

**CITY OF FLORENCE
RESOLUTION NO. 10, SERIES 2016**

**A Resolution Sustaining the Appellant's Objection to PC 16 06 VEG 02 an application for a
Vegetation Clearing Permit in order to prepare and survey land for residential and street
development at the NE corner of 6th and Greenwood Streets**

RECITALS:

1. Application was made by Advance Construction, representing Ron's Stuff LLC, for a Vegetation Clearing Permit as required by FCC 4-6-4 and FCC 10-1-1-6; and
2. The application was referred to the Planning Commission for their approval as provided in FCC 10-1-1-6-C and FCC 10-1-1-6-E on April 6, 2016
3. The Planning Commission/Design Review Board met in a public hearing on April 26, 2016 as outlined in Florence City Code 10-1-1-6-C, to consider the application, evidence in the record, and testimony received, and
4. The Planning Commission/Design Review Board determined per FCC 4-6, after review of the application, testimony and evidence in the record, that the application meets the criteria through compliance with certain Conditions of Approval; and
5. Kate Shapiro, Mary Holm, Bill Robertson, Charles Adel, Sam Mulvaney, Jeannie Owen, and Marji Jones filed an appeal of the Planning Commission's decision per FCC 10-1-1-7 stating concerns clearing widths and area, insufficient vegetation preservation, insufficient consideration and risk management of dune ridge instability, lack of an environmental impact study, and lack of assignment of responsibility for damage to private properties following clearing activity; and
6. The City Council met in a properly noticed public hearing on June 6, 2016 and has considered the appeal, the evidence in the record including the staff report dated May 27, 2016, and the testimony presented;

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

Based on the findings attached hereto as Exhibit A, conditions of approval required by the Planning Commission are amended as follows:

Condition 3. A phased clearing plan shall be used whereby a five to ten ft. wide survey line may be mechanically cut and surveyed along presumed 6th and Greenwood Streets to determine the street and utility construction needs. If development is financially feasible then the applicant may clear the lots as proposed, once required planning and permitting documents are submitted and approved. Once construction, stormwater, and grading plans are submitted to and approved by Public Works for the street and utility improvements the lots and streets may be cleared, excavated and graded for construction.

Condition 7. If the applicant determines street construction is not feasible then a re-vegetation plan shall be submitted for review and approval and the clearing sight line replanted within four months of clearing. Revegetation of the lots and street shall be addressed in the Phase II site investigation report and include proposals for both a scenario where construction and development of the lots proceed and one where development does not proceed. Noxious vegetation is not permitted to grow on the site at any time.

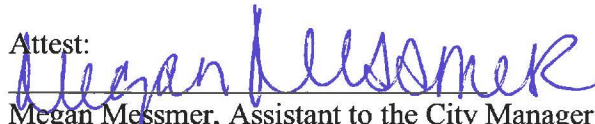
ADOPTION:

This Resolution is passed and adopted on the 6th day of June, 2016.



Joe Henry, Mayor

Attest:



Megan Messmer, Assistant to the City Manager
Acting in Capacity of City Recorder

EXHIBIT A

Council Findings in Response to Appellant's Appeal Issues

For CC 16 04 APP 01, the Council's decision in response to appellants' appeal of the Planning Commission's Vegetation Clearing Permit approval, PC 16 06 VEG 02, the Council adopts the following findings.

I. PROCEDURE

Pursuant to FCC 10-1-1-7(E), the Council has determined to not open the appeal proceedings to new evidence. As a result, the Council's decision on this appeal is confined to the record before the Planning Commission and any argument submitted prior to the closing of the record after the public hearing on April 26, 2016. For these findings, the Council has only considered the evidence in the record before the Planning Commission and argument submitted into the record during the appeal. To the extent any new evidence was submitted, the Council does not consider the evidence in making these findings. Appellants have made no objections to the record. The appellant claims fault with several stipulations of the approval related to clearing widths, insufficient vegetation preservation, insufficient consideration and risk management of dune ridge instability, lack of an environmental impact study, and lack of assignment of responsibility for damage to private properties following clearing activity. The appellants have submitted argument in favor of their appeal.

