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**Clatsop County
Board of Commissioners
Minutes
Wednesday, March 22, 2023**

REGULAR MEETING: 6:00 PM

FLAG SALUTE

ROLL CALL

PRESENT

Commissioner Lianne Thompson
Commissioner Pam Wev
Commissioner John Toyooka
Vice Chair Courtney Bangs
Chair Mark Kujala

AGENDA APPROVAL

Chair Kujala stated the agenda was reviewed during the work session.

Motion made by Vice Chair Bangs, Seconded by Commissioner Toyooka to approve the agenda as amended.

Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner Toyooka, Vice Chair Bangs, Chair Kujala

PROCLAMATION

2. Child Abuse Prevention Month Proclamation {Page 5}

Public Affairs Officer Angelini presented details of the proclamation to raise awareness of child abuse issues and the need for prevention. She cited statistics about child abuse and advised on how to report suspected abuse or neglect.

Motion made by Vice Chair Bangs, Seconded by Commissioner Thompson to approve the Resolution and Order proclaiming April 2023 as Child Abuse Prevention Month and authorize the Chair to read, then sign the proclamation.

Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner Toyooka, Vice Chair Bangs, Chair Kujala

Chair Kujala read the proclamation declaring April 2023 as Child Abuse Prevention Month in Clatsop County.

3. Problem Gambling Awareness Month Proclamation {Page 9}

Health Promotion Specialist Reilly presented the proclamation to raise awareness of problem gambling. She shared information about the negative impacts of problem gambling and cited statistics about gambling youth in the county.

1 *Motion made by Vice Chair Bangs, Seconded by Commissioner Thompson to*
2 *approve the Resolution and Order proclaiming April 2023 as Problem Gambling*
3 *Awareness Month and authorize the Chair to read, then sign the proclamation..*
4 *Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner*
5 *Toyooka, Vice Chair Bangs, Chair Kujala*
6

7 Chair Kujala read the proclamation declaring April 2023 as Problem Gambling
8 Awareness Month in Clatsop County.
9

10 **BUSINESS FROM THE PUBLIC**

11 Rick Bowers, 357 Commercial, Astoria, referred to a chart contained in a handout which
12 indicated that states with higher rents had higher rates of homelessness. The
13 ECONorthwest report said that high rents were to blame for the severity of the
14 homelessness crisis. Economists have demonstrated that housing affordability, not
15 personal circumstance, was the key to predicting the severity of homelessness. An
16 estimated 10 percent increase in rent led to a 13 percent increase in homelessness. His
17 analysis indicated that median rents explained 43 percent of the variance in
18 homelessness rates. From 2010 to 2016, Oregon created 63 new housing units for
19 every 100 households. An economic policy review says that if policy advocates were
20 interested in reducing housing costs, they would start with zoning reform.
21

22 **CONSENT CALENDAR**

23 Commissioner Toyooka asked how the dispatch services agreement affected the
24 response for the rest of the rural areas in the County.

25 Sheriff Phillips said the City of Gearhart do not have an overwhelming number of calls
26 for service and they the Sheriff's Office is only down one position which they are looking
27 to fill, so they are in a pretty good spot. He believed this was a great opportunity to
28 support the City of Gearhart because they are part of the community and their one
29 officer has not had a day off in a very long time. He was honored that the City looked to
30 the County. This is an act of good will for a short period of time. The Sheriff said he
31 believed the County would be okay. Based on the call volumes, he believed the County
32 could provide County-level service. They would not be in Gearhart all the time, but they
33 would respond to Gearhart just as they do to the unincorporated areas of the County.
34 The average response time is less than 20 minutes for regular calls. That would be
35 better than calling Gearhart's one officer on his day off or just after he completed a 12-
36 hour shift.

37 Chair Kujala said the agreement was a testament to the trust Gearhart had in the
38 Sherriff's Office and the County appreciated Staff's willingness to help by providing
39 mutual aid.

40 Commissioner Wev thanked the Sherriff for providing the Board with thorough
41 information.

Commissioner Thompson said she was looking forward to the Sherriff's upcoming update on public safety.

Motion made by Vice Chair Bangs, Seconded by Commissioner Wev to approve the Consent Calendar.

Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner Toyooka, Vice Chair Bangs, Chair Kujala

4. Board of Commissioners Meeting Minutes 2-22-23 {Page 11}

5. Public Works Custodial Contract - Amendment No. 1 {Page 17}

6. Dispatch Services Agreement {Page 25}

7. Project Turnkey 2.0 {Page 29}

COMMISSIONER'S LIAISON REPORTS

Commissioner Thompson reported that the Department of Land Conservation and Development (DLCD) held workshops on sea level increase and coastal erosion. The flooding south of Seaside has begun to encroach on to the highway. She attended the Oregon Department of Transportation (ODOT) open house to discuss their request for funding to study the US 101 Circle Creek Seaside flood mitigation. The next ODOT open house was in Tillamook and online on March 23rd. She recommended the Board have a joint work session with the Planning Commission to discuss the impact of flooding on public infrastructure. She reported that she had been working with the Association of Oregon Counties (AOC) to develop relationships so that people all over the state know about Clatsop County.

Vice Chair Bangs reported that she was working with the Northwest Senior Disability Services on their budget. She also reported that CFTLC would not be meeting for awhile and the Fair Board was preparing for the fair by holding work sessions. She also reported she was glad that she could now pump her own gas. She never understood why pumping one's own gas was illegal.

Commissioner Wev reported that she attended two of the DLCD meetings on sea level rise, which were poorly attended. She wanted more Staff to get involved in the DLCD's work because their project would be good for county-wide public information and training for citizens about what to do in subduction zone catastrophes.

Commissioner Toyooka reported that the Clatsop Economic Development Resources (CEDR) awards would be on April 6th. The event is a great example of the hard work, perseverance, and dedication from some of the community members and a wonderful way to spotlight them and see what they are doing. He also reported that NACO Veterans had a meeting and he reported that they have a program where the veteran can speak to another veteran who had actually been in their boots. Marines have been places and have done things that normal humans have not and it's nice to have that network available. As he learned more, he would pass on information to Staff.

1 **COUNTY MANAGER'S REPORT**

2 County Manager Bohn reported that Staff would coordinate with anyone who wanted to
3 attend the CEDR awards event because registration was required. He also reported that
4 Clatsop Community Action (CCA) just hired a Veterans Service Officer.

5
6 **BUSINESS AGENDA**

7 8. Appeal of Hearings Officer Decision – JJG ORE LLC Variance {Page 37}

8 Planner Sisson presented the Staff report on the appeal of the JJG ORE LLC
9 variance request, which was denied by the hearings officer.

10 Commissioner Thompson stated there was clearly a conflict. She referred to a
11 map, which was displayed on the screen and said the house was jammed in. She
12 questioned whether the criteria the denial was based on had always been
13 applied to variance requests.

14 Planner Sisson stated this was the first variance he had worked on, but he and
15 the Hearings Officer were interpreting the criteria the same way. However, the
16 Hearings Officer came to a different conclusion than he did because he was
17 more strict about reasonable use of the land.

18 Commissioner Thompson said that in the five years she sat on the Planning
19 Commission, she never heard that criteria when considering a variance request.
20 She wanted to do the legally proper thing, but this would end up at the Land Use
21 Board of Appeals (LUBA) anyway. She asked what was the cheapest and most
22 efficient way to resolve this conflict.

23 Planner Sisson responded that the Commission had four options. Three of the
24 options would include this issue coming back before the Commission in a hearing
25 and the other option would be to deny a review.

26 Commissioner Thompson stated the shortest and cheapest resolution would be
27 to let the Hearings Officer's decision stand. Someone else would take the issue
28 to LUBA where legally qualified people would make a decision.

29 Chair Kujala said he did not agree with the Hearings Officer's decision.

30 Vice Chair Bangs asked if the variance was denied for any other reason. No
31 waterways were being impacted and there was no environmental impact. She
32 supported property rights and she understood the purpose of a variance.
33 However, this request seemed logical.

34 Planner Sisson confirmed the primary reason for denial was that the Hearings
35 Officer found that the variance requested was not the minimum necessary to
36 have reasonable use of the land. The opponents had demonstrated that the
37 Applicant could meet all of the setback by building a smaller house. The variance
38 criteria are very clear. The conditions on the property must be so unique and
39 unusual and apply only to that property such that without a variance or through
40 strict application of the Code, the Applicant would be deprived of reasonable use

1 of the property. The Staff report defined reasonable use based on the existing
2 development in the neighborhood.

