

CITY OF FLORENCE PLANNING COMMISSION
May 27, 2014 ** MEETING MINUTES **

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE

Vice Chairperson Curt Muilenburg opened the meeting at 7:00 p.m. Roll call: Commissioners: Curt Muilenburg, Robert Bare, John Murphey, and Alan Burns were present. Chairperson Cheryl Hoile was absent. Also present: Interim Planning Director Kelli Weese, Senior Planner Wendy FarleyCampbell, City Attorney Emily Jerome, Public Works Director Mike Miller and Planning Technician Glen Southerland.

APPROVAL OF AGENDA

Commissioner Bare motioned to approve the Agenda, Commissioner Murphey seconded. By voice, all ayes, with the exception of Chairperson Hoile, who was absent. The motion passes.

APPROVAL OF MINUTES

Meeting of April 22, 2014

Commissioner Murphey motioned to approve the Minutes of April 22, 2014, Commissioner Bare seconded. By voice, all ayes, with the exception of Chairperson Hoile, who was absent. The motion passes.

Meeting of May 13, 2014

Commissioner Murphey motioned to approve the Minutes of May 13, 2014, Vice Chairperson Muilenburg seconded. By voice, all ayes, with the exception of Chairperson Hoile, who was absent. The motion passes.

PUBLIC COMMENTS

*This is an opportunity for members of the audience to bring to the Planning Commission's attention any items **NOT** otherwise listed on the agenda. Comments will be limited to **3 minutes per person**, with a maximum time of 15 minutes for all items.*

There were no public comments.

PUBLIC HEARINGS:

Vice Chairperson Muilenburg said that there was one public hearing before the Planning Commission that evening. The hearing would be held in accordance with the land use procedures required by the City in Florence City Code Title 2 Chapter 10 and the State of Oregon. Prior to the hearing(s) tonight, staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the Planning Commission must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria in the Plan or Land Use Regulations which you believe applies to the decision per ORS 197.763 (5). Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties involved an opportunity to respond to the issue may preclude an appeal of this decision based on that issue. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval without sufficient specificity to allow the Planning Commission to respond to the issue that precludes an action for damages in circuit court. Any proponent, opponent, or other party interested in a land use matter to be heard by the Planning Commission may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Commissioner's bias, prejudgment, personal interest, or other facts from which the party has concluded that the Commissioner will not make a decision in an impartial manner.

SEIFERT PLAN AND ZONE CHANGE – RESOLUTION PC 14 06 CPA 01 AND PC 14 07 ZC 01:

An application for zoning map and Comprehensive Plan designation changes for properties located at the northeast corner of Munsel Lake Road and Spruce Street. The properties are as follows: Map Number 18-12-14-20 Tax Lots 00301& 00600 and the east half of Spruce Street and Map Number 18-12-14-24 Tax Lot

00300. The applicant proposes to change 13.6 acres zoned Service Industrial to Mobile / Manufactured Home District and plan designated Service Industrial to High Density Residential. The applicant proposes to change 0.9 acres zoned North Commercial to Mobile / Manufactured Home District and plan designated North Commercial to High Density Residential. The changes are proposed to accommodate a 55 and older manufactured home park.

Vice Chairperson Muilenburg opened the hearing at 7:06 p.m. and asked if any of the Planning Commissioners wished to declare any conflicts of interest or bias. Commissioner Burns declared that he is a partial owner of a property on 52nd Street in which he does not live. City Attorney Jerome asked Commissioner Burns if he felt that he would be able to make an impartial decision in this matter. Commissioner Burns stated that he would do his best. No other Commissioner declared a site visit, ex parte contact, or conflict of interest or bias. Vice Chairperson Muilenburg asked if the public had any challenges to any commissioner's impartiality in making this decision. There were no challenges. Vice Chairperson Muilenburg asked for the staff report.

Staff Report

SP FarleyCampbell stated that the applicant was McGill Holdings and presented the applicable Code Criteria to the application. She stated that FCC 10-1-1-5-E-3 was not included in the noticing Code Criteria, but would be included in the future. SP FarleyCampbell gave an overview of the three tax lots that make up the proposed site, the surrounding area, and the noticing vicinity map.

SP FarleyCampbell presented the proposed Comprehensive Plan amendment and map. She stated that the areas to the north and south are Medium Density, the property to the west was North Commercial and that the property to the east would remain Service Industrial.

SP FarleyCampbell stated that a Traffic Impact Study was required. She said that this study looked at trip distribution, existing facilities, sidewalks, number of traffic lanes, turn lanes, access points, and coordination with other jurisdictions. She stated that the applicant was required to provide a determination that there were no significant impacts to affect the transportation facility. SP FarleyCampbell stated that if the applicant was not able to provide this determination, the applicant would be required to provide solutions to those impacts. She stated that the Traffic Impact Study provided found that there would be no significant impact to the intersection of Spruce Street and Munsel Lake Road.

SP FarleyCampbell stated that a correction to the Traffic Impact Study was received the day of the hearing. She said that the correction was submitted in response to Public Works Director Mike Miller's concerns that the incorrect edition of the Trip Generation Manual was used as well as an incorrect multiplier used to determine the trip generation for warehouses. She stated that the changes reduced the traffic impact found by the study.

SP FarleyCampbell said that the applicant was not proposing a development as part of this Comprehensive Plan and Zone Change, but the anticipated development was reviewed to make sure it would meet the Criteria for the proposed zoning. SP FarleyCampbell gave an overview of the future proposed development and how it related to the current proposal.

SP FarleyCampbell stated that the City conducted a housing needs assessment in 2008 as well as an Industrial Plan adopted in 2001. She stated that these documents supported this application.

SP FarleyCampbell reviewed the testimony submitted in reply to referrals and from the public. She said that Siuslaw Valley Fire and Rescue and Lane County Transportation had no concerns with the application. SP FarleyCampbell stated that Exhibit "L" included in the packet was testimony from Claudia and Albert Garner. She said that Exhibit "M" was a memo regarding aforementioned corrections to the Traffic Impact Study and Exhibit "N" were those corrections to the TIS. SP FarleyCampbell stated that Exhibit "O" was additional testimony from Claudia and Albert Garner, Exhibit "P" was testimony received from Jean Busby,

and Exhibit "Q" was testimony received from Robert Busby. SP FarleyCampbell stated that the staff report addressed the possibility of mapped and delineated wetlands on the site in response to testimony received from the Garners. She said that staff did not include the "possible wetlands" on-site because the City did not have any criteria dealing with those wetlands, but the applicant would have to perform a Phase 1 Site Review prior to application for development.

