

Buel-McIntire Appeal to City Council – January 13, 2011

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Steven and Crystal Buel-McIntire

September 8, 2010

~~John McClintock~~
City of Yachats
PO Box 345
Yachats OR 97498

Larry

Re: 615 Lemwick Lane

Dear John:

Please find enclosed the following: (1) Culvert Application; (2) Conditional Use Application; and, (3) a Check for \$275.00.

My wife and I would like to complete the installation of the two culverts in conjunction with completing the one-half circular drive way and RV pad. Please know that our intent will be to move forward with home construction plans as our situation allows.

By this letter, we will address the applicable ordinances and standards relative to our requests in the order as indicated above.

My wife and I have been coming to the coast multiple times every year for several years. For the past 10 years, we have made many visits to view potential cities and properties for future residential use. After having frequently visited your City, we decided Yachats is the place for us. My wife and I grew up in Oregon and we have lived here for most of our lives, with the exception of my service in the military and when Crystal's employment took her to California. We have rarely found an Oregon location that we like to frequent more than Yachats. We love the 804 trail and the neighborly community. We purchased our property on Lemwick so that we can enjoy the place we love the most, Yachats. We hope this process we are about to embark upon will be fair, objective and consider the investment and commitment we have made in the purchase of our property and to the City of Yachats as well as our desire to use and enjoy our property while we work towards our goal to build a permanent home.

RECEIVED

SEP 13 2010

CITY OF YACHATS

Culvert Application

I believe the information contained on the application itself is sufficient to warrant approval. Our intent is to be able to access our property with our 27' Travel Trailer. Having visited our property several times, we've noticed the road is fairly narrow and, at times, the home to the immediate South has had several vehicles located within its driveway and further west. Accordingly, there may be times when it would be impossible to maneuver our RV on to our lot with only one point of access. Thus, it appears necessary to have two points of entry with a one-half circular driveway and an RV pad so that we do not have to rely on our neighbors' kindness to access our land. You have previously made a finding pursuant to Yachats Municipal Code (hereinafter referred to as "YMC") 7.16.040 that we must install a culvert with a minimum length of 20 feet and a diameter of at least 12 inches. I believe our proposed culverts comply with the relevant sections of the Code. Attached hereto as Exhibit "A" is a sight design evidencing the driveway, sight work and location of the culverts. Please note the planned riprap basin which should alleviate your concern regarding water issues relative to neighboring landowners. If you believe you need more information as allowed by YMC 7.16.020, please do not hesitate to contact me by phone or email.

Conditional Use Application

My wife and I own a 2006 Dutchman Smooth Side 27' Travel Trailer which meets the definition of an RV under YMC 9.040.030. The property located at 615 Lemwick Lane is zoned R2. Pursuant to YMC 9.16.030, parking a Recreational Vehicle ("RV") on R2 property is an appropriate and allowable use. Under YMC 9.68.020(B), it is permissible to park an RV on the owner's property. My wife and I are owners of the property at 615 Lemwick Lane. The Planning Commission has authority under YMC 9.68.060 to approve an application to park on RV on our property as a conditional use.

My wife and I have owned the property at 615 Lemwick Lane for over two years and we have a desire to visit Yachats more frequently. Our visits to Yachats will allow us to better maintain our property and to become more involved within our desired community. Both Crystal and I volunteer time to charitable organizations like CASA, Civilian Review Board and Junior League of Eugene and we would like to have more opportunities to give back to the City of Yachats. We do not intend to exceed the scope of any permitted use and we do not intend to park our RV on the property as permanent storage. Rather, we intend to visit Yachats occasionally throughout the year. Attached hereto as Exhibit "B" are pictures of our Travel Trailer. As one can see, our RV is in excellent condition and is well maintained. Crystal and I are very respectful and deliberate in our approach to maintaining our property, both real and personal. Please note the proposed site work in Exhibit "A" that will facilitate ingress, egress and parking of our RV.

We request that the Planning commission grant our reasonable conditional use request as allowed by relevant City Code so we enjoy the Oregon Coast and our substantial investment.

If you have some flexibility in scheduling the public hearing, please contact me to coordinate schedules.

Very Truly Yours,

Crystal & Steven Buel-McIntire

SLM

cc: File

Encls.

Land Use Application

City of Yachats
441 Hwy 101 N
PO Box 345
Yachats OR 97498
(541) 547-3565

Fee:
Date Received: 9/13

- Conditional Use \$250 Nonconforming Use \$250 Variance \$250
 Zone Change \$500 Comprehensive Plan Change \$500
 Urban Growth Boundary Change \$1000
(Actual expenses in excess of the application fee will be billed.)

Applicant: Steven and Crystal Buel-McIntire Phone: (541) 912-5259
Address: PO BOX 10172
City: Eugene State: OR Zip: 97440
Relationship to property: OWNERS
(Owner, Co-owner, Purchaser, etc.)
1015 Lemwick Lane
Legal Description: 14-12-22-DD-01100 Current Zone: R-2
Lot Dimensions: 88' x 85' Area: _____ Flood Zone: Yes
Natural Hazard: _____ Topography: LEVEL
Directions to Property: West on Lemwick Ln
Previous Planning Actions on Property: None

Reason for Request: Occasionally parking an RV on our property is a permitted use. We would like to enjoy our property and the Yachats Community until we can begin the home construction process.
Existing Structures on Property: NONE
Proposed Use and Structures: occasionally parking our 27' RV. We do not intend to leave our RV on the property as storage.
Current Utilities and Providers: Water, power, and Sewer are at property.
Anticipated Date of Development: No later than June 30, 2011, weather permitting.
We would like to complete the work as soon as possible, however.

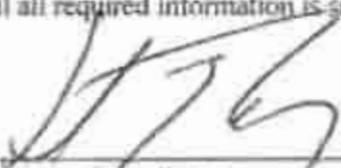
Land Use Application

Supplemental Required Information

Attachments to Application (check all that apply)

- Plot Plan of subject property showing all property lines
- Existing and proposed structures and their location in relationship to property lines
- Total floor area, use and height of all existing and proposed uses
- Operating characteristics of all proposed commercial use
- Location, extent, arrangement, and proposed improvements of all off-street parking and loading facilities.
- Location of access to adjacent arterial or collector
- State or County Road Approach Permit
- Narrative which address applicable ordinance standards (required for all land use actions)
- Other: Pictures of RV

I have read the above application and hereby certify all information contained therein to be true and complete to the best of my ability. I understand that this application will not be processed until all required information is submitted to the City.



Signature of Applicant

Signature of Property Owner (if other than applicant)





CASE FILE: #1-CU-PC-10
DATE FILED: Sep. 13, 2010
DATE APPLICATION DEEMED COMPLETE: Sep. 28, 2010
120-DAY COMPLETION DATE: Jan. 18, 2011
HEARING DATE: Oct. 19, 2010
PREVIOUS ACTION: None

STAFF REPORT

Conditional Use Application

APPLICANT: Steven & Crystal Buel-McIntire

A. REPORT OF FACTS

1. Property Location: The subject property is located at 615 Lemwick Lane, and described on the Lincoln County Assessor's Map as 14-12-22DD, Tax Lot 1100.
2. Applicant's Request: The applicant is requesting a conditional use permit to park a recreational vehicle on their property for temporary living purposes.
3. Zoning: Residential Zone R-2
4. Plan Designation: Residential
5. Lot Size and Dimensions: The lot size is 7,480 square feet with dimensions of 88'x85'.
6. Existing Structures: None
7. Topography and Vegetation: The subject site is generally flat with no significant vegetation.
8. Surrounding Land Use: Single family residential dwellings.
9. Utilities:
Water & Sewer: City of Yachats
Electricity: Central Lincoln PUD
10. Development Constraints: No development constraints are identified.

B. EVALUATION OF REQUEST

1. Applicant's Proposal: The applicant submitted the required application form and fee and the following material:
 - Narrative (attached to this staff report)
 - Proposed Site Plan
 - 3 photographs of the recreational vehicle
2. Relevant Yachats Municipal Code (YMC) Standards:
 - a. **Chapter 9.16 R-2 Residential Zone**

Section 9.16.010 Purpose.

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

Section 16.030 Conditional Uses

E. Recreational vehicle. See Chapter 9.68

b. Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks and Recreational Vehicles

Section 9.68.060 Recreational Vehicles

Recreational vehicles may be parked by an owner on his or her own land for temporary living purposes as follows:

- A. The vehicle and the use on the owner's lot must be approved as conditional use by the planning commission.
- B. A renewable yearly parking permit is obtained from the city recorder. Fees are set by the city council.
- C. The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
- D. The vehicle must be hooked up to city sewer and water.
- E. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 1. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 2. Users of the recreational vehicle must use sanitation facilities within the lot owner's home.

c. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits

- A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88 (Administration).
- B. In permitting a conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by the code, additional conditions which are considered necessary to protect the best interest of the surrounding city as a whole.
 1. Increasing the required lot size or yard dimensions;
 2. Limiting the height of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the street width;
 5. Increasing the number of required off-street parking spaces;
 6. Limiting the number, size, location and lighting of signs;
 7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
 8. Designating sites for open space;
 9. Setting a time limit for which the conditional use is approved;

10. Regulation of noise, vibration, odors and sightliness;
11. Requiring surfacing of parking areas;
12. Regulation of hours of operation and duration of use or operation;
13. Such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

Section 9.72.040 Time limit on a conditional use permit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for an additional period not to exceed six months on request.

d. Comprehensive Plan Goal G. Control of Urban Growth and Form

Policy 7. The City shall encourage improvement of the community's visual character.

3. **Public Testimony Received:** As of the writing of this staff report, the City had received one letter from the property owner who is adjacent on the east side of the subject property. The property owner expresses opposition to the conditional use permit request. In part, the neighboring property owner states "there is not need for a "temporary living purposes". If a permit is issued it should be for a specified period of time, for example, 6 to 9 months and only after plans have been approved and a building permit issued." "...there is no compelling reason for a trailer or some other temporary structure to be placed on this lot other than for use as shelter while a permanent structure is being completed."
4. **Public Agency Comment:** The Yachats Public Works Director states that prior to any development on the property, a storm drainage plan needs to be submitted to the City and approved by the Public Works Director. The applicant has had conversations with the Public Works Director who has indicated that, at minimum, storm drain culverts will be required at driveway locations.

C. STAFF ANALYSIS

1. Residential R-2 Residential Zone.

YMC Section 9.16.010 Purpose states that "this residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary."

The Residential R-2 Residential Zone allows recreational vehicles as a conditional use in accordance with Chapter 9.68 (addressed below).

The R-2 allows recreational vehicles as an outright permitted use for dwelling purposes during the construction of a permitted use for which a building permit has been issued (YMC Section 9.16.020). This provision is not relevant at this time since the applicant is not pursuing a building permit for a permitted use.

2. Taking Action on a Conditional Use Permits Application.

Per YMC Section 9.72.010(A), the Planning Commission may either permit or deny a conditional use permit application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance.

On one hand, there is justification for a temporary recreational vehicle to be occupied on the site as long as the permit for the temporary recreational vehicle is in accordance with the recreational vehicle provisions (YMC 9.68.060) and conditional use provisions (YMC 9.72).

On the other hand, there is consideration of the purpose of the R-2 Residential Zone (YMC 9.16.010), i.e. "this residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary." A determination needs to be made whether or not the proposed 'temporary recreational vehicle' is a "compatible land use determined to be desirable and/or necessary". The written testimony received in opposition to the request states the temporary structure will be unsightly. Comprehensive Plan Goal G. Control of Urban Growth and Form, Policy 7 states that the City shall encourage improvement of the community's visual character. The question is whether or not placement of a temporary recreational vehicle on a property is unsightly and/or is not detrimental to the community's visual character.

The Planning Commission should discuss whether or not this application will set a precedence that may or may not be detrimental to the community's visual character. If the Planning Commission determines the request is not unsightly and not detrimental to the community's visual character, the findings should be specific to this case. The Planning Commission may, or may not, find this request is not detrimental however similar requests in other locations may be detrimental to the community's visual character.

4. Permitting a Conditional Use Permit

If the Planning Commission finds that the request adheres to the requirements of the comprehensive plan and zoning ordinance, YMC Section 9.72.0101(B) allows the Planning Commission to impose additional conditions which are considered necessary to protect the best interest of the surrounding city as a whole. In this event, the following conditions should be considered:

- 9.68.060(B). A renewable yearly parking permit is obtained from the city recorder. Fees are set by the city council.
- 9.68.060(C). The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
- 9.68.060(D). The vehicle must be hooked up to city sewer and water.
- 9.68.060(E). A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 - 1. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 - 2. Users of the recreational vehicle must use sanitation facilities within the lot owner's home.

The Planning Commission may consider other conditions of approval, for example:

- a. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane. An alternative to this condition is to limit access to one or two locations and/or to specify where the recreational vehicle will be placed on the property.
- b. A landscape buffer shall be provided between the gravel driveway and the east, west, and north property lines. Landscaping on the entire property shall not visually impact ocean views from surrounding properties.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

1. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane. Alternatives to this configuration are to limit access to one or two locations and/or to specify where the recreational vehicle will be placed on the property.
2. A minimum 5 foot wide landscape buffer shall be provided between the gravel driveway and the east, west, and north property lines. Landscaping on the entire property shall not visually impact ocean views from surrounding properties.
3. Prior to development, a storm drainage plan shall be submitted to the City and approved by the Public Works Director.
4. A renewable yearly parking permit shall be obtained from the city recorder. Fees are set by the city council.
5. The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
6. The vehicle must be hooked up to city sewer and water.
7. The lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 - a. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 - b. Users of the recreational vehicle must use sanitation facilities within the lot owner's home (property).

