

Chairperson Cary Johnson called the October 13, 2009 Clatsop County Planning Commission meeting to order at 10:02 a.m. Planning Commissioners (PC) present: Mike Autio, Christine Bridgens, Marcia Harper-Vellutini, Cary Johnson and Clarke W. Powers. Excused: Brian Pogue.

Staff present: Blair Henningsgaard, County Counsel; Ed Wegner, Director; Will Caplinger, Development and Services Manager; and Michael J. Weston II, Planner, Transportation and Development Services.

### **Business from the Public**

No one from the public asked to speak.

### **Public Hearings**

#### **Uskoski Variance Request**

Chairperson Johnson reported an *ex parte* contact, saying he lives across the street from the property and is familiar with the owner and the site, but it did not create a conflict. There were no other *ex parte* contacts, no conflicts of interest, nor objections to the jurisdiction of the planning commission to hear the matter at this time.

Development Services Manager Will Caplinger presented the staff report, which was prepared by Planner Jennifer Bunch, who was not able to attend today's hearing. Mr. Caplinger explained the request for a variance to the 50-foot setback to resource lands. He said five of the seven criteria were not satisfied, and he described the topography outlined in the Horning report. Mr. Caplinger said Ms. Bunch had recommended denial, based on the five unsatisfied variance criteria, writing that there were multiple building sites on the property and the variance was not required to permit reasonable use of the land; the fifty-foot set back was to provide a buffer to the adjoining forest land, variance from which might cause injury to the forestland; and the applicant/owner was responsible for the layout of the subdivision and created the hardship himself.

Mr. Caplinger stated he had visited the site, and he directed attention to maps in the staff report, including one by Ms. Bunch that provided three outlines for other potential building sites that would negate the need for the variance and the contours showing the slopes of the site. He also read from a letter (exhibit U-1) from the applicant, Neal Uskoski. Mr. Uskoski's letter responded to Ms. Bunch's concerns, stating two of the potential sites she proposed were wetlands or within the 35-foot aquatic vegetation setback requirement and the third site would cut off the existing driveway and left no room for a garage. He also revised his request to a 20-foot variance and restated his contention the site he proposed is the only appropriate spot and not approving would render it un-buildable.

Mr. Caplinger explained when he visited the site, it recently had been brush-hogged, something he thought had not been done when Ms. Bunch made her site visit. He confirmed the presence

1 of wetland vegetation on two of the proposed sites and said building there would be a violation  
2 of the code. In addition, he introduced the April 24, 2006, Horning Geosciences report on the  
3 site, called tax lot 4800 at that time. He pointed to language in the "Springs and Seeps" section,  
4 labeled E-6, indicating the third proposed site is saturated with ground water and lies in a swale  
5 and should be avoided when siting a house. Mr. Caplinger commented Mr. Uskoski's revision  
6 of his request to a 20-foot setback would leave a 30-foot setback to state forest lands and offer  
7 to place the liability agreement in a permanent covenant spoke for itself.  
8

9 Mr. Caplinger said in light of the additional information, it seemed the site proposed by Mr.  
10 Uskoski was the only reasonable location and denying the variance might render the lot  
11 unbuildable. He thought it possible the planning commission could make findings that the  
12 criteria were satisfied.  
13

14 Mr. Caplinger read a letter from Cullen Banks, Oregon Department of Forestry (ODF), stating  
15 ODF does not support the request and typically requests a 125-foot setback in such situations.  
16 He said ODF's concern is an increased risk of trees falling, forest fires, and potential for  
17 encroachment.  
18

19 Mr. Caplinger explained Mr. Uskoski offered to do a property line adjustment with ODF and the  
20 map in exhibit U-I shows wetlands and terracing, and read an email from John and Mary Allen  
21 into the record, expressing concerns found in the Horning report (sections E5, E6, and E10).  
22 Mr. Caplinger noted the site is not in the geologic hazard overlay district. It was noted that the  
23 Horning report addressed risk and the last attachment outlines the conditions of approval.  
24

25 PC Powers asked if the findings are being changed and Mr. Caplinger said that additional  
26 information has been provided and he wanted to make sure the Planning Commission  
27 understood the comments, but he was not changing staff's recommendations. PC Autio asked  
28 how the sites were identified. Mr. Caplinger said that when he visited the site, it had been  
29 brush-hogged and he doesn't think that had happened when Ms. Bunch visited. PC Autio asked  
30 if the pending amendment might change the variance requirements, and Mr. Caplinger said the  
31 hardship requirement might change because it is very difficult to define.  
32