SP FarleyCampbell stated that staff recommended that the Planning Commission recommend approval to the City Council with the stipulation that a trip cap be established of 103 or less senior detached manufactured home dwelling units and that that restriction be included on the Deed of Record for the subject property and any changes require a new TIS. She said that the trip cap was to prevent the development from triggering a significant impact rule under the Transportation Planning Rule analysis.

Commissioner Burns stated that he does not have Exhibits "K" and "L" in his packet. Commissioner Burns asked for clarification whether or not the wetlands on-site were designated or not. SP FarleyCampbell stated that the wetlands were "probable" wetlands, meaning that they were identified through LIDAR and topography and not an on-site analysis.

Vice Chairperson Muilenburg asked if the eastern property would remain Service Industrial. SP FarleyCampbell identified the site in question for the proposed change. He asked what the remaining acreage was for the remaining Service Industrial tax lot. SP FarleyCampbell stated that she did not know. VC Muilenburg asked if Munsel Lake Road was a county road. SP FarleyCampbell confirmed that Munsel Lake Road was under county jurisdiction and Spruce Street was under the City's jurisdiction. VC Muilenburg asked if there would be an age restriction on manufactured and mobile homes. SP FarleyCampbell stated that there was no age restriction through City Code, but any changes would require a new Traffic Impact Study.

VC Muilenburg asked SP FarleyCampbell to address the restriction referenced in Exhibit "P." SP FarleyCampbell stated that it appeared that the intent of that particular ORS was that residential zoning was provided for mobile and manufactured homes within a UGB that was not commercial or industrial. She stated that the intent was to provide affordable housing opportunities and that this was an allowable use within the proposed zoning.

Applicant Testimony

Del Phelps – 107 Evergreen Lane, Florence, OR 97439

Mr. Phelps stated that he was the listing agent for the owner of the property, Glen Seifert. He said that he was also a representative of the buyer, McGill Holdings as the buyer of the property and the consultant for the project. He stated that any statements he made were also representative of his clients. Mr. Phelps stated that he felt that there was a need for an affordable senior manufactured home park in the Florence area. He stated that the park would only allow newer manufactured homes.

Mr. Phelps stated that the Traffic Impact Study has shown that senior housing generates fewer trips than single-family residential in general, and that this would protect the neighborhoods to the north. He said that he felt this project was the best solution for this property and its neighbors and stated that he thought staff had done a great job with the findings.

Public Hearing

Vice Chairperson Muilenburg asked for testimony from the public whether they were an opponent, proponent or neutral, but have a comment.

Claudia Garner – 2260 52nd Street, Florence, OR 97439

Ms. Garner stated that she did not feel strongly for or against the proposal. She stated that she would like to see a development that was not age-restricted and that she believed that manufactured homes would not be in demand in the future. Ms. Garner responded to Mr. Phelps' statement that seniors do not travel as much by stating that she leaves her home quite a bit. She asked if PWD Miller addressed traffic at Spruce Street and Munsel Lake Road. PWD Miller stated that the Traffic Impact Study was only needed for the intersection of Spruce Street and Munsel Lake Road, but not the intersection of Munsel Lake Road and Highway 101.

Ms. Garner asked if McGill intends to purchase the property immediately after the approval. VC Muilenburg stated that she would get an answer when the applicant was able to respond.

Ms. Garner stated that she looked at the tentative plan describing the land use after the zone change and felt that she would like to see more duplexes and triplexes to serve more residents than a senior park would.

James Genereaux – 10714 SW Tualatin Drive, Tigard, OR 97224

Mr. Genereaux stated that he was at the meeting on behalf of the Spruce Village Homeowner's Association. He said that the manager of the HOA, Pam Dickson, was unable to attend and asked Mr. Genereaux to attend on their behalf. He stated that he was also a member of the Siuslaw Rod and Gun Club and was representing members of the club.

Mr. Genereaux stated that he felt frustrated that the applicant had not met with Spruce Village and the Siuslaw Rod and Gun Club prior to application. He said that the club had not received notice of the application because they were beyond the 300-foot noticing buffer and had only found out a couple of days before the hearing.

Mr. Genereaux said that the burden of proof was on the applicant to provide reasonable and substantial evidence that their proposal meets all applicable criteria. He stated that the applicant has proposed a 103-unit mobile home park between two Medium Density residential areas and within the noise impact area of the Siuslaw Rod and Gun Club.

He said that the applicant should prove that their high-density development is suitable to the site. Mr. Genereaux stated that the two groups of people he was representing would not be concerned if the development was designated Medium Density.

Mr. Genereaux stated that a wetland delineation was completed by Wilbur TERNYK in September of 2008 and that was provided to the state and the City. He said he was not sure why that delineation did not end up in the Wetland Inventory. Mr. Genereaux stated that the wetland information was not included in the notice and may have altered the response received.

Mr. Genereaux stated that information provided in the staff report that the DEQ has monitored the site for potential contamination and has determined that there were not any health or welfare concerns was not accurate. He stated that there were known contaminations and there were "accumulation releases of petroleum and other metals associated with site operations."

Mr. Genereaux stated that he would like the Planning Commission to consider suitability of the site when considering the proximity of the Gun Club. He said that when he developed Spruce Village, he took steps to mitigate any possible conflict between Spruce Village and the Gun Club. He asked if the same could be done for a high-density residential development. He outlined the importance of the Gun Club to the Florence area and the measures taken by Spruce Village. He stated that homes in Spruce Village are built with additional insulation for noise mitigation and that measure was not possible with manufactured homes.

Mr. Genereaux stated that stormwater was also a concern. He expressed concerns that stormwater could not be kept on-site with the density of development proposed.

Mr. Genereaux stated that he would like an independent review of the Traffic Impact Study by a traffic engineer because he did a traffic study for the same site with fewer homes and found greater trips generated.

He also stated that the DEQ should designate the site as No Further Action and the site should be cleaned up prior to a change in zoning to residential.

Commissioner Murphey asked how much noise level from the Gun Club dropped in relation to Spruce Village. Mr. Genereaux stated that the development would experience the same, if not greater, noise level as Spruce Village. Commissioner Murphey asked how much change there would be because the site is further west than Spruce Village. Mr. Genereaux stated that the development was south of Spruce Village and would not be further west than Spruce Village and would have the same noise level as the first 25 homes of Phase 1 of Spruce Village.

Applicant Rebuttal

VC Muilenburg asked for a rebuttal regarding the concerns brought up by Mr. Genereaux regarding the noise issue, stormwater, traffic impact, and contamination.

Del Phelps – 107 Evergreen Lane, Florence, OR 97439

Mr. Phelps stated that the applicant would propose to develop the site in three or four phases, not build all at once, depending on the demand for units. He stated that traffic impact at Highway 101 is not addressed because the proposal did not meet the criteria requiring an impact study at that intersection.