Submitted by,

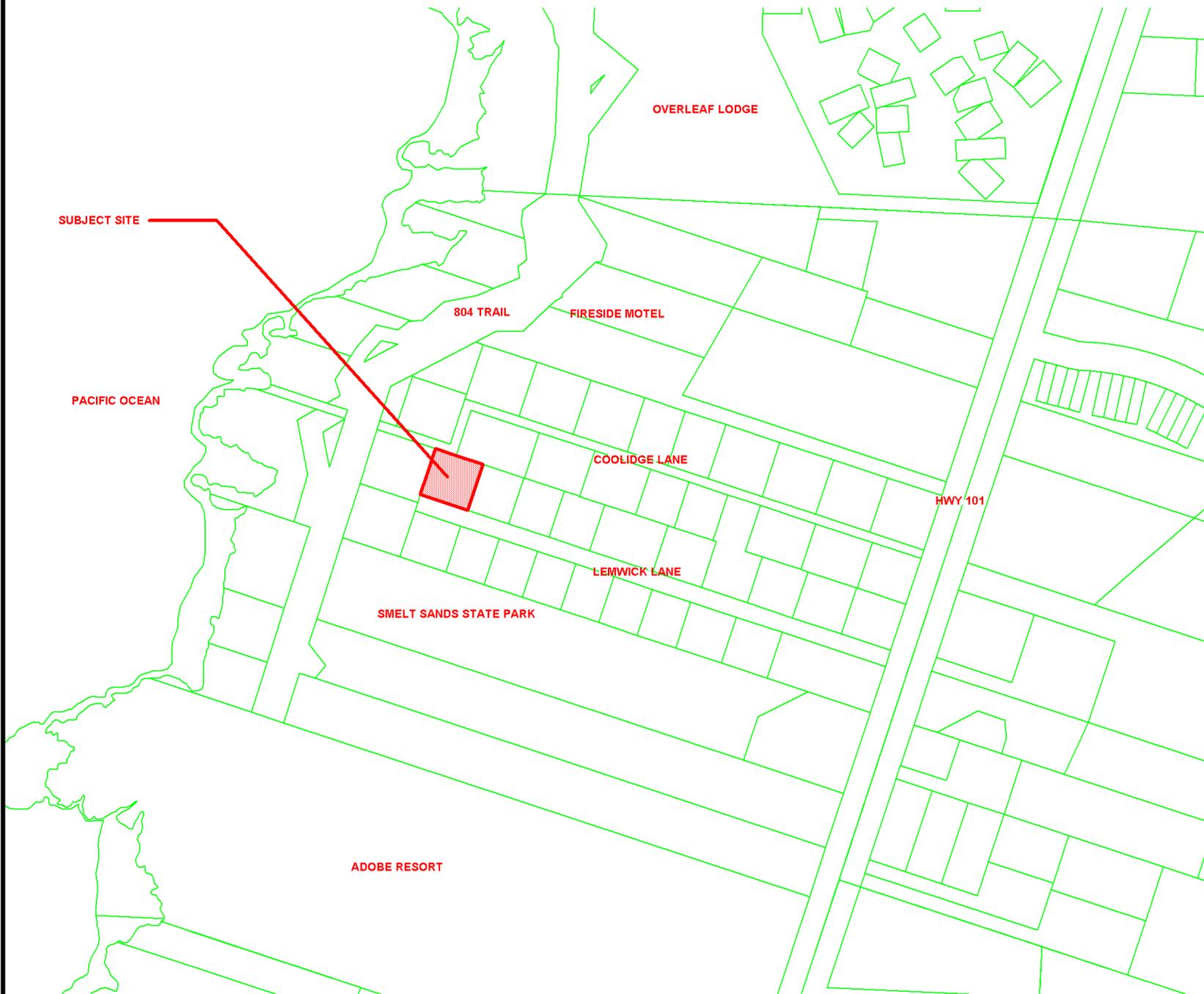
Larry Lewis
City Planner

Enclosures: Vicinity Map
Aerial Map
Applicant's Narrative, Site Plan, and Photographs
October 5, 2010 Letter from Richard E. Koonce

Lincoln County

Geographic Info System

Taxlot
Taxlot
ugb



Lincoln County government use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

1in. = 250 ft.



9/28/2010



Lincoln County

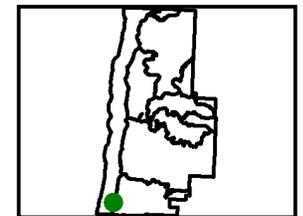
Geographic Info System

Taxlot
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1 in. = 100 ft.



10/12/2010



Richard E. & Carolyn A. Koonce

October 5, 2010

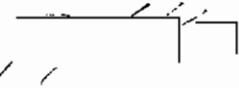
City of Yachats, OR

This letter is in reference to the conditional use permit for the site located at 615 Lemwick Lane.

It is my understanding that the applicant has no intention of building a permanent home on this lot in the immediate future. If this is the case there is no need for a "temporary living purposes". If a permit is issued it should be for a specified period of time, for example, 6 to 9 months and only after plans have been approved and a building permit issued.

This would be a second home for the applicant and, as a result, there is no compelling reason for a trailer or some other temporary structure to be placed on this lot other than for use as shelter while a permanent structure is being completed.

We own the property at 551 Lemwick Lane and will be directly affected by an unsightly temporary structure placed on this lot. Thank you for your consideration.



Richard E. Koonce

OCT 6 2010

October 15, 2010

To: Nancy Batchelder City Recorder, Larry Lewis Planner and the members of the Yachats Planning Board

From: Ron Spisso, Carol McWilliams Owners of home at 610 Lemwick Lane

Date: Oct 15, 2010

Subject: Comments about Steven and Crystal Buel-McIntire request for Conditional Use Permit at 615 Lemwick Lane, Yachats, Oregon.

Thank you for having comprehensive information on the city planning site.

After review of the documents, these are our concerns:

1. We have objections to siting a recreational vehicle on the property because it appears that the owners do not have a building permit and have not indicated that they are planning on obtaining a permit. If and when a building permit is issued we would not object to a temporary RV to aid in building.

2. We object to allowing an RV on the site year after year. If approved the permit would be create a de facto RV park which we feel is incompatible with our neighborhood.

3. We purchased this lot because of the views and because it was surrounded by custom residential homes. We feel that allowing yearly use of our neighbors property for a recreational vehicle

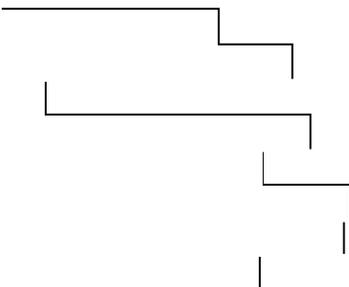
will in fact change the permitted use of the property and will have an detrimental effect on value of our property and our ability to sell it at some future date.

4. If I am not mistaken the planning board in recent years has placed a restriction on our property. Although we are zoned for two family use the required lot size has been increased in our area. This indicates to us that the planning board wants to preserve the custom single family use in the area and sets a precedent along those lines.

5. Please deny the conditional use permit.

Sincerely,

Carol McWilliams and Ron Spisso

The image shows several horizontal lines of varying lengths and positions, which appear to be handwritten signatures or initials. There are three main lines, with some shorter lines extending from the ends of the longer ones, suggesting multiple names or a stylized signature.

I WOULD LIKE TO "rv" ON MY LEMWICK LN.TAX LOT 808 A FEW DAYS EACH YEAR,
AND IF THIS APPLICATION IS FOR THEM TO DO THAT, I SUPPORT IT; & IF IT
IS APPROVED, AND THE FEES ARENOT TOO MUCH I WILL APPLY , TOO;

SINCERELY
RON SANDERS

October 14, 2010

Larry Lewis,

Please be advised that we have no objection to the Buel-McIntire's placing a recreational vehicle on the property as long as they have a building permit showing when they will start building a home on the site at 615 Lenwick Lane. We don't mind a recreational vehicle temporarily while building, but not permanently.

Should you need to contact us, you may do so at the following address:

John or Debbie Schram

.....

Debbie and John Schram

October 15, 2010

Larry Lewis
City Planner
City of Yachats
441 HWY 101 N
Yachats, OR 97498

I have received the notice for a conditional use permit for property located at 615 Lemwick. This property is located to the south of my home located at 667 Coolidge Lane.

I am opposed to the conditional use permit for the following reasons:

1. The homes surrounding the Lemwick lot are quality, high-end homes. The granting of the permit would negatively impact property values of these homes.
2. The parking of a recreational vehicle does not improve the community's visual character. The lot is highly visible from the 804 Trail that is well used by tourists and locals alike. Three prominent motels are located on this area of the 804 Trail. The parking of an RV while building this home would have a negative impact on the visual character of this area.
3. Surrounding homes on this lot have been built in the last ten years without the need of an RV being parked while doing so. To allow one now would be incompatible with the neighborhood and unfair to the local residents.

Sherri Bade-

/

OCT 18 2010

October 15, 2010

Larry Lewis
City Planner
City of Yachats
441 HWY 101 N
Yachats, OR 97498

I have received the notice for a conditional use permit for property located at 615 Lemwick. This property is located immediately to the south of my home located at 590 Coolidge Lane.

I am opposed to the conditional use permit for the following reasons:

1. The homes surrounding the Lemwick lot are quality, high-end homes. The granting of the permit would negatively impact property values of these homes.
2. The parking of a recreational vehicle does not improve the community's visual character. The lot is highly visible from the 804 Trail that is well used by tourists and locals alike. Three prominent motels are located on this area of the 804 Trail. The parking of an RV while building this home would have a negative impact on the visual character of this area.
3. Surrounding homes on this lot have been built in the last ten years without the need of an RV being parked while doing so. To allow one now would be incompatible with the neighborhood and unfair to the local residents.

Clara Warner
Coolidge Lane

OCT 18 2010

October 17, 2010

Dear Nancy and/or City Planning Office,

We recently became aware of a request for a conditional use permit to allow recreational vehicles to park on an empty lot at 615 Lemwick Lane (described on the assessor's map as 14-12-22DD, Tax Lot 1100) owned by Steven and Crystal Buel-McIntire.

Due to work schedules, we are not able to attend the public hearing on this topic on October 19, but would like to voice opposition to the request. While the property is not directly adjacent to ours, it is in our immediate neighborhood and visible from our property. We believe we also represent the views of several of our neighbors whose work and family obligations also prevent them from being present at the hearing.

This is a stable area of attractive homes, most of which are occupied by permanent residents. We can see no valid reason for transient residents and visitors to park one or more recreational vehicles in this environment of established family residences – particularly when there are a number of dedicated camping and RV spaces in the Yachats vicinity already available for temporary visits. This area is clearly not an appropriate setting for what would seem to be a small private RV park.

We are aware that, on occasion, people place RVs temporarily on their property in order to be onsite while they are constructing a permanent residence on that property. If that is the case with these applicants then we believe the RV permit should only be issued once building plans have been submitted and a building permit issued – or there is other legal evidence that a permanent residential structure will be completed within a short period of time.

Thank you for the opportunity to comment.

With best regards,

Jan and Curtis Brown

Yachats, OR 97498

October 12, 2010

Larry Lewis
City Planner
City of Yachats
441 HWY 101 N
Yachats, OR 97498

Dear Mr. Lewis,

I received the Notice of Public Hearing for a request of a conditional use permit for property located at 615 Lemwick Lane. This property is located immediately to the south of my house located on 679 Coolidge Lane.

I am opposed to the granting of a conditional use permit for several reasons.

1. As stated in Yachats Municipal Code (YMC) Standards:

**a. Chapter 9.16 R-2 Residential Zone
Section 9.16.010 Purpose.**

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

The homes surrounding the Lemwick lot are quality, high-end homes. The granting of the permit would seriously detract from the views and negatively impact property values of the surrounding homes.

I am a supporter of the view shed preservation program for our nearby mountains, "View the Future". Allowing a recreational vehicle to park on the lot for temporary housing would negatively affect the "view shed" of the surrounding neighborhood.

The lot is visible not only by the residents but also by the local lodges and the walkers on the 804 Trail. Yachats is dependent on its tourism and the lot is located near 3 prominent lodges. The 804 Trail is a well-used walking trail enjoyed by tourists and residents alike. The RV will negatively impact the experience of local residents and the tourists.

2. **Comprehensive Plan Goal G. Control of Urban Growth and Form**

Policy 7. The City shall encourage improvement of the community's visual character.

The parking of a recreational vehicle does not improve the community's visual character, in fact it would do just the opposite. *Not only would the vehicle detract from the community's visual character, but once the recreational vehicle leaves the property, the unsightly RV footprint on the landscape would remain.* If the vehicle is allowed for no greater than 120 days per year at 90 day intervals, then the remaining 245, the residents and tourists would see the remains of the vehicle parking, such as soil degradation, destroyed landscaping, possible vehicle residue such as oil stains, etc. Either way, it would be unsightly.

- 3. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane. An alternative to this condition is to limit access to one or two locations and/or to specify where the recreational vehicle will be placed on the property.**

This is a major issue. If there needs to be access from both Lemwick and Coolidge, then this would be virtually impossible from Coolidge. In order to access the Lemwick lot from Coolidge Lane, the recreational vehicle would need to maneuver a sharp, narrow, 90 degree turn directly in front of my house. The turn would be virtually impossible without driving onto private property and destroying the landscaping along the road. Having maneuvered my car many times around this turn, I can attest to the fact that it is a difficult sharp turn for a passenger vehicle, let alone a recreational vehicle. Also, Coolidge Lane is not paved, so any attempt for the recreational vehicle to drive on Coolidge would further degrade the road. So access from Coolidge Lane is unacceptable.

In an area of high-end, quality homes, the permit approval would basically allow the owner to convert their property to a private RV park. We bought our lots and built our homes in a residential neighborhood of nice homes with lovely views. Since the lot is so visible to the local residents, tourists, and nearby lodges, to allow a private RV park would be incompatible with the neighborhood feel and blatantly unfair to the local residents and set an undesirable precedent for other areas in the city. If Yachats is the Gem of the Central Oregon Coast, it begins with its wonderful views. An RV parked two lots away from the water along a visible walking path is absolutely unacceptable. Please deny the conditional use permit.

Sincerely,

✓
Linda Fava
679 Coolidge Lane
Yachats, OR 97498

Received at
Public Hearing
by applicant
10-19-10

Public Comments on Staff report by Steven Buel-McIntire

B. EVALUATION OF REQUEST

2. Relevant Yachats Municipal Code (YMC) Standards:

a. Chapter 9.16 R-2 Residential Zone.

Section 9.16.010 Purpose.

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

Section 9.16.010 should be balanced with the overall purpose of Zoning, Section 9, which is found in Section 9.04.020. The purpose of this title (the entire set of Zoning ordinances) is to promote the public health, safety and general welfare and to assist in carrying out comprehensive plans for the city including all future lands and subdivisions annexed into the incorporated city.

It seems reasonable to say that occasionally parking an RV on our property is not a public health, safety or general welfare issue. RV use by land owner is consistent with single-family temporary residential purposes as well as "other compatible land uses". Our parking our RV on our land is certainly not for commercial purposes and is consistent with a single family residential use. Our RV is a temporary living unit, which would be parked on our residential lot and for single family residential purposes.

It seems to me that if the City didn't think the occasional parking of an RV by the owner on his/her own property was permissible, then it would not have passed YMC 9.68.060, which specifically allows for such use.

b. Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks and Recreational Vehicles

Section 9.68.060 Recreational Vehicles

It's important to note here, the City has defined limitations on RV use and it has controls to address abuse by a lot owner, e.g., the stay must temporary and the permit is annual, which translates into sufficient controls to prevent one from putting a dumpy trailer on the property and stay for months on end. Also, it's important to note that exceeding the scope of the permitted use is considered a zoning violation under 9.72.010(B)(14).

c. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits

A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. **The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88 (Administration).**

Important to note the Planning's Commission's action must be based on both comprehensive plan AND zoning ordinance, and not limited to whether the visual character as will be discussed in more detail below.

d. Comprehensive Plan Goal G. Control of Urban Growth and Form

Policy 7. The City shall encourage improvement of the community's visual character.

While Policy 7 does speak of the community's visual character, Goal G and the proposed actions there under speak of development, e.g., new structures, and Policy 7 as it relates to visual character should be considered under the overall purpose of development which is not the same as occasionally parking our RV on our property, a permitted, conditional use. The preamble to the policies of Goal G state, "The City shall ensure that growth and development within the City's urban growth boundary will be orderly and efficient, and consistent with adopted land use plans." Let me also read the proposed actions under Goal G. I would say however, that improving our lot is improving the visual character, although I should note that Lemwick is a private road and it is unlikely the general public would see the improvements or travel trailer as it is tucked behind a duplex and in between other homes. The public would generally access the public park to the South and then the 804 trail.

