

MINUTES & NOTICE OF BOARD ACTION

APPROVED May 15, 1996

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.

January 10, 1996
1:30 p.m.

REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

Harris Hall
Main Floor

Chair Bobby Green, Sr. presided with Steve Cornacchia, Ellie Dumdi, Jerry Rust and Cindy Weeldreyer present. Sharon Giles, Recording Secretary.

11. COMMISSIONERS' ANNOUNCEMENTS

Dumdi discussed the upcoming appointments to the planning commissions, suggesting that there be a subcommittee of the Board to review the applications. Green and Dumdi volunteered to do the review.

Dumdi observed her 37th wedding anniversary and received congratulations from the Board.

Weeldreyer reminded the Board of the AOC District 5 conference call to be held tomorrow at 2:00 p.m., the goal of which is to develop district legislative priorities and discuss them with the Benton and Linn County partners.

Weeldreyer reported that she and Green had attended a City of Eugene public hearing regarding proposed improvements to Ayres Road and had a follow up meeting with city staff. She indicated that the City of Eugene is asking the County to give permission to assess county properties on the north side of the road for street improvements. Weeldreyer emphasized that many residents have concerns regarding the difference/equity between the road assessment policies of the city and the county. She stated that she would like the Board to think before continuing down the road in terms of losing prime agricultural land and allowing for development on a floodplain. Weeldreyer expressed concern that if this is allowed to happen, then several county property owners will receive assessments/liens of

close to \$500 per month for ten years. Green clarified that this matter will come to the Board when and if the Board decides it wants it to come before them, remarking that the County could choose not to play. Dumdi indicated that she understands there may be a possibility of withdrawing this area from the UGB.

Rust stated his belief that to reconfigure the UGB will require all three jurisdictions to buy in. He noted that if there is building on floodplains, they are doing so within the guidelines. Rust remarked that he would not offer a lot of hope for undoing the Metro Plan in this case, but added that the County might be able to work with the affected property owners on assessments. Cornacchia echoed Rust's comments, noting that all of the jurisdictions are going through state periodic review and there may be an opportunity in that exercise to look at this type of issue. He indicated that, in this case, Lane County could look at weighing in in terms of the design and the assessment policy to be used out there. Cornacchia asked for information regarding Eugene's system for local improvement districts. Van Vactor observed the need for a work session related to this project. Responding to Weeldreyer, Cornacchia noted that it is the responsibility of governing bodies to make choices regarding response to the reasonable growth needs of communities. He added that he does not want to be put in the position of reconsidering all agricultural UGB land. Weeldreyer indicated that her primary interest is the land between the two major rivers. Rust encouraged Weeldreyer to go to the Eugene City Council to perhaps persuade them to do work on the design without a Metro Plan amendment.

With regard to the Pleasant Hill levee situation, Weeldreyer commented that she has asked for assistance from the Army Corps of Engineers and a multi-agency group will be looking at the quarry situation tomorrow. She stated that she is going to have a staff planning meeting on the 18th to address questions and set up a series of citizen meetings, beginning on the 23rd, regarding the role of the Corps, the responsibility of folks in a floodplain, the expectations of flood control projects, etc. Weeldreyer remarked that not one person she has talked to has said they weren't willing to help toward repayment. She indicated she was looking at resolution by the end of the fiscal year as funds were expended during this fiscal year. Responding to Green, Van Vactor stated that Lane County has spent approximately \$44,000. Weeldreyer was asked to work with John Goodson regarding a work plan and estimated FTE staff time needed and then report back to the Board.

12. PUBLIC COMMENTS

Paul Atkinson, 26884 Powell Road, Eugene, commended Weeldreyer for standing up for the soil on Ayres Road. He agreed that the Board has some difficult choices to make, stating that he believes decisions made for the metro area regarding farmland were wrong, as shown by new data regarding floodplain problems. He urged that the Board revisit the issues regarding prime farmland, even though it is difficult. He noted that only 1.5% of the County is Class I soil and it is wrong to just let it go. Dumdi indicated that she has talked to Land

Management and reported that a map is being prepared and will be available in LMD for public view.

13. APPEALS

- a. **ON THE RECORD HEARING/Appeal of a Hearings Official Decision Affirming the Planning Director's Approval of a Request to Allow a Paintball Playing Park Within an Impacted Forest Land (F-2) Zone District (PA 0856-95; Gillette/Williams: Applicants; Spencer Creek Neighbors: Appellants)**

Green reviewed the rules on conduct and asked Board members to declare ex parte contacts. Weeldreyer stated that she has had conversations with a number of people over a long period of time, including Mr. Gillette, whom she had questioned regarding whether he had looked into the previous location of a paintball facility in Creswell where results were less than desirable. Weeldreyer indicated that she has had conversations with Jerry Strand, Patricia Frazier and Laurence Christopher. Cornacchia reported that he has had one or two phone calls from paintball advocates discussing paintball in general, but not the merits of this application; and he stated that he gave them his personal feelings as a veteran regarding men playing war. Cornacchia remarked that his personal feelings, however, will not have an impact on his decision on the planning process. He also stated that counsel for the applicant (Bruce Anderson) is a good friend and hunting partner with whom he has had two phone conversations in the last week wherein they agreed that it was inappropriate to talk about this matter and thus have not. Rust, Dumdi and Green reported no ex parte contacts.