33 Chairperson Johnson opened the public hearing and asked for public agency comments.  
34

35 Cullen R. Banks, ODF, 92219 Highway 202, Astoria, said he appreciated his letter being read  
36 into the record and confirmed ODF is an adjacent landowner to the south. He does realize  
37 there is a 50-foot setback and the concern is about reducing the setback because of increased  
38 risk. He appreciates the applicant's suggestion to remove the trees and the willingness to work  
39 with ODF. He said ODF is not interested in a property line adjustment and that once the  
40 buildings are constructed, they would be hard to move. He said ODF wants to protect life and  
41 property and that there is concern about fuel, i.e. brush accumulation, fences, etc. PC Harper-  
42 Vellutini asked about requirements to remove fuel once the buildings are constructed and Mr.  
43 Banks said that is not likely. PC Autio asked about a deed restriction to protect ODF and the  
44 homeowner and Mr. Banks said he is not an attorney but ODF might be willing to consider such  
45 a restriction.  
46

47 Mr. Uskoski, the property owner, thanked the planning commission and staff for their work. PC  
48 Autio asked if the applicant would be willing to put in language regarding maintenance and  
49 accumulation of brush and Mr. Uskoski said he would agree to any wording preferred and would  
50 be willing to exchange land from the other side of the creek. PC Powers asked about the  
51 timeline and Mr. Uskoski said he has owned the property for ten years and applied for the

1 subdivision in 2006. PC Powers asked if he was aware of the unbuildability of lot 1, and Mr.  
2 Uskoski said he did, but at the time he thought he would be able to do something about it by  
3 getting a variance later.  
4

5 Mr. Banks said that ODF has procedures in place for land exchanges but he doesn't think this  
6 project would fit. PC Bridgens asked about liability issues and Mr. Uskoski suggested a hold  
7 harmless agreement. PC Bridgens said that ODF speaks to risk and asked if a "hold harmless"  
8 would have any teeth. County Counsel Blair Henningsgaard said he is not really sure what that  
9 meant and didn't know how it would be enforced. PC Bridgens asked if the County would be  
10 liable and Mr. Henningsgaard said no. PC Autio said that the most significant risk would be  
11 trees falling and that homeowners wouldn't find ODF liable for that.  
12

13 Chairperson Johnson had concerns about the language and the updated findings. PC Powers  
14 said he had difficulty being in favor as it stands and had concerns about encroaching on the  
15 ODF boundary. PC Harper-Vellutini asked if language could be developed if the variance were  
16 approved now. Mr. Caplinger said that there could be a conditional approval and wording could  
17 be developed so that it doesn't have to come back to the Planning Commission. Mr.  
18 Henningsgaard said the variance could be tentatively approved subject to new findings. PC  
19 Autio said to keep in mind that language is being revised in the new ordinance and there will  
20 probably be different rules next month. As there was no further discussion, Chairperson  
21 Johnson closed the public testimony.  
22

23 **PC Autio made and PC Harper-Vellutini seconded a motion to conditionally**  
24 **approve the application and direct staff to present findings for approval**  
25 **with the condition the applicant and county staff agree on the language of a**  
26 **deed restriction that would be satisfactory to the Department of Forestry.**  
27

28 PC Johnson commented ODF might not find any language satisfactory. PC Autio said he was  
29 not so much concerned about the approval of ODF as much as he wanted ODF to be consulted  
30 and have the opportunity to weigh in.  
31

32 **PC Autio restated his motion thus: To conditionally approve the application**  
33 **and direct the staff to prepare findings for approval with the condition the**  
34 **applicant and staff work out language for a deed restriction and include**  
35 **consultation with the Department of Forestry. PC Harper-Vellutini**  
36 **seconded the motion; the motion was approved unanimously.**  
37

### 38 **Neikes Conditional Use Permit – Mixed Use**

39

40 PC Harper-Vellutini reported an *ex parte* contact, saying the applicant, Tom Neikes, is a client  
41 but she said it would not affect her participation. There were no other *ex parte* contacts, no  
42 conflicts of interest, and no objections to the jurisdiction of the planning commission to hear the  
43 matter at this time.  
44

45 Planner Mike Weston said Mr. Neikes wants to upgrade the loft area of his property to include  
46 residential features, constructing two, 900-square-foot apartments above an existing  
47 warehouse, in the Miles Crossing/Jeffers Garden area. Mr. Weston said the area currently has  
48 many residential properties in conjunction with businesses. He noted that the sewer should  
49 come on line in a couple of weeks, and he recommended approval with the conditions listed on  
50 page 32 of the packet. He said that no comments have been submitted. PC Powers asked how

1 condition 8 would work. Mr. Weston explained the cause for review, which is a blanket  
2 condition on all conditional use permits. Chairperson Johnson opened the public hearing.