3. Public Testimony Received:

It appears this homeowner may be confused with the ability to live in a manufactured home or RV while building pursuant to YMC 9.16.020(B), which is different from our conditional use application under 9.68.060, which is permitted by the Code. The neighbor's statements appear a bit conclusory and lacks substance other than his/her own personal interest. Granted, there is no need to park the RV, but need is not a requirement under the Code and need is not the basis of our request. Rather, R2 zoning allows for RV parking for temporary living purposes and our request is to park our RV is for that narrow purpose, which is permissible by the Code. The homeowner does not seem to articulate any other compelling reason for prohibiting access to the property other than his/her desired outcome. I believe that occasionally parking our RV on our property so that we may enjoy some minimal pleasure from our very

substantial financial investment while we look forward to building our vacation home in the future is not only sufficiently compelling, but is authorized and appropriate under the City's very own Code.

In fact, I cannot find anything within the Code that requires us to present some compelling reason other than a desire and willingness to pay the annual license and comply with all applicable ordinances and the terms of the conditional use, e.g., no more than 120 days per year. While I do not think the neighbor's personal interest should outweigh our property interest, I will say that we do not intend to live on the property as a permanent residence; rather, occasional visits. We also do not intend to leave our trailer on the property at the conclusion of our visits. What's interesting here is that outright permitted uses under 9.16.020 include manufactured homes, out buildings, green houses, etc., which one might argue is more long lasting from a visual perspective and more unattractive than an occasional use of an RV.

Pursuant to 9.04.020, the overall purpose of the zoning and land use regulation is to promote the public health, safety and general welfare and to assist in carrying out comprehensive plans for the city including all future lands and subdivisions annexed into the incorporated city. An occasional use of our property would not seem to rise to the level of a health and or safety concern. Finally, if the City did not believe conditional use as we intend was reasonable, then it would not have passed the ordinance allowing such use.

4. Public Agency Comment:

We have submitted a culvert application; and, attached to our application is a site map that includes placing the required culverts.

C. STAFF ANALYSIS

1. Residential R-2 Residential Zone.

YMC Section 9.16.010 Purpose states that "this residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary."

Occasionally parking our RV on our property is consistent with an R2 residential use. As stated earlier, YMC 9.16.010 should be balanced with and should not usurp YMC 9.04.020, which states the overall purpose of the zoning and land use regulations are to promote the public health, safety and general welfare and to assist in carrying out comprehensive plans for the city including all future lands and subdivisions annexed into the incorporated city. An occasional use of our property would not seem to rise to the level a health and or safety concern.

In passing YMC 9.68.060, the City Council must have decided that single-family and other uses for R-2 zoned property includes the conditional use relating to an RV or the Council would not have passed the ordinance so allowing.

In addition, it is important to note the RV use is controlled and limited by the annual licensing requirements as well as limitations on the number of days. Accordingly, if the Council or someone within the city opined the use permit was in some way being abused by us, it can be controlled.

Factually, both Crystal and I are full time working adults. It is a near factual impossibility for us to use the property 120 days per year, which should alleviate or otherwise allay the neighbor's concerns.

Crystal and I fully intend to develop the property by building a very modern home. Under the Code, we could place a manufactured home on the property as it is an outright permitted use; however, we desire to build a very modern and contemporary home on our property and we are not willing to settle for something less. I am sure all can appreciate the economic uncertainty that presently exist within our state. My wife and I do not intend to be one of the many people that over extend themselves to disastrous consequences. We believe timing is important and we should let economics dictate when it's appropriate to build. In the mean time, we think it's a completely reasonable expectation to use our property on an occasional basis, considering the economic investment we've made in the purchase and the property taxes we pay. We also think, while others may have a rightful opinion as to how we should use our property, such opinions should not be controlling as he or she has no economic risks at stake. In other words, if he or she is willing to shoulder the financial burden of the purchase, then he or she would have more room for a persuasive argument. Simply, not wanting to see us occasionally use our property, without more, should not rise to the level of a compelling argument.

Finally, as acknowledged in the Staff report, the Residential R-2 Residential Zone allows recreational vehicles as a conditional use in accordance with Chapter 9.68

2. Taking Action on a Conditional Use Permits Application.

Yes, I agree there is justification as YMC 9.016.030 and 9.68.060 specifically allows such use. As stated above, YMC 9.16.010 must be balanced by the overall purpose of Zoning as described in 9.04.020 regarding public health, safety and general welfare. There can be no argument that our RV does not present a public health, safety or welfare issue and does not represent some sort of nuisance as defined in Title 5 of the YMC. It seems reasonable the City balanced the homeowner's ability to use his/her property when it passed 9.68.060 allowing temporary RV use with community's visual character desires under 9.16.010 and goal G of the Comprehensive plan. To do otherwise would be to render 9.68.060 rather meaningless as no one could temporarily park and RV on his/her lot, something the City must not have intended when the ordinance was passed. As support for this proposition, one only need look at YMC 9.68.060 and consider the annual licensing and the limitations on the number of days the RV can be parked on the owner's property. The approving body of the ordinance must have decided the duration limitation was a reasonable balance against the desire to maintain the community's visual character. Moreover, the City must have decided RVs are allowable as evidenced by an RV park located at 95480 Highway 101 S., in Yachats. Further,

our RV is a 2006 model and is in excellent condition as evidenced by the pictures submitted into evidence. I would argue the testimony by the neighbor to the east that our RV would be unsightly has no real basis in fact. In fact, according to "Report Buyer", the total domestic demand for the RV industry in 2009 was \$7.2 billion. If RVs are unsightly, but sales were \$7.2 billion last year, then there are a lot of people purchasing ugly RVs every year. Or, maybe, a lot of people disagree with the belief that RVs are unsightly.

Finally, a manufactured home is an outright permitted use. One could argue that a permanent manufactured home that is in constant view versus the occasional use would be more unsightly over the long-term than our intended use until we build a permanent residence.

The staff's reporting limiting the Commission's consideration to visual character and discussion of precedence is a bit too narrow. Pursuant to Section 9.72.010, authorization to grant or deny conditional use permits must be in accordance with the standards and procedures set forth in this chapter. The planning commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance as addressed in Chapter 9.88. That would mean, the planning commission's decision is not limited to deciding whether the RV is unsightly or detrimental to the community's visual character; rather 9.72.010 instructs the commission to consider both the comprehensive plan and the ZONING Ordinance, which specifically allows for the requested use. In addition, as discussed above, Goal "G" has more of a focus on development as it relates to the visual character which is not exactly the same as occasionally parking our RV on our property, a permitted, conditional use as is consistent with the preamble and the proposed actions of Goal "G".

If the Planning Commission is going to balance between visual character and permissible use even though the permissible use does not represent development as appears to be contemplated by Goal G, then the Commission should only allow a truly unsightly RV, e.g., some obnoxious color (bright orange for example) or broken down old converted school bus, to tip the scales of balance in favor of denying the conditional use application, which is not the case here. As the pictures submitted into evidence indicate, our RV is pretty new, has smooth sides and is in excellent condition.

And, while precedence can be helpful in guiding subsequent decisions, it may not be controlling as the decision should be based on the totality of the circumstances and the facts of the particular case.

4. Permitting a Conditional Use Permit

The Planning Commission may consider other conditions of approval, for example:

- a. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane.

I did not submit a plan for access from Coolidge Ln, but would I would be willing to consider such access from Coolidge Ln as it may reduce the need for two access points on Lemwick while reducing the amount of gravel coverage too.

D. CONCLUSIONS

1. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane.

I would like three weeks to explore the possibility of access from Coolidge through to Lemwick and be allowed to revise the site plan to reduce the amount of gravel needed as well as the circular drive.

2. A minimum 5 foot wide landscape buffer shall be provided between the gravel driveway and the east, west, and north property lines.

I think the 5 feet buffer is sort of unnecessary, especially considering there are no such buffers on the surrounding properties. A 5 foot buffer would consume several square feet of our property. I would respectively request that if such condition is required that the Commission establish the buffer as some minimum, e.g., no less than two feet except where ingress and egress is located.

6. The vehicle must be hooked up to city sewer and water.

This requirement seems really unnecessary considering the occasional use and the RV is fully self contained there are prohibitions against illegal dumping and paying for services and ongoing minimum monthly fees for services that are unneeded seems a bit unreasonable.

7. The lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:

- b. Users of the recreational vehicle must use sanitation facilities within the lot owner's home (property).

This condition is kind of not applicable if the RV is self-contained. Also, the 9.068.060 references home, but there is no home, so this section does not really seem to apply.

Crystal and I request you approve our conditional use permit as is contemplated and allowed by YMC 9.016.030 and 9.68.060. Crystal and I do not intend to abuse the privilege.

Thank you for your consideration.

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CITY OF YACHATS
PLANNING COMMISSION
October 19, 2010

Minutes

The October regular meeting of the Yachats Planning Commission was called to order by Chair Katherine Guenther at 3:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Guenther, Christine Orchard, Nan Scott, Ken Aebi, Lawrence Musial, Edward Meyrowitz and Phyllis Castenholz. Also present, City Planner Larry Lewis. Audience – 8.

I. Announcements and Correspondence – Rich and Julie Scott: Request for City to evaluate height restrictions of ocean front homes.

Guenther said that the Planning Commission spent most of last year on the issue of determining building height. Lewis agreed to respond to this letter.

In the letter the Scotts asked if the setbacks are determined by the amount required for the ground level while allowing each story to be wider and thus extend into the setback. Commissioners confirmed that was not the case, and in fact the setbacks are determined by the height of all stories.

II. Minutes

- **Work Session – September 21, 2010**
- **Regular Meeting – September 21, 2010**

Motion to adopt the minutes of the September 21, 2010 work session and regular meeting, Aye – 7, No – 0.

III. Citizen's Concerns

Ron Spisso said that he was the owner of home located at 610 Lemwick Lane that was mentioned as an example in the above referenced letter from the Scotts. He stated that the plans for his home were drafted by a professional and approved by the City.

Guenther explained that the Code has been changed since his home was built, and that change is more restrictive now.

IV. Public Hearing

A. Case File #1-CU-PC-10 Buel-McIntire Conditional Use Permit Application

Guenther opened the public hearing and stated that the purpose of the hearing was to consider the application made by Crystal and Steven Buel-McIntire for a conditional use permit.

Guenther asked if anyone wished to object to the jurisdiction of the Commission to hear this matter.

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There were none.

Guenther asked if any Commissioner wished to make any disclosure, or abstain from participating or voting on this application because: of possible financial gain resulting from this application; because they owned property within the area entitled to receive notice of this hearing; because they had a direct private interest in the proposal; or because they had determined that they could not be impartial.

There were none.

Guenther asked if any Commissioner needed to declare any contact, written, oral or otherwise, prior to the hearing, with the applicant, appellant, any other party involved in this hearing, or any other source of information (outside of staff) regarding the subject of this hearing; and if so, to please state with whom they had the contact and what was said.

There were none.

Guenther asked the staff to give a description of the land use application.

Lewis summarized his staff report in which he described the land use application and the applicable Code sections.

Lewis explained that the City has received eight letters – seven are opposed to the conditional use.

Lewis also said there are recommended conditions in the staff report that the Planning Commission may wish to apply to this application if they approve the conditional use permit.

Guenther opened the public testimony portion of the public hearing and asked anyone addressing the Planning Commission to come forward, use the microphone, and begin by giving their full name and address. Guenther asked that each speaker try to keep their comments to three minutes. Guenther also said that the Commission would appreciate it if evidence already given by someone else not be repeated; concurring with the speaker is sufficient.

Guenther asked the applicant to explain the application.

Steven Buel-McIntire submitted copies of written testimony that he wished to enter into the record.

Buel-McIntire said that the Planning Commission must look at the Comprehensive Code as well as the Yachats Municipal Code when considering this application.

Buel-McIntire said that occasionally parking an RV on his property is consistent with the R-2 zone, and that the City would not have adopted that section of the Code that allows for such use if they did not intend for conditional uses to be approved.

1
2 Buel-McIntire said that references to Goal G and Policy 7 of the Comprehensive Plan which
3 state that the City shall encourage improvement of the community's visual character relates to
4 development and control of that growth. It does not seem to relate to occasionally parking ones
5 RV on their property, and, the use of an RV is controlled by the conditions listed in the
6 Ordinance and the permit process.

7
8 Buel-McIntire said that they do plan to build a home some day, but with the economy as it is
9 today, it seems reasonable to allow him and his wife to be able to park their RV there
10 occasionally so that they are able to enjoy the property in which they have made such an
11 investment.

12
13 Buel-McIntire said that his RV is a new one, and it is not unattractive. There are many outright
14 uses that are allowed in an R-2 zone that could be much more unattractive. If the Planning
15 Commission is going to balance between visual character and permissible use then the
16 Commission should only deny the conditional use for a truly unsightly RV.

17
18 Buel-McIntire said that in the staff report reference is made to a gravel drive with access location
19 on Lemwick Lane and one access location on Coolidge Lane. The plan as submitted does not
20 have access from Coolidge Lane, but he would be willing to consider that since it would mean
21 there would be no need for the second access point on Lemwick.

22
23 Proponents were asked to present evidence and testimony. Guenther said that the audience may
24 have noticed that the applicant had not been kept to three minutes because the time limit does not
25 apply to the applicant, but asked that speakers try to limit their comments to three minutes.

26
27 There were none.

28
29 Opponents were asked to present evidence and testimony.

30
31 Quentin Smith said that he is also representing his wife Kathleen Smith, and property owners
32 Karla Chambers and Craig Reynolds.

33
34 Smith said that years ago when his mother-in-law Nancy Reynolds was on the Planning
35 Commission there were discussions about how this City should develop. They discussed, at
36 length the question of whether the City should allow the use of RV as living quarters. At that
37 time, the Planning Commission decided that the City of Yachats should set a higher standard.
38 The City is better for that decision. There are no other RVs being used as residences at this time -
39 this would be a first.

40
41 Brad Webb said that while he understands that the Buel-McIntires have invested in their property
42 he is requesting that the Planning Commission deny this application. Yachats has set a higher
43 standard than most other cities. There are other ways to enjoy this community on a temporary
44 basis by staying in transient rentals or hotels.

1 Webb said that if the Planning Commission allows this conditional use it is setting a precedence
2 that would open it up for every other empty lot in town to be occupied by trailers, campers or
3 buses.

4
5 Webb said that the occupants of those temporary structures would enjoy all of the benefits of the
6 City and the County while contributing little to the cost of those benefits. The infrastructure of
7 the City is based on the premise that the lots within the urban growth boundary will support the
8 capital improvements and reserves for future improvements. The temporary structures will not
9 provide the same level of support as permanent structures.

10
11 Maggie Marshall said that the only letter that the City received who is favor of this application is
12 a property owner who also wants to do the same, and Lemwick does not need to be turned into a
13 trailer park.

14
15 Marshall said that Lemwick is a very narrow lot and from the pictures it looks like a big trailer,
16 so there seems there would be a problem with getting the trailer onto the lot in the first place.

17
18 Marshall said that the area is zoned R-2 and approval of this would take away the desirable part
19 of the purpose of the zone, and it would be detrimental to have that RV there. This lot is visible
20 from the 804 Trail and it could be detrimental for the City if this trailer were visible to tourists
21 and other walking on the trail.