Weeldreyer reported that she has a personal bias regarding paintball in general, but not as a result of any ex parte. Responding to Rust, Weeldreyer stated that she believes she can make a decision based on the merits of the land use laws without bias.

Bill Sage noted addendums to the agenda material with additional correspondence, including two letters from parties not previously a party of record. MOTION: To follow staff recommendation and exclude letters from Gee and Whitlock from the record. Cornacchia MOVED, Dumdi SECONDED. VOTE: 5-0.

Sage indicated that correspondence was received from Ronald Merrow, who is co-chair of the Spencer Creek Neighbors, which requested that four individuals from the 22 members qualified to testify be given three minutes each to talk about specific issues, in addition to the amount of time provided to their attorney. Sage explained that Jerry Strand would talk about public safety, Don Walken who would discuss timber lands and production, Jane Novick who would discuss fire dangers and liability for timber losses and Patricia Frazier who would discuss quality of life. He indicated that in response, Bruce Anderson requested that he would like to testify prior to the

Board making a decision on this request. Cornacchia recalled that the Board's willingness to hear the appeal was limited to certain items, "definition of park" and "assignments of error". Cornacchia asked whether those requesting to speak would address those specific issues. Sage responded that there was some latitude to allow discussion on forest uses in the assignments of error, thus would include the testimony of Strand, Walken and Novick.

Bruce Anderson, 777 High Street, stated that he represents applicant Curt Williams, owner of the paintball business, but not Jim Gillette. He expressed concern that there is a substantial risk that this can unwittingly be turned into a de novo hearing. Anderson noted that there are three issues stated in the appeal, in addition to the Board's request for a definition of park. He explained that the three issues are: 1) appellants' statements regarding the issue of intensity in a park; 2) that it is bad public policy to allow this to be a park as it will automatically allow a caretaker's house on the property; and 3) two factual misstatements by the Hearings Officer: a) his comment about the way forest land is managed in the area and b) which rural fire protection district is responsible. Anderson expressed his fear that the record will be prejudiced by having parties other than Sherlock speak as they may get back into criteria which are not in the appeal. He provided the example of a letter, Exhibit S, which has substantial new information and is from a person listed to testify today. Anderson urged that Sherlock represent his client and state their case.

William Sherlock, 935 Oak Street, Suite A, attorney for the Spencer Creek Neighbors, stated that he has a copy of the proposed testimony of Novick who wishes to address issues regarding the Hearings Official's decision about the allocation of timber and the use of timberland surrounding this property. He urged the Board to allow Novick to address the erroneous statements of the Hearings Official regarding forest land management in the vicinity.

Responding to Cornacchia, Vorhes indicated that if new evidence is introduced, this would change the scope of the hearing. He recommended that the Board let people know that in advance so they can be prepared, as if there were new evidence presented, then there would be the need to provide an opportunity for other parties to respond. Cornacchia offered support to deny the requests for testimony from the four citizens and that Sherlock be relied upon to present the arguments based upon the record as it exists today. MOTION: To not provide the opportunity requested to the four individuals who were noticed and exclusion of Exhibit "S." Cornacchia MOVED, Dumdi SECONDED. VOTE: 3-2, Rust and Weeldreyer dissenting.

Vorhes remarked that there are two issues that need to be dealt with: the amount of time to allow and the sign-up sheet which was mistakenly left at the door, which is not the usual practice for this type of hearing. Cornacchia stated that he was comfortable with limiting testimony to the applicant and opponent's representatives, as is the usual

practice. The same majority as above agreed to this procedure. Green set a time limit of 10 minutes total for each party, to include rebuttals.

Sage identified the first 46 exhibits as the record and the Board agreed to forego a review of the history, as it is included in the agenda material.