3  
4 There were no comments from public agencies, the public, or the applicant.

5  
6 **PC Harper-Vellutini made and PC Autio seconded a motion to approve this**  
7 **(Neikes Conditional Use Permit Request) based on the staff report and**  
8 **conditions. Motion was approved unanimously.**  
9

10 **Reed Conditional Use Request – Miles Crossing/Jeffers Garden Area**

11  
12 There were no conflicts of interest, *ex parte* contacts, or objections to the jurisdiction of the  
13 planning commission to hear the matter at this time.

14  
15 Mr. Weston said the subject site is split-zoned, and the front of this site and primary structure  
16 are in the RCC (Rural Community Commercial) zone, with a small out building in the rear in the  
17 RCI (Rural Community Industrial) zone. The applicant is asking to do metal fabrication in the  
18 back, use the center for storage, and use the front for a storefront. He said that RCC doesn't  
19 allow for metal fabrication outright, but the ordinance allows the planning and county  
20 commissions to make a judgment about uses that are similar, and the ordinance allows metal  
21 fabrication in the RCI zoning, right next to the RCC zone. He said that the use is similar to  
22 others in the area (i.e. Clatsop Power) except for the machining element.

23  
24 Mr. Weston explained adding this as a similar use would require amending the ordinance and  
25 attaching the new language to Chapter 7. The whole matter would have to be approved by the  
26 board of commissioners, and he noted making this change would set precedence.

27  
28 PC Harper-Vellutini asked if there would be welding and asked about noise and fire. Mr.  
29 Weston said there would be welding but there may be a way to condition it. PC Autio asked if  
30 the board of commissioners has the option to treat this as an amendment; Mr. Weston said it  
31 did. He recommended approval with conditions, saying it made sense to have it there, except  
32 for the zone, which changed to appropriate zoning about 10 feet away.

33  
34 Chairperson Johnson opened the public hearing. The applicant, Tod Reed, said industrial  
35 property is difficult to find and the whole strip has been removed from industrial zoning. He said  
36 Clatsop Community College previously used the current structure for welding and fabrication.  
37 He said the industrial line is right next to the building and the use wouldn't be a full-blown  
38 machine shop.

39  
40 As there was no comment from any public agencies, the public or staff, Chairperson Johnson  
41 closed the public hearing.

42  
43 **PC Powers made and PC Bridgens seconded a motion to accept/adopt**  
44 **staff's recommendation for conditional approval (of the Reed Conditional**  
45 **Use Permit request) at this time and request the commission add the minor**  
46 **metal fabrication as stated in the conclusion and recommendations.**  
47 **Motion was approved unanimously.**  
48

49 Chairperson Johnson recessed the hearing at 11:15 a.m. and reconvened at 11:25 a.m.  
50  
51

1 **Waters Conditional Use Permit Request – Primitive Campground**

2  
3 There were no conflicts of interest, *ex parte* contacts, or objections to the jurisdiction of the  
4 planning commission to hear the matter at this time.

5  
6 Mr. Weston submitted packet W-I of letters into the record and reviewed the issues raised in the  
7 letters. He said the application is for a primitive campground. He said lots 300 and 307 do not  
8 stand-alone and are part of a tract that includes lot 308, which has an illegal residence. He said  
9 there is a violation on the site and there is no water or septic. He explained the tract rule and  
10 explained the most pertinent parts of the ordinance and said that a campground can be  
11 established on soils not high in value. He said the subject property has types III and IV soils  
12 and not types I and II. He explained how he determined this is not high value farmland, which  
13 he said satisfied one criterion. After reviewing the criteria, Mr. Weston found the following:  
14 There was development of an illegal road where a sizeable culvert was placed, ingress/egress  
15 would go through Public Works, applicant says they'll be self contained, site can't be lived on  
16 more than 30 days out of 90, and the property is farm and forest land. He said the use is  
17 permissible in both the EFU (Exclusive Farm Use) and AF (Agriculture Forestry) zones.