22
23 Ron Spisso asked if the recent increase to the required lot size for two dwellings in an R-2 was
24 relevant to this application.

25
26 Guenther explained that the City actually reduced the required lot size for two dwellings in an R-
27 2 and said that she did not see how that is relevant to the current discussion.

28
29 Spisso asked if he could have two units on his lot. Lewis said that if his lot is 7,500 sq feet he
30 could, but that by looking on the map it would appear that his lot is not large enough.

31
32 When Guenther explained that this was not relevant to the current discussion, Spisso said that he
33 is asking because he would like to know if it was the City's intent to have single family homes in
34 that area.

35

1 Applicant was asked to respond to opponents

2

3 Buel-McIntire said that he would like to answer several points that were brought up in the
4 testimony.

- 5 • There are few empty lots on Lemwick so it could not look like a trailer park.
- 6 • There is duplex between his lot and the 804 Trail so it is not really visible from the trail.
7 Lemwick is a private street so there would not be a lot of public driving on that street.
- 8 • There would be no problem with moving his trailer up and down that street.

9

10 Buel-McIntire said that the Code does not require him to prove any compelling reason for this
11 request other than the desire and willingness to pay the annual license and comply with all
12 applicable ordinance standards and the terms of the condition use. The Code provides for limited
13 use in that there are a maximum number of days allowed with a permit. They do not intend to
14 leave the trailer on the property, and would be there for only a few weekends a year.

15

16 There was no further testimony and Guenther closed the public testimony portion of the hearing
17 and the Planning Commission began their deliberations.

18

19 Meyrowitz asked if it is possible to have access to Coolidge Lane.

20

21 Lewis said that the property does abut Coolidge, but the question would be if there is sufficient
22 turning radius to pull a trailer off the lot and onto the street at that point. Meyrowitz said that he
23 was actually asking if it is permissible to have access to two streets.

24

25 Guenther said that it would be best for the Planning Commission to decide first if the application
26 meets the criteria of the Comprehensive Plan and the Municipal Code before discussing the
27 specific details of the proposal.

28

29 Meyrowitz said that it appears the proposed use is allowed in the Code, with conditions.

30

31 Aebi asked if Lemwick is just a long driveway. Lewis explained that it is a private tax lot.

32

33 Quentin Smith explained that the Reynolds family pays the property taxes on that tax lot.

34

35 Meyrowitz said that in his testimony the applicant seems to be at odds with the very Zoning
36 Code that would permit this use and the requirements., because he does not seem to want to
37 comply with the conditions listed in that Code for such things as the connection to the City water
38 and sewer or the landscape buffer. It would appear that the requirements are to establish a
39 minimum of improvements necessary to occupy the lot.

40

41 Meyrowitz said that he did have to point out however, if there were a house on that lot he would
42 be able to park his RV in the driveway since that is not prohibited.

43

44 Musial said that Webb was right in that an RV that is not connected to the water and sewer does
45 not support the City's water and sewer or property taxes in the same way as a permanent

1 structure would. Musial said that he is not sure what the City portion of the property taxes
2 would amount to.

3
4 Guenther said that the property is in the Urban Renewal District and so if developed would
5 contribute significantly to the URD.

6
7 Musial said that the applicant has made a very good presentation, but the opponents have also
8 made some very compelling and thoughtful comments.

9
10 Scott said that she does not believe the application agrees with the spirit of the Comprehensive
11 Plan or the R-2 Zone, nor does it conform with the purpose of the R-2 Zone. A permanent family
12 dwelling would be what she would look for in that Zone.

13
14 Orchard and Castenholz both agreed that it did not meet the purpose of the zone.

15
16 Orchard said that this would open the City up to this type of use everywhere in the City. The
17 Planning Commission would not be able to say yes to this application then say no to another.

18
19 Castenholz said that she believes that this use would cause a negative visual impact – it can be
20 seen from the 804 Trail. She also stated that she thought it would mean wear and tear on the
21 street.

22
23 Aebi said that he thinks what the applicant is asking for is reasonable, but it would be more
24 acceptable if he were willing to comply with the other conditions in the Code.

25
26 Buel-McIntire said that he has not asked for a variance from the Code. Although it does not seem
27 reasonable to require a self-contained vehicle to connect to the water and sewer he has not asked
28 for a variance from that requirement. Buel-McIntire further stated that the Code does specifically
29 list parking a RV as a conditional use permissible in that zone.

30
31 Musial said that he is also concerned about the applicant's reluctance to comply with the buffer
32 requirement.

33
34 Scott, Musial, Orchard and Castenholz all stated that they do not believe it fits within the R-2
35 Zone. Aebi said that it does not meet, but that it could. Meyrowitz said that he believes it does.

36
37 Guenther said that she believes it does not meet the Code or the Comprehensive Plan. Nor, does
38 it meet the goals of the Urban Renewal District.

39
40 Motion to deny the request for a conditional use permit based on the fact that it does not meet the
41 R-2 zone standards or the Goals of the Comprehensive Plan, Aye – 6, No – 1 (Meyrowitz).

42
43 **V. Planner's Report** – Larry Lewis – attached in writing.

44
45 **VI. New Business** – None.

1 **VII. Other Business**

2 **A. From the Commission**

3

4 The Commission discussed the scheduling of the November meeting. It was agreed that
5 it would be necessary to have a longer work session in November and that if there are no
6 land use applications the regular meeting could be cancelled. The Commission also
7 agreed that if it is necessary to have a regular meeting the work session could continue
8 after.

9

10 **B. From Staff - None.**

11

12 The meeting was adjourned at 4:25 p.m.

13

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16 _____
Katherine Guenther, Chair

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20 _____
Nancy Batchelder, City Recorder

21

Steve & Crystal Buel-McIntire
PO Box

SENT OVERNIGHT VIA UPS
CONCURRENTLY by First Class Mail

Planning Commission
City of Yachats
PO Box 345
Yachats OR 97498

Re: Supplemental Argument concerning Conditional Use Permit
Application for 615 Lemwick Ln

Original Hearing Date: October 19, 2010

Crystal and I would like to supplement the written and oral comments I submitted as part of the record with the following and I respectfully ask the Commission to review the submitted materials in detail.

PROCEDURAL DEFICIENCIES

ORS 227.175(5) provides that when hearings are required or authorized, they are subject to ORS 197.763. ORS 197.763(6)(e) states, "[u]nless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence." The Planning Commission did not apprise me of this right and I did not waive this right. Considering I did not waive this right, I do not believe the Planning Commission should have voted to deny our request before the expiration of seven days after closing the record. In any event, I am hopeful the Commission will find the supplemental argument persuasive enough to reverse its decision.

Before getting into specific comments and argument, I would like to point out additional procedural deficiencies experienced during this process:

(1) ORS 227.175(5) provides that, "[h]earings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763." There are several issues regarding notice:

OCT 27 2010

- a. Pursuant to ORS 197.763(2)(a)(A), notice shall be provided to the applicant and the properties owners within *100 feet* of the subject property if the property is wholly or partially within the urban growth boundary. The subject property is clearly within the urban growth boundary as evidenced by the Oregon Transportation map attached hereto and incorporated herein as Exhibit "1". However, the City of Yachats provided notice to all neighbors within 250 feet of the subject property, which is well beyond the 100 feet requirement;
- b. The notice failed to provide us with the opportunity to request the notice be sent to the Department of Land Conservation and Development pursuant to ORS 197.763(2)(c), which I would have done;
- c. The notice failed to list the applicable criteria from the comprehensive plan that applies to the application at issue pursuant to ORS 197.763(3)(b); and,
- d. The notice failed to include a general explanation of the procedure for conduct of hearings pursuant to ORS 197.763(3)(j);

(2) As required by ORS 197.763(5), the Chair of the Planning Commission failed to provide or inadequately failed to provide at the commencement of the hearing a statement to those in attendance that:

- a. Lists the applicable substantive criteria;
- b. States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and,
- c. States that 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 board based on that issue.

(3) Just prior to the commencement of my testimony, the Chair incorrectly advised the audience that comments should be limited to three minutes. I had to revise my presentation, to my detriment, to shorten my arguments in an effort to comply with the three minute requirement.

SUPPLEMENTAL ARGUMENT

Comprehensive Plans must be adopted by appropriate governing bodies. ORS 197.010(1)(a). Comprehensive Plans are expressions of public policy and are the basis for more specific rules and land use regulations which *implement* the policies expressed through the Comprehensive Plan. ORS 197.010(1)(b) and (c) (*emphasis supplied*). In other words, zoning and land use regulations must necessarily reflect the goals and policies of the Comprehensive Plan.

Consistent with statutory requirements, Yachats' Comprehensive Plan ("YCP") serves as a guide to land use and it establishes policies and land use designations which shall be implemented throughout Yachats' zoning and land use ordinances. *See* page 3 of the YCP. "[YCP] provides the basis for other plans, ordinances and other implementing documents that set forth more detailed direction regarding specific activities and requirements. All City plans and implementing ordinances must be consistent with the Comprehensive Plan." *See page 4 of YCP*. Finally, "[t]he City must follow relevant policies when developing other plans, zoning, and development standards. *See page 5 of YCP (emphasis supplied)*."

When Commissions of Yachats are interpreting ordinances and conducting hearings under the Yachats Municipal Code ("YMC"), it is important for them to consider other sections of the Code too. Specifically, YMC 1.04.070 provides the guiding principle that the provisions of the ordinances (all of them, including zoning) "and all proceedings under them, are to be construed with a view to effect their objects and to promote justice." (*emphasis supplied*). The word justice is important here. When one considers the word "justice", one must consider such terms as "fairness", "equality" and "evenhandedness". Thus, when considering our conditional use request, the Commission must look to promote justice. It should be said that when the City passed YMC 9.68.060, it must have considered this principle of justice and struck a balance between the requirements of the YCP, competing neighbor interests and the lot owner's ability to use his or her property with the limitations and conditions imposed within that ordinance. Moreover, consistent with YMC 1.04.070, the goal of Yachats' Administrative Policy No. 18 is to ensure the timely and *fair* action on all matters before the Commission. If the Commission insists on denying our request that strikes a very reasonable balance between competing interests, then it has failed in the directives to seek justice and to be fair under the circumstances. Specifically, our RV is new and in excellent condition, which is visually more pleasing than several dilapidated homes around Yachats that was most likely the impetus for appointing the Beautification Project Committee and/or the Citizen Advisory Committee as part of the Urban Renewal Plan. Our request is permissible under the relevant sections of the Code and the request is reasonable too, especially considering Crystal and I made a very substantial economic investment in Yachats and that a portion of our property taxes are directed back to the community. If our request is not approved, then not only is the decision inconsistent with justice and fairness, it also stands that no such request will ever be approved by this commission thus

rendering YMC 9.68.060 utterly meaningless, something the City could not have intended when it approved the relevant ordinances permitting such use.

According to *The Role of the Yachats Planning Commission* as adopted by the Commission on April 10, 2010, if an applicant demonstrates compliance with the existing land use regulations, the application *must* be approved. If it is not clear, Crystal and I affirm our intention to comply with YMC, 9.68.060 and should thus be approved. For the record, my comments regarding the City Planner's recommendation for landscape buffers was not a refusal to comply with the recommendation; rather my request was for the Commission to be reasonable when such buffer is not required by any provision of the Code. Also, while I did say the required hook up to water and sewer seems unnecessary given that our RV is fully self-contained, we recognize that hooking up to Sewer and Water is required by ordinance and my comments as to the necessity was not stating an intention to disobey the ordinance. In fact, \$5,000 of the approximate \$10,000 hook up fees has been previously paid and the remaining fees, obviously, will have to be paid when we obtain building permits.

Further, many of the letters submitted by Yachats residence should be disregarded as irrelevant as required by the same guidelines concerning the Role of the Planning Commission as noted above. For example, the letter from Mr. and Ms. Schram is directed to a permitted use when constructing a home, which is not applicable to the conditional use request before the Commission. Points 1 and 3 of Ms. Bade's letter are irrelevant as someone's unsupported personal opinion that there will be deterioration in property values does not address any relevant factor, especially considering the statement is most likely inaccurate, at best. Likewise, point 2 of the same letter would have the Commission believe that the temporary parking of an RV *must improve* the community's visual character, which is not the test or a requirement under any relevant Code or Goal. In fact, even if Policy 7 of Goal G was controlling here, which I do not believe it is, Policy 7 speaks of *encouraging* improvement to the community's visual character, rather than *requiring* improvement to the community's visual character. Finally, considering some of the homeowners that submitted written testimony live more than 100 feet from the subject property and received notice not otherwise required under ORS 197.763(2)(a)(A), it is completely possible the Commission received testimony it would have not have received but for the excessive notice to neighbors beyond 100 feet, notwithstanding the fact that the public hearing is open to all.

While the Commission spent time discussing the purpose of R2 zoning as defined in YMC 9.16.010 and limited its discussion to whether the conditional permissible use was consistent with R2 zoning, the Commission cannot limit its discussion "to quality environment for medium density, urban single-family residential uses" as it must consider the remainder of the language contained in that very ordinance (which allows for other compatible uses) and it must also consider the other sections of R2 as defined in YMC 9.16, e.g., YMC 9.16.030 (Conditional uses compatible with R2). In addition, the Commission must base its decision on the standards and criteria, which shall be set forth

in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur. *See* ORS 227.173. *See also, Lee v. City of Portland*, 57 Or App 798, 801, 646 P2d 662 (1982).

If all City plans and implementing ordinances must be consistent with the YCP, necessarily, then, the City must have opined the regulated parking of an RV on one's property as a conditional use is consistent with the YCP or it would not have passed the ordinance. While YMC 9.16.010 does indicate R2 residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary", our proposed temporary use of our property is wholly consistent and compatible with both residential use and "other compatible uses." There can be no doubt R2 zoning contemplates RV use as YMC 9.16.020 specifically allows for it while building a residence. And, YMC 9.16.030 indicates such conditional use is permissible, subject to YMC chapters 9.44 (sign ordinance not applicable here), 9.48 (off street parking, not applicable here), 9.52 (supplementary use and design regulation which would be applicable as to the gravel driveway and pad), and 9.72 (conditional uses which requires the decision to be based on standards and procedures set forth within the chapter and points us to 9.88).

There were some public comments expressing concerns to the effect that approval of our request would amount to the approval of a "trailer park". The comment about the area looking like a trailer park is simply a self-serving, disingenuous statement designed to invoke an emotional response of denial by this Commission and has no basis in fact or law. One only need to view the neighborhood to understand there is only one or two lots available, and at least one lot shows no signs of development any time soon as it has remained undeveloped since its purchase by the present owner more than 20 years ago. Also, several trailers on one lot is not practical or even reasonably consistent with R1 or R2 use. R1 zoning allows for a single dwelling and R2 zoning allows, at most, a two-family dwelling. And, I have yet to see a manufactured duplex. Also, it is simply unreasonable to believe someone would pay the premium dollars required to buy a lot on Lemwick to site a trailer park even if it was permissible.