3 Commissioner Wev said she was astounded by the vitriol from the neighbors
4 during the hearing because the houses in the neighborhood are very close
5 together. The neighbors who commented knew a lot about zoning and cited
6 concerns about their view corridors. However, conditions of approval were added
7 to prevent vegetation from blocking views. She asked why the neighbors were so
8 opposed to the request.

9 Planner Sisson responded it was possible that the area was contentious about
10 replacing houses. However, he believed the primary concern of the opponents
11 was the view. Two people who owned property on the east side of the street
12 believed their views would be impacted by the width of the house and the shape
13 of the roof.

14 Commissioner Wev stated the proposed house would be a couple of feet shorter
15 than the existing house. Additionally, the beach access provided a wider view
16 corridor because it was paved. She was concerned that the Hearings Officer
17 would be vulnerable in a LUBA case. It was unusual that the hearing was not
18 continued and that there was no opportunity for rebuttal testimony.

19 Planner Sisson believed the hearing was conducted correctly. All parties were
20 given the opportunity to present their arguments and the Applicant was given the
21 opportunity to provide rebuttal testimony. Additionally, no one requested a
22 continuance during the hearing.

23 Planner Sisson said the Staff report included data from the neighborhood about
24 lot size, lot width, and dwelling size. However, the Hearings Officer's decision
25 was not based on that kind of analysis.

26 Commissioner Wev said the neighbors were not doing it the same way. The
27 houses in this neighborhood are very close together and are quite different from
28 each other. She did not believe there were any sensory issues. She believed the
29 conditions of approval address the opponents' issues.

30 Chair Kujala agreed.

31 Vice Chair Bangs stated she wanted to support the property owner and she did
32 not want to deny a review because everyone deserved the opportunity to express
33 themselves when they requested that opportunity. However, denying a review
34 could be the quickest way for the Applicant to get approval to build on the
35 property. She asked how Staff recommended the Commission help the property
36 owner quickly.

37 Chair Kujala reminded that the Commission had four options. One of those
38 options was to review the record, which he believed was the simplest way for the
39 Commission to go forward.

40 Planner Sisson stated he was a neutral party and the Hearings Officer was a
41 very experienced land use attorney. The Applicant and the opponents have
42 attorneys as well, so a review would be a deep dive into the technicalities of the

1 criteria, precedents, and the law. All four options include the opportunity to
2 appeal this issue to LUBA.

3 Vice Chair Bangs said she did not want to set a precedent of denying property
4 owners their basic property rights. She asked if the Applicant's ability to move
5 forward would be impeded if the Commission denied a review.

6 Commissioner Thompson heard that the more complicated the issue is, the
7 longer it takes and the more money it costs. It was a shame that the neighbors
8 could not welcome new property owners who wanted to build an energy efficient
9 house that would be better for the environment.

10 Director Henrikson clarified that if the Commission denied a review, LUBA's
11 decision would not be impacted. She understood Vice Chair Bangs' support of a
12 property owner's right to develop within the Code. However, this Applicant was
13 requesting something above and beyond what is normally allowed. The request
14 could be denied by LUBA, appealed to the circuit court and denied, and then
15 appealed all the way to the Supreme Court and still be denied. Regardless of the
16 outcome, the property owner still has the ability to build on their property. The
17 variance process is not intended to help people build their dream house; it is
18 intended to help people who need relief from the rules in order to do anything
19 with their property.

20 Commissioner Wev added that LUBA is supposed to make their decision based
21 on the merits of the case, so the Board's opinion would not have any
22 consequence on their decision. Denying a review would not have any impact.

23 Planner Sisson reviewed the Commission's four options.

24 Chair Kujala agreed with Commissioner Thompson that the Commission should
25 deny a review.

26 Vice Chair Bangs asked for clarification.

27 Planner Sisson said Option #2 would allow the Board to review everything in the
28 record without accepting any new evidence. Option #4 would be a completely
29 new hearing.

30 Chair Kujala feels that denying the review would be the most prudent way to go
31 forward.

32 Vice Chair Bangs said she doesn't feel right denying the review.

33 Planner Sisson clarified that the proposal would meet the maximum height of 18
34 feet.

35 Chair Kujala reminded that the Applicant still had the opportunity to build a house
36 without a variance.

37 Commissioner Wev came to the meeting knowing how she was going to vote, but
38 now she had no idea how to vote. If the Board went with Option #2 that would
39 mean to re-hear the hearing which would be a way of responding to constituents
40 about how the Commission felt about this issue. However, she was sure this
41 would go to LUBA.