18  
19 PC Autio asked about the fire district and Mr. Weston said the property is in the Elsie-Jewell Fire  
20 District, not John Day. PC Powers asked about the illegal structure and Mr. Weston said that  
21 CUP requirements don't require lack of violation. He noted that the house doesn't have utilities  
22 and this action will not make it legal. Chairperson Johnson asked about the size and Mr.  
23 Weston says that is not noted. Mr. Caplinger said that part of the code revision would allow  
24 relatives or friends to occupy 30 out of 90 days. He said a revision would allow for up to three  
25 RVs on the undeveloped property. PC Harper-Vellutini asked about the number of spaces and  
26 Mr. Weston said he has not seen the site plan. He also said a limit on the number of spaces is  
27 not in the standards and the planning commission could make that determination. PC Bridgens  
28 asked if there are abandoned vehicles and trash on the site; Mr. Weston said he did not go on  
29 to lot 308. He said he did see an RV, picnic table and a fire pit on 307.

30  
31 Chairperson Johnson opened the hearing and called for public testimony. There were no public  
32 agency comments. The applicants, Sam and Donna Waters, said they have been part of the  
33 Jewell area for thirteen years. They are responding to a letter in the staff report regarding  
34 hunting and said they are not personally interested in hunting and have dreamed of building  
35 their dream home on the property. Mr. Waters wanted to share the property with friends and  
36 family. He said there are 36 acres of tree canopy, with the closest neighbor being 1/4 mile  
37 away. He said it is not their intention to bring 5,000 people for a concert and doesn't want to be  
38 limited to designated sites. He said he wants to let people pick where they want to camp. He  
39 doesn't think the request will harm the community and he will screen the users. He said that Mr.  
40 and Mrs. Rode have offered to let them tap into their water supply. He invited the PC members  
41 to visit the site and he asked to read the letters in the file.

42  
43 PC Harper-Vellutini asked about vehicle access. PC Powers asked about how much time would  
44 be offered to users. Mr. Waters said they would go by rules established and doesn't think strict  
45 regulations are deserved. PC Powers asked if users will be charged and the Waters said yes,  
46 they intended to charge. Chairperson Johnson asked how many users are expected at any one  
47 time and Mr. Waters said he is anticipating 100 spaces but wouldn't want the use to be  
48 uncontrollable and there would be a caretaker on site. PC Bridgens asked how the usage  
49 would be screened and Mr. Waters said the use would be like a membership-type of facility.

1 Chairperson Johnson asked for comments from proponents. Hearing none, he asked for  
2 comments from opponents.

3  
4 Herb Oltstedt, 4217 Tweedle Lane, owns property adjacent to west boundary. He said he has  
5 trouble with hunters and squatters all the time. He said he is not saying that the Waters are  
6 "druggies," but he expects there will be trespassing that will change livability for him.

7  
8 PC Harper-Vellutini asked about vehicles and Mr. Oltstedt said there haven't been any but there  
9 could be.

10  
11 Mike Tiedeman, 39861 Burnside Loop, Astoria, representing Loraine Rodgers, a neighbor to the  
12 subject property, suggested Mr. Waters might be making up the story as he goes along and the  
13 scale hasn't been determined. He said that Loraine Rodgers lives alone and doesn't have the  
14 means to protect herself. He said she is concerned about the party atmosphere and cavalier  
15 attitude of the visitors. He asked to whom complaints would be addressed if the Waters would  
16 be absentee landlords. He believes the neighbors are being set up and the proposal doesn't fit  
17 the area.

18  
19 Steve Oltstedt, 453 2<sup>nd</sup> Street, Gearhart, stated he was there to represent his father. He said  
20 rules should be in place and he would be embarrassed to bring this matter to the commission  
21 without a site plan. He thought there would be campfires in the woods during fire season. He  
22 said 100 campsites is more like a KOA-type, commercial development and there is no water or  
23 sewer to support the campground. He said storm water and site plans needs to be drawn up by  
24 a professional as well as a wetlands delineation, DSL permit, and Army Corps permit. He said a  
25 road was built across the wetland without permits.

26  
27 Emil Rode, 42962 Mullenbach, said 100 sites are excessive, but 30 or 40 would be ok.

