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MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
This form is a public record

MEETING DATE: 9 FEB 2006

SUBJECT: LAND USE PLANNING

AGENDA NUMBER OR TOPIC: NON-AGENDA

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: BOB LEPPER

ADDRESS: PO Box 94

CITY/STATE/ZIP: TROUTDALE OR 97060

PHONE: DAYS: 503-695-5276

EVES: _____

EMAIL: _____

FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: YES

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

Two weeks ago Chair Linn asked for proof of unethical and illegal actions of some planning department staff after several incidents were mentioned by Multnomah County residents who spent their time and energy to speak before you. I am back to present you with that proof for the incidents I mentioned. Let me start by saying again, as I have said before: there are many good, honest, competent employees at the Land Use Planning and Transportation division. There are also several out-of-control planners that should not be receiving a taxpayer-funded salary.

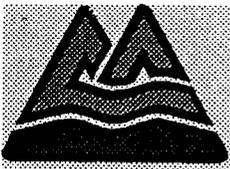
Incident 1: Exhibit #1 is a letter from your own previous “Interim Planning Director” documenting the lack of compliance with state law regarding the 150 day rule (ORS 215.427) on two separate applications. Not mentioned in this letter is the fact that Multnomah County (MC) had code provisions previous to November 2000 that contained specific time deadlines in those NSA codes. Also not mentioned in this letter is the fact that in my case the 120-day rule applied, not the 150 days as the letter implies was the governing law. This letter clearly shows a lack of compliance with state law and the Multnomah County NSA codes, codes that this Board passed. The 2003 SB 310 passed with a nearly unanimous vote in the House and was signed into law by Governor Kulongoski. It was necessary only because some Multnomah County planners, in my case Chuck Beasley, had decided they didn’t want to comply with this pesky already existing law. During the committee meetings on SB310 Senator Ringo offered an apology to me for the treatment at MC. No such apology has ever come from MC.

Incident 2: Exhibit #7 is a page from the MC Code Compliance Procedures manual prepared by Kim Peoples. Paragraph 1.5.4.1 clearly says “Priority Cases. The Board of County Commissioners has established the following priorities for Land Use and Transportation Division code violations.” Eight violations are listed, the third being violations within the Columbia River Gorge National Scenic Area. When Mr. Peoples was questioned about the lack of enforcement within the NSA at a Planning Commission meeting review he responded that these were not priorities but “simply bullets . . . of values”, and that violations were not prioritized (Exhibit #6). During the adoption of the new enforcement code Mr. Peoples also told me, before the Planning Commission, that existing, proven violations that were beyond the appeal deadlines in the old code would not simply be starting all over again from the start under the new 15 step code. Yet that is what has occurred in regards to ZV-0017 under Mr. Peoples supervision. At the same time as “priorities” became “bullets”, this violation was back to step 2, step one being the original complaint.

Incident 3: Last August a presentation of the MC code process was given to the Gorge Commission (GC) by Kim Peoples and Michael Grimmatt, his subordinate. During the presentation it was represented that there was one closed ZV case within the NSA for the approximately year and a half that the new enforcement code had been in effect. Except it really wasn’t closed, it was just renumbered, a fact that was not made clear to the GC and the public. See exhibit #2. A letter to the GC after I talked to Mr. Grimmatt was sent to “provide clarification” but never really mentioned the one specific NSA “closed ZV violation”.

Incident 4: During the process of a residential addition application, Mr. Beasley also jumped over a fence adjoining a lock gate after he was simply asked to make an appointment so I could be home and unlock the gate. These pictures of his actions are not in your packet since I feel you can ask him yourself if you are really serious. If he admits to looking at the locked gate and then going beside it to jump over the fence and gain access, then you have your proof without the pictures. ORS 215.080 does not apply. If he denies doing it, then I will make these pictures available to a third party, such as the newspapers.

If department or division supervisors are not able to do any investigation on these and other incidents, it is time for a replacement. The same would apply to any legal staff who are advising ignoring other state and local laws and simple ethical standards.



Department of Business and Community Services

MULTNOMAH COUNTY OREGON

Land Use and Transportation Program

1600 SE 190th Avenue

Portland, Oregon 97233-5910

(503) 988-3043

Members of the Senate Water and Land Use Committee
900 Court Street, State Capitol
Salem, OR 97301

March 17, 2003

Dear Chair Ferrioli and Committee Members:

Thank you for the opportunity to provide information regarding SB 310. As you know, The Federal Act establishing the Columbia River Gorge National Scenic Area mandated that each county within the Scenic Area either adopt regulations to implement the Management Plan for their portions of the Scenic Area or relinquish control of land development within the Scenic Area to the Columbia River Gorge Commission. Multnomah County adopted an ordinance to implement the Act and Plan on February 6, 1993. Since that time, Multnomah County has processed 213 cases in the Scenic Area; we have approved all but 4 of those 213 applications. Since 1993, our average case processing time has been **136 days**. Recently the County staff has worked diligently to improve that number and for the time period between July 1, 2001 through June 3, 2002, our average review time was 80 days for scenic area permits.