Also the comment that we all should be worried about setting precedence if the Commission approves our request is simply without merit. If the Commission felt it was bound to a previous decision when considering a conditional use, then why would it ever have a hearing regarding a conditional use that has been previously approved? A sample review of previous conditional use permit requests regarding operating a small business within the home yields several different applications and separate decisions. If previous precedence requires the Commission approve similar requests, then, literally, there would be no need for a hearing on subsequent requests; rather, the Commission would simply ask the City Council to make the conditional use a permitted use to avoid having what would be a meaningless hearing. I think if our request was approved based on the condition of our RV and our intended use, a subsequent request could be denied where

the condition was inferior and truly unsightly, e.g., converted 1959 school bus with a Volkswagen van incorporated into the roof (yes, I have seen this sort of RV in Eugene, Oregon) or the use would be incompatible with the relevant ordinance.

Apparently, there was also a comment that the weight of the trailer could be hard on the road surface. Please note that Lemwick Ln is a private road that is not maintained by the City or accessible by the general public. Please also know our trailer weighs less than 10,000 pounds at maximum capacity, which, I believe, is far less than the propane refueling truck I have seen at the neighbors' property immediately to the South of 615 Lemwick.

Crystal and I believe our conditional use request is consistent with the YCP and all relevant zoning ordinances as well as all directives providing guidance to such decisions. Crystal and I do not intend to abuse the privilege and we believe the occasional use should be allowed. We grew up loving Yachats and we believe our occasional use of our property as requested will not diminish the community in any material way. In fact, we believe the landscaping we intend to complete as part of this process will actually improve the view of our lot and will in no way diminish the value of our property or the value of other properties in the surrounding area.

Steven Buel-McIntire



LEGEND

	Interstate
	State Route
	Arterial
	Collector
	Local
	Proposed
	Railroad
	Waterway
	Other

Scale

0 100 200 300 400 500 Feet

0 100 200 300 400 500 Meters

ORIGINS

Yachats, Oregon

OREGON TRANSPORTATION MAP
Showing Functional Classification of Roads
City of

YACHTS

LINCOLN COUNTY
2009

**BEFORE THE PLANNING COMMISSION
OF
YACHATS, OREGON**

Request for Conditional Use Permit

Buel-McIntire, #1-CU-PC-10

FINDINGS AND CONCLUSION

Applicant: Steven & Crystal Buel-McIntire

Nature of the Application

The applicant requested a conditional use permit to park a recreational vehicle on their property for temporary living purposes.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision.

- A. The subject property is located at 615 Lemwick Lane, and described on the Lincoln County Assessor's Map as 14-12-22DD, Tax Lot 1100.
- B. The lot size is 7,480 square feet with dimensions of 88'x85'.
- C. No structures are currently located on the subject property.
- D. The subject site is generally flat with no significant vegetation.
- E. Surrounding land uses consist of single family residential dwellings.
- F. No development constraints are identified.
- G. The applicant submitted the required application form and fee and the following material:
 - Narrative (attached to this staff report)
 - Proposed Site Plan
 - 3 photographs of the recreational vehicle
- H. Written testimony was received from eight different property owners with seven expressing opposition and one in favor to the conditional use request. Written testimony is summarized as follows:
 - Granting the (conditional use) permit would seriously detract from the views and negatively impact property values of the surrounding homes.
 - Allowing a recreational vehicle to park on the lot for temporary housing would negatively affect the "view shed" of the surrounding neighborhood.
 - The RV will negatively impact the experience of local residents and the tourists (from nearby lodges and walkers on the 804 trail).
 - The RV would detract from the community's visual character, and once the RV leaves the property the unsightly RV footprint would remain.
 - Access from Coolidge would be virtually impossible due to a sharp 90 degree turn.

**Case File #1-CU-PC-10 Buel-McIntire
Findings and Conclusion**

- In an area of high-end, quality homes, the permit approval would basically allow the owner to convert their property to a private RV park.
- No objection temporarily placing an RV on the property as long as a building permit is secured while building a home.
- Allowing yearly use of the property for an RV will change the permitted use of the property and have a detrimental effect on property values.
- There is no valid reason for transient residents and visitors to park one or more RVs in this environment of established family residences – particularly when there are a number of dedicated camping and RV spaces in the Yachats vicinity.
- The parking of an RV would have a negative impact on the visual character of the area.
- An occupied RV would be incompatible with the neighborhood and unfair to the local residents.
- A nearby neighbor is supportive of the request and would like to park a recreational vehicle on their property for temporary living purposes.

I. A public hearing was held before the Yachats Planning Commission on October 19, 2010 at 3:00 p.m., in order to consider the applicant's request. Due notice of the hearing was given and all interested parties were given an opportunity to present testimony.

The applicant presented written and oral testimony and answered questions at the public hearing which is herein incorporated into the record. In summary, the applicant's testimony included the following:

- The Planning Commission must look at the Comprehensive Code as well as the Yachats Municipal Code when considering this application.
- Occasionally parking an RV on his property is consistent with the R-2 zone, and that the City would not have adopted that section of the Code that allows for such use if they did not intend for conditional uses to be approved.
- References to Goal G and Policy 7 of the Comprehensive Plan which states that the City shall encourage improvement of the community's visual character relates to development and control of growth. It does not seem to relate to occasionally parking ones RV on their property, and, the use of an RV is controlled by the conditions listed in the Ordinance and the permit process.
- The applicant plans to build a home some day, but with the economy as it is today, it seems reasonable to allow him and his wife to be able to park their RV there occasionally so that they are able to enjoy the property in which they have made such an investment.
- The RV is new and it is not unattractive. There are many outright uses that are allowed in an R-2 zone that could be much more unattractive. If the Planning Commission is going to balance between visual character and permissible use then the Commission should only deny the conditional use for a truly unsightly RV.
- The staff report reference is made to a gravel drive with access location on Lemwick Lane and one access location on Coolidge Lane. The plan as submitted does not have access from Coolidge Lane, but he would be willing to consider that since it would mean there would be no need for the second access point on Lemwick.

Four people testified in opposition to the request at the October 19, 2010 Planning Commission meeting. In summary, the opponent's testimony included the following:

**Case File #1-CU-PC-10 Buel-McIntire
Findings and Conclusion**

- Years ago the Planning Commission discussed how this City should develop. They discussed, at length the question of whether the City should allow the use of RV as living quarters. At that time, the Planning Commission decided that the City of Yachats should set a higher standard. The City is better for that decision. There are no other RVs being used as residences at this time - this would be a first.
- Yachats has set a higher standard than most other cities. There are other ways to enjoy this community on a temporary basis by staying in transient rentals or hotels.
- Allowing this conditional use would set a precedence that would open it up for every other empty lot in town to be occupied by trailers, campers or buses.
- If allowed, occupants of those temporary structures would enjoy all of the benefits of the City and the County while contributing little to the cost of those benefits. The infrastructure of the City is based on the premise that the lots within the urban growth boundary will support the capital improvements and reserves for future improvements. The temporary structures will not provide the same level of support as permanent structures.
- The only written testimony that the City received in favor of this application is a property owner who also wants to do the same, and Lemwick does not need to be turned into a trailer park.
- Lemwick is a very narrow lot and from the pictures it looks like a big trailer, so there seems there would be a problem with getting the trailer onto the lot in the first place.
- The area is zoned R-2 and approval of this would take away the desirable part of the purpose of the zone, and it would be detrimental to have that RV there. This lot is visible from the 804 Trail and it could be detrimental for the City if this trailer were visible to tourists and other walking on the trail.
- A question was asked if it is the City's intent to have single family homes in that area since most lot sizes would only allow for single family homes.

The minutes of the October 19, 2010 Planning Commission meeting and all written and oral testimony is herein incorporated into the record.

- J. The Yachats Public Works Director stated that prior to any development on the property, a storm drainage plan needs to be submitted to the City and approved by the Public Works Director. The applicant has had conversations with the Public Works Director who has indicated that, at minimum, storm drain culverts will be required at driveway locations.

Relevant Criteria

a. Chapter 9.16 R-2 Residential Zone

Section 9.16.010 Purpose.

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

Section 16.030 Conditional Uses

E. Recreational vehicle. See Chapter 9.68

b. Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks and Recreational Vehicles

Section 9.68.060 Recreational Vehicles

Recreational vehicles may be parked by an owner on his or her own land for temporary living purposes as follows:

- A. The vehicle and the use on the owner's lot must be approved as conditional use by the planning commission.
- B. A renewable yearly parking permit is obtained from the city recorder. Fees are set by the city council.
- C. The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
- D. The vehicle must be hooked up to city sewer and water.
- E. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 1. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 2. Users of the recreational vehicle must use sanitation facilities within the lot owner's home.

c. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits

- A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88 (Administration).
- B. In permitting a conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by the code, additional conditions which are considered necessary to protect the best interest of the surrounding city as a whole.
 1. Increasing the required lot size or yard dimensions;
 2. Limiting the height of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the street width;
 5. Increasing the number of required off-street parking spaces;
 6. Limiting the number, size, location and lighting of signs;
 7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
 8. Designating sites for open space;
 9. Setting a time limit for which the conditional use is approved;
 10. Regulation of noise, vibration, odors and sightliness;
 11. Requiring surfacing of parking areas;
 12. Regulation of hours of operation and duration of use or operation;
 13. Such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
 14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

Section 9.72.040 Time limit on a conditional use permit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for an additional period not to exceed six months on request.

d. Comprehensive Plan Goal G. Control of Urban Growth and Form

Policy 7. The City shall encourage improvement of the community's visual character.

Findings

The following is a summary of the findings:

1. Residential R-2 Residential Zone.

The Residential R-2 Residential Zone allows recreational vehicles as a conditional use in accordance with YMC Chapter 9.68.

The R-2 zone allows recreational vehicles as an outright permitted use for dwelling purposes during the construction of a permitted use for which a building permit has been issued (YMC Section 9.16.020). This provision is not relevant at this time since the applicant is not pursuing a building permit for a permitted use.

2. Purpose of the R-2 Residential Zone

In reviewing the application the Planning Commission considered whether or not the request satisfies the purpose of the R-2 Residential Zone. YMC Section 9.16.010 Purpose states that "this residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary."

The Planning Commission determined that the proposed 'temporary recreational vehicle' is not a compatible land use that is desirable and/or necessary in this single family residential neighborhood. This finding is supported by public testimony that the proposed temporary RV use would adversely impact views of the neighborhood, detract from the community's visual character, and that the experience of local residents and visitors would be negatively impacted.

The written testimony received stated that the temporary structure will be unsightly. Comprehensive Plan Goal G. Control of Urban Growth and Form, Policy 7 states that the City shall encourage improvement of the community's visual character. The Planning Commission finds that the placement of a recreational vehicle on a vacant lot is out of character with the predominant single family use of the neighborhood and therefore would be detrimental to the community's visual character.

The Planning Commission finds that the temporary placement of a recreational vehicle in this predominantly single family residential location is not in accordance with the spirit of the Comprehensive Plan or the R-2 Zone, nor does it conform with the purpose of the R-2 Zone.

The Planning Commission finds that approval of this request would open the City up to this type of use everywhere in the City. The Planning Commission would not be able to say yes to this application then say no to another. That would clearly be detrimental to the

**Case File #1-CU-PC-10 Buel-McIntire
Findings and Conclusion**

community's visual character. The Planning Commission finds the temporary recreational vehicle use would cause a negative visual impact as it can be seen from the 804 Trail.

The Planning Commission finds that the proposed use does not meet the Yachats Municipal Code or the Comprehensive Plan. Nor, does it meet the goals of the Yachats Urban Renewal District.

Conclusions

Based on the above facts and findings, the Yachats Planning Commission finds:

- A. The site under consideration is not suitable for the proposed use considering the location.
- B. The proposed use is not a compatible land use that is desirable and/or necessary in this single family residential neighborhood.
- C. The placement of a recreational vehicle on a vacant lot is out of character with the predominant single family use of the neighborhood and therefore would be detrimental to the community's visual character.

Order

It is ORDERED by the Yachats Planning Commission that the requested Conditional Use Permit be and is hereby denied.

This ORDER was presented to and approved by the Yachats Planning Commission on November 16, 2010.

Katherine Guenther, Yachats Planning Commission Chair

Date

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CITY OF YACHATS
PLANNING COMMISSION
November 16, 2010

Minutes

The November regular meeting of the Yachats Planning Commission was called to order by Chair Katherine Guenther at 3:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Guenther, Christine Orchard, Nan Scott, Ken Aebi, Lawrence Musial, and Phyllis Castenholz. Absent: Edward Meyrowitz Also present, City Planner Larry Lewis. Audience – 2.

I. Announcements and Correspondence – Yachats Affordable and Workforce Housing Committee – supporting the Townhome PUD Concept

II. Minutes

- **Work Session – October 19, 2010**
- **Regular Meeting – October 19, 2010**

Motion to approve as amended, Aye – 6, No – 0, Absent – 1 (Meyrowitz).

III. Citizen’s Concerns – None.

IV. Public Hearing

A. Case File #1-CU-PC-10 Buel-McIntire Conditional Use Permit Application – Findings and Conclusion

Motion to adopt the Findings and Conclusions as drafted by the City Planner, Aye – 6, No – 0, Absent – 1 (Meyrowitz).

V. Planner’s Report – Larry Lewis – Attached in writing.

VI. New Business

A. Planning Commission Membership - Terms expiring December 31, 2010 include Orchard and Castenholz

Motion to recommend to City Council that Orchard and Castenholz be reappointed to serve on the Planning Commission, Aye – 6, No – 0, Absent – 1 (Meyrowitz).

B. Discussion: City Goals

The Planning Commission discussed the current City Goals, made the following comments, and suggested additions:

- Their Commission action items from the previous year that have not yet been completed should be continued.

- 1 • Clarify the difference between those issues requiring a public hearing vs. those
- 2 issues requiring a Planning Commission review; or modify Code to eliminate the
- 3 review or require a public hearing. This item would fall under the Goal of
- 4 Effective Governance.
- 5 • The work on getting a transportation connection between Yachats and Florence
- 6 should continue to be a priority.
- 7 • Encourage and facilitate sustainable health care.

8
9 **VII. Other Business**

10 **A. From the Commission**

11
12 Musial asked for clarification about what the City Council looks at when a Planning
13 Commission decision goes to them on appeal. Musial said that he thinks it is very
14 important to be as specific as possible when voting on the decision to ensure that their
15 intent is clear. That way the City Council would know that intent when considering an
16 appeal.

17
18 Scott said that there should be discussion and/or education on public hearing protocol.
19 Guenther agreed and asked that be added to a work session agenda after the first of the
20 year.

21
22 **B. From Staff - None.**

23
24 The meeting was adjourned at 3:47 p.m.

25
26
27 _____
28 Katherine Guenther, Chair

29
30
31 _____
32 Nancy Batchelder, City Recorder

Appeal of Land Use Decision

City of Yachats
441 Hwy 101 N
PO Box 345
Yachats OR 97498
(541) 547-3565

Date Received: 11/30/10 (over)

Fee is based on the original application fee.
Original application fee paid: \$ 250 x 75% =
\$ 187.50 fee due (paid)
(Actual expenses in excess of the appeal fee will be billed.)

The appeal of a Planning Commission decision provides for a review of a quasi-judicial decision by the City Council. The City Council shall be provided with a record of the original application, including the original application form and supporting documentation, the Planning Commission Findings and Conclusions, City Planner Staff Report, Minutes of the Planning Commission public hearing, any facts or testimony relating to issues and materials that were submitted before or during the initial quasi-judicial public hearing process, this appeal application and supporting written statement filed by the Appellant. The Planning Commission decision may be affirmed, reversed, modified, or remanded by the City Council.