The Council finds that appellants waived their rights under ORS 197.763(6) (e) to submit final rebuttal written argument. This waiver was made on the record at the public hearing by appellants.

II. APPEAL ISSUES

A. Clearing widths and amounts

B. Insufficient consideration of dune ridge instability

C. Insufficient vegetation preservation

D. Lack of an environmental impact study

E. Lack of assignment of responsibility for damage to private properties following clearing

The appellants object to the above related issues to the conditions and findings of the approval given by the Planning Commission. The Council makes the following findings:

A. Clearing Widths & Amounts

The applicant proposed clearing the underbrush of three tax lots and leaving the root mat and mature trees not in the way for access or that pose a safety hazard. The clearing was proposed in preparation for site survey and feasibility of development. The Planning Commission approved a phased clearing plan whereby 6th and Greenwood Streets could be cleared first to perform survey work and determine the approximate cost of street and utility extension to and along the lots. If the project was found feasible for the applicant he could then proceed to clear the lots in the manner he proposed above after submitting and receiving approval of required planning and

permitting documents. Construction, stormwater and grading plans are required prior to the final clearing phase for street and utility construction. The Planning Commission discussed the size of equipment to be used for the mechanical clearing of the streets and underbrush on the lots. An excavator about the size of a dump truck was settled on, being approximately 10 ft. wide.

The appellants remain concerned about development follow-through and request 4' wide survey sight lines with minimum limbing and felling of larger vegetation and a maximum of 20% lot clearing. This issue of equipment size was brought up at the hearing and the applicant responded with a concern of roll-over when clearing the native vegetation with smaller excavation equipment. The applicant also cited concern for project cost with having to mobilize a clearing crew multiple times and thus wanted to use larger equipment.

Florence City Code 4-6 includes the following applicable criterion related to the above argument: "The necessity to remove native vegetation in order to construct proposed improvements or otherwise utilize the property in a reasonable manner consistent with the City Code and policies". The applicant was not proposing clearing to construct improvements at this time. FCC 4-6 permits cutting and limbing for the purposes of surveying without a vegetation clearing permit. The applicant is proposing clearing and felling for the purposes of surveying which requires a permit. Public Works states that 5 ft. wide sight lines are possible with a maximum clearing width of 10 ft. wide. The City Council supports the Planning Commission's decision to require a phased clearing approach. City Council finds the above criterion to be broad allowing a diverse application of set clearing limits depending on the site situation. The appellants' objection to permitting the clearing of all ground cover in Phase 2 is discussed in "B" below. The appellants' objection to sight line clearing width limits not being addressed is sustained and Condition 3 is revised as follows:

"Condition 3 A phased clearing plan shall be used whereby a five to ten ft. wide survey line may be mechanically cut and surveyed along presumed 6th and Greenwood Streets to determine the street and utility construction needs. If development is financially feasible then the applicant may clear the lots as proposed, once required planning and permitting documents are submitted and approved. Once construction, stormwater, and grading plans are submitted to and approved by Public Works for the street and utility improvements the lots and streets may be cleared, excavated and graded for construction."

B. Dune ridge top stability

FCC 4-6-4-C Vegetation Preservation criterion related to this concern is as follows: "Review and approval shall be based on the following criteria, as applicable to the request: ...The environmental and physical impacts such clearing may have, including visual drainage, wind erosion, protection of adjoining property and structures, and impacts on significant riparian corridors or wetland buffer zones."

The conditions of approval require submittal of several plans in accordance with city code. A sand management plan to protect public and private properties from the effects of uncovered sand is reviewed by the Building Official who may require additional measures of protection. Florence City Code also requires submittal of engineered plans for grading and drainage under certain conditions namely during grading or filling of 5000 cubic yards or more and the clearing of 10000 sq. ft. or more and also on proposed development with slopes greater than 12%.