We understand there has been specific testimony regarding the timelines of two particular cases processed by Multnomah County; the first is the case of Tim and Casey Heuker and their application to replace a burned down dwelling. The County processing time for Tim and Casey Heuker's case was 181 days from the date it was determined to be a complete application, which included the unanticipated appeal and public hearing process required for us to take this case to a County Hearings Officer. The application was filed at the County on May 4, 2001, approximately five months after the devastating fire the Heuker family suffered, and the final County decision was issued on January 24, 2002. The difficult situation that makes the processing timeline for the Heuker property unique and beyond 150 days is that the Heuker's had a land division violation, and knowledge of the violation, on their property prior to the fire. Multnomah County Code prohibits us from approving applications on properties where violations exist. We notified the Heuker's of the violation and rather than deny the application, waited and held the decision until they cleaned up the violation. The day after they cleaned up the violation, we issued an approval for the replacement dwelling, unfortunately, that took us beyond 150 days. On March 4, 2002, the County signed off the building permit for the replacement dwelling and the Heuker's began construction at that time. As you may know, even though construction was occurring, that case was later appealed to the Columbia River Gorge Commission, who then issued a final decision on July 9, 2002.

Another case you have heard testimony on was Mr. Bob Leipper's application to construct a new 2 story detached garage, an addition to an existing structure and new retaining wall, totaling over 1,000 square feet in new structures on the site. The Hearings Officer noted

this was a difficult application to decide, because there is difficulty interpreting applicability of code provisions when an applicant has proceeded to do excavation and construction prior to making application and retroactively determining how much work had been done is more difficult than if the application is made prior to work commencing. Never the less, Multnomah County issued that decision 156 days after the application was deemed complete. The 156 day processing time on this case included the time of Mr. Leipper's appeal of his own approval.

The question of whether or not the 150 day clock provisions of ORS 215.427 has never been litigated or tested to our knowledge, and in a past case, a Multnomah County Hearings Officer found the 120 or 150 day ruling as the case may be, not applicable to an appeals case in the Scenic Area and that matter was not contested. In November 2000, Multnomah County adopted procedures in the Scenic Area that mimic the state processing rules found in ORS 215.402 to 215.438. There does need to be a release valve however, for one reason, if the 'cultural review process' found in the Management Plan kicks in then the process can and usually does go well outside 150 days. The United States Forest Service, in conjunction with State Historic Preservation Office determines when this process is applicable and when each step of the process is satisfied. There is a similar situation with the 'natural resource review' process controlled by the United States Forest Service and the Oregon Department of Fish and Wildlife. In other words, the County has no control over these portions of the Scenic Area process and the associated timelines. However, where we can comply with the 150 day rule, we will comply, and we will continue to improve our internal processes to streamline the 80 day average we are currently maintaining.

It is one of Multnomah County's goals to continuously strive to improve customer service and we look for opportunities to reach out to our customers and improve their experience with our program and the land use system. We have been able to make recent improvements to our case processing timelines with this goal in mind and have shaved approximately 55 days off our processing time in light of this goal. We continuously search for ways to improve service delivery and exceed customer expectations at a cost that represents value to them and appreciate any feedback your committee may have on how we can continue to improve.

Sincerely,



Susan L. Muir
Interim Planning Director

cc: Diane Linn, Multnomah County Chair
Lisa Naito, Multnomah County Commissioner
Serena Cruz, Multnomah County Commissioner
Maria Rojo de Steffey, Multnomah County Commissioner
Lonnie Roberts, Multnomah County Commissioner
Martha Bennett, Executive Director, Columbia River Gorge Commission
Anne W. Squier, Gorge Commission Chair
Tom Guiney, Interim Land Use and Transportation Director

- h. there is a previous history of complaints and code enforcement on the subject property and/or with the alleged code violator;
- i. there is community interest in the violation, and the potential code enforcement and compliance on the property would be very visible;
- j. there is good potential for combining enforcement action on the violation with other violations;
- k. the relative benefit of code enforcement outweighs its cost;
- l. there is good potential that the violation(s) can be established will be successfully resolved; and
- m. there is little likelihood of obtaining voluntary compliance.

1.5.4 Priorities for Code Enforcement. It is the county's policy to investigate and to attempt to resolve all code violations. However, because of limited code enforcement resources, there may be times when all code violations cannot be given the same level of attention; some code violations may receive no attention at all; or the county may be unable to carry out code enforcement activities set forth in this manual.