Appellant: Steven + Crystal Buck-McIntire Phone: 0

Address: PO Box

City: Engleville State: OR Zip: 97124

Original Land Use Application for: 615 Lenwood W - Conditional Use as RV

Planning Commission Public Hearing date: 10-19-10

Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal, be based on the record, and be limited to the issues raised during the Planning Commission review at the public hearing held on the above date. The appeal statement shall explain specifically how the Planning Commission failed to properly evaluate the application or make a decision consistent with applicable criteria.

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a Planning Commission decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

[Handwritten signature]

RECEIVED
NOV 30 2010

Signature of Property Owner (if other than applicant)

Steve & Crystal Buel-McIntire

Eugene OR 97440

5

November 28, 2010

SENT OVERNIGHT VIA UPS

City Council
City of Yachats
441 Hwy 101 N
Yachats OR 97498

**Re: Appeal Statement re Conditional Use Permit
Application for 615 Lemwick Ln**

Original Hearing Date: October 19, 2010; Findings Adopted November 16, 2010

Please find our check enclosed for \$187.50. Crystal and I appeal the adverse decision arising out of the October 19, 2010 hearing relating to our Conditional Use Permit Application for the following reasons:

1. PROCEDURAL DEFICIENCIES

There were several procedural deficiencies experienced during this process:

A. ORS 227.175(5) provides that, “[h]earings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.” There are several issues regarding notice:

- a. Pursuant to ORS 197.763(2)(a)(A), notice shall be provided to the applicant and the properties owners within *100 feet* of the subject property if the property is wholly or partially within the urban growth boundary. The subject property is clearly within the urban growth boundary as evidenced by the Oregon Transportation map previously attached to our Supplemental Argument as Exhibit “1”. However, the City of Yachats provided notice to all neighbors within 250 feet of the subject property, which is well beyond the 100 feet requirement. While I acknowledge the hearing was open to the public, it is quite possible the excessive notice generated more interest in this hearing than otherwise might have occurred. As the Council Members will see below, much of the public testimony was irrelevant and not sufficiently narrowed to address the applicable standards and criteria relevant to the application. It is likely the public testimony unfairly prejudiced the decision;

- b. The notice failed to provide us with the opportunity to request the notice be sent to the Department of Land Conservation and Development pursuant to ORS 197.763(2)(c), which I would have done;
- c. The notice failed to list the applicable criteria from the comprehensive plan that applies to the application at issue pursuant to ORS 197.763(3)(b) and Yachats Municipal Code (“YMC”) 9.88.060(B)(5);
- d. The notice failed to include a general explanation of the procedure for conduct of hearings pursuant to ORS 197.763(3)(j) and YMC 9.88.060(B)(11). Just prior to the commencement of my testimony, the Chair incorrectly advised the audience, including me, that comments should be limited to three minutes. If the time limitations and applicability was explained in the notice, I would not have had to revise my presentation, to my detriment, to shorten my arguments in an effort to comply with the inapplicable three-minute time requirement. The lack of full discussion affected my presentation, my ability to elicit a candid conversation with the Commission and my ability to have a discussion about relevant and applicable standards, which may have led to a different outcome;

B. As required by ORS 197.763(5), the Chair of the Planning Commission failed to provide or inadequately failed to provide at the commencement of the hearing a statement to those in attendance that:

- a. Lists the applicable substantive criteria, which would have narrowed the testimony to relevant evidence versus inapplicable opinion as will be further discussed herein;
- b. States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision. Much of the testimony, both written and oral invoked standards and dialogue that was not factual, relevant, or directed to the applicable criterion; and,
- c. States that 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 board based on that issue. The improper time limitations along with lack of disclosure creates due process issues in that I was not afforded sufficient opportunity to present all relevant facts and argument in support of our very reasonable and permissible request.

C. Pursuant to ORS 227.170(2) the City Council shall prescribe one or more rules stating that all decisions made by the Council on permits and zone changes will be based on factual information, including adopted comprehensive plans and land use regulations. As will be discussed in greater detail herein, the Commission's decision had little to do with objective facts and/or applicable criteria. Moreover, as you will also see below, the Commission did not make its findings based on the complete record or even have a material discussion of the relevant laws, facts and evidence demonstrating appropriate understanding and adequate analysis.

D. Pursuant to ORS 227.173, approval or denial of our application should have been based on standards and criteria that are set forth in the development ordinance and which relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole. The City Planner's report inappropriately narrowed the question to "whether or not placement of a temporary recreational vehicle on a property is unsightly and/or is not detrimental to the community's visual character", which is wholly inconsistent with the applicable standards contained in YMC 9.16, 9.04, 9.68, 9.72 and the Comprehensive Plan. Further, the Commission largely relied on YMC 9.16.010, the purpose of R2 zoning, rather than a comprehensive balance of all relevant ordinances and standards as required by statute.

E. ORS 227.175(5) provides that when hearings are required or authorized, they are subject to ORS 197.763. ORS 197.763(6)(e) states, "[u]nless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence." While I understand the Planning Commission voted to deny our request at the October 19, 2010 hearing, I did not waive the right to submit additional argument. In fact, I do not understand how the Commission could have even brought this matter to a vote at the October 19, 2010 hearing if I didn't waive the right to submit additional argument. I submitted additional written argument within the 7 days as allowed by statute. In her email to me dated November 24, 2010, the City Recorder acknowledged she received the Supplemental Argument timely. However, it appears the Planning Commission either: (a) did not receive the Supplemental Argument as required; or, (b) received the Supplemental Argument but did not give it any consideration as I can find no record of discussion contained within the recording or the minutes for the November 16, 2010 hearing.

2. DISCUSSION/FINDINGS DEFICIENCIES

I ask the Council to take judicial notice of the recorded hearing of the October 19, 2010 hearing and admit the recording in its entirety into evidence and hereby incorporate same by reference herein. I further ask the Council to listen to the recorded record of the October 19, 2010 hearing, particularly the discussion and decision portion of the hearing which begins at about the 50 minute mark. I am willing to transcribe the Hearing for the Council and present same in written form if the Council so desires.

A. One Commission Member opines she didn't think the application was within the "spirit of the Comprehensive Plan or R2 zoning" and so she would have to vote no. In the context of R2 zoning discussion, this member goes on to say that a permanent structure is more of what she is looking for, which is not a requirement of the applicable ordinance. See recording at appx. 50 – 50:27. Another member acknowledges that our request is permissible as a conditional use, but that he sees it as part of building a home. Parking one's RV on his or her lot as part of the building process is an outright permitted use pursuant to YMC 9.16.020(B) and is not subject to a hearing. It is inappropriate to insert what has been omitted, or to omit what has been inserted. ORS 174.010. This member would inappropriately insert words into YMC 9.68.060 that would require building a home as a condition to parking an RV on one's property. See recording at appx. 50:40. Another member expresses concern that if the conditional use is permitted, then the Commission opens itself up to having to approve all other conditional use permits. See recording at appx. 51:25. The Planning Commission must understand it is not bound by previous decisions on conditional use applications. If that were true, then as soon as one conditional application was approved, there would be no point in having subsequent hearings as, under this line of thinking, there is no discretion once a use has been approved. If that were so, it would then just make sense for the City Council to simply revise the applicable permitted use ordinance to outright allow for a previously approved conditional use. Even if our request was approved, there is still a balance of all relevant facts and laws for subsequent requests that may distinguish one request from another. I submit such misplaced belief had no relevance to the application and unfairly influenced the decision.

B. The question of whether the request is in compliance with R2 zoning and the Yachats Comprehensive Plan ("YCP") is called for at appx. 55:00. The discussion and vote takes about 7 minutes and is devoid of any material discussion regarding the Comprehensive Plan Goals, the relevant ordinances, all of them, or even any of the testimony. Rather, the discussion is very conclusory in that a member simply opines the application does not meet the intentions or purpose of R2 zoning to provide quality environment for medium density urban and residential uses. This member inappropriately omits the remainder of the YMC 9.16.010, "and other compatible land uses determined to be desirable and/or necessary." Stopping the analysis at the *purpose* of R2 Zoning, YMC 9.16.010, fails to consider the rest of YMC 9.16, which necessarily includes conditional uses for RVs, YMC 9.16.030, which then directs us to YMC 9.68, all of which must be compatible with R2 zoning or the authority would not be referenced within the very R2 zoning ordinance cited by the Commission. Provisions of a zoning

ordinance should be interpreted in a manner which gives meaning to all parts of the ordinance. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996). The Commission Members fail to discuss all relevant ordinances applicable to this decision. As the recording makes clear, the other members equally limit the discussion to one half of the R2 zoning purpose and include other factors that should not influence the decision, e.g., the development costs are such that the applicant should simply use an RV park, that it does not fit within the urban renewal plans, or that we should not approve this request because we will then have to approve subsequent requests, etc. The Commission should not rely on “factors” or “considerations” that are unconnected to approval standards established in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000). Similarly, the Commission should not have adopted conclusory findings unsupported by the evidence. Quite simply, the Commission’s findings are not based on the substantial evidence in the record nor are the findings clearly supported by the record as will be further discussed below. The findings and conclusions of law appear to intimate the Commission considered the relevant laws, facts and applied laws to the facts, but the record and deliberations therein do support such an interpretation as there is no such substantive discussion. In fact, the Commission’s conclusions:

- A. The site under consideration is not suitable for the proposed use considering the location;
- B. The proposed use is not a compatible land use that is desirable and/or necessary in this single family residential neighborhood; and,
- C. The placement of a recreational vehicle on a vacant lot is out of character with the predominant single family use of the neighborhood and therefore would be detrimental to the community’s visual character.

seem to suggest there was more discussion and substance as to those points than actually occurred at the hearing or captured in any sort of deliberation by the Commission. Moreover, even if one were to strain to find the oral discussion by the Commission supportive of the conclusions, it does not appear the oral discussions were even meant to constitute findings.

C. The Commission did not consider, analyze or appropriately apply all relevant authority. Comprehensive Plans must be adopted by appropriate governing bodies. ORS 197.010(1)(a). Comprehensive Plans are expressions of public policy and are the basis for more specific rules and land use regulations which *implement* the policies expressed through the Comprehensive Plan. ORS 197.010(1)(b) and (c) (*emphasis supplied*). ORS 197.175(2)(b) instructs that Cities must enact land use regulations to implement their Comprehensive Plans. Thus, necessarily, YMC 9.68.060 must be consistent with its YCP. In other words, zoning and land use regulations must necessarily reflect the goals and policies of the YCP.

D. Consistent with statutory requirements, YCP serves as a guide to land use and it establishes policies and land use designations which shall be implemented throughout Yachats' zoning and land use ordinances. See page 3 of the YCP. "[YCP] provides the basis for other plans, ordinances and other implementing documents that set forth more detailed direction regarding specific activities and requirements. All City plans and implementing ordinances must be consistent with the Comprehensive Plan." See page 4 of YCP. Finally, "[t]he City must follow relevant policies when developing other plans, zoning, and development standards. See page 5 of YCP (*emphasis supplied*).

E. When Commissions of Yachats are interpreting ordinances and conducting hearings under the YMC, it is important for them to consider other sections of the Code too. Specifically, YMC 1.04.070 provides the guiding principle that the provisions of the ordinances (all of them, including zoning) "and all proceedings under them, are to be construed with a view to effect their objects and to promote justice." (*emphasis supplied*). The word justice is important here. When one considers the word "justice", one must consider such terms as "fairness", "equality" and "evenhandedness". Thus, when considering our conditional use request, the Commission must look to promote justice. It should be said that when the City passed YMC 9.68.060, it must have considered this principle of justice and struck a balance between the requirements of the YCP, competing neighbor interests and the lot owner's ability to use his or her property with the limitations and conditions imposed within that ordinance. Moreover, consistent with YMC 1.04.070, the goal of Yachats' Administrative Policy No. 18 is to ensure the timely and *fair* action on all matters before the Commission. As the testimony and discussion makes clear, the Commission's denial our request fails to strike a very reasonable balance between competing interests, and necessarily fails the City's directives to seek justice and to be fair under the circumstances. Specifically, our RV is new and in excellent condition, which is visually more pleasing than several dilapidated homes around Yachats that was most likely the impetus for appointing the Beautification Project Committee and/or the Citizen Advisory Committee as part of the Urban Renewal Plan. Our request is permissible under the relevant sections of the Code and the request is reasonable too, especially considering Crystal and I made a very substantial economic investment in Yachats and that a portion of our property taxes are directed back to the community. Under the Planning Commission's logic in its denial of our request, no such request will ever be approved by this Commission thus rendering YMC 9.68.060 utterly meaningless, something the City could not have intended when it approved the relevant ordinances permitting such use.

F. According to *The Role of the Yachats Planning Commission* as adopted by the Commission on April 10, 2010, if an applicant demonstrates compliance with the existing land use regulations, the application *must* be approved. If it is not clear, Crystal and I affirm our intention to comply with YMC, 9.68.060 and should thus be approved. For the record, my comments regarding the City Planner's recommendation for landscape buffers was not a refusal to comply with the recommendation as some members of the Commission would like to believe; rather my request was to be reasonable when such buffer is only optional and not required by any provision of the Code. Also, while I did say the required hook up to water and sewer seems unnecessary given that our RV is fully

self-contained, we recognize that hooking up to Sewer and Water is required by ordinance and my comments as to the necessity was not stating any intention to disobey the ordinance. In fact, \$5,000 of the approximate \$10,000 hook up fees has been previously paid and they, obviously, will have to be paid when we obtain building permits.

Based on the above, it appears the Commission did not evaluate or measure appropriate objective standards when evaluating our request.

G. Many of the letters submitted by Yachats residence should be disregarded as irrelevant and nonresponsive to the applicable criterion. For example:

a. The letter from Mr. and Ms. Schram is directed to a permitted use when constructing a home, which is not applicable to the conditional use request before the Commission;

b. Points 1 and 3 of Ms. Bade's letter are irrelevant as someone's unsupported personal opinion that there will be deterioration in property values and does not address any relevant factor, especially considering the statement is most likely inaccurate, at best, and unsupported by factual evidence, e.g., professional realtor or appraiser and is not even a required consideration of the applicable ordinance. Nor does this letter consider that the property will be improved thus increasing its value or that we would be willing to limit our stays in the event one of our neighbors was trying to sell his or her home and was concerned about value issues. Likewise, point 2 of the same letter would have the Commission believe that the temporary parking of an RV *must improve* the community's visual character, which is not the test or a requirement under any relevant Code or Goal. Even if one read such a requirement into the analysis, a fair argument can be made that clearing the property of brush, completing planned improvements and some landscaping would actually improve the visual aspect. Even if Policy 7 of Goal G was controlling here, Policy 7 speaks of *encouraging* improvement to the community's visual character, rather than *requiring* improvement to the community's visual character. Translated, that means there is no requirement that a conditional use must improve the visual character or simply be denied. Policy 7 of Goal G is aspirational in nature;

c. The letter indicating the RV would leave an unsightly footprint simply fails to consider the proposed culvert and driveway that would eliminate visual evidence that our RV was present during some weekend;

d. The letter indicating the parking of our RV would give the impression of an RV park is simply meant to be inflammatory and evoke an emotional response, but has little substance or even a nexus to the relevant ordinances. One only need to view the neighborhood to understand there are only a few lots available, and at least one lot shows no signs of development any time soon as it has remained undeveloped since its purchase by the present owner more than 20 years ago. Also, under YMC, an RV or Trailer Park is not a permitted or conditional use within an R1 or R2 zone. See YMC 9.12 and 9.16.