Liam Sherlock, attorney for the appellant, observed his desire to reserve three minutes for rebuttal. Sherlock stated that the applicants have seized the lack of a clear statutory definition of "park" to present an application for this prime land. He stressed that a forest park should be open for everyone for general recreation and that commercial paintball is not a park use. Sherlock cited several cases related to paintball/forest lands, including Tyce v. Josephine County and Spearing v. Yamhill. He stated the Hearings Official acknowledged that Spearing is not binding on the analysis of this case because it concerns the question of parks in farm zones rather than parks in forest zones. Sherlock emphasized that the Hearings Official also correctly found that state forest lands restrict intensive recreational activities and "commercial outlets that might support these recreational activities, but are not themselves recreational." He continued that the opinion gets confusing from there on because the Hearings Official found that, in this case, "development is proposed to facilitate the recreation activity in the form of a road, a large parking lot, a clubhouse, open shelters...but these developments are not in themselves the focus of the recreational activity as contrasted with swimmings pools and tennis courts;" thus ignoring his own finding that commercial uses are also prohibited. Sherlock stressed that the whole facility, including the clubhouse, is a commercial facility. He summarized that the Board should deny the permit as 1) a paintball facility is not a park as contemplated under the rules, and 2) the facility is a private, highly structured for-profit business and should be handled in a "park and recreation zone," a specific zone for this type of activity. Sherlock urged the Board not to open the door of impacted forest zones to bring in commercial uses.

Bruce Anderson, attorney for the applicant, was given ten minutes. He addressed the issue of the importance of the case law decisions. Anderson remarked that the Tyce case dealt with a highly developed race track and is not what is being talked about here; however he noted that in Spearing it was said that a private, commercial paintball facility is a park under the farm resource zone. Anderson stressed that the language in this F-2 zone is exactly the same. He cited page 703 of the Spearing decision, commenting that the appellant in that case was arguing that a paintball facility should not be allowed in any resource zone, farm or forest. Anderson stated that the Court went out of its way to point out that a paintball park under state regulations was, in fact, a park within the meaning of the law. He indicated that that is what the Hearings Official concluded in this case, looking at the history of the prior decisions by the County and looking at Spearing. Anderson remarked that the Hearings Official also looked at the County ordinance, suggesting qualifying language

- engrafting into the combination of the state regulation and Lane County's ordinance the requirement that to be a permitted recreational facility in a resource zone, it would have to not be an intensive use; then, he found that this use is not an intensive use. Anderson observed that there are strong limitations on how the clubhouse can be used. He suggested that if the Board wants to be certain in the future, then they should go back and amend the code provisions and add specific language that by interpretation the Hearings Official found the requirement that any approved park could not be an intensively developed facility. Anderson stressed that this paintball application is appropriate and is a proper use for this zone. He read Exhibit 34, a letter from Pacific Corrugated Pipe Company regarding the positive experience of paintball, into the record and suggested that the Board read Exhibit 37.

Sherlock provided his 3-minute rebuttal, stating that Anderson did not provide any detail in Spearing as to the distinct differences in the qualifications that carry the language regarding the uses allowed under parks on forest lands. He agreed that LUBA did say that, notwithstanding the fact that this use is allowed on the parks and recreation zone, it is not precluded from being allowed on the Exclusive Farm Use if there are no other restrictions. Sherlock stressed that there are other restrictions on park lands, including small retail stores, gas stations, swimming pools, tennis courts, which have been compared with paintball. He emphasized that it is important that the distinction be made clear, as LCDC has made it a point to not allow extensive development on forest lands.

Cornacchia remarked that Sherlock did not address the other assignments of error with regard to his statement that this would provide an option for a caretaker residence. He asked Sherlock whether, assuming that the Board would find that this is a private park, he would still take issue with the staff findings that a residence would not be allowed. Sherlock remarked that he had not found a definition of private versus public, noting that in testimony before the Hearings Official, Gillette had made it clear that he regarded this as a public park and that it would not be gated and would be open for picnicking, hiking, etc. Sherlock stated that if it is then a public park, a caretaker residence is outrightly allowed.

Rust asked if there is anything in Lane Code regarding intensity of use. Sherlock cited 16.211(3)(c&d), remarking that because Lane Code distinguished parks from campgrounds, whereas the state regulation co-mingles the two, the Hearings Official found that the intensity of uses provisions does apply to parks as well as campgrounds.

Anderson remarked that the issue of a residence is not an appeal issue, noting that the Hearings Official and the Planning Director stated that no residential use would be allowed. He indicated that the separate language in the code regarding a caretaker residence for public parks and fish hatcheries is not an allowable issue as there is no house requested or permission given. Responding to Cornacchia, Anderson remarked

that the caretaker residence should not even be an issue in this case and is outside the scope of the record.

Sherlock remarked that the issue is a clear policy decision, agreeing that there was no request for a residence made in the application; but stated that his point is they don't have to request it as it would be an outright use if the Board finds this is a park.

Green closed the hearing.