In circumstances where not all code violations can be investigated, the most serious violations, as determined under the priorities set forth in this section and the criteria for enforcement in Section 1.5.4 of this manual, shall be addressed before the less serious violations, regardless of the order in which the complaints are received. However, complaints alleging both priority and non-priority violations should be processed together to maximize efficiency.

1.5.4.1 Priority Cases. The Board of County Commissioners has established the following priorities for Land Use and Transportation Division code violations.

- a. Violations that present an imminent threat to public health and safety;
- b. Violations affecting the environment;
- c. Violations within the Columbia River Gorge National Scenic Area;
- d. Violations causing irreparable damage;
- e. Violations involving ongoing un-permitted construction;
- f. Violations for failure to comply with permits;
- g. Violations affecting neighboring property;
- h. Violations within a site that is considered a critical area, including, but not limited to, a view shed, habitat, or landslide area; and any court ordered enforcement action.

Grimmett gave an overview of the case history by stating that in February 2005, there were 48 open Zoning Violations still pending from 1992 through 2002 and 245 open Under Review cases from 2000 through 2005. Grimmett gave a breakdown on the complaints and the current case breakdown. Grimmett discussed the fact that he had learned that the accepting of anonymous land use violation complaints might need to be reconsidered, that there was a need to be more flexible in determining a violation and the remedy, and there was a need to be more flexible in timelines needed for property owners to address violation remedies.

Looking ahead, the Code Compliance Program will be issuing a second revision of the Code Compliance Manual, reviewing the acceptance of anonymous complaints by other jurisdictions, and the launching of a web site for the Environmental Compliance Program.

Questions:

Foster asked about the possible problems with anonymous complaints and asked Grimmett to describe some of the potential problems and if he had found that many complaints were not valid.

Grimmett stated that there have been mixed reviews about the program accepting anonymous complaints from the general public and that to date, most complaints had been valid, even though in some cases additional code violations were discovered during site inspections.

Brothers asked if the anonymous complaint issue had been addressed by counsel.

Peoples stated that under State law all the files are eventually discoverable unless there is some kind of an exemption. The procedure of holding a complaint anonymous is an option as one takes into consideration the public policy. At this time the file is held in confidence to those that the file does not impact, however, these are public records unless there is an exception, which would have to go through County Counsel and subject to State and Public records law.

Chairman Ingle stated that the public would have an opportunity to make comment.

Public Comment

Robert Leipper, P.O. Box 94, Troutdale, OR 97060.

Leipper stated that he had not come prepared to make a statement but that the last Code Compliance Procedure Manual that he had read was about 8 months ago. It listed the NSA violations as the third highest priority. Leipper did not hear any breakdown of NSA violations or complaints during Grimmett's overview. He felt that by not mentioning these, it was like trying to hide something. Leipper asked what the Gorge Commission voted on when they did not have the Code Compliance Manual and now it appears that it had been changed.

2

Peoples responded that in the Procedures Manual these types of cases were not prioritized, they were simply bullets that stated that these were values that Land Use and the Board of County Commissioners held as significant. Peoples referred Leipper to page 6 of the paper copy of the power point presentation where it incorporates the view sheds; environment and others are mentioned under Level 1. The Procedures Manual has not changed. Any changes being made are to take care of editing errors and the like. There has been a data base kept of everyone who has received a copy of the Procedures Manual and they will receive the second version when it is available.

Peoples commended Grimmett for his hard work and diligence in getting the program up and running.

EX #6

CLOSED Zoning Violation Cases by Type and Rural Plan Area

10% in the National Scenic Area (NSA)

	WSR	ESR	West Hills	Sauvie Is.	NSA	Total
Grading and Erosion Control/ Hillside Development	2	0	1	0	0	3
Health Hardship	0	0	0	0	0	0
Non-Permitted Dwelling	1	0	1	0	0	2
Junk Yard	0	0	0	0	0	0
Commercial	1	0	0	0	1	2
Multiple/Miscellaneous	2	0	1	0	0	3
Illegal Structure or Development Standard	0	0	0	0	0	0
Totals	6	0	3	0	1	10

Summary of Code Compliance Cases

for the

National Scenic Area (NSA)

	Total Open ZV	Closed ZV	Active ZV	Total Open UR	Closed UR	Active UR
Grading and Erosion Control / Hillside Development	0	0	0	6	4	1
Health Hardship	0	0	0	0	0	0
Non-Permitted Dwelling	3	0	0	5	1	2
Junk Yard	0	0	0	2	1	0
Commercial	5	1	0	4	8	0
Multiple/Miscellaneous	3	0	1	15	9	1
Illegal Structure or Development Standard	0	0	0	6	3	1
Totals	11	1	1	38	26	5