Mr. Phelps stated that the applicant would not buy the property if the zone change could not be accomplished. He said that he felt that this proposal was viable for what the applicant wanted to do.

Mr. Phelps stated that the applicant must buy the property by September 30 and asked the owner of the property to state his case.

Glen L. Seifert – 5055 Munsel Lake Road, Florence, OR 97439

Mr. Seifert stated that when Spruce Street was constructed and the Local Improvement District created. He said that he was not able to pay his property taxes in addition to the repayment to the City. Mr. Seifert stated that Mr. Genereaux planned on developing the land, but backed out and Mr. Seifert was later approached by the possible buyer. He said that he does not want to default on the property.

Mr. Seifert stated that he does not believe that this project is any different than Spruce Village and that that project started out in much the same way.

Del Phelps – 107 Evergreen Lane, Florence, OR 97439

Mr. Phelps stated that if the City could come to a decision by September 30, 2014, the buyer would purchase the property and the City could obtain the money owed it by the property owner.

He said that he could have approached Florentine Estates, Spruce Village, and the Gun Club prior to application, but felt that they would be noticed by the City as part of process. He stated that he would approach these groups prior to reaching a development stage, but did not feel that a zone change would require that outreach.

Mr. Phelps stated that the eastern edge of the property in question was three to four hundred feet further away from the Gun Club than the eastern edge of Spruce Village. He also stated he did not know what was in the walls of manufactured homes, but that the walls of manufactured homes are also 6-inches thick like site-built homes.

He stated that there were no apparent wetlands on the site that can be seen from satellite photos. He said that any wetland study would be done before development, but not part of this application. Mr. Phelps stated that the applicant would address that issue with the next application.

Mr. Phelps stated that Mr. Seifert asked Mr. Genereaux for the completed contamination studies and had not received them. Mr. Phelps stated that attempted to obtain the contamination report from Branch Engineering and that they had been instructed not to release that information. He stated that he has obtained a cost to complete a study and will complete that study as part of the next application.

Mr. Phelps stated that his applicant is aware that a stormwater system may have to be installed on the site. He stated that a smaller number of larger houses with larger roof area create more stormwater run-off that must be dealt with. He said that a larger number of smaller homes with less roof area will not change that roof area much.

Mr. Phelps said that the Traffic Impact Study was created by Jim Hanks, a traffic engineer.

Mr. Phelps stated that all of these issues would be addressed with a development application.

Mr. Phelps asked Mr. Seifert if he had anything he wanted to add. Mr. Seifert stated that Mr. Genereaux let his option to buy the site lapse in 2011. Mr. Phelps stated that he wondered why Mr. Genereaux wanted to oppose this proposal.

Staff Response

SP FarleyCampbell stated that Mr. Genereaux was correct that the Gun Club was not sent a notice because they were beyond 300 feet from the site, but that City Code required on-site noticing. She said that the notices on-site were included as part of bright yellow signs along Munsel Lake Road and Spruce Street.

SP FarleyCampbell stated that staff could not make any comments regarding the site being within the noise impact area of the Siuslaw Rod and Gun Club because maps of the noise impact were not provided as part of testimony and the City was not in possession of this map. She stated that noise impacts were addressed during subdivision.

SP FarleyCampbell stated that the 1992 Industrial study identified all of the Service Industrial sites north of the property in question, including the 80 acres north of Spruce Village as candidates for zone change to residential. She added that until 2001, the applicant's site was designated Manufactured / Mobile Home Residential and High Density Residential. She stated that the property is not included as required industrial land because the Planning Director in 2001 changed the zoning of the property as to prevent Mr. Seifert's business from becoming a pre-existing non-conforming use.

SP FarleyCampbell stated that traffic impact to Highway 101 was not required because ODOT only required those impact studies from abutting properties. She said that Single Family Residential also has a higher trip generation than what was being proposed. SP FarleyCampbell stated that there were no Goal 5 or 17 wetlands on the site. She added that if the wetland delineation for the site expired two years prior to the hearing that could be a reason why it was not included in the 2013 Wetland Inventory.

SP FarleyCampbell stated that Exhibit "K" and "L" were included on the website, so the public was able to access those exhibits. She stated that it was staff's intent to replace the Table 1 on page 20 with Table 2 of Exhibit "M."

Commissioner Murphey asked if the City could be held liable if the proposal was approved and the DEQ found that the site was contaminated and could not be used as proposed. City Attorney Jerome stated that the City could not be held liable.

Commissioner Muilenburg stated that there could be similar concerns over the noise from the proposed development as there were from Spruce Village. City Attorney Jerome stated that consultation with surrounding land uses would only be required by many City Codes prior to the development application. She stated that the cap on the number of homes could be added, but it was early to add such a condition. She also said that since City Code does not require it, it could not be included as a condition of approval.

City Attorney Jerome stated that the applicant was entitled to an additional seven days to submit testimony. She said that the applicant could waive that period to submit additional testimony and a decision could be reached that night. Mr. Phelps asked if the additional seven days would allow opponents to submit testimony as well. City Attorney Jerome stated that only the applicant could submit new testimony and the testimony would be limited to argument only. Mr. Phelps stated that he would like the additional seven days. City Attorney Jerome stated that she had not heard any other members of the public providing testimony ask for an additional period to provide testimony, the Planning Commission had the option to close the record except for additional argument from the applicant or request additional argument from others as well. The Planning Commission elected to close the record except to allow additional argument from the applicant for seven days, ending on June 3, 2014 at 5 p.m. City Attorney Jerome added that the City Council would re-open the record for public testimony during their hearing.

Commission Discussion

Vice Chairperson Muilenburg stated that the public hearing would be closed and that written testimony would be accepted from the applicant until June 3, 2014 at 5:00 p.m. The hearing would be continued on June 10, 2014 at 7:00 p.m.

APPEAL HEARING

CALOSSO FENCE APPEAL – RESOLUTION PC 14 08 APP 01: An appeal of the administrative land use decision (AR 14 03 DR 02) concerning sheet metal fencing at 1231 18th Place, as submitted by Fred Calosso.

Vice Chairperson Muilenburg asked if any member of the public would like to challenge a Commissioner's impartiality. There were no challenges. Vice Chairperson Muilenburg asked if any Commissioner wished to declare any bias, site visits, or ex parte contacts. There were no declarations. Vice Chairperson Muilenburg asked for the staff report.

Staff Report

PT Southerland presented background related to AR 14 03 DR 02 and PC 14 08 APP 01. He stated that Mr. Calosso appealed the decision on May 6, 2014 and that the appellant has requested use of the public right-of-way based on a permit submitted on April 12, 2014. He stated that the agreement was not signed by the City.