November 28, 2010

Moreover, even if it were physically possible to park several trailers on one lot, is not practical given the actual dimensions of each lot. Please note, however, that R2, R3 and R4 zoning under YMC allow Temporary RV use as requested; and,

e. One letter indicates we have no need to park our RV on our property given there are RV sites within Yachats. However, that comment is irrelevant to the request as the ordinance does not require a need;

A review of the oral testimony produces similar results that should not have been relied on or given any sort of weight by the Commission. For example:

a. One witness spoke of a previous decision by the Commission to ban RVs as living quarters. Living quarters is not the nature of the request; rather, the request is for *temporary* living purposes, which has not been banned and is, in fact codified in YMC 9.68.060;

b. One witness simply opines we should be happy to enjoy Yachats by residing in a hotel or some other transient rentals. This witness does not seem to consider or appreciate our substantial purchase and our desire to enjoy our property in a way permissible under the YMC;

c. One witness also expresses concern for setting precedence, which is not an appropriate argument. As mentioned earlier, if approving our request would set a binding precedence, then as soon as a conditional application is approved, there would be no point in having subsequent hearings as, under this line of thinking, there is no discretion. We all know by a quick review of previous Planning Commission minutes, the Commission has routine hearings for similar Conditional Use Permit requests, e.g., home businesses. I think if our request was approved based on the condition of our RV and our intended use, a subsequent request could be denied where the condition of the RV was truly inferior or unsightly, e.g., converted 1959 school bus with a Volkswagen van incorporated into the roof or a obnoxious pumpkin orange with hundreds of hub caps on it or, even, some less dramatic examples as the use could be objectively and factually considered incompatible with the relevant ordinance;

d. One witness opines that allowing our requested use would allow us to enjoy the benefits of Yachats without contributing to the expenses. However, while this thought is not a consideration under any relevant ordinance, the opinion also fails to consider our property is within the urban growth boundary, that we pay property taxes, a portion of which goes to the City, that we would spending money for goods and services within the City or that hooking up to water and sewer is a requirement that has a cost and that also has monthly charges even though we would have no need to use the services; and,

e. One witness expressed concern about ingress and egress on Lemwick. However, the trailer is not as wide as our utility vehicle and probably weighs less than the propane truck I occasionally see refueling the neighbors' gas supply. Moreover, the site map submitted as part of the request takes into consideration turning radius required for ingress and egress.

In sum, much of the testimony lacks objectivity, contains little compelling substance or even relevance to the applicable criterion governing the decision and should be weighted accordingly.

Finally, considering some of the homeowners that submitted written testimony live more than 100 feet from the subject property and received notice not otherwise required under ORS 197.763(2)(a)(A), it is completely possible the Commission received testimony it would have not have received but for the excessive notice to neighbors beyond 100 feet, notwithstanding the fact that the public hearing is open to all.

H. During the hearing, the Commission briefly discussed the purpose of R2 zoning as defined in YMC 9.16.010, but it limited its discussion to whether the conditional permissible use was consistent with R2 zoning. The Commission, however, cannot limit its discussion "to quality environment for medium density, urban single-family residential uses" as it must consider the remainder of the language contained in that very ordinance (which allows for other compatible uses) and it must also consider the other sections of R2 as defined in YMC 9.16, e.g., YMC 9.16.030 (Conditional uses compatible with R2). In addition, the Commission must base its decision on the standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur. *See* ORS 227.173. *See also, Lee v. City of Portland*, 57 Or App 798, 801, 646 P2d 662 (1982). A review of the last 15 minutes of the recording demonstrates the Commission did not discuss the substance of the relevant YCP or appropriate YMC.

I. If all City plans and implementing ordinances must be consistent with the YCP, necessarily, then, the City must have opined the regulated parking of an RV on one's property as a conditional use is consistent with the YCP or it would not have passed the ordinance. While YMC 9.16.010 does indicate R2 residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary", evidence presented demonstrated the proposed temporary use of our property is wholly consistent and compatible with both residential use and "other compatible uses." There can be no doubt R2 zoning allows for RV use as YMC 9.16.020 specifically allows for it while building a residence. And, YMC 9.16.030 indicates such conditional use is permissible, subject to YMC chapters 9.44 (sign ordinance not applicable here), 9.48 (off street parking, not applicable here), 9.52 (supplementary use and design regulation which would be applicable as to the gravel driveway and pad), and 9.72 (conditional uses which requires the decision to be based on standards and procedures set forth within the chapter and points us to 9.88 which allows such requested use).

Buel-McIntire Appeal Statement

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The Planning Commission's decision lacks substantial evidence. The facts do not support the Commission's conclusions. And, the Commission fails to apply relevant standards.

In sum, the Planning Commission made a number of procedural and substantive errors and its decision should be reversed or other appropriate remedy consistent with our request should be granted.

As this process moves forward, Crystal and I reserve all rights to reimbursements for obtaining transcripts, attorneys' fees, costs and other reimbursable expenses.



~~Steven and Crystal~~ Buel-McIntire

SLM

encls.

Steve & Crystal Buel-McIntire
PO Box 10172
Eugene OR 97440
541-912-5259

January 4, 2010

City Council
City of Yachats
441 Hwy 101 N
Yachats OR 97498

**Re: Executive Summary re Conditional Use Permit
Application for 615 Lemwick Ln**

Original Hearing Date: October 19, 2010; Findings Adopted November 16, 2010

Dear Council Members, let me begin by apologizing for the length of the Appeal Statement and its technical nature. Unfortunately, in order to preserve all issues for any subsequent hearing I am required to raise *every* issue at each level of this process, no matter how minor the issue. Today, I write to provide a more manageable summary of our position. I thank you in advance for your consideration.

As you know, Oregon has maintained a statewide program with land use planning that is expressed in Planning Goals. These Statewide Goals are achieved through local comprehensive planning which requires each City to adopt a Comprehensive Plan and enact appropriate zoning ordinances to put the Plan into effect. Local plans and ordinances must be consistent with the Statewide Planning Goals and are reviewed for consistency by the Land Conservation and Development Commission (“LCDC”). Yachats’ Comprehensive Plan was first acknowledged for compliance with State Planning Goals by the LCDC in 1980 and has been periodically updated to ensure compliance, including in 2008.

Like many Comprehensive Plans, Yachats’ Comprehensive Plan (“YCP”) consists of broad goals, intended for guidance when enacting zoning ordinances. As with other Plans, the YCP includes policy statements that are naturally under tension with specific zoning ordinances. For example, Policies 9 and 10 of Goal G – Control of Urban Growth and Form -- requires the City of Yachats to preserve public views of wetlands, beaches and stream corridors and to protect views from ridgelines. A literal interpretation of Policies 9 and 10 would cause an unintended result; namely, to follow a strict interpretation of the Policies would require a prohibition against building any residence close to the beach and in front of other homes to preserve public views even though building in such an area is expressly permitted as an outright use in the appropriate zone. Thus, it is important to note that the YCP, like other Plans, is *not* approval criteria unless the applicable zoning regulations specifically incorporate a Comprehensive Plan Policy as such.

Yachats' zoning ordinances, however, *are* the specific regulations that implement the City's decisions it reached in connection with balancing the Goals and Policies of the YCP with individual property owner's rights. In fact, unless the City violated its own Comprehensive Plan by adopting zoning ordinances inconsistent with the YCP, then it necessarily found that the ordinances applicable to our request are consistent with the Comprehensive Plan. Accordingly, the City must have decided that temporary RV use on lots within an R-2, R-3 or R-4 zone is consistent with the YCP, including Policy 7 that merely *encourages* improvement to the community's visual character.

While there are many relevant state statutes, two are directly applicable to our request. ORS 227.173 requires that approval or denial of discretionary permit applications be based on standards and criteria which shall be set forth in the development ordinance. The applicable standards can be found in YMC 9.68.060, which will be further discussed below. The other applicable statute is ORS 227.178. This statute is the "Fixed Goalpost Rule," which basically means that approval or denial of the application shall be based on the standards and criteria that were applicable at the time the application was first submitted. The ordinance can, however, be revised for subsequent applications if the Council so desires.

The standards and criteria applicable to our request primarily include: YMC 9.16, 9.68 and YMC 9.72.

YMC 9.16.010 advises that R-2 zoning is intended to provide a quality environment for medium density, urban single-family residential uses *and other compatible land uses determined to be desirable and/or necessary*. The staff report indicates that a "determination needs to be made whether or not the proposed 'temporary recreational vehicle' is a 'compatible land use determined to be desirable and/or necessary'". The staff's analysis missed the mark and inappropriately pointed the Planning Commission down the wrong path in its analysis of our request. To be sure, the City Council already determined that Recreation Vehicle ("RV") use for temporary living purposes, provided the applicable criteria are met, represents *other compatible land uses determined to be desirable and/or necessary* in an R-2 zone or it would not have permitted such conditional use. Unfortunately, the Planning Commission was inappropriately directed to focus its decision on factors already determined acceptable by the City Council rather than on the applicable standards contained in YMC 9.68.060. Our requested use has been determined by the City Council in R-2, R-3 and R-4 zones. In contrast, however, the City Council has determined that our requested use is not acceptable in R-1 (residential); C-1 (Commercial); S-P (State Park); EN (Estuary Natural); or, PF (Public Facilities) zones. It seems clear the City Council realized it was making a distinction between the different zones by allowing the conditional use in some zones while not allowing it in other zones.

YMC 9.16.030 is the zoning ordinance that allows for the temporary parking of an RV in an R-2 zone. YMC 9.16.030(E) directs us to YMC 9.68.

YMC 9.68.060 sets forth the *substantive criteria* that should be used to judge our request. The criteria are as follows:

Recreational vehicles may be parked by an owner on his or her own land for temporary living purposes as follows:

- A. The vehicle and the use on the owner's lot must be approved as conditional use by the planning commission.
- B. A renewable yearly parking permit is obtained from the city recorder. Fees are set by the city council.
- C. The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
- D. The vehicle must be hooked up to city sewer and water.
- E. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 - 1. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 - 2. Users of the recreational vehicle must use sanitation facilities within the lot owner's home.

According to law, the above standards as expanded by YMC 9.72 should guide the Council's decision as it relates to our specific request.

YMC 9.72.010 provides that conditional uses listed in this title may be permitted, enlarged, altered or denied by the Planning Commission *in accordance with the standards set forth in this chapter*. The Commission's decision must be based on findings addressing the requirements of the Comprehensive Plan and Zoning Ordinance *as addressed in Chapter 9.88*. It is important to note that the Goals or Policies of the Comprehensive Plan are not separately or specifically referenced in YMC 9.88 or in the standards set forth in 9.68.060 other than how those ordinances necessarily reflect the Goals and Policies of the YCP. Further, the YCP is only specifically referenced in YMC 9.72(B)(13) as it relates to *development*, which is not applicable to our request. Thus, the YCP should not be viewed as having some independent force of law that would allow for a result different from the standards contained in YMC 9.68.060 and 9.72. It should also be noted that Page 4 of the Comprehensive Plan provides: "All City plans and implementing ordinances must be consistent with the Comprehensive Plan". Thus, the YCP is consistent with the requirements of ORS 227.173 in that the YCP requires the decision to be based on the standards and criteria set forth in the development ordinance, YMC 9.68.060 and 9.72.

It is clear that YMC 9.72 allows for additional requirements as part of the approval process of a conditional use request. The City can impose such additional conditions as, for example, fencing, screening and landscaping. The only additional standards contained within YMC 9.72, however are contained in YMC 9.72.050. A read of that section does not reveal any other applicable standards as the standards govern: hotels and resorts; special setback requirements; public utilities; home occupation; and, bed and breakfast facilities.

In sum, the City Council should focus its inquiry on whether or not the requested use meets the standards contained in YMC 9.68.060 and YMC 9.72.010. Likewise, the City Council should disregard evidence or testimony beyond the scope of the defined

January 4, 2010

standards and criteria enumerated within YMC 9.68.060 and 9.72.010. For example, denying the request because of the risk associated with setting a precedent, or interpreting the conditional use to be associated with building a permanent home is beyond the applicable standards and should not influence the Council's decision.

The Planning Commission denied our request believing that our request does not meet the R-2 zone standards or the Goals of the Comprehensive Plan. Based on the Planning Commission minutes and the motion to deny our request, it appears the Planning Commission, other than Commissioner Meyrowitz, defines the applicable standards to the first half of the intent of the R-2 zone and to that of parking an RV in connection with building a permanent residence, which misses the mark and ignores the actual and applicable standards contained in YMC 9.68.060.

As the above criteria relate to our request, Crystal and I agree to be bound by the requirements of YMC 9.68.060. In addition, we are also willing to agree to reduce the maximum parking days from 120 per year to 90 and we would further agree to a maximum number of consecutive parking days to no more than 30 days for any one stay. Crystal and I would further agree to the voluntary landscape buffer/plan attached hereto. I believe our request satisfies all applicable requirements and that the Planning Commission's finding, contained in paragraph 2 of section 2 on page 5 of the Findings, that the proposed use is not a compatible land use that is desirable or necessary ignores the applicable Code and its standards. I further believe the Commission's findings, effectively, amount to a repeal of the section of the YMC that allows for temporary RV parking as a conditional use. Finally, I believe that repealing a section of the YMC should only occur through the legislative process and not within a land use hearing. If the City Council is in agreement with the Planning Commission's desire to repeal temporary RV parking in R-2 zones or other zones, then it should simply amend the Code to do so after allowing for our requested use. The Planning Commission also found that approval of our request would open the City up to this type of use everywhere. This finding is also misplaced as the contemplated use is not available to properties zoned R-1 and properties in other zones as discussed above.