28  
29 Benjamin Clark, 81651 Highway 103, said he owns property nearby. He said he sees people  
30 living in the barn and there is trash. He said he works nights and has a wife and child. He said  
31 that people are renting the home, which is supposed to be condemned.

32  
33 Tony Fraser, 82441 Mullenbach, said he purchased the property from the Waters, alleging they  
34 knew it wasn't buildable when he bought it from them. He said he removed seven tons of trash  
35 from lot 308. He said there are six issues of violations. He said there is a decommissioned  
36 mobile home on lot 308 with people living there and the water is being pumped out of the creek.  
37 After finding he couldn't build a residence on the site, the property returned to the Waters  
38 through legal means.

39  
40 Chairperson Johnson asked for applicant rebuttal. Mr. Waters said he had listed the property  
41 with an agent from Forest Grove. He said that Mr. Fraser put in the un-permitted road and that  
42 trash on the property is from previous owners. He said he plans to have portable toilets, wants  
43 to start small, and it would not be a party haven. He said he lives in Vernonia but wants to live  
44 on the property. He asked about crime rates at primitive state campgrounds.

45  
46 PC Harper-Vellutini asked the Waters if they had read the conditions. They indicated they had.

47  
48 Michael Morrell, 3004 SE Teal, Gresham, doesn't think the well will produce enough water. He  
49 said the trail is used by quads and there is trespassing. Mr. Waters said that in regard to the  
50 pump in the creek, the previous owners were given access to the creek water 40 years ago.

1 Mr. Weston responded to Mr. Tiedeman's comments. He said that the scope of project is  
2 needed and that 100 people using the site, not three or four, would be a game changer. He  
3 said that criteria for a campground don't give a number limit and that a site plan is needed. He  
4 noted there are streams on the property and that a wetland delineation is probably not  
5 necessary unless they do work in the streams/wetlands. He said that 100+ spaces would  
6 create compatibility issues with the neighbors and ODF and there would need to be water  
7 certification. PC Powers asked if a 24/7 caretaker establishes a residential use that's illegal.  
8 PC Autio asked if a CUP can be granted on a lot with a violation and Mr. Weston said the  
9 ordinance permits a CUP to rectify the violation. He said more information is needed for  
10 approval and the applicant needs to come up with a plan. PC Autio said the applicant should  
11 have a chance to come up with new information and Mr. Weston said the application is early in  
12 the 150-day rule and the planning commission could look at the project again once or twice.

13  
14 After discussion, it was the consensus of the Planning Commission that the project be continued  
15 to November to allow the applicant additional time to respond without charging the applicant an  
16 additional fee.

17  
18 **PC Powers made and PC Harper-Vellutini seconded a motion to keep the**  
19 **Waters Conditional Use Permit Hearing open and request a detailed site**  
20 **plan, to be addressed at the next hearing, scheduled for November 10,**  
21 **2009, at the Boyington Building, at 10 a.m. The hearing will continue to be**  
22 **open for public testimony. Motion was approved unanimously.**

23  
24 Chairperson Johnson called a recess at 12:49 a.m. and reconvened at 1:30 p.m.

#### 25 26 **Land and Water Development and Use Ordinance Standards Document Amendment**

27  
28 Mr. Caplinger updated commissioners about the newest revisions to the draft Ordinance and  
29 Standards. He drew attention to page 9, regarding non-conforming structures and uses; page  
30 11, regarding the Camp Rilea buffer zone, which eliminates the tract rule except for parcels  
31 abutting Camp Rilea; and page 12, regarding sign requirements in the Light, Marine and other  
32 industrial zones.

33  
34 Chairperson Johnson asked about the definition of legal non-conforming use, and Mr. Caplinger  
35 responded such uses cannot be established in violation of existing regulations and are still  
36 subject to building standards.

37  
38 The public testimony was closed.

39  
40 **PC Powers made and PC Bridgens seconded a motion to recommend (the**  
41 **draft Ordinance and Standards) go before the County Commissioners for**  
42 **approval. Motion was approved unanimously.**

43  
44 As there was no further business, Chairperson Johnson adjourned the meeting at 1:19 p.m.

45  
46 Respectfully submitted,

47  
48 **SIGNED ORIGINAL ON FILE**

49  
50 \_\_\_\_\_  
51 Cary T. Johnson  
Chairperson, Clatsop County Planning Commission