PT Southerland listed applicable Code Criteria for the appeal and gave an overview of the site and where the fence is located on the property. He presented photos of the site showing the fencing and the sections of fencing intruding into the right of way.

PT Southerland stated that the applicant submitted a site plan as part of his application for AR 14 03 DR 02 showing the west corner pins. He said that this site plan still showed the fence as encroaching into the right of way.

PT Southerland stated that the decision for AR 14 03 DR 02 was issued for the appearance and material of the fence only, but a timeline was included as Condition 3 for the relocation of the fence after receipt of referral comments from Public Works Director Mike Miller.

PT Southerland presented staff's findings for the appeal. He stated that an adequate timeline for removal of the fence was given. He said that the applicant was given six months to remove the fence, whereas Code requires a minimum of seven days notice. He stated that obstruction of the right-of-way is subject to provisions of the public nuisance code and the Public Works Director has the authority to allow items in the right-of-way or require their removal.

PT Southerland stated that staff's recommendation was that the appeal as presented was not valid and that the Planning Commission affirm the findings of AR 14 03 DR 02 as the fence is obstructing use of the right of way by utilities.

Commissioner Burns asked PT Southerland to return to a photo of the fence and asked what the fence was obstructing. PT Southerland stated that the property line ended somewhere behind the fence and there was a stormwater culvert underneath the sidewalk and other utilities between the sidewalk and property line. Commissioner Burns asked if the utilities could still be accessed. PT Southerland deferred the question to PWD Miller. PWD Miller stated that if a repair was needed to the stormwater system, the fence would need to be removed, in addition, there have been several requests to place utilities between the sidewalk and property line. Commissioner Burns asked if the fence could be removed if repairs needed to be made and then put back up. PWD Miller stated that the City would not remove and replace the fence at its expense.

Commissioner Burns asked if the Lane County Maintenance Yard's fence was in the City right-of-way. PWD Miller stated that their fence is on their property. PWD Miller stated that Kingwood in this location arcs and no accommodation for that arc was made by the appellant.

Commissioner Burns stated that he read that many of the comments at the last meeting were relating to the material being sheet metal. He asked if the material was in question as well. IPD Weese stated that the applicant was only appealing based on the fence being in the right-of-way, so no discussions could be reopened regarding the design of the fence.

Commissioner Burns asked how many feet the fence encroached upon the right-of-way. He stated that if PT Southerland was going to show a photo of the fence, he should show where the property line is. PWD Miller stated that he included a photo in his memo that shows where the property line is. Commissioner Burns stated that it appeared that the north end of the fence lined up with the County Yard fence. PWD Miller stated that a section of the fence on the north end was on the property line.

Commissioner Bare wanted to confirm that someone requested use of this section of the right-of-way to place fiber optic lines. PWD Miller confirmed. Commissioner Bare stated the southwest property corner could not be located because it was encased in concrete.

Commissioner Burns asked if the concrete would have to be removed for repairs to the utilities or stormwater culvert. PWD Miller stated that if the storm sewer was worked on, they would remove the concrete and replace it.

Appellant Testimony

Greg Freeze – 244 Maple Street, Florence, OR 97439

Mr. Freeze stated that he is an attorney representing the Calosso Family Trust. He stated that he brought along the wrong presentation. He stated that the fence needs to be straight in order for the fence gate to operate. Mr. Freeze stated that the fence is only a few inches out of alignment at the beginning, but it creates

a two or three foot difference at the end of the fence. He stated that his client was proposing leaving everything north of the south-end of the gate opening and move everything south of that to the property line. Mr. Freeze stated that telecommunications companies would push under the driveway rather than tear up the driveway.

Mr. Freeze stated that the fence also has width to it, so some posts which are identified as being over the property line may actually be on the property line. He said that the fence was installed along a concrete slab that may have been over the property line. He stated that his client agrees that the fence is in the right-of-way and would like to compromise, removing the portion of the fence south of the gate.

Mr. Freeze stated that PWD Miller agreed to the compromise on site, but changed his mind when sending a letter of his decision. He said that he would like the Planning Commission to give his client the Private Use of Public Right-of-Way agreement his client signed and turned in prior to the legislative change allowing this fencing. He stated that he and his client were under the impression that the agreement would be signed when it was turned in.

Mr. Freeze requested that an exception be granted for his client's fence.

Commissioner Bare asked if the post south of the gate anchors the gate. Mr. Freeze confirmed that it does anchor the gate, which rolls to the north.

Commissioner Murphey asked if the applicant had ever hired a surveyor to determine the property line. Mr. Freeze stated that the applicant did not find the southwest pin and Public Works was not able to find the pin was well. Mr. Freeze said that the contractor determined where the fence should go based on the concrete pad that was already in place. Commissioner Murphey asked if a surveyor had been hired. Mr. Freeze stated that no surveyor had been hired.

Mr. Freeze stated that if the City accepts the compromise, there may be more visibility at the corner of 18th Place and Kingwood and the fence may be more aesthetically pleasing.

Staff Response

Vice Chairperson Muilenburg asked for staff response.

IPD Weese stated that staff did not have much response. She said that it was not a land-use issue, it was a nuisance issue, and only was before the Planning Commission because the timeline for removal of the fence was included as a condition of approval.

Appellant Rebuttal

Vice Chairperson Muilenburg asked for applicant rebuttal.

Mr. Freeze stated that his client apologized for being in the right-of-way, but he would like this approved so that he could put the issue behind him.

Commissioner Murphey asked how wide the right-of-way is in this section of Kingwood. PWD Miller responded that he was not sure, but likely was 60 or 70 feet wide. Commissioner Murphey asked if work had to be done on the stormwater system, if a cage would take up about four feet. PWD Miller stated it would take about that much.

Commissioner Burns motioned to close the hearing. Commissioner Bare seconded the motion.

Commission Discussion

Vice Chairperson Muilenburg stated that it was the property owner's responsibility to hire a surveyor to locate their corners. Commissioner Burns asked if it was the property owner's responsibility to locate a pin underneath a City sidewalk. VC Muilenburg stated that a surveyor could locate that corner and mark it for the property owner. Commissioner Burns stated that he disagreed. Commissioner Burns stated that the City and surveyor told him completely different things during his own property issues.

Commissioner Murphey stated that he was concerned for the crew that had to repair the stormwater culvert in the event of a line break.

Commissioner Burns motioned that the compromise from the applicant be accepted. There was no second, the motion did not carry.

Commissioner Murphey asked how the fence would roll if the south post of the gate was moved. Vice Chairperson Muilenburg stated that the south gate fence post would not be moved.

Commissioner Bare motioned to affirm the finds of AR 14 03 DR 02 and require the applicant remove the fence to comply with that decision. Vice Chairperson Muilenburg seconded the motion. Motion carried 3-1.