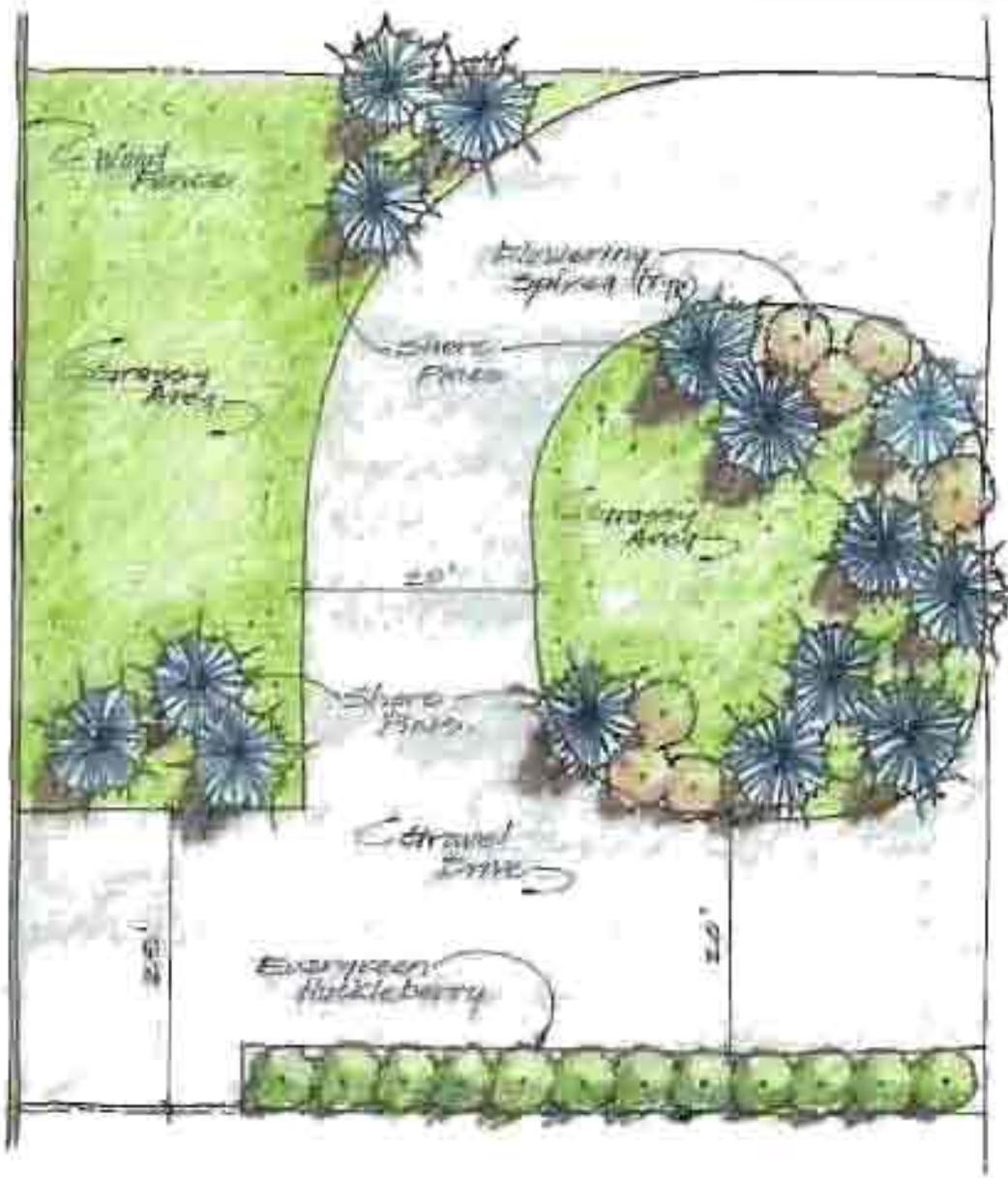
Please know that Crystal and I have made a substantial investment in our property and we do intend to build a home at some point in the future. Thus, our conditional use request is intended to be temporary in duration and we intend to be great neighbors during our temporary stays.

Because Crystal and I are willing to meet the defined criteria, with further proposed limitations, our requested use should be allowed and the City Council should enter an order consistent with our request.

Respectfully,


Steven and Crystal Buel-McIntire

SLM/Encls.



Lamwick Lane

Site Plan



12345 Main St
 12345 City, OR
 503-555-1234



DATE: 10/15/2011

615 Lamwick Lane
 Victoria, OR

NO.	DATE	DESCRIPTION
1	10/15/2011	ISSUED FOR PERMIT
2		
3		
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LA-1



City of Yachats

441 Hwy 101 N.
P O Box 345
Yachats, OR 97498

January 4, 2011

To: Yachats City Council
From: Larry Lewis, City Planner
Re: Staff Report – Case File #1-CU-PC-10
Appeal of Planning Commission Decision

This Memorandum serves as the Staff Report for the appeal of the Planning Commission's decision of denial for Case File #1-CU-PC-10.

SUMMARY OF REQUEST, PLANNING COMMISSION DECISION, AND APPEAL

The applicants, Steven and Crystal Buel-McIntire, submitted an application requesting a conditional use permit to park a recreational vehicle on their property for temporary living purposes.

The subject property, located at 615 Lemwick Lane, is currently vacant (undeveloped).

The Planning Commission denied the request. Please review the Findings and Conclusions (enclosed) for a description of Relevant Facts, Relevant Criteria, Findings, Conclusions, and Order. Based on the facts and findings, the Planning Commission denial was based on the following conclusions:

- A. The site under consideration is not suitable for the proposed use considering the location.
- B. The proposed use is not a compatible land use that is desirable and/or necessary in this single family residential neighborhood.
- C. The placement of a recreational vehicle on a vacant lot is out of character with the predominant single family use of the neighborhood and therefore would be detrimental to the community's visual character.

The applicants appealed the Planning Commission's decision of denial. The City Council holds a public hearing for an appeal of a Planning Commission decision.

RESPONSE TO APPLICANT'S APPEAL STATEMENT REGARDING PROCEDURAL DEFICIENCIES

The applicants submitted an "Appeal Statement re Conditional use Permit Application for 615 Lemwick Lane". As part of the appeal statement the applicants identified Procedural Deficiencies. Please review the Appeal Statement (enclosed) for detailed descriptions of the alleged deficiencies. A staff response to each of the deficiencies follows:

A. Public Notice

- a. Notice to Property Owners.** The applicant states that the applicable Oregon Revised Statute (ORS) requires the notice (of the Planning Commission public hearing) be provided to the applicant and property owners within 100 feet of the subject property however, the City provided notice to all neighbors within 250 feet.

Staff Response: The City provided notice to property owners within 250 feet in accordance with Yachats Municipal Code 9.88.060. The City is allowed to have greater notice requirements for quasi-judicial applications but not less than 100 feet of the perimeter of the subject property.

- b. Notice to DLCD.** The applicant states the notice failed to provide them with the opportunity to request the notice be sent to the Dept. of Land Conservation and Development (DLCD) pursuant to ORS 197.763(2)(c).

Staff Response: ORS 197.763(2)(c) states “At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development”. The ORS statute does not require this statement be placed in the notice. At the discretion of the applicant, the city would have provided notice to DLCD.

The notice of the appeal and City Council public hearing was forwarded to DLCD.

- c. Applicable criteria.** The applicant states that the notice failed to list the applicable criteria from the comprehensive plan that applies to the application.

Staff Response: The notice of the Planning Commission hearing only listed the applicable criteria of the Title 9 Zoning and Land Use Code. The applicable comprehensive plan criterion was identified in the Staff Report.

The applicable comprehensive plan criterion was listed in the notice of the appeal and City Council public hearing.

- d. General explanation of the public hearing procedure.** The applicant states that the notice failed to include a general explanation of the procedure for conduct of hearings pursuant to applicable ORS and Yachats Municipal Code (YMC).

Staff Response: The notice states that the public may provide oral testimony at the public hearing. Public notices of public hearings rarely, if at all, provide detail such as time limitations allowed in public hearings.

B. Statements at Commencement of Public Hearing

- a. Applicable criteria.** The applicant states the list of applicable substantive criteria was not provided at the commencement of the hearing.

Staff Response: The Planning Commission chair opens the public hearing and identifies procedures. The first step in the public hearing procedure, prior to any public testimony, is a summary of the staff report by city staff. The summary of the staff report included identification of applicable criteria.

- b. Testimony not directed to applicable criteria.** The applicant states there was failure or inadequacy to state that testimony must be directed toward applicable criteria, and that much of the testimony, both written and oral, invoked standard and dialogue that was not factual,

relevant, or directed to applicable criterion.

Staff response: Although the public is notified that testimony must be directed toward applicable criteria, it is typical that testimony deviates from applicable criteria. The Planning Commission's task is to consider testimony that is directed towards the applicable criteria.

- c. Insufficient opportunity to present all relevant facts and argument.** The applicant states that due to improper time limitations and the lack of disclosure, he was not afforded sufficient opportunity to present all relevant facts and argument in support of the request.

Staff response: There are no specific YMC provisions that limit the time a person may provide oral testimony. However it is common practice to limit those providing oral testimony, other than the applicant, to three minutes each. The applicant's oral presentation at the Planning Commission meeting lasted approximately 10 minutes and he submitted written testimony at the public hearing.

C. Decision Not Based on Applicable Facts

The applicant states the Planning Commission's decision had little to do with objective facts and/or applicable criteria.

Staff response: The purpose of having conditional uses is to recognize that certain types of uses require special consideration. Reasons for special consideration include such things as the size of the area, the nature of traffic problems, and the effect such uses have on adjoining land uses and on the growth and development of the City as a whole.

Per YMC 9.72(A), in taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance. The Planning Commission's findings were based on applicable criteria identified in the Yachats Municipal Code (R-2 Residential Zone and Conditional Uses) and Comprehensive Plan (the community's visual character).

- D. Standards Should Have Been Based on Standards and Criteria.** The applicant states that the City Planner's report inappropriately narrowed the question to "whether or not placement of a temporary recreational vehicle on a property is unsightly and/or is not detrimental to the community's visual character"; and the Commission largely relied on the Purpose of the R-2 zoning rather than a comprehensive balance of all relevant ordinances and standards.

Staff response: The intent of the staff report is to inform the Planning Commission of the proposed request and to address applicable criteria. The staff report addressed the applicable criteria including conditional uses allowed in the R-2 Residential zone, the purpose of the R-2 Residential zone, and Comprehensive Plan Goal G. Control of Urban Growth and Form, Policy 7 which addresses the community's visual character.

- E. Applicant Did Not Waive the Right to Submit Additional Information.** The applicant states he did not waive his right to submit final written arguments within seven days after the record is closed, and that the applicant's final submittal shall be considered part of the record, but shall not include any new evidence. The applicant did submit additional written arguments within seven days of the Planning Commission hearing. The Planning Commission did not receive the supplemental argument.

Staff response: ORS 197.763(6)(a) states that "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. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.” In quasi-judicial hearings, the Planning Commission typically asks if anyone would like to leave the record open however that was not asked at the October 19, 2010 meeting. There were no requests to present additional evidence, arguments or testimony regarding the application.

APPLICANT’S APPEAL STATEMENT REGARDING DISCUSSION/FINDINGS DEFICIENCIES

As part of the appeal statement the applicants identified Discussion/Findings Deficiencies. Please review the applicant’s November 28, 2010 Appeal Statement (enclosed) for detailed descriptions of the alleged deficiencies.

In summation, the applicable criteria are identified below. Please review the enclosed Findings and Conclusion for a more detailed description of applicable criteria.

a. Chapter 9.16 R-2 Residential Zone

Section 9.16.010 Purpose.

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

Section 16.030 Conditional Uses

E. Recreational vehicle. See Chapter 9.68

b. Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks and Recreational Vehicles

Section 9.68.060 Recreational Vehicles

Recreational vehicles may be parked by an owner on his or her own land for temporary living purposes as follows:

- A. The vehicle and the use on the owner's lot must be approved as conditional use by the planning commission.
- B. A renewable yearly parking permit is obtained from the city recorder. Fees are set by the city council.
- C. The permit is effective for parking one hundred twenty (120) days per calendar year with no more than ninety (90) consecutive days for any one stay.
- D. The vehicle must be hooked up to city sewer and water.
- E. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 - 1. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;
 - 2. Users of the recreational vehicle must use sanitation facilities within the lot owner's home.

c. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits

- A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission’s action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as

addressed in Chapter 9.88 (Administration).

- B. In permitting a conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by the code, additional conditions which are considered necessary to protect the best interest of the surrounding city as a whole.
1. Increasing the required lot size or yard dimensions;
 2. Limiting the height of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the street width;
 5. Increasing the number of required off-street parking spaces;
 6. Limiting the number, size, location and lighting of signs;
 7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
 8. Designating sites for open space;
 9. Setting a time limit for which the conditional use is approved;
 10. Regulation of noise, vibration, odors and sightliness;
 11. Requiring surfacing of parking areas;
 12. Regulation of hours of operation and duration of use or operation;
 13. Such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
 14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

Section 9.72.040 Time limit on a conditional use permit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for an additional period not to exceed six months on request.

d. Comprehensive Plan Goal G. Control of Urban Growth and Form

Policy 7. The City shall encourage improvement of the community's visual character.

CITY COUNCIL DECISION OPTIONS

The City Council will make a decision on the appeal of the Planning Commission decision. Three options are identified below for the City Council's consideration. The City Council may choose to modify these options.

A. Uphold the Planning Commission Decision

Upholding the Planning Commission's decision would deny the request for a conditional use permit to park a recreational vehicle on their property for temporary living purposes. In this case, the City Council would make findings that the Planning Commission did not error in their decision and that the request does not meet all applicable criteria. Findings could be found that although a recreational vehicle may be parked on land for temporary living purposes, the request fails to satisfy the purpose of the R-2 Residential zone to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary. The request would not provide an urban single-family residential use. The surrounding area is established as a single-family residential neighborhood. A

recreational vehicle used for temporary living purposes is not compatible with the surrounding single family residential use. The requested use would be incompatible because, unlike the surrounding single family residential use, it is not a single family dwelling, it is not a permanent use, and other activities, e.g. RV traffic, would be inconsistent with the everyday activity and character of a single family neighborhood. Additionally, a finding could be made that the proposed request does not encourage improvement of the community's visual character and therefore does not conform to Comprehensive Goal G, Policy 7.

This motion should also direct staff to prepare the City Council's Findings and Conclusions, and either 1) have the City Council review and approve the Findings and Conclusions at the February 10, 2011 City Council meeting only if the applicant agrees to an extension to the 120-day completion date for the City to make a final decision (from January 18, 2011 to February 11, 2011), or 2) have the Mayor review and sign the Findings and Conclusions on or prior to the January 18, 2011 120-day completion date.

B. Reverse the Planning Commission Decision

Reversing the Planning Commission's decision would result in the applicant receiving a conditional use permit to park a recreational vehicle on their property for temporary living purposes. In this case, the City Council would make findings that the request satisfies all applicable criteria, i.e. satisfies 1) the purpose and allowable conditional use per YMC 9.16 R-2 Residential zone, 2) the requirements for recreational vehicles per YMC 9.68.060, and 3) provisions of YMC 9.72 Conditional Uses; and Comprehensive Plan Goal G, Policy regarding improvements of the community's visual character.

In this case, staff recommends the following conditions of approval:

1. Development shall occur in accordance with the site plan dated 1/3/11 (received by the City 1/4/11), including but not limited to a gravel drive with two access locations on Lemwick Lane, no access to Coolidge Lane, a wood fence along the north property line, and landscaping as shown on the site plan. The applicant shall be responsible for maintaining the gravel drive, fence, and landscaping.
2. Prior to any development on the property, storm drainage improvements shall be constructed in accordance with approval by the City Public Works Director.
3. A renewable yearly parking permit shall be obtained from the city recorder. Fees shall be set by the city council.
4. As agreed by the applicant in their January 4, 2010 submittal, the permit is effective for parking ninety (90) days per calendar year with no more than thirty (30) consecutive days for any one stay.
5. The vehicle must be hooked up to city sewer and water.
6. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided:
 - a. The duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks;

The motion would also direct city staff to prepare the City Council's Findings and Conclusions, and have the Mayor review and sign the Findings and Conclusions on or prior to the January 18, 2011 120-day completion date.

C. Remand the Request to the Planning Commission

The City Council may remand the request to the Planning