, Planning Supervisor, presented this item to the Board. He stated that Attachment B to the March 4, 1992, Cover Memo were the items clearly in the record before the Hearings Official (see material on file). Since that time there have been items received by staff; a February 19, 1992, letter from Michael Rupp to Roy Burns with a copy of a letter from Ron Gerber dated July 24, 1991, which Mann felt should be accepted for interpretive and legal arguments to the issue. The Board agreed to include this material in the record.

Dale Riddle, Attorney for Applicant, asked that the enclosure in a letter from Jan Goldberg to Steve Olienyk be excluded from the record as not being relevant to this issue. He also referred to a letter of July 24, 1991, from Ron Gerber to the Land Conservation and Development Commission (LCDC) and suggested that tapes and

transcripts be included if this matter goes to LUBA (Land Use Board of Appeals). He stated that all parties did not testify under oath in front of the Hearings Official, though this was listed as a fact on page 5 of the brief. Ron Gerber, Attorney for Heceta Water District, stated that 20 minutes would not give him enough time to respond to the new materials which were presented today. Gerber did not object to the correspondence added to the record, but he would like a chance to respond to the letters. He did not object to the enclosure in the letter from Jan Goldberg being removed from the record. Gerber stated that there had been no objection to witnesses who appeared and testified at the hearing being sworn.

Gerber was allowed a 15 minute recess to review the new materials.

This meeting recessed at 2:25 p.m. to reconvene at 2:43 p.m.

Mann commented that the Board had elected to hear this appeal because it was of Countywide significance and it was a policy matter. He briefly summarized the issues and discussed the definition of "dwelling" and "dwelling - single family" (see material on file). The Hearings Official interpreted these terms to require that a dwelling have the basic essentials which he characterized as; establish a self-sufficiency of residential living, a bathroom, cooking and sleeping facilities. The applicant took issue with the statement that a dwelling must be a place where someone lives since the definition of dwelling does not require that someone live in the dwelling. Staff recommended a definition which does not choose one definition over the other, but incorporates them both: 1) the dwellings would be limited to the occupancy of not more than one family; 2) dwellings could be used for a spectrum of living uses ranging from sleeping quarters on a temporary basis to full-time occupancy on a permanent basis; and 3) dwellings would be required to have housekeeping facilities, but the level of the use of the dwelling would determine the kind of housekeeping facilities and that housekeeping facilities would not be used to determine whether a dwelling existed. Cornacchia asked if this interpretation was consistent with all actions taken by the County relevant to this zone and Mann said it was consistent with 1990 Code amendment.

Dale Riddle, representing applicants Gordon and Whitey Howard and Marsha Smith, stated that the Howards have owned property on Clear Lake since 1932. He stated that his clients generally accept the facts as found by the Hearings Official, but they believe that he made a mistake in the interpretation. He stated that the cabin was used on a regular basis for recreational activities. There is no requirement in Lane Code that a recreation dwelling contain housekeeping facilities; there is no authority for the Hearings Official ruling that there must be a full range of facilities; and there is no authority that, if housekeeping facilities are required, those facilities must be permanent in nature and continuously present at the facility. He stated that the Code provisions must be read

together as a whole and it is clear that any replacement dwelling could not contain housekeeping facilities for more than one family, not that any dwelling already on the property had to contain any particular type of housekeeping facilities. He stated that what is important is that the Howards used this dwelling and this is a lawful replacement of an existing dwelling.

Mike Evans, representing the Howards, asked the Board to focus on the effects that the Hearings Official's interpretation would have on the broader Lane County base. He stated that he is concerned about the legitimate replacement of dwellings and the repair and maintenance of buildings in Lane County. He asked the Board to overturn the Hearings Official interpretation with the Board's own interpretation similar to that presented by County staff.