DISCUSSION ITEMS

There were no items for discussion.

DIRECTOR'S REPORT

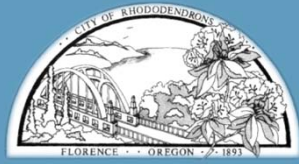
IPD Weese announced that SP FarleyCampbell will be taking over as Interim Planning Director on June 2, 2014.

CALENDAR

The Planning Commission discussed the upcoming calendar. The next meeting is scheduled for June 10, 2014 at 7:00 p.m.

Vice Chairperson Muilenburg adjourned the meeting at 9:36 p.m.


Cheryl Hoile, Planning Commission Chairperson



Munsel Lake Estates / McGill Holdings LLC Plan & Zone Change

PC 14 06 CPA 01 &

PC 14 07 ZC 01

● PC 14 06 & 14 07

5/27/2014 ● 1

Criteria

Florence City Code, Title 10:

- Chapter 1: Zoning Administration, Sections 10-1-1-4-D, 10-1-3-B-4, & 10-1-1-5-E-3
- Chapter 12: Mobile/Manufactured Home Regulations, Sections 10-12-1-1-D & 10-12-1-2-A.
- Chapter 35: Access and Circulation, Section.10-35-2-5

Realization 2020 Florence Comprehensive Plan:

- Realization 2020 Florence Comprehensive Plan:
- Chapter 2: Land Use, Policies 1 & 4
- Residential, Policies 7 & 10
- Industrial, Policy 4
- Chapter 10: Housing Opportunities, Policies 3, 4, 5
- Chapter 12: Transportation, Policies 8 & 29

● PC 14 06 & 14 07

5/27/2014 ● 2

Criteria

Oregon Statewide Planning Goals

- Goal 1: Citizen Involvement
- Goal 2: Land Use
- Goal 7: Development Hazards and Constraints
- Goal 9: Economic Development
- Goal 10: Housing
- Goal 11: Public Facilities and Services
- Goal 12: Transportation

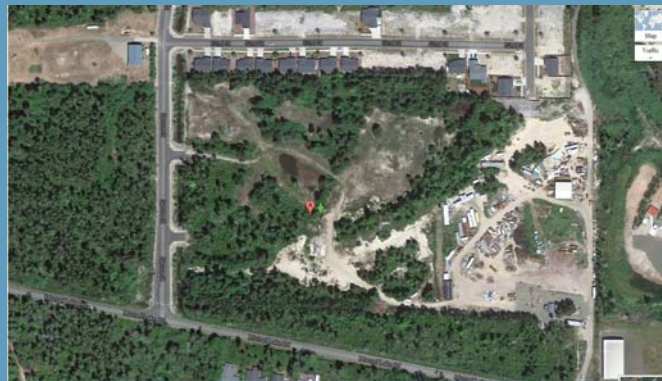
Oregon Administrative Rules (OAR):

- 660-012-0060 Transportation Planning

• PC 14 06 & 14 07

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Site Location



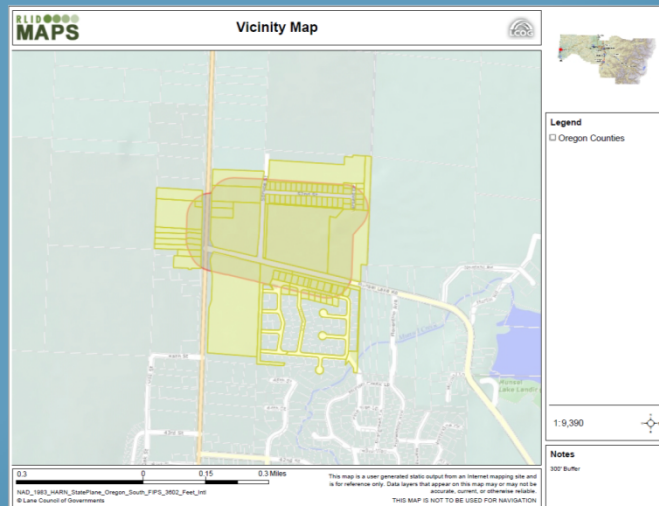
Plan Designation & Zoning: Service Industrial & North Commercial

Map & Tax Lot: 18-12-14-20 Tax Lots 00301 & 00600 & the east ½ of Spruce St. & Map Number 18 12 14 24 Tax Lot 00300

• PC 14 06 & 14 07

5/27/2014 • 4

Vicinity Map



• PC 14 06 & 14 07

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Current & Proposed Comp Plan Text

Florence Realization 2020
Comprehensive Plan

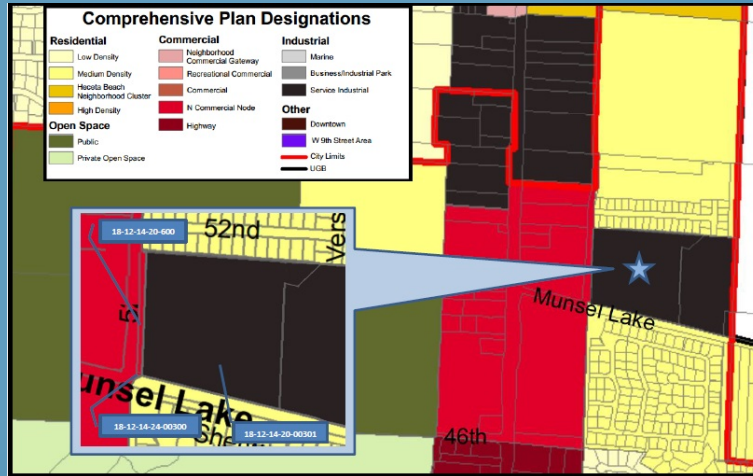
Chapter 2, Page II-32



• PC 14 06 & 14 07

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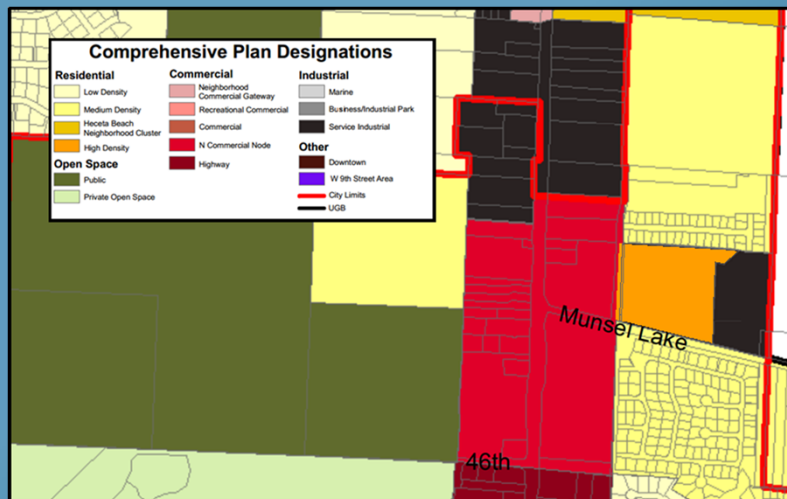
Current Comp Plan Map