Weeldreyer asked legal counsel if this is the opportunity for the Board to address concerns to place additional conditions on this private park that would directly address concerns regarding fire safety and timber production. Vorhes stated that would depend on the Board's initial decisions on the appeal issues and if the decision lends itself to the imposition of conditions. He indicated that one option is to take action on the permit application and another option is to send it back with the Board interpretation of the legal issues and asked the Hearings Official to take another look at it based on that. Vorhes stressed that it is difficult to say yes or no as it depends on the resolution of issues raised on appeal.

Rust indicated that he was having trouble with the issue of intensity of the use, stating that his interpretation of that phrase is that it is more than just a building or structure. He added that he was looking at this as a highly structured operation with umpires, security, rules, monitoring of trespass, thus was struggling with the definition as a park.

Cornacchia stated that he was finding it hard to argue against a park, but was having difficulty with the club house, indicating that it should be just a structure to store equipment. He remarked that he is not even sure there could be rental of equipment based on the Hearings Official's findings/limitations. Cornacchia agreed that a store would be too much development for a park, commenting that the Hearings Official has limited the building to a shell with toilets.

Dumdi indicated that she sees a contradiction as this is a privately owned piece of property, but the owner says it will be a public park. She stated that she thinks the Hearings Official's interpretation has been too broad in this case, remarking that she can't say it qualifies as a park because of its commercial nature.

Weeldreyer agreed that there will still be intensive use of this facility by the public, expressing concern that this will set a precedent for other "parks". She indicated that she would feel more comfortable if the Board had an opportunity to look at the code in terms of an update for this current "technology." Cornacchia stressed that the application must be treated under rules that currently exist. He indicated that it may

be better to take this one on current merits/rules and then change the rules, if desired, for all other future uses.

Cornacchia asked legal counsel whether, if the Board agrees with the Hearings Official that it is a park and does not accept the other assignments of error, the Board can then say it wants to make the condition that this is a private park and also in periods of fire danger when public parks are closed, that paintball or other similar activities would also be prohibited to reduce fire danger to adjacent forest land. Vorhes' reply was "maybe," remarking that the difficulty will be attaching it to the Board's decision regarding what it thinks the interpretation of park ought to be. He stated that if the Board is affirming the Hearing's Official, then it might be able to express its understanding of what the Hearings Official's decision means on those issues.

Rust agreed that there is work to do on the park definition; observing, however, that he is ever more convinced that on the merits, this should be turned down as it falls more toward a highly structured, intensive commercial use and does not meet the standard of a park. He agreed that afterwards the Board could then work on the code, adding that future applicants should make a zone change request for a designation that would allow this type of use.

MOTION: To overturn the Hearings Official and find that this does not meet the definition of park, asking attorney for appellant to draw up the findings and that this be a tentative decision. Rust MOVED, Dumdi SECONDED.

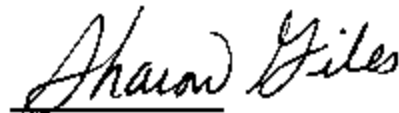
Cornacchia stated that he remains troubled by expanding the concept of development to something else as he can think of parks with more intensive use than is suggested here. He advocated that the Board consider this on the issue of intensity of development, but not create a new term/rules for "development" today. Cornacchia stressed that he wants the Board to be straightforward in how it deals with procedures and codes and that expanding the definition of development as Rust described is not appropriate in this case. Rust noted that the OAR discusses "intensively developed recreational use." Green observed that he has some trouble with the activity, but indicated that the applicant has played by the rules and he finds it hard to rationalize denial when the applicant has met the criteria. Weeldreyer commented that she has frequently stated her support for private property owners deriving economic benefit from their property, but stressed that when the use of that property impacts others, then terms and conditions must be set. She noted that the Hearings Official was trying to create that balance. Weeldreyer emphasized that if she does find that this is a permitted use, she would like to see the Board take up this issue further to be in a better position to deal with future applicants. She indicated that after removing her personal bias, she would find in favor of the applicant. VOIE: 2-3, Cornacchia, Green and Weeldreyer dissenting.

MOTION: To deny the appeal and direct counsel for the applicant to prepare appropriate findings. Cornacchia MOVED, Weeldreyer SECONDED. VOTE: 3-2, Dumdi and Rust dissenting. Anderson indicated that he could have findings available in 10 days. Cornacchia cautioned that this is a special use permit and will remain monitored throughout its existence, so conditions and limitations remain the standard. He added that the Board would like Land Management to come back and discuss the appropriate timeframe necessary to do the work that has been talked about regarding the parks' subsection. There was consensus to ask for a response back from Land Management in 30 days to detail the necessary workload for code review. Responding to Weeldreyer, Vorhes indicated that provision for additional conditions would take action from the Board.

14. OTHER BUSINESS

None.

There being no further business, this meeting adjourned at 3:47 p.m. to convene into Executive Session at 3:55 p.m.



Sharon Giles
Board Secretary