1 Commissioner Thompson stated she would move to deny a review because she
2 wanted to expedite the process.

3 *Motion made by Commissioner Thompson, Seconded by Chair Kujala to deny a*
4 *review of Variance Application Number 22-000318.*

5 Commissioner Toyooka asked if they voted to deny are they setting any
6 precedent for future decisions.

7 Planner Sisson responded that this was still a quasi-judicial land use issue, which
8 do not set any legal precedent.

9 Vice Chair Bangs asked if their decision would be part of the record.

10 Planner Sisson said the Commission's decision, documented in a Notice of
11 Decision with the Commission's findings, would become part of the record.

12
13 *Voting Yea: Commissioner Thompson, Chair Kujala*

14 *Voting Nay: Commissioner Wev, Commissioner Toyooka, Vice Chair Bangs*
15

16 *Motion made by Vice Chair Bangs, Seconded by Commissioner Wev to restrict*
17 *the review to the record made by the hearing body in Variance Application*
18 *Number 22-000318.*
19

20 Vice Chair Bangs asked for confirmation that the review of record would be the
21 entire record.
22

23 Planner Sisson confirmed that everything from the application to the Hearings
24 Officer's decision would be part of the record.
25

26 Commissioner Thompson asked how much time it would take and how many
27 legal hours were usually involved with this kind of thing. She wanted this process
28 to be a brief and inexpensive as possible.
29

30 Planner Sisson stated that Staff's work to prepare for a hearing would be
31 minimal. No new evidence would be allowed, but the parties would still have the
32 opportunity to testify during the hearing. The hearing would likely be scheduled
33 for the second meeting in April.
34

35 Commissioner Wev asked if the hearing would be conducted during a
36 Commission meeting.
37

38 Director Henrikson said the normal procedure was to have the hearing during a
39 regular Commission meeting. However, the Commission could work with the
40 County Manager to schedule a special meeting to conduct the hearing.
41

42 Commissioner Toyooka asked County Counsel in terms of the nature of the
43 decision is this delay going to cause issues for the county.
44

1 County Counsel Pope said he did not think so, this is the Board's decision which
2 could be appealed but there would not be any liability. They could just appeal to
3 LUBA.

4
5 Commissioner Thompson stated that LUBA did not care what the Commission
6 said. LUBA had to consider the issue on the merits of the law but the party pays
7 for the privilege of having the Commission's opinions on the record.

8
9 Vice Chair Bangs asked for clarification on the cost of the fee.

10
11 Director Henrikson responded and noted that the County had changed the fee so
12 that they would only pay if the Commission agreed to take up the case.
13

14 *Voting Yea: Commissioner Wev, Commissioner Toyooka, Vice Chair Bangs*
15 *Voting Nay: Commissioner Thompson, Chair Kujala*
16

17 **PUBLIC HEARINGS**

18 9. Rural Accessory Dwelling Unit Regulations Amendments {Page 46}

19 Chair Kujala said this was the continuation of the hearing of Ordinance 23-03.

20 County Counsel Pope conducted the second reading of the ordinance.

21 Chair Kujala asked for any additional information from staff. Planner Sisson said
22 there were none.

23 Chair Kujala called for public comments. There were none. He closed the public
24 hearing.

25 *Motion made by Vice Chair Bangs, Seconded by Commissioner Toyooka to*
26 *approve Ordinance 23-03.*

27 *Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner*
28 *Toyooka, Vice Chair Bangs, Chair Kujala*

29 10. Ordinance 23-04: LAWDUC Amendments Child Care Facilities {Page 74}

30 County Counsel Pope conducted the second reading of the ordinance.

31 Chair Kujala called for public comments. There were none. He closed the public
32 hearing.

33 *Motion made by Vice Chair Bangs, Seconded by Commissioner Toyooka to*
34 *approve Ordinance 23-04.*

35 *Voting Yea: Commissioner Thompson, Commissioner Wev, Commissioner*
36 *Toyooka, Vice Chair Bangs, Chair Kujala*
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38 **GOOD OF THE ORDER**

39 There was nothing for the good of the order.
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There being no further business, the meeting was adjourned.


Mark Kujala, Chair

Mark Kujala, Chair