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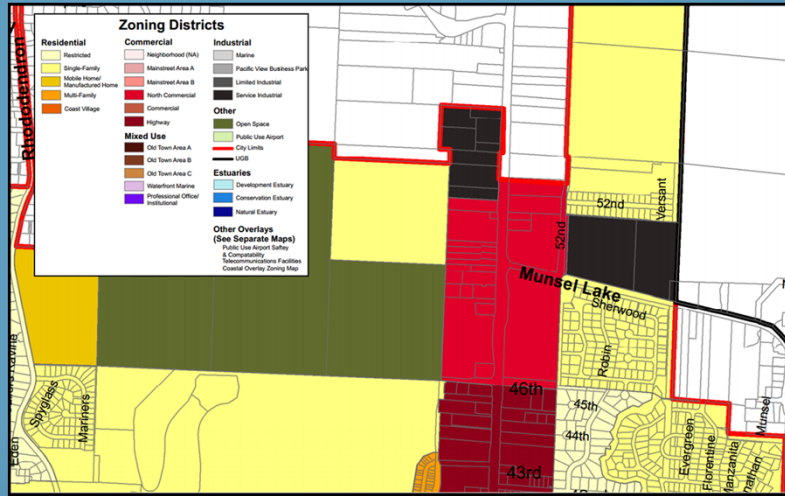
Proposed Comp Plan Map



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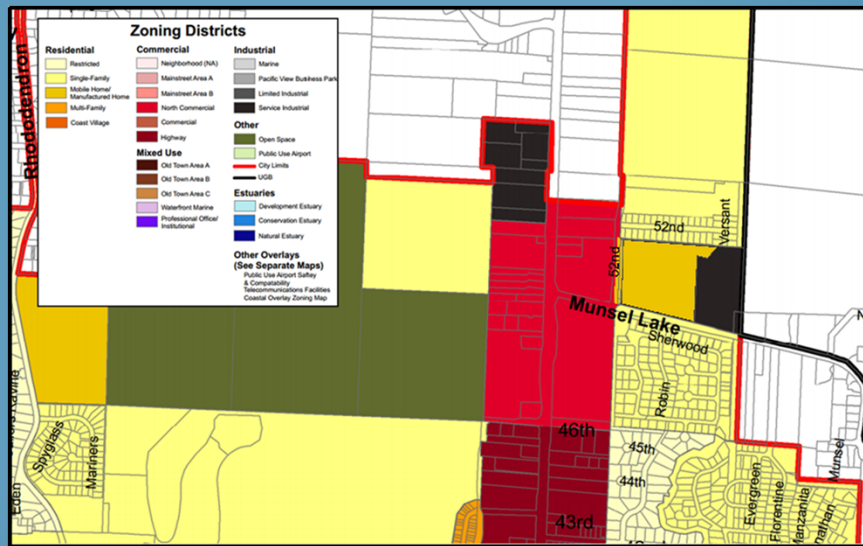
Current Zone Map



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Proposed Zone Map



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Findings Overview

- Transportation
 - Traffic Impact Study-Trip distributions, existing facilities, access points, coordination w/other jurisdictions.
 - Transportation Planning Rule-determine if it will “significantly affect” a transportation facility OAR 660-012-0060.
- Mobile Home/Manufactured Home Residential District
 - 5 acres of contiguous land & review of applicable Comp Plan policies
- Land Use
 - Industrial Conversion to Residential
 - Housing

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Testimony

- Exhibit “J”: May 8, 2014, Fire Marshal, Sean Barrett
 - Has no Concerns with project or comments at this time
- Exhibit “K”: May 9, 2014, Lydia McKinney, Lane County Transportation
 - Has no Concerns with project or comments at this time
- Exhibit “L”: May 16, 2014, Claudia & Albert Garner
- Exhibit “M”: May 27, 2014, JRH, Errata Sheet
- Exhibit “N”: May 27, 2014, JRH , Revised TPRA & TIA
- Exhibit “O”: May 24, 2014, Claudia & Albert Garner
- Exhibit “P”: May 20, 2014, Jean Busby
- Exhibit “Q”: May 21, 2014, Robert Busby

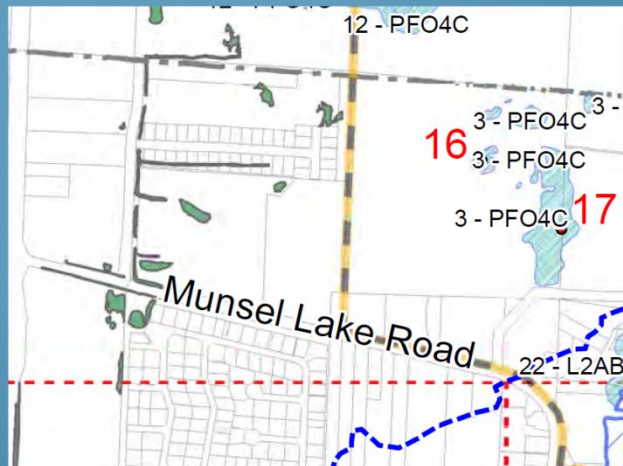
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Wetlands

Florence Area
Local Wetlands
Inventory, June
13, 2013

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Staff Recommendation & Condition

Recommend Approval to the Florence City Council the Comprehensive Plan and Zone Change that includes a trip cap of 103 or less senior detached manufactured home dwelling units and such shall be included on the deed of record for the subject property. Any change requires a new Transportation Planning Rule analysis.

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Questions?

• PC 14 06 & 14 07

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City of Florence

Planning Commission

Applications

PC 14 06 CPA 01 & PC 14 07 ZC 01

**Testimony and evidence submitted by the
Spruce Village Homeowners Association
& Siuslaw Rod and Gun Club**

May 27, 2014

It is unfortunate that the applicant did not meet with the adjoining and potentially impacted property owners including:

- Spruce Village Homeowners Association - north
- Siuslaw Rod and Gun Club - east
- Florentine Estates - south

A Comp Plan Amendment and Zone change is one of the most challenging land use applications in Oregon - the bar for approval is set high - and it should be.

The burden of proof is on the applicant to provide reasonable and substantial evidence that the application meets all applicable criteria.

What is proposed here is a high density 103 unit trailer park sandwiched between two medium density single family residential neighborhoods and within the noise impact area of the Siuslaw Rod and Gun Club.