Ron Gerber, representing Heceta Water District, stated that this structure had no utility service, no phone, no mail, no address and the County had attributed no value to that structure between 1973 and 1990. There was no building permit ever obtained on this structure and the applicants were unable to locate any septic permit. The Lane County sanitarian reported that the septic system may not be adequate to service the proposed home and the current problems for Collard and Clear Lake are caused by houses situated near the lake having poorly thought out disposal systems. He stated that the word "dwelling" and "single-family dwelling" has not been redefined in the Code which stated that this language shall mean single-family dwelling unless otherwise noted; this language will be effectively removed by the staff proposal. There will need to be a Public Hearing in order to make this change to the Code as well as go through the LCDC acknowledgement process. There is no ambiguity in this language and there is no interpretation necessary.

Greg Winterowd, professional planner, commented that he would like to address broader policy issues which discuss the fair definition for a replacement dwelling. He stated that dwelling is linked unambiguously to single-family dwelling and single-family dwellings must include housekeeping facilities. The question is - what constitutes housekeeping facilities - that is where the ambiguity exists in the Code. He used the adopted building code to define housekeeping facilities - bathroom, cooking facilities and a place to sleep - this is fairly consistent statewide. He stated that LCDC would want to see a definition which would not result in lean-to's which were illegally placed being turned into a dwelling by virtue of a sloppy definition. He commented that the staff interpretation seems to be tailored to meet this particular case, which is the opposite of what should occur; this definition should not be colored by a particular case. He suggested that a dwelling should have an address, some utilities attached to it, a bedroom or sleeping place, a place to go to the bathroom, a place to cook, four walls and a roof.

Roberts and Cornacchia questioned the use of the term "sleeping place" and Winterowd stated that it was probably a matter of poor drafting. Cornacchia asked about the permanency of the housekeeping facilities and Winterowd explained that there should be cooking facilities, someplace to wash dishes with potable water or a pump outside, someplace to put a bed on a permanent basis.

Gerber stated that there were threshold issues which need to be in the definition of a dwelling; four walls, reasonable functioning roof, floor, doors and windows. He stated that a dwelling was defined as a single-family dwelling in the Code.

Riddle commented that this was not a new interpretation and there are permit requirements which must be met in order to qualify for a new dwelling. He stated that the term "sleeping place" was put into the Code to cover situations for recreational cabins where the cabin is not the primary residence.

Roberts commented that this definition of dwelling is probably broader than he intended and seems to include virtually everything; there is some help with the term single-family dwelling. The intent is that a dwelling will include housekeeping facilities in some form and the staff definition is well founded and he would have trouble grafting the interpretation of the Hearings Official onto the one proposed by staff. He would support remanding this to the Hearings Official for further consideration.

Cornacchia stated that the intent of both definitional sections is different; the first definition of dwelling is intended to apply to a variety of sections of the Code. He stated that he has faith in the system and is supportive of the staff recommendation.

Rust commented that he substantially agreed with the comments of Roberts and Cornacchia. He commented that staff has done a good job of recognizing that there is a wide range of choices about how to live one's life and he will vote to remand this to the Hearing's Official.

Frazier stated that she would support the staff definition and commented that the Code allows for interpretation as needed; residence or sleeping place and permanent and temporary allow the greatest flexibility to the zone.


Dumdi stated that she would support the remand and commented that there are varying lifestyles and circumstances which need to be taken into account. Van Vactor stated that case law requires the Board to make a tentative decision at this point and he recommended that the prevailing outside counsel prepare the findings for review by County Counsel. MOTION: To tentatively decide in support of the proposed interpretation, that findings be brought back, that this be remanded to the Hearings Official to look at the narrow legal issue of

interpretation using the factual record as it now exists and that the Board requests that the Hearings Official provide the Board with a decision within 30 days after the Board executes the final order. Roberts MOVED, Cornacchia SECONDED. Riddle asked that there be no new evidence taken into the record and that this decision be on the record. The order will come back to the Board on March 31. Dumdi requested that it come back on April 1 as she will not be in town on March 31. VOTE: 5-0.

16. OTHER BUSINESS

None.

There being no further business, this meeting adjourned at 4:23 p.m.


Judy Waldeman
Recording Secretary