

MINUTES SEASIDE PLANNING COMMISSION
January 7, 2014

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

PLEDGE OF ALLEGIANCE

ATTENDANCE: Commissioners present: Virginia Dideum, Ray Romine, Tom Horning, Chris Hoth, Bill Carpenter, and Dick Ridout, Staff Present: Debbie Kenyon, Administrative Assistant, Kevin Cupples, Planning Director

OPENING REMARKS & CONFLICT OF INTEREST/EX PARTE CONTACT: Chair Romine 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. Chair Romine then asked if any of the Commissioners wished to declare a conflict of interest or ex parte contact. There was no response.

APPROVAL OF MINUTES: Motion to approve the December 3, 2013 minutes;
Commissioner Carpenter made a motion to approve the minutes as submitted. Commissioner Horning seconded. The motion was carried unanimously.

AGENDA:

PUBLIC HEARING REQUIREMENTS:

The following public hearing statements were read by Chair Romine:

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.) Discussion concerning a petition by residents in Ocean Cove Estates & Rose Creek Subdivisions, requesting greater restriction of vacation rental dwellings & bed & breakfasts in these neighborhoods.

Kevin Cupples, City Planning Director, presented a memo reviewing the request to restrict Vacation Rentals and Bed & Breakfast facilities in the Rose Creek Subdivision just like the policy that was passed back in 2010 for the Ocean Cove Estates subdivision.

Chair Romine asked if there was anyone who would like to offer testimony in favor of the request.
Roy Hackett, 488 Fairway Ct, Seaside

- Past around the petition.
- Kevin Cupples did an excellent job in describing their view of the situation.
- Would like option 3 to be approved.
- Include Rose Creek Subdivision in the policy that was passed back in 2010.

Dan Hamilton, 3107 Bay View Terrace, Seaside

- They have 67 signatures, which is the vast majority of the residence in those subdivisions.
- Would like option 3 to be approved.

Thomas Kenny, 491 Fairway Ct, Seaside

- Would like option 3 approved.
- Would like commissioners to hammer out a boiler plate ordinance that would specify where uses can be reviewed.
- They have CC & R's that restrict these types of uses.

- They have been before the Planning Commission before and just don't want VRD's in their neighborhood. It doesn't work in this area.
- Some people have tried and vacation rentals just don't work well in this area.
- Would like option 3 to be approved.

Colleen Chandler, 2955 Keepsake Drive

- This is just putting off an ongoing problem.
- She thought nothing can be decided without Kevin Cupples.
- She thought the CC &R's cover this, and she has been told they do not.

Chair Romine stated that Mr. Cupples was here and that the planning commission will listen to all the people that wish to speak. Then the planning commission will instruct Mr. Cupples on their decision and Mr. Cupples will write up the recommendation to Council.

Harry Barber, 2991 Evergreen, Seaside

- In the memo it states that vacation rentals will be discouraged in an effort to promote consistencies in the comp plan. The words need to be changed to not allowed.
- This group is looking for more formalization.

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

Marcia Harper Vellutini, 3180 Sunset Blvd, Seaside

- She is opposed to this because it sets a serious precedence to ban an entire neighborhood.
- They have applied and complied with the rules and regulations.
- The planning & building department told her that the city has nothing to do with CC&R's and that she had to hire a lawyer in order to try to stop her neighbor from becoming a VRD and Mr. Moberg told her that a vacation rental is not a commercial business.
- She had a friend just about go bankrupt trying to go through the process.

Commissioner Hoth asked Mrs. Vellutini if she was for or against the restriction of vacation rentals in the Ocean Cove Estates and Rose Creek subdivision. Mrs. Vellutini stated that if they have a homeowners association that restricts vacation rentals and the people bought those homes and signed the agreement then that is what should be upheld. That is totally different than the city coming in and banning vacation rentals or choosing to try to police that set of CC&R's for them. The Vellutini's were told that they could not do that and are against the ban. These people have a right to come and ask for a vacation rental and be denied or accepted. If this goes through and the ban goes into effect then what is to stop them from banning us? Or Whaler's Point or any of the other neighborhoods. It is not the job of the city to enforce those CC&R's.

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

John Dunzer, 2964 Keepsake Dr. Seaside. In the Rose Creek subdivision. Mr. Dunzer asked if he could give a handout to the Planning Commission and did so.