The appellants cite specific concerns they wish included and considered in the preparation of engineering plans and the city's approvals of those plans. They are as follows: destabilization of the east side of the ridge caused by clearing to the west, inadequate 20' buffer within the alley, windfall of remaining vegetation within the alley, additional erosion from rain and wind. They propose the following: an additional buffer of 25' west of the 20' wide alley or combination of buffer and retaining structures.

Condition 3 requires submittal and approval of planning and permitting documents prior to beginning the second phase of clearing. Due to the identified slope of the properties on the LIDAR imagery this will include a Phase 1 and Phase 2 Site Investigation Report. Both of these require assessment of the slope and a Phase 2 consists of engineered plans for stabilization. The combination of the Site Investigation report(s) and the required grading and drainage plans will identify a comprehensive course of action to address drainage, erosion, mechanics of and stability of the slope mass, suitable setbacks, site stabilization plan, vegetation retention plan. A Phase II SIR will include bank stabilization methodology based on site conditions and will require Planning Commission review and approval and the opportunity for appeal. City Council finds that neither they nor staff possesses the professional certifications to identify a necessary stabilization or buffering plan for the project area and that this will be addressed by the required engineered plans. The appellants' request to require either a 25' buffer or combination of buffer and retaining structure is overruled.

The appellants' concern to address erosion is sustained and Condition 7 is revised as follows:

"Condition 7. If the applicant determines street construction is not feasible then a re-vegetation plan shall be submitted for review and approval and the clearing sight line replanted within four months of clearing. Revegetation of the lots and street shall be addressed in the Phase II site investigation report and include proposals for both a scenario where construction and development of the lots proceed and one where development does not proceed. Noxious vegetation is not permitted to grow on the site at any time.."

C. Removal of mature trees and understory shrubs

FCC 4-6 criterion related to this concern is as follows: "Review and approval shall be based on the following criteria, as applicable to the request: ... The environmental and physical impacts such clearing may have, including visual drainage, wind erosion, protection of adjoining property and structures, and impacts on significant riparian corridors or wetland buffer zones."

The appellant wishes to add understory shrubs 15'+ tall to the 24" diameter trees proposed to be retained by the applicant. The site consists of Waldport soils for the entirety of the lot. FCC states that Waldport soil condition stability is moderate to severe, depending on the slope and that vegetation preservation to needed and disturbed soil is to be stabilized. The Council isn't the informed party on this issue rather the applicant's engineer and the City's reviewing engineer are more qualified to make the decisions related to vegetation retention on the lots as discussed in "B" above. The appellants' request to retain additional plant species in the streets is discussed in "A" above.

D. Lack of an environmental impact study

One appellant cites concern for lack of an environmental impact study. This statement is coupled with concern and liability for vegetation and tree removal. The latter is addressed earlier and later in the findings. Florence City Code 10-7 and 10-19 require certain types of work along the Siuslaw River or within the 50' setback buffer of significant riparian or wetland areas to perform environmental analysis. An actual Environmental Impact Study is required through the Corps of Engineers Section 10/404 permit process for fill projects within or adjacent to a navigable water body. This property is neither along the Siuslaw River nor within 50' of a significant riparian or wetland area. The engineering analysis required in the Phase 2 Site Investigation Report is more fitting since an impact study is not really suited to this type of work. An engineering analysis will look at vegetation, slope, and remedial measures to come up with a mitigation plan. The appellants' objection to not requiring an environmental impact study is overruled.

E. Responsibility for damage to properties

This concern is not directed at an approval criterion. Florence City Code does not have criteria related to responsibility for property damage. The appellants' objection to no assignment of damage to properties is overruled.

The Council also finds that appellant had notice of the possible changes to the conditions from the staff report available to appellant seven days prior to the public hearing. The conditions and over rulings were also discussed at the public hearing. Appellant offered no argument in opposition to these possible changes and over rulings and waived their right to present rebuttal argument on these issues and all other appeal issues.