Designation and location of land uses shall be made based on an analysis of documented need for land uses of various types, **physical suitability of the lands for the uses proposed**, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impacts on environmental, economic, social and energy factors.

Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development **when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to** high concentrations of vehicular traffic, noise, odors, glare, or **natural hazards**.

The City shall recognize mobile homes and multiple family dwellings as an important part of the overall housing stock **if well situated**.

The burden of proof is on the applicant to provide reasonable and substantial evidence that the property is **physically suitable for HIGH DENSITY RESIDENTIAL and a 103 unit trailer park.**

Not just residential.

But high density residential

The following significant applicable issues/criteria have not been successfully addressed by the applicant or City Staff - including significantly incorrect information:

1. Wetlands
2. Environmental Contamination
3. Compatibility with the Siuslaw Rod and Gun Club and Noise Hazard
4. Impact the proposed zone change will have on percentage of **impervious surfaces** - is Storm Water management even possible?
5. Inconsistent and un-reviewed **TIA** on proposed zone change - with no analysis on the impact on the failing Munsel Lake Road and Highway 101 Intersection

1. Wetlands

Applicant states as follows:

The site has no flood plains, no areas of scenic value, no special wild life habitat designations. It does have one very small wetland in the North East corner which is outside of the proposed development area.

Staff Report states as follows:

"This goal and related policies are inapplicable because **neither the subject site nor adjacent or nearby lands have been inventoried or identified as sources of wetlands**, riparian areas, beaches and dunes, mineral or aggregate resources, open spaces, scenic & historical or natural resources."

1. Wetlands

Wetland Consultant Wilbur TERNYIK completed a wetland delineation report for the Property September 30, 2008. A copy of that report has been provided to the City and DSL. (These reports expire after 5 years)

A review and approval letter has been received from the Oregon Division of State Lands (DSL). The DSL letter concurred with the delineated wetlands on the Property in accordance with OAR 141-090-0055.

This wetland delineation included over 1 acre of wetlands.

2. Environmental Contamination

The Staff reports states as follows:

“While DEQ has monitored this site for potential contamination there are no publically known health and welfare concerns.”

This is inaccurate. The property has known contamination as detailed in the DEQ environmental contaminations site.

“Hazardous Substances/Waste Types:
Accumulation releases of petroleum and/or
metals associated with site operations.”

2. Environmental Contamination

The site does not have a DEQ NFA (No Further Action) certification at this time and there is no guarantee that it will get one.

Until an NFA is acquired for the property the property is not suitable for the zone change from Industrial to high density residential.

3. Compatibility with the Siuslaw Rod and Gun Club

“Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, [noise](#), odors, glare, or natural hazards.

Compatibility with the Siuslaw Rod and Gun Club

In recognition of the importance of the Siuslaw Rod and Gun Club to the local economy as well as the safety and recreation of its citizens, it is the policy of the City of Florence and State of Oregon to encourage and support the continued operation and vitality of the Siuslaw Rod and Gun Club.

The subject property is located close the Gun Club. It is important that effective protections be provided for the Gun Club regarding possible complaints or legal actions by residents in developments in the surrounding areas. It is also important that any development of the site is designed and planned in such a way that the development is compatible with the noise that travels to the site from the Gun Club.

3. Compatibility with the Siuslaw Rod and Gun Club

For example, Spruce Village provided the following Protections:

- ✓ Recorded Covenant.
- ✓ Comprehensive Disclosure Statement recorded against all lots requiring a signature and acknowledgement of receipt of the Disclosure Statement by current and future home buyers as a condition of sale.
- ✓ Spruce Village has a Home Owner's Association with carefully written CC&Rs that make the HOA responsible for and legally liable for enforcement and maintenance of the Gun Club protections.

Compatibility with the Siuslaw Rod and Gun Club

Also, the following:

- ✓ **Agreement not to file claim for noise:** *The Declarant and its successors in interest, agree to accept as normal and necessary activities associated with a shooting range as part of the risk of building, owning, and occupying a residential dwelling in an area in proximity to an established and operating shooting range and further agree not to file claim for relief or cause of action for noise caused by the above practices for which no action or claim is allowed under ORS 467.131 to 467.138 or any successor statutes."*
- ✓ All Spruce Village homes are constructed with additional sound insulation and to exceptionally high **Noise Level Reduction (NLR) standards**.

In order to protect the homeowners from noise from the Gun Club, every Spruce Village home is built to specific standards for sound insulation and noise level reduction.

Compatibility with the Siuslaw Rod and Gun Club

Normal residential construction can be expected to provide a **Noise Level Reduction (NLR)** of 20dB. This means that a noise at 65dB outside will be reduced to a level of 45dB inside the house.

NLR construction standards were developed by the FAA (Federal Aviation Administration) and the AOPA (National pilots association) to mitigate the impact of airport noise. These same construction standards but can be used to mitigate other noises such as the gun club.

Noise level reduction requirements are often stated as 5, 10 or 15 dB over standard construction. All homes in Spruce Village are constructed to exceed the normal NLR standards by 5dB. Therefore the NLR for all of the homes will be 25 dB.

This is a significant improvement in the sound insulation and noise level reduction provided for the residents.

But this is not an option with a trailer park.

Compatibility with the Siuslaw Rod and Gun Club

Oregon Revised Statutes 467.131 through 467.138 provide significant and effective protections for gun clubs and read as follows:

467.131 Exemption from civil or criminal liability based on noise or noise pollution from shooting range. Any owner, operator or lessee of a rifle, pistol, silhouette, skeet, trap, black powder or other shooting range in this state shall be immune from civil or criminal liability based upon an allegation of noise or noise pollution so long as:

(1) The allegation results from the normal and accepted activity on the shooting range;

(2) The owner, operator or lessee complied with any applicable noise control law or ordinance existing at the time construction of the shooting range began or no noise control law or ordinance was then existing; and

(3) The allegation results from activity on the shooting range occurring between 7 a.m. and 10 p.m. or conducted for law enforcement training purposes.

467.133 Exemption from action for nuisance on basis of noise caused by shooting range. The owner, operator or lessee of a rifle, pistol, silhouette, skeet, trap, black powder or other shooting range in this state shall not be subject to any action for nuisance and no court in this state shall enjoin the use or operation of such shooting range on the basis of noise or noise pollution so long as:

(1) The allegation results from the normal and accepted activity on the shooting range;

(2) The owner, operator or lessee complied with any applicable noise control law or ordinance existing at the time construction of the shooting range began or no noise control law or ordinance was then existing; and

(3) The allegation results from activity occurring between 7 a.m. and 10 p.m. or conducted for law enforcement training purposes.

