

MINUTES SEASIDE PLANNING COMMISSION
March 5, 2019

CALL TO ORDER: Chair Chris Hoth called the regular meeting of the Seaside Planning Commission to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Commissioners present: Chair Chris Hoth, Vice Chair David Posalski, Bill Carpenter, Lou Neubecker, Jon Wickersham, Robin Montero and Teri Carpenter. Staff Present: Debbie Kenyon, Administrative Assistant, Kevin Cupples, Planning Director, Absent:

APPROVAL OF MINUTES: February 5, 2019 adopted as written.

INTRODUCTORY STATEMENTS

This is the time duly advertised for the Seaside Planning Commission to hold its monthly meeting. Agenda items can be initiated by the general public, any legal property owner, Seaside City Council, City staff, and the Seaside Planning Commission.

Chair Hoth asked if there was anyone present who felt the Commission lacked the authority to hear any of the items on the agenda. There was no response.

PUBLIC HEARING PROCEDURES, EX PARTE CONTACTS & CONFLICTS OF INTEREST:

Chair Hoth stated it is standard procedure for the members of the Commission to visit the sites to be dealt with at these meetings. He then asked if any of the Commissioners wished to declare an ex parte contact or conflict of interest. Commissioner Bill Carpenter stated that he was at the City Council meeting on January 28th. Chair Hoth asked if he is excusing himself from the hearing, Commissioner Bill Carpenter stated no.

AGENDA:

PUBLIC HEARING REQUIREMENTS:

The following public hearing statements were read by Chair Hoth:

1. The applicable substantive criteria for the hearing items are listed in the staff report(s) prepared for this hearing.
2. Testimony and evidence shall be directed toward the substantive criteria listed in the staff report(s) or other criteria in the plan or land use regulation, which you believe applies to the decision.
3. Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.
4. The applicant will testify first, then any opposition will testify, and then the applicant will be given time for rebuttal.

PUBLIC HEARING:

- A. Conditional Use 19-006VRD; 2 bedroom, 6 occupancy Vacation Rental Dwelling Permit at 433 13th Avenue; T6-R10-S 16DA TL#10300
- B. Conditional Use 19-007VRD; 2 bedroom, 6 occupancy Vacation Rental Dwelling Permit at 435 13th Avenue, T6-R10-S 16DA TL#10300

Kevin Cupples, City Planning Director, presented a staff report, reviewing the request, decision criteria findings, conditions and conclusions. Mr. Cupples stated that these two homes are on the same lot and have been vacation rentals since 2005. This is a change in ownership. Mr. Cupples stated that he does two separate orders so if you wish to put conditions on one and not the other that can be done.

Chair Hoth asked if there was anyone who would like to offer testimony in favor of the request. Mark Howser, East Glacier Park, Montana. Mr. Howser is in the middle of purchasing these properties from the current homeowner and what they would like to do is basically get through the approval process and run VRD's at these two locations. It helps them afford the properties and offset some of the costs associated with owning a home here in Seaside. He would like to give you some background on himself and his wife. They are Montana residents and live in East Glacier Park, Montana. They run

seasonal tourist businesses, hotels, a general store, car rentals, restaurants, all things tourist related. He appreciates the work that the planning commission does and understands that planning is tough in a city. They swell from a population of 467 year round residence to over 3000 people on only two paved roads. Their season is only 120 days and they see a little over 2 million people pass by their doors. So if anyone understands the demands placed upon towns that deal with influxes of people and seasonally, it is him. That said, they have 25 plus years of experience in handling people that stay in motels on a transient basis. They understand how to manage their guests that may use the property when they are not present. Their goal is not to own another business. Their goal is to own a vacation rental property that offsets some of the cost of living here in Seaside. They fell in love with Seaside about five years ago when they made their first trip here. They've always stayed at these two properties when visiting Seaside and are asking permission to run a VRD. Their goal is to be just far enough away from Glacier National Park and their responsibilities to actually have a vacation. That's their hope. They fell in love with these two properties and are negotiating with the homeowners to purchase them.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. Ron Sleseranko, 13505 SE River Rd, Portland, Oregon. They purchased 435 & 433, 13th Avenue properties or 40 years ago. His association with Seaside goes back to the 50s being a native Oregonian raised in eastern Oregon. It was a treat and delight to come to Seaside. When he became an architect and planner located in Portland they found themselves with a little bit of extra cash. They came to Seaside and found these properties. They were owned by a slum lord in Vancouver, Washington. It's been a labor of love bringing these properties to where they are currently. They have designed a number of museums and libraries throughout the State of Oregon. History has always been really important and so what they've done with these properties is to rescue a lot of businesses that are no longer around. The old Harrison's bakery is one of businesses that they basically cleaned out when the last owner closed the door. They also cleaned out the agate shop that was on Broadway and they have the 40 foot mural and divided into three sections. It's in the two houses. The point to all of this is that these two houses are important to them as being a part of Seaside and the North Coast. Five years ago when the Howser's first visited their places and became interested in owning a place, they started a dialogue and it became a natural thing for this couple who has three children. They had three young children when we first bought here and they've come to know the new owners. They want somebody that can take the properties and basically not change anything. They want to keep everything as it is and save a part of Seaside's history. They thought that was really important. The Howsers will be good stewards of the property. So he hopes you vote in their favor.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. There was no response.

Chair Hoth asked if there was anyone who would like to offer testimony in opposition. There was no response.

Chair Hoth closed the public hearing and indicated the issue was opened for Commission discussion. Chair Hoth had a quick question for Mr. Cupples about the two houses being on one lot. Mr. Cupples stated they actually have two platted lots. He's not exactly sure where the houses sit in relationship to where the property line is, but from what he can recall, there's actually two platted lots. If they wanted to separate them, technically he thinks they could, so long as the houses aren't on the property lines. But it's been as far back as he could find in the file it's always been one property. He tried to give the commission a little history that was found in the file because it was rather interesting. The past owner did have lots of problems because they kept referring to a motel there, he thinks at one point there was another building back behind these homes that ultimately got torn down. But it's kind of weird, it's like it was a commercial motel property. Chair Hoth asked if these are non-conforming structures. Mr. Cupples stated no. Chair Hoth asked for further comments. It seems fairly straight forward. The only thing that he noticed that might need to be corrected is the condition for one of the homes, either 435 or 433, that talks about the fact that it's gravel and needs to be paved and Mr. Cupples had a condition for that. That same condition is not in the other one, which also has the same issues in terms of the gravel non-paved driveway. Mr. Cupples stated that he was thinking that was, 435, and he thought that was paved. Chair Hoth stated that neither one of them are paved, there's a little bit of paving at the street and then he thinks it turns into gravel at the bottom. Mr. Cupples stated then just add same condition to both properties.

Chair Hoth stated taking a year to accomplish that, doesn't that seem a little long, especially since you're offering some rather moderate conditions like paving stones. You're not requiring full paving, it

seems like a year is a bit excessive. Mr. Cupples stated he usually just put a year in just because it's a standard number. If he asked them to do it right now, they couldn't get the asphalt to do it. But sometime during the summer he would assume they'll probably get that done. Chair Hoth stated his only concern here would be that we just made it up shorter like maybe six months instead of a year and we had the condition for both homes. Mr. Howser appreciates the timeline of six months, but he would really appreciate the extra six months to a year. He has spoken with a few contractors even in the Seaside area and when he mentioned that he needed to be done in a year several of them said that that would be just about right. What he would like to propose is an October date, which would be the best time he could be here with the contractor. If there could be any consideration to that point for maybe leaving it at a year, that'd be great.

Chair Hoth stated that is good information to have and we'll let the commissioners take that under advisement. Commissioner Teri Carpenter stated let's say you have a condition like, they need the driveway paved or we need this or that. Can the VRD be used before that or do they have to meet the conditions? Mr. Cupples stated yes, there have been instances when it has been written up that way. The concern is they're going to be dragging gravel out into the roadway? With these two homes it is really compacted it's almost the same as being paved now, he just wanted to be consistent.

Commissioner Bill Carpenter made a motion to approve the conditional use or 19-006VRD and 19-007VRD with the modifications that were noted that both of gravel driveways will need to be paved. Chair Hoth asked if Commissioner Bill Carpenter would care to elaborate on whether you were required to pave in six months or a year. Commissioner Bill Carpenter stated one year. Commissioner Neubecker seconded and the motion was carried unanimously.

C.) Limited Remand of 18-068HOZ For Planning Commission To Determine a Proportionate Condition of Approval Regarding Traffic Control for a New 18,000 sq. ft. Retail Building (Grocery Outlet) South of the Avenue N & the Coast Hardware Property.

Kevin Cupples, City Planning Director, presented a staff report, reviewing the request, decision criteria findings, conditions and conclusions. Mr. Cupples stated that in all the time that he has been here he doesn't think that he's ever dealt with a remand. So if he stumbles around a little bit, he's sorry. The city council wanted the planning commission to look again at the conditions of approval that were done for the grocery outlet, the application by Main and Main, and the opposing attorney provided the commission with some information earlier today and the commission also received information from Maine and Maine's attorney who is here too. The information that was provided he thinks in some cases went beyond what the scope of what the council wanted you to look at, which is really narrowing down exactly what it is that they're being required to do and try to make this a proportional requirement rather than far reaching the way that it was written. What he provided to the commission a few minutes ago is a revised condition that he thinks would satisfy what it is that the applicant is looking for and what it is that the council wanted the commission to do. And that is a revision which really just identifies the widening of the roadway and the re-striping of the roadway. It isn't the exact design that the ODOT's representative wanted, he said you're going to need to go a little further north in order to kind of smooth out the way that lane comes in around the turn pocket. But they are willing to do the paving and widen the roadway to get a turn pocket in. He thinks that was originally what the planning commission was wanting them to do in the first place. So this at least satisfies the big concern he had which was not having any turn pocket there at all. That was written into the decision. It's just the way that it was written up, it became somewhat problematic with the case law. If you have any questions about what he provided you can ask him or you can ask the applicants. Chair Hoth stated that before the commission gets started with the proceedings he has a question. What is the scope of having an additional person who was not present at the initial hearing standing in on the proceedings? The PPN Attorney who wasn't at the original one, but was at the city council meeting, asked if they have standing here now in this because it's a remand from the city council. Mr. Cupples stated that the council was just asking the planning commission to look at fixing what was broken. So right now he thinks it's a matter of the commission addressing that matter. He really hasn't gotten into the whole question about, who has standing. He was allowed to take part in the city council meeting and that didn't go any further than that. Other than just to say, yes, you need to go back and look at fixing what seems to be broken.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. Dan Dover 6600 Page Rd, The Colony TX. Mr. Dover stated the last time they were here, they were approved. Thank you. The one condition or the one narrative in the decision that they just couldn't satisfy was in paragraph two and as Mr. Cupples stated, they appealed it to city council. In that

conversation with the city council last month they have been remanded back to planning or to the planning commission to discuss the widening that's a little more proportional to the project. And so what they've done over the last month is they've worked with ODOT to come up with something that will work. It's important to note that the design is part of the TIA dated 10-18, which is in the record and the original application that was reviewed by ODOT on 11-7-19. Since the city council meeting they've had conversations with the ODOT. On February 26th and then yesterday, providing them some more information on the design, which Kevin has before you. The design that they presented ODOT with, they said it was good. In theory, they essentially just needed a little bit longer. So the design that Kevin has put in front of you is essentially what the design would be. Just the taper area going northbound. Essentially it would just go right past Avenue M. They got this information as they were driving out here this afternoon. By the time he got to the coffee shop, they were closed already, so he didn't get a chance to print it. If you'd like to see it, he has it on the tablet. It's in ODOT format. But if you'd like to look at it, that's the exhibits that they would like for the record. That's the design that they will build to. That's what they proposed to ODOT, and then today ODOT came back with an alternate design. Mr. Cupples has a copy. Is that the same handout? Mr. Cupples stated yes, that's just a color version of what they've got. This shows the new striping and the gray areas just new paving. Chair Hoth asked if he could ask Mr. Dover a question to refresh his memory, in paragraph two that contained the commission's condition for the left turn solution. Did that condition state specifically that you were required to do a full ODOT treatment or did it just say that information made it necessary to have a left turn pocket? Mr. Dover asked if his legal counsel could answer that. Chair Hoth stated yes. Dave Phillips stated for the record (17355 SW Boones Ferry Road in Lake Oswego) he does have extra copies of his brief that he sent to Kevin. He asked Mr. Cupples if he had time to look at the brief that he sent earlier today or should he hand that out as well? The commissioners had the document. Mr. Phillips stated he's going to direct the commissioners to page two of his brief and pages one and two of the updated memorandum that came in tonight's record dated March 5th for the original language that Chair Hoth asked regarding the approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane recommended under the TIA, or right in and right out with turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the grocery outlet can open. That's the paragraph they need. Chair Hoth stated now does that language mean that we were saying you need to put it in something that met the complete ODOT standards for bike lanes with the whole nine yards and all the bells and whistles is open. Mr. Phillips stated that's the best question for tonight. Because then ODOT would have been in control of the design had this condition or precondition of approval under the case law they cited before city council that is named *Koontz*. Had that been final, then there would have been a third agency in control of the width and depth and breadth of such a project. That's the purpose for appeal. So they could get it back and get it clarified before the commission. Mr. Dover stated that point pretty much covers where they're at today. Hopefully the commission sees that they made their best effort. It's important to go back and when they did their due diligence early last spring, they had ODOT on record stating that this is a fully funded project and will be completed this year and in tandem with their project. And so to find out mid process that it's not a funded project and for us to have to find the resources to complete the work for the project to proceed has been a stretch. It's not the commission's concern to worry about, but it certainly has put a burden on them and their ability to move forward and they really feel like they're putting the best foot forward and making the best effort here to satisfy the intent of that condition. So hopefully the commission agrees and if you have any questions they'll be happy to answer them.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. Dave Phillips stated that since they came here this evening, some of the information is coming in real time and although the case law has been around since 1987, 1994 and 2013, he does want to spend a moment talking about some of the arguments Mr. Anuta made in this brief and he and Mr. Phillips disagree obviously on a number of points of legal contention. But tonight it isn't about what we disagree about. In fact, he thinks the commission and Mr. Anuta and himself agreed that the proposal on the table as modified just this afternoon by ODOT (which they do agree to) is the proposal that satisfies the case law under *Nollan* and *Dolan* and *Koontz*. He also believes it satisfies the intent of both the city council and their concern related to safety and traffic impacts, only which 3% to 5% of the total we're adding to, but at the same time protecting those left hand turns with a pocket is imperative he believes from the commission's perspective. If they were to get to the point where they're going to consider putting pen to paper, he would suggest that on the updated memorandum dated March 5th that they consider the language that Mr. Cupples has presented instead of using language in order to satisfy the concerns identified by the ODOT. They don't want ODOT to change their mind again. ODOT had a \$10

million project and then pulled the rug out from under them and everyone else. But in any event, they want the exhibit to be adopted as it is this evening so they can make sure that what ODOT sent to Kevin and that what they can present, there isn't any wiggle room in it. So they're sure as to what they are required to build and that the commission is obviously comfortable with what they are requiring of them. With that, he thinks to the extent they get to that point, he believes they should see his brief, there's really four sections of it. First of all, the meets and bounds of their limited remand. That's a point of contention that Mr. Anuta and he had at the time before city council. Mr. Anuta cites a case in Oregon that was overruled by *Koontz* by the US Supreme Court. This case is the West Linn case that he believes could apply to this situation and require them to build the ODOT design. The truth is the constitution says no and *Koontz* says that the case law in *Nollan* and *Dolan* does apply to it and the commission also agreed with them and that's why they're here. The project that they have prepared to build is certainly a good one and a condition to the extent we can get to the last part of the finish line and see if they are willing and ready to do just that. And if you have any legal questions after Carl speaks he'll come back up and answer your questions then. Thank you very much for your time.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. Tyler Evans retired resident of Seaside. When he drives by this location and then drives up to his home, which is by the bridge north of the school by 24th, he has noticed that the highway there is much narrower than the highway where they're supposed to put this left turn lane in. He measured the north Seaside road and he measured the road where this development will go and the road here is actually wider than the left turn lane that exists just before you get to 24th to go across the bridge. So a cheap way to do it seems to him is to just restripe the road. He knows that's probably unacceptable, but he's just a computer type guy and he measured the road. It's wider here by Avenue N where they want to put the development than what already exists up there. If you go up and turn left on the 24th just before you get to the bridge it is extremely narrow and he's been turning left there for over 20 years without a problem. The speed up there is 40 mph and down here by Avenue N is 35 mph so it doesn't seem to be a danger. He's in favor of a less expensive solution. Three years ago he looked at the ODOT plans. They were going to redo a left turn lane from Safeway all the way to the end of Holladay. They ran out of money so it appears to him that they're going to redo that whole section anyway, so he suggests a minor change at this time and let ODOT do their rebuilding eventually. He's in favor of a less expensive alternative and that's all. He doesn't know anything about highways, but this makes sense.

Chair Hoth asked if there was anyone else who would like to offer testimony in favor of the request. There was no response.

Chair Hoth asked if there was anyone who would like to offer testimony in opposition.

Karl Anuta, 735 SW First Avenue, Portland, Oregon 97294. There are a couple of things he needs to address here. First, in answer to the question of who has standing to speak at the hearing that Chair Hoth asked earlier: is this is a public hearing and has it been noticed for any member of the public to attend? His response is even if a person hadn't appeared from a legal standpoint and participated extensively at the council level, there would be standing for him to appear before you now. He would note that Mr. Phillips very correctly did not argue today that there was a "standing" issue because there isn't. There's just one, the legal issue. Turning to the sort of more substantive issue, he disagrees very strongly with the legal analysis has been presented to the commission and he thinks if you got advice from the city attorney you would know that the West Linn case study cited is not overruled. He's looking at the wrong part of it. The court there talked about the issue that it had to make it proportional and that's what they've always said and that's what the court and *Koontz* said; it has to be proportional. The issue for the commission and the one that he thinks there is a potential for the city to be in trouble is the applicant asking the commission to look at the wrong things when evaluating proportionality, which is what you have to do. The city council remanded and they very clearly said we want the planning commission to work out: is it proportional or is not proportional? They've got good minds there. Let them work that out. The problem is the applicant is asking you to look at the 3 to 5% that they say they're increasing the highway traffic. What they should be asking you to look at is how much they are increasing the left turns because that's the impact that has to be evaluated; whether the mitigation that you're asking them to do is proportional to the impact.

The impact that is at issue is the turning. They recognize that tonight's new submittal addresses some of the turning issue, but that turning issue is not a 3 to 5% impact. They sent you a report that evaluated that. From an engineering standpoint, it's a 567% increase in left turn lanes and it has safety implications. So when you're trying to decide what is or is not proportional, make sure you're comparing the right things. What's the impact that the proposed project is going to create on left turns off of Highway 101 and what is the mitigation that we're proposing to do with the rest of that? There's some other legal issues that Mr. Phillips and he disagree on, but it's probably not worth the debating those in front of you. The key thing is this design may actually solve the problem or it may not. You don't know, and he doesn't frankly know because he just saw it tonight just like the commission did and he has not seen the traffic engineering analysis that goes behind this. Is this restriping going to solve the queueing problem that the traffic impact analysis identified as being a problem? Well, he hasn't done the analysis on this and if they have done it, he hasn't seen that analysis. What's the effect of this kind of shorter turn lane and if in fact it will solve the problem, this could be a proportionality, you could have a win, win and reach a solution, but what you can't do tonight is you can't answer that question yet because you haven't seen the traffic analysis that tells you whether this preliminary design works or not and you haven't seen what ODOT actually says about this. And he would urge you to address this problem by putting this matter on the next agenda and asking ODOT to come in and tell you what they think about this. And the reason he urges you to do that now is that he will have another traffic analysis done and then we will know the answer. If in fact this solves the problem, they won't be opposing. But he can't tell you right now whether that's going to be the case or not. Frankly, he wouldn't like to be in your shoes trying to make a decision based on something he just saw that he hasn't seen the underlying analysis on. But someone says that some other agencies say it's okay. So he thinks that's the fundamental problem for you tonight is that you're being asked to approve something when you don't have all of the data to know if in fact this is a proportional fix or not.

He would also note that the applicant again in their briefing referenced the cost of the ODOT proposal that was in front of you last time. The cost is not the issue in proportionality. Does the mitigation solve the problem or mitigate the problem which is the left turns. If it's really expensive to mitigate the problem than the applicant shouldn't be proposing that project. If there's a way to do the project less expensively, great, but you don't compare the cost of the mitigation to the cost of the project because which is what they did in this brief and at the council. The one other thing he would like to point out to you when you do the analysis finding on this new design that showed up today, is to ask yourself and the applicant, well, was this designed to handle peak hours? Because that was the issue that concerned the council, what is this going to do at peak hours? The traffic impact analysis was done based on average, not peak hours. And peak in the summer is when there's going to be a big problem and we don't know what this analysis does at peak hours. Maybe it's fine, it could be perfectly good, but it could also be a problem that doesn't really solve the impacts or address those impacts, in which case you're not going to want to approve it because you need a mitigation that actually addresses the impact the project will create, which in this case is both the 3 and 5% and the left turning of 567%. The only other thing he would note is that if it's helpful for you, he knows some of the planning commissioners were actually at the city council meeting. He has the minutes from the city council meeting where he has highlighted what the city council said about sending this back to you. They did not say we agree the impact is 3 to 5%. They never said anything like that. They did not say we agree that this project or this proposal in front of us is not proportional anyway. That didn't say that. They said we want the planning commission to evaluate the proportionality issue and make a decision on what is or is not proportional. That's all they said. And they sent it back for you to do that. And that's why you've got to look very closely at the new design and new proposal and why frankly he has to look at it and have a traffic engineer evaluate it. Is that going to solve the problems? He would urge you not to do as Mr. Phillips proposed and approve this tonight without knowing whether it solves the problem or not and whether it was during a design for peak hours or just average.

Chair Hoth asked if there was anyone who would like to offer testimony in opposition. There was no response.

Chair Hoth stated now is the time for the applicant's rebuttal. Mr. Dover stated he will reiterate on a few things that he went through last time. The TIA was completed October 18th. It was reviewed by ODOT on November 7th. They have had multiple conversations with ODOT. That TIA was performed specifically for the traffic commission for the City of Seaside. So other bodies have seen that. The city council has seen that. Everybody has seen this. It's available we'll just leave it at that. The conversation that we've had with ODOT is that they are 100% on board with a 75 foot turning lane, which is the design that we proposed and that is here in front of you. And then when they came back today, they said it's not the depth of the turn lane that they have any issues with, it is they don't want the road to pop out and pop back in. So they want it smoothed out heading up to Avenue M. They'll agree to do that. It's essentially extending the pocket two and a half times. So instead of being 75 feet, it's going to be closer to 175 feet deep instead of carrying three cars and it's going to carry eight cars. So now it's going to carry two semi-trucks and two vehicles. It's a very, very long turn lane. Beyond that if other experts want to look at this that is fine. But he doesn't know where they would say an additional turn pocket would go past Avenue M and we're proposing to take the turn pocket all the way to Avenue M. He doesn't know how much further it goes past that. Especially with ODOT saying they're fine with 75 feet and they're offering approximately 175 feet. He is scaling it off this plan so it could be a little bit off, but it's going to be close to that. So the logic is flawed in Mr. Anuta's argument that ODOT is not concerned with the depth of the pocket. They just wanted the acceleration lane. If they pause again, they're just going to be here in another month having the same conversation, arriving at this exact same plan for approval. They're running out of time and a window for approval. And again, he knows this is not the commission's concern, but they've been coming to these hearings since May last year and they really would like some kind of definitive decision and ability to move forward. So he's happy to answer any questions.

Chair Hoth asked if there was any other rebuttal. Dave Phillips stated that he's not going to argue back and forth with Mr. Anuta. His brief states the law as it is and as it controls the situation. But the truth is ODOT just today approved the plan and it fixes the problem. When Mr. Anuta describes problems, they're not responsible for the entire problem that exists here. They're just responsible for those impacts that can be attributed to our development and that's what this plan is proposed to mitigate for it is proportion portion because of that standard. And again, the West Linn case that he cites, the part of it that potentially is relevant tonight is proportional because you don't look at a 500% increase in left hand turn lanes. You look at the safety impacts and they proposed a plan that deals with those and mitigates for those impacts. Mr. Cupples has that approval from ODOT. Again just to caution us all having a third party be in control of the outcome of a future condition of approval makes him a little uncomfortable. He'd like to make sure that we draft the language or adopt a decision that is clear and concise so there can't be wiggle room in the future either for Mr. Anuta or for ODOT to change or us to change. We want it to be clear and concise.

Chair Hoth indicated the issue was opened for Commission discussion.

Chair Hoth stated that his original impression of the laws is that it may be something for an attorney, but sometimes you adopt things and you don't realize that language may be something different in a different venue. He impression, and he thinks if you probably go back and look at the minutes and the language that he used at the time, was that that condition said what is required is, is some kind of left turn mitigation and that they would approve the project and you could go out and come up with some kind of solution. He doesn't believe that he has ever said at any time you've got to do the whole thing, if you can come up with something that works, then that's what we were looking for. That has always been his impression from the start. So just with that being said, we can go to the open discussion for the rest of the commission. Commissioner Bill Carpenter stated that his understanding is that ODOT has approved their concept. Is that correct? Mr. Cupples stated yes, the email that he received today, which he didn't bring into this whole fray because he wasn't even sure that the last email he got from Dan said we'll look at that. But the suggested change is actually what Dan is referring to, the suggested change was to extend the turn lane up further to allow a more gradual entrance and that's what he put in the updated memo that you received today. Those were the words of David Smith from ODOT and he does have a colored drawing that shows how that taper would come in and based on David's comments it sounded like he was satisfied.

Commissioner Bill Carpenter stated based on that, he sees no reason not to approve. Chair Hoth stated again, he'll go back to his initial impression. That's what he kind of thought would be the outcome of this; that this would be developed, whatever it might be and hopefully approved by an agency that has control issues. Commissioner Bill Carpenter stated he's glad they didn't have to put a cement barrier out there. Commissioner Teri Carpenter stated she has a concern that people are people going to try to

use this turn lane to turn into Chevron. Chevron's right there, so there'll be a turn pocket to go on to Avenue N but won't people want to be turning into that turn lane to turn into the Chevron station. Commissioner Neubecker stated that he has seen people turn everywhere. Mr. Cupples stated that it's possible. He encounters that once in a while right out here (City Hall and Avenue A) because when he leaves he always goes up to turn left he gets in the reserve lane and then moves over. But there are times that you run into them, but when he spoke with David he said his intent was really to have that as a turn pocket and he uses the word turn pocket. He said as it goes up there it might end up functioning as a reserve lane, but he uses "turn pocket" just so that we were clear that yes, we were getting something in to get traffic out of the travel lane, moving southbound and onto Avenue N. Commissioner Teri Carpenter stated then if you're turning off of Avenue N to Roosevelt, to the south, it's always difficult to get out on Holladay because you can't see around the corner. So is that going to impact that at all? You can't see around the corner when you're trying to get out on Holladay because there's a big propane tank in the way. Mr. Cupples stated they actually moved the tank back some because of that issue. Commissioner Teri Carpenter stated but people are going to be turning off of Avenue N and out into that pocket so is that pocket going to be wide enough so people can get out of there and go on? Mr. Cupples stated that is actually something Commissioner Montero pointed out that there is room where you could actually store a car with that restriping.

Commissioner Montero asked as you're heading west on Avenue N will there be a dedicated left hand turn to head south as well as a right hand turn to head north on 101 or is it all just collectively in one lane. Mr. Dover stated there will be at a dedicated right lane and then a straight "out" lane. Commissioner Montero asked, like the other grocery store down here? Mr. Dover stated that they wouldn't stripe it for "left lane" only. Then Commissioner Montero stated, going back to Kevin's comment on that pocket as you're heading south from Avenue M, does the painted stripe indicate the dedicated left hand turn or will it need a little concrete barrier, like what Commissioner Teri Carpenter addressed. For instance, if somebody's trying to take a left and you use that lane to go to Chevron. If there was that little concrete barrier as you're heading south from Avenue M and you're getting into that left hand turn lane, having that little nine inch yellow concrete bump that travels all the way down that left side of that left turn lane. Mr. Dover stated he thinks the difficulty they're going to have there is the right of way availability for ODOT. So the more inches we add to the width on the southern end, the harder it's going to become to redo the striping to get it to line up to create the turn pocket for the southbound turn lane. He doesn't know ODOT's exact plans but that's probably something outside of the scope that we will do.

Vice Chair Posalski stated that he would like to apologize for being late as airline schedules are not within his control. Based on the commission's previous conversations that you're only thing that we ran into that prevented us from moving completely forward was ODOT; not wanting, or requiring some way of getting cars out of traffic. If they've approved this solution then he sees no reason not to move forward. Chair Hoth stated that he is kind of there himself, although just to speak the obvious, he never is unreservedly happy with any of these solutions when it comes traffic because it's a huge problem and it's always a band-aid fix. But again, this was his initial impression that they could come up with some way of at least providing a left turn refuge. He doesn't think it's the best solution, but it is a solution. ODOT seems to be ok with it he's always reticent to do these things, but he thinks the conditions have been met here.

Commissioner Bill Carpenter stated that he would ask Kevin to prepare the verbiage for us, to make a motion so that they don't get into trouble. Mr. Cupples stated that he doesn't know if he can guarantee that.

Mr. Cupples asked Mr. Phillips if he was suggesting that on the colored drawing that was proposed by ODOT, or that came back from ODOT, was he suggesting that be incorporated into the condition? Mr. Phillips stated that's affirmative, exactly. That way there's no question. Mr. Cupples stated that he has a copy that was sent to him from David Smith. Mr. Phillips stated he's going to suggest that we also allow Mr. Anuta to look at the evidence. Mr. Anuta stated that would be good since he probably should see what it is you are actually what you are proposing. Mr. Cupples stated that he already had a chance to look at that. Mr. Anuta stated, no, he had not had the chance to look at that yet or the approval from ODOT. Mr. Phillips stated just for the record, he's going to ask Mr. Dover to show that to Mr. Anuta so he has the same opportunity that we've all had since the approval came this afternoon. And to make sure that we're all on the same page, literally and figuratively. Then that way, Kevin, doesn't get into situation where it could be modified further. Additionally, Mr. Anuta stated that he's got some feedback on that.

Mr. Cupples stated that he would read what he has and really he's just rewording what was in that decision and it would say: approval to establish a new retail commercial building approximately 18,000 square feet at 825 Avenue N is with the understanding the applicant will provide a left turn pocket on South Roosevelt, Highway 101 based on the drawing provided by David Smith from ODOT dated 3-5-19. The turn pocket will be developed before the grocery outlet is open to the public for retail sales.

Commissioner Bill Carpenter made a motion to approve 18-068HOZ with the verbiage that Mr. Cupples just read. Commissioner Neubecker seconded and the motion was carried unanimously.

ORDINANCE ADMINISTRATION:

Mr. Cupples stated the commission has heard comments by one of the neighboring property renters of a vacation rental on 16th Avenue. If you would like for staff to bring that back before the planning commission, he can try and make sure that the owner/renter of the vacation rental can be here at your next planning commission meeting and if you want to review that vacation rental you're open to do that and we'll have to provide notice and everything like we would normally. Vice Chair Posalski asked if there have been any activities since that meeting? Mr. Cupples stated that since the last time Bonnie came in and spoke to the council, there haven't been any more follow up complaints that he's aware of. He will say, staff did a re-inspection basically of a property. He hasn't been out to verify that all the corrections that were noted on have been done. But he believes that Erin can actually arrange the re-inspection. He thinks Kelly said that she didn't have anyone coming in until the eighth. So this week he should be able to get out there and verify that the items on the punch list are done. Chair Hoth asked if that would be a public hearing item and would Mr. Cupples provide the commission with kind of report of what the complaints were and what the issues were. Mr. Cupples stated yes, if you want him to. He added he had spoken with the city attorney about that very issue. He says they can lift their license. What the city attorney was suggesting is if you strengthen the conditions of approval so that the license could be lifted if some performance measure isn't met that would probably be the route to take. And that would be something we could explore during the review. It could be like double secret probation or something. Vice Chair Posalski stated that they have talked about discussing the ability to re-look at those and what the criteria would be to re-look at those. Mr. Cupples stated that was going to be the topic at the next work session.

COMMENTS FROM THE PUBLIC:

John Dunzer, 2964 Keepsake Drive, Seaside, Oregon. Welcome to Walmart, all the greeters just got laid off so no more greeting. This is just a catch up on things that he just couldn't resist commenting on after hearing at the last council meeting Sheila with the School district moaning and groaning about all the money she was having to put in the new school up on the hill. Dealing with the foundation and with the retaining walls and the fact that there were way over budget. They were having to cut the size and having to cut all facilities out so forth because of the extreme costs that they were running into on the site prep. It got to him a little bit. Sheila won't be the first one to tell you that she doesn't know anything about building this school much less putting a retaining wall and entering that stuff and it is all news to her, which is fine. We expect her to be a good teacher and a good administrator and he thinks she is that, she's just a little over her head in terms of building a school. But this goes back to about a year and a half ago when the school district came to Seaside to get permission to basically expand the urban growth boundaries up on that hill to put the school up there. Now she has been working with the school district for about a year and a half trying to figure out a way to help, since their bond issue had collapsed, (the first one) and how to do this things a little cheaper. Then they got the idea that they could save the elementary school. Then she had proposed some other things to them about possibly building the junior high over the existing parking lot of the elementary school. Then doing some other things for the high school with the result that they didn't need \$100 million in their bond issue they needed \$40 million. They didn't need the \$60 million that they were asking. Now they chose not to do that and they managed to convince enough people in the district to vote for that hundred million dollars, which says something good about the community. That's a wonderful thing that they did. They did it with a little bit of dog and pony show, but that's all right. When they got to the city, the city has requirements based upon Oregon law that when you're going to go and expand the urban growth boundaries the city has to be able to certify that they can do it. They can't do this project in any other form and the other alternative, there was no reasonable alternative to doing this without expanding the urban growth boundary. Well that's a task for the city. The school isn't going to help with that because they're not the least bit interested in that solution. They want to build this thing up on the hill. They already got \$100 million that the people gave them, here's a check. Go ahead and build it up there even though there are other solutions. Now when they came before this body a year and a half ago, many of you weren't here at that time. They basically had a nice show. He doesn't know if the architect was here. John was with

his wife because she had some cancer issues and he was unable to attend, but he had put together a fairly decent presentation, but the question then was never asked. To the best of my knowledge, nobody ever asks that architect who was, as Mr. Cupples has pointed out, was a certified architect. This man knows what he's doing. He's looked at everything and he says, this is a way to go therefore we should support it, and you did. The trouble is when it really came down to the fact that he was going to sue them, the architects said, he didn't even know that alternatives existed. He never even looked at it. He never did any of that. Furthermore, he said Dunzer's solution won't work. There's only 20,000 square feet up there. So the county approved this too and he didn't take it to LUBA because the county didn't include a lot of information that they should have included in the record. And when then if he got to LUBA, LUBA would say, if it isn't in the record we don't look at it. So okay, it's no skin off his back. He's just a poor old homeowner over here. He's got no stake in this thing, a little bit of property taxes here and there, \$1,000 more a year. He went up and measured and the architect said, well, I looked at it, you can't do this. You can't get enough parking up there, you can't get a building up there above that. So Mr. Dunzer went up to the school site and measured. You can do exactly what he said you could do up there. You can build that junior high single story right above the parking. The architect is committed at this point because he had to commit because he had to say something or else LUBA would've jumped up and down on it. He said, you can't possibly do it. You can do it. He's still a licensed surveyor in California. In two hours he put together this thing, the question should have been asked here at the planning commission, did you look at this alternative and if you didn't look at the alternative, go look at it and bring us back the results. Don't just rubber stamp architects because he never even heard of it. He never even looked at it. He didn't do anything and we're spending hundreds, tens of millions of dollars that we could be helping out by fortifying the bridges. We got no money to do that. We had no money to do anything to save thousands of lives in case the tsunami does come in here and you know as well as he does, almost nobody is going to be able to get from the beach to those evacuation centers. There's not enough time to get to the hills you need a vertical evacuation site over the convention center or around that area or else you're going to kill a lot of people and it's just totally unnecessary. It's a bad use of resources. He wasn't trying to save anybody any money so they could go put it away. He was trying to make the resources such that we could solve some problems that need to be solved and then you just run out of money when you throw a lot of money up on the hill and dump cubic yard after cubic yard into retaining walls and all this other stuff. The budget for that school was on the back of one sheet of paper when they put that bond issue together and he has the sheet of paper. They had no idea how much this thing was going to cost. They had zero idea. That architect has never even seen these alternatives. It's your responsibility as a planning commission to find out whether these guys have really looked at the alternatives; just because they're a licensed architect doesn't it mean squat. Vice Chair Posalski stated that he is looking at the map that Mr. Dunzer provided the commission. He asked if this is the space that's supposed to hold the schools and the parking. Mr. Dunzer stated yes. Vice Chair Posalski stated that he sees 179 parking spaces. Where do you put the school? Mr. Dunzer stated right on top of the parking spots. It's all level. You know, you can design seismic structures, he used to be a structural engineer. What you want is flexibility throughout the structure and that's what saves it. Chair Hoth questioned what Mr. Dunzer was trying to communicate and what he's getting is that Mr. Dunzer is chiding the commission for not looking into this enough and that maybe in future we should look deeper into the situation. Mr. Dunzer stated you know, you're giving up your time, nobody's paying you to do this. He understands that part of it. We need to ask these questions at these levels and don't take these people's credentials and the fact that the school district didn't do anything to verify things were being done correctly. This architect didn't do anything either, he didn't check out any alternatives. And that's what he wrote. He never even heard of this alternative. And yet we gave them a blank check to say that there weren't any alternatives. So one question would have done the job. He's sorry he wasn't here, he's been on planning commissions before, just because some architect walks up here or God help us, a lawyer walks up here and says something it doesn't mean squat. He apologized for his comments. Chair Hoth stated Mr. Dunzer has nothing to apologize for and he appreciates his input and point taken. Chair Hoth thinks that maybe sometimes we have a tendency maybe to depend on whether we should ask more questions. Mr. Dunzer stated here's clear evidence this guy is way out of his league. Chair Hoth stated that the commission will take that as an example.

Erin Barker, Lewis and Clark Rd, Seaside. She has two property management companies in town, Beach Property Management, which is long term rentals, and Beach House Vacation rentals, short term rentals. She's been doing this since 1999 for someone else and then since 2002 on her own. She sees a lot of new commissioners and people that she knows. She used to come to the meetings all the time and Kevin would tease her that she's coming so that she won't let anybody get away with anything. It may have been true. But she wants to keep her finger on the pulse of what was going on. Then she quit coming for a while because Gearhart just burned her out for a year and a half and she needed a break,

but now she's back. Part of it is because of this one particular house that seems to be having some issues and she's been in similar situations. Every situation is different, but if you could lump certain scenarios together and she's been in this kind of scenario before. What she is telling the commission is she's been to a lot of the meetings, many proposed changes, and many changes. The commission has implemented them and most of them have been very successful. Most people are on board with it. She is not one of those anti-regulation people. She thinks what makes things work is when you have rules like getting on and off a plane, there's rules you don't just say everybody get in line. You do it in a certain order. Sometimes she disagrees with the order that they do it in, but she does it in the order they say it because it makes it more smooth and workable for everybody. She has been to work session meetings as well, but having been through all of the various scenarios and seeing both sides, she does vacation rentals, and full time rentals and she's done both the same amount of time. She gets that there are two different things. Sometimes they get melded together. So what she's asking is she would like to be included in discussion about vacation rentals in general and having her input heard. She knows at one point in 10, 10 of 10 before a bunch of changes happened. They had meetings actually with different property managers just to discuss those changes and get people's input and experience on that.

Vice Chair Posalski stated that as far as he is concerned she is entirely invited to our work session. We would love it as much input as possible because in our discussions previously we didn't know what we didn't know. Erin stated that she just wants to be kept in the loop. She thinks she has good input to give as she's experienced all kinds of comments from homeowners, from neighbors, from guests, she has seen it all. This weekend was one of her craziest weekends; she had a car back into a house and break the wall. That day was Bob Mitchell, the police department, the fire department, Mr. Mead (to certify that it wasn't going to fall down in six hours) an electrician, and a contractor. That was not the day she woke up expecting to have. She doesn't know how that happened, but it was like, she was shuttling back and forth. Chair Hoth stated that Erin needs to know is that it's illegal for the commission to get together and talk about things outside of a public hearing or work session. If the commission gets more than two or three commissioner together they can't discuss things. So none of this discussion goes on out of your purview if you choose to attend the times when they're together legally which are the regular monthly meeting and our work session. So those are the two things you want to be involved in and if you attend those you'll be involved. Vice Chair Posalski stated that the commission would love to have as many stakeholders as possible that would like to have input on those discussions.

COMMENTS FROM COMMISSION/STAFF:

Mr. Cupples want to make sure he thanked Robin and John for volunteering for the planning commission.

ADJOURNMENT: Adjourned at 8:25 pm.

Chris Hoth, Chairperson

Debbie Kenyon, Admin. Assistant