- Before moving to Seaside he and his wife were involved in a Bed & Breakfast for 11 years.
- \$2 million dollar homes surrounded the B & B. No complaints.
- The Planning Commission should do something.
- Applauds Mr. Cupples for getting people out so that they are aware of the laws and regulations of a city.
- There are bigger problems in this city than Vacation Rentals.
- We need to get services up on the hill, out of the inundation zone.
- Bad vote on the schools moving, we need to get those kids safe.
- We need to take out the permanent residents in the inundation zone and put it into a tourist type of zone.
- We have to do something as a city and deal with this particular problem. We need more vacation rentals and second homes in this area and move the permanent homes away from the inundation zone. You may not like that but that is what needs to happen.
- He has lived in the Rose Creek subdivision for 10 ½ years and has never broken the CC&R's.
- He would like no parking signs put on the street. He can park 13 cars on his lot.
- People should always read the CC&R's before they buy.
- CC&R's in the Rose Creek subdivision are due to expire in 1 year.

- They are poorly written and confusing, and they have been violated by the people who wrote them.
- Laws are written and he is for following the law.
- He passed out a pamphlet on a Vacation Rental that is closest to his home. The comments all say how much they love the vacation rental.
- All the areas of the city should have vacation rentals.

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

Erin Barker, Beach house Vacation Rentals, 800 N Roosevelt Dr. Seaside.

- Has been attending planning commission meeting and work sessions for the past 12 years.
- There has to be a balance.
- Tourism is the driving force for the economy of this town.
- The commission has dealt with these for many years.
- Concern is for work force housing.
- This should be policy and not an ordinance change.
- Policy works better than an ordinance change because it will have less entanglements.
- It works well the way it is. West of Holladay has a lot of second homes and vacation rentals. East of Holladay is more or less local residences and vacation rentals typically do not do well in that area.

Chair Romine asked if there was anyone who would like to rebut any of the comments.

Colleen Chandler, 2955 Keepsake Drive

- Lives next to a permanent rental and the owner lets anyone use it.
- Lots of problems with people throwing trash on her property.
- People trying to get in to her home.
- Even the vacation homes on Sunset Blvd cause problems people running across the street in their underwear and throwing trash in the street.
- It is something that the city does not need.
- We don't want vacation rentals in our neighborhood.
- Seaside is a lovely town and we should keep it that way.

Chair Romine asked if there was anyone who would like to rebut any of the comments.

Robert Ray, 2981 Evergreen, Seaside.

- Bought the property in 2002
- Built the home 2 years later
- Went to Mr. Cupples and was told that the city does not enforce CC&R's.
- Wants his neighborhood to be maintained as a neighborhood and not turned into a commercial use.
- Vacation Rentals are not well taken care of.
- Vacation Rentals leave the garbage out and is not picked up making a mess out of the street and surrounding areas.

Roy Hackett, 488 Fairway Ct, Seaside

- The problem is not on Sunset Blvd it's the subdivision behind Sunset Blvd.
- The goal is not to get you to enforce any areas CC&R's
- The CC&R's are a benchmark, people signed these when they bought their homes. That was the expectation of their environment out into the future. Please use those as a reference.

John Dunzer stated that he has not made a study of this but he believes that Gearhart and Cannon Beach do not have vacation rentals. Mr. Cupples stated that Gearhart has them but they do not regulate them. Cannon Beach has them and regulates them. Cannon Beach has a two fold approach. They have a VRD process similar to ours. Mr. Cupples stated that he is not sure on how vacation rentals work in Cannon Beach but they do have restrictions. Mr. Dunzer stated that Cannon Beach and Gearhart have high property values and can handle them, and he doesn't understand why we spend so much time on vacation rentals when there are other more important things that need to be addressed.

Chair Romine closed the public hearing and the issue was opened for Commission discussion.

Commissioner Hoth wanted to get some clarification from Mr. Cupples and asked if a policy is not 100% binding, and ordinance change is 100% binding. Mr. Cupples stated that if you make an ordinance change there can still be some wavering. Chair Romine stated that the people bought into these developments with CC&R's, read and signed them and they are hoping that the CC&R's are renewed then this problem would be mute. Mr. Cupples stated that the people who signed the petition don't want to have to keep coming back to the Planning Commission saying please do not allow these in our neighborhood. That is why they would like an ordinance change. Right now people who come in and apply for a vacation rental in that area are told that they can apply but the vacation rental will not be supported by staff. So far that has been working. People can appeal the Planning Dept. decision then go to Planning Commission and an appeal of their decision goes to the City Council and appeal their decision to the Land Use Board of Appeals (LUBA) and continue on up to the Supreme Court if they wish to do that. Usually once you go to LUBA. you had the right decision to begin with. If there is an ordinance established and it's not just based on policy then you have a different story. Right now what Mr. Cupples sees as a jointly agreed upon problem is that, staff, the planning commission and the city council thought that Rose Creek was a part of the Ocean Cove Estates and not a separate subdivision. We have a policy that is inconsistent and Rose Creek should have been included in the policy that the Ocean Cove estates is under.

Commissioner Hoth mentioned that it all makes sense and now the issue is rather to make this an ordinance change or add it to the policy that already exists in the Ocean Cove Estates. If we do this as policy, do we need to add the area East of Holladay in an ordinance and make a policy for that area too. Commissioner Hoth stated that he is in favor of a policy change and not an ordinance change.

Someone in the audience asked if Mr. Cupples could read Article 6 pertaining to the Vacation Rentals and he did.

Commissioner Carpenter asked about the R-2 zoning in these two subdivision. If we were to change the R-2 zoning in this area what could we do to add no vacation rentals in this zone. Mr. Cupples stated that we could rezone it to R-2-NV and create your own zone. It would still be a medium density residential zone but have no vacation rentals in that zone and that could be supported under the comprehensive plan and based on the current language because it does speak specifically about that. Then we could add policy to that. The CC&R's would help with that because the use is not currently authorized. In this case you are not enforcing the CC&R's you are just recognizing a fact and that is what you make a land use decision based on.

Commissioner Carpenter asked anyone in the audience if they knew when the CC&R's expire. Someone in the audience stated that they think the Ocean Cove Estates is 2016, and then someone else stated that they have another 10 years. Someone else stated that she thinks they expire in 2016 and if nothing is done then they roll over for another 10 years.

Chair Romine asked Mr. Cupples about measure 49 and what happens if we change the particular use of a property. Mr. Cupples stated that Measure 49 basically says that if you legislate and take away a right by changing a zone or manipulating a use, then someone can say that we have taken away a use and now that has devalued my property. Then they can file a claim against the city saying that this change has devalued their property and you can either pay them or you can wave the restriction. Right now the Ocean Cove Estates and Rose Creek Subdivision is in a really unique situation because they do have CC&R's. Mr. Cupples is not sure how the courts or any land use attorney in Oregon could tell you what would come out of a situation like this. If we did create a zone with restrictions on vacation rentals now and they have current CC&R's saying that you can't have commercial activities what claim would they have. The CC&R's would dilute or undermine any 49 claim someone may have. The 49 claim is something that if the city legislates something and takes away a right a current property owner has the right to say I own this you changed it, I have gone through the appropriate steps to show what loss I have had in value. All this will need to be documented in order to have a claim. Someone from the audience asked if that wouldn't work both ways. If someone put in a vacation rental next to your home wouldn't that also devalue ones property? Mr. Cupples stated that's why documentation would be essential and this would be a difficult situation either way. One wouldn't or couldn't predict how the courts would deal with this. It would be interesting to see though. Commissioner Hoth stated it has to be a result of the government making a change in the rules that cause the loss in value.

Marica Harper Vellutini stated that they have CC&R's in their townhome that only has two units, the other owner immediately applied for a vacation rental. Marcia had her attorney write them a letter stating that the CC&R's say they cannot have a commercial business at the home. Mr. Moberg the other attorney wrote them back that stated that there vacation rental was not a commercial use, it was still

being used as a family residence by those people coming in. His point was that it is still a family coming in to stay there and being used as a residence.

Commissioner Dideum stated that she wished they had never brought up the CC&R's regarding vacation rentals. She wished they would have come in as a group and said that as a community we do not want them in our area, because it is not the cities responsibility to enforce CC&R's. It's your responsibility you signed the document, not the city. With that being said at the beginning of this situation Commissioner Dideum was leaning toward the ordinance change. She thinks that a policy change would work the best for this situation. We haven't even discussed B & B's yet. What she has found out so far being on the planning commission is that anytime there is a decision that needs to be made, the planning commission goes back and studies old records and minutes to see what the thought process was at the time the decision was made. Things change, in ten years from now maybe that's not what the owners will want. They have always found the Planning Director (Kevin Cupples) very upfront, sometimes his answers are really long and if he says this is our policy then she has faith in him and usually agrees with the findings that he comes up with. Right now there is a large group of people here who do not want vacation rentals in there neighborhood and Commissioner Dideum feels that a policy change will work in this situation.

Chair Romine stated that this is a struggle for him because this is a very close knit community and he enjoys the fact that he lives in a neighborhood where there are no VRD's. It's a policy regarding the VRD's and it's an area that wouldn't work well with them because it's to far from the beach. We are also a community that is driven by tourism. We all seem to have connections to the tourism industry in one way or another. In a large part the planning commission does try their best to regulate them, make sure they have good managers, local contact and try to make sure that they do not cause problems for the neighbors. We do on occasion have problems and we do want people to complain and let us know what is going on. It doesn't take very many complaints before the VRD license can be revoked. Everyone in this room would like us to go with option three because it's straight forward, it's denied and there is no application process and it cannot be done. On the other hand, with all things being considered the support that you have and the CC&R's seem to exist, and we don't know the details of those, I would lean to a policy not an ordinance change.

Commissioner Ridout stated that he doesn't understand why the Ocean Cove Estates people are here. He has not seen an ongoing problem with vacation rentals in that area. The policy has been in effect for about 4 years now and he doesn't think that we have had any requests come before the planning commission since that time. Mr. Cupples stated that there hasn't been any request within the Ocean Cove Estates since the 10/10/10 memo went into effect. Commissioner Ridout stated that is why he doesn't understand why they are here now when none have been approved since then. The Rose Creek subdivision area was not even discussed and he didn't know that there was a separate subdivision there. In a sense, he thought the whole area was addressed with the 10/10/10 memo. He wanted a show of hands of the people that live in the Rose Creek subdivision approximately 5 people raised there hands. Commissioner Ridout stated that he would not be in favor of an ordinance change. Chair Romine asked Mr. Cupples how many B&B's have come into the planning department. Mr. Cupples stated that he has been at the city for 14 years and no B&B requests have come in. Commissioner Carpenter stated that in Article 6, 6.136 Variance procedure for Bed and Breakfast Establishments, the first requirement is abutting property owners have to be in agreement. So that put the nix on it right out of the gate. Mr. Cupples stated the variance for B&B provisions is a separate issue than just doing B&B's. The variance part applies when an applicant wants to go over the amount of rooms allowed. Mr. Cupples also stated we do have a few B&B's in town but most people choose to do a vacation rental instead.

Commissioner Carpenter stated that he lives in a location where there are lots of vacation rentals. Generally people come to the beach with their families to enjoy Seaside. They bring a lot of money with them when they come. He hasn't had the problems that he has heard about, for example the trash all over the street and parking on the street. He has a hard time in looking at this request and would rather take option # 1 and that is to take no action.

Roy Hackett stated that he was at the meeting regarding the Hood to Coast event. A number of people who came to that meeting were irate that there was a number of vacation rentals in use by huge quantities of people crammed into these vacation rentals, which brought them over the allowed occupancy. It was clearly violating the description of use for a vacation rental. It was so massive that it was clear there was no way to enforce any of the rules. So they put their fingers in their ears and just

waited for the weekend to be over. If vacation rentals were allowed in the Ocean Cove Estates we would have the same problems. Commissioner Carpenter stated that in his neighborhood, during the Hood to Coast, it's the people who own homes that are not vacation rentals that open up their homes to people that are in the Hood to Coast. Chair Romine asked Erin Barker with Beach House Vacation Rentals what her thoughts were on the subject. Erin stated that people sign agreements and sometimes just don't follow the rules of the agreement. There are people who own vacation homes and don't rent them out to the public during certain events so that they as the owners can use them. Then there's really nothing anybody can do to regulate what they do in their own homes. Chair Romine asked Mr. Cupples to explain the complaint process. Mr. Cupples stated that based on the language in the zoning ordinance it says that complaints from two different neighbors would basically get the code enforcement officer to contact the VRD manager or owner to resolve the issues. If those issues cannot be resolved then the VRD can be brought before the planning commission for a potential revocation of their business license and VRD permit. We really want them to contact the property manager or local contact immediately so that the issue can be taken care of right away.

Commissioner Horning asked Mr. Cupples regarding options two and three. We have one that is to expand the current policy to include the Rose Creek subdivision and potentially include B&B's if that's necessary. The other option is item 3 which most of these people are asking for but it's a fairly large comprehensive change that could be rather expensive for the city. So the question is, do you think if someone came to the city and asked for a VRD in the Ocean Cove estates and you told them that it is policy not to allow them in that area would that be more effective detouring them than if they confronted you and said we are going to file a measure 49 or measure 56 claim. To get what they want. What works better policy of ordinance? Mr. Cupples stated that with the 49 claim, it wouldn't be the city granting them a permit it would be the city waiving the restriction and so if the restriction were waived they would be back to square one and would have to apply for a conditional use permit. Commissioner Horning stated that what we have now, the policy is probably better than the ordinance change. With the show of hands for the people here tonight that are in the Rose Creek subdivision it would be best just to do an amendment to the current policy to include them. Commissioner Horning feels that an ordinance change is not going to give the people what they need.

Someone from the audience asked about the 100 ft notification area, he doesn't think that a big enough area for notifications. Mr. Cupples and the planning commission members stated that it is a state recognized standard.

Commissioner Dideum made a motion to expand the current policy regarding VRD's to the Rose Creek subdivision and strengthen the wording of the highlighted section, as proposed in the memo dated 3-16-10. Commissioner Horning seconded the motion.

Commissioner Ridout asked how did this get sent to the planning commission in the first place. Mr. Cupples stated that the city council received a petition from people who were in the Ocean Cove Estates and the Rose Creek subdivision, that petition was asking for an ordinance that would in some way prohibit vacation rentals and B&B's in both those subdivisions. We sent out notice to all the owners in both of those subdivisions regarding this. The city council sent it to the planning commission because this is a land use issue and that is the planning commission expertise. If you want an ordinance change then you can make that recommendation to the city council if it's a policy change then we can do that here and now. Commissioner Ridout stated that based on that he cannot support the addition of Rose Creek subdivision that should come separately. Chair Romine stated that all the people in that area were notified and that's why so many people are here.

Chair Romine stated that there was a motion and a second and asked for a vote. Commissioner Romine, Commissioner Hoth, Commissioner Horning and Vice Chair Dideum voted in favor of the motion. Commissioner Carpenter and Commission Ridout voted no.

Commissioner Dideum made a motion that B&B's not be permitted in the Ocean Cove Estates and the Rose Creek subdivision by policy. Commissioner Horning seconded the motion. Commissioner Ridout stated that he can't imagine doing this because we haven't even had a request in 14 years so it's a nonexistent problem. Commissioner Hoth stated that he could see that someone might ask, and that there would be legitimate concerns for this however it is a distinct and separate issue than a vacation rental. Chair Romine asked for a vote, Commissioner Horning and Vice Chair Dideum voted yes. Chair Romine, Commissioner Hoth, Commissioner Carpenter and Commission Ridout voted no for changing the policy to include B&B's.

Mr. Cupples stated that he would be passing along to council a subsequent memo indicating the actions of tonight's meeting, of what happened and what didn't happen. Then they can do what they want to with that. As a Planning Commission you have responded to the petition that was given to the City Council.

Commissioner Carpenter stated to the audience that there is an opening in the Planning Commission and that if anyone would like to apply, please come to city hall and fill out an application.

ORDINANCE ADMINISTRATION: Council will be hearing the Goal 9 and Goal 10 recommendations on the 27th of this month.

COMMENTS FROM THE PUBLIC: None

COMMENTS FROM COMMISSION/STAFF: Election of Officers - Commissioner Hoth nominated our current Chairman Ray Romine to continue in his capacity. Commissioner Carpenter seconded and the motion was carried unanimously. Commissioner Hoth nominated our current Vice Chair Ginny Dideum to continue in her position. Commissioner Carpenter seconded and the motion was carried unanimously.

ADJOURNMENT: Adjourned at 8:55 pm.

Ray Romine, Chairperson

Debbie Kenyon, Admin. Assistant