467.136 Preemption of certain local regulation of shooting range. Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a shooting range a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to a shooting range for which no action or claim is allowed under ORS 467.131 and 467.133.

Compatibility with the Siuslaw Rod and Gun Club

DISCLOSURE STATEMENT

A mandatory Disclosure Statement is recorded as a deed restriction on all of the lots in the Spruce Village subdivision. The Deed Restriction will require that any homeowner purchasing a home must sign a Disclosure Statement stating that:

They have been informed that the Gun Club is located to the east of the property and that sound travels from the Gun Club to the property.

they have received a copy of the Covenant protecting the Gun Club and accept the terms of that Covenant.

they are aware that there are restrictions on the right of the property owner to take action against the Gun Club.

Signing the disclosure statement is required of the initial buyers, AND ALL FUTURE BUYERS AS A CONDITION OF THE SALE OF THE LAND.

This kind of disclosure statement has proven to be very effective at making certain that buyers are aware of and do not take action against noise sources in a community.

4. Impact the proposed zone change will have on percentage of **impervious surfaces** - is Storm Water management even possible?

5. Applicant TIA

Munsel Lakes Estates is a proposed 13.7- acre, 103- unit, senior-adult housing project located on the Northeast corner of Spruce Street and Munsel Lake Road in the City of Florence, Oregon. The analysis contained in this document shows that if the development is capped at 103 dwelling units, and no development is permitted beyond that amount without a new land-use application, then the transportation impacts from the Zone Change and Comprehensive Plan Amendment will be less than they would be under the current Zone and Comprehensive Plan Designation.

5. Applicant TIA

Munsel Lakes Estates is a proposed 13.7- acre, 103- unit, senior-adult housing project located on the Northeast corner of Spruce Street and Munsel Lake Road in the City of Florence, Oregon. The analysis contained in this document shows that if the development is capped at 103 dwelling units, and no development is permitted beyond that amount without a new land-use application, then the transportation impacts from the Zone Change and Comprehensive Plan Amendment will be less than they would be under the current Zone and Comprehensive Plan Designation.

5. Applicant TIA

- Not reviewed by an independent traffic engineer
- INCONSISTENT WITH SPRUCE VILLAGE SOUTH TIA BY JRH
- SVS 10% reduction with 57 homes
- How a reduction with 103 homes?
- Does not address Munsel Lake Road and Highway 101

This application is not complete and the applicant has not met their burden of proof.

1. Wetlands - Current **Wetland Delineation Report** with DSL Concurrence letter - re-notice to stakeholders
2. Environmental Contamination Report including DEQ NFA (**No Further Action**) Certification prior to any zone change
3. Analysis and provision for **compatibility with the Siuslaw Rod and Gun Club** including mitigation of noise hazard
4. Impact the proposed zone change will have on percentage of **impervious surfaces** - is Storm Water management even possible?
5. **Independent review** of the applicant TIA and addition of analysis on the impact to the failing Munsel Lake Road and Highway 101 Intersection

Calosso Fence Appeal

PC 14 08 APP 01



Introduction

- Mr. Calosso appealed the administrative decision issued by AR 14 03 DR 02 on April 25, 2014.
- The applicant submitted a notice of appeal of the decision on May 6, 2014.
- The applicant has appealed the decision based on a private use of public right-of-way permit submitted April 2013. The agreement was not signed by the City.
- The appellant has requested that the City allow his fence to remain in the right-of-way.

Applicable Code Criteria

Florence City Code:

Title 8, Chapter 2: Section 2-4-2: Obstruction of Right-of-Way

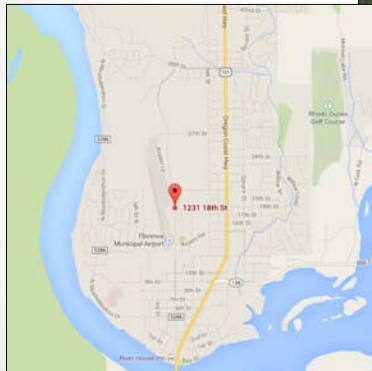
Title 6, Chapter 1: Section 8-5: Nuisance Abatement

Title 10, Chapter 1: Section 1-7: Appeals

● Calosso Fence Appeal - PC 14 08 APP 01

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Property Location



● Calosso Fence Appeal - PC 14 08 APP 01

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Site Photos



● Calosso Fence Appeal - PC 14 08 APP 01

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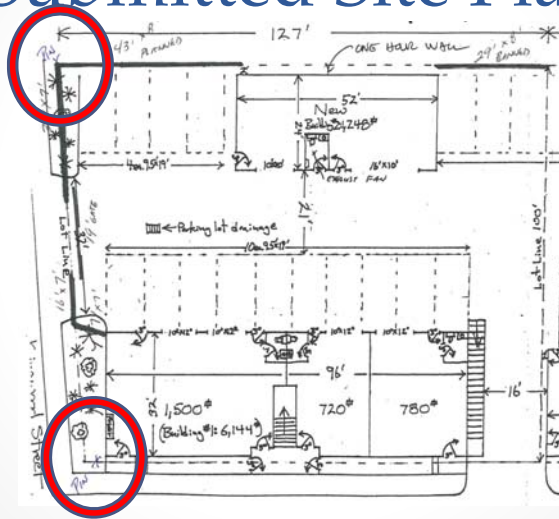
Location of Fence

- At time of application, the applicant was informed that he would have to establish the location of the fence and his property line.
- The applicant submitted a site plan showing the location of the western corners of his property (shown on next slide).

● Calosso Fence Appeal - PC 14 08 APP 01

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Submitted Site Plan



- Calosso Fence Appeal - PC 14 08 APP 01

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Location of Fence

- Decision was issued for the material and appearance of the fence only.
- A timeline (Condition 3 of AR 14 03 DR 02) was established for the relocation of the fence after receipt of referral comments from Public Works Director Mike Miller.

● Calosso Fence Appeal - PC 14 08 APP 01

5/27/2014 ● 8

Findings

- An adequate timeline was given for removal of the fence, extending beyond the seven days required by City Code.
- Obstruction of a right-of-way is subject to provisions of the public nuisance code.
- Public Works Director Mike Miller has authority to allow items in the right-of-way or to require their removal.

● Calosso Fence Appeal - PC 14 08 APP 01

5/27/2014 ● 9

Staff Recommendation

- Staff finds the appeal as presented is not valid.
- The fence is located within the right-of-way and is obstructing public use of the right-of-way, including City utilities.
- Staff recommends that the Planning Commission affirm the findings of AR 14 03 DR 02.

● Calosso Fence Appeal - PC 14 08 APP 01

5/27/2014 ● 10

Questions?

● Calosso Fence Appeal - PC 14 08 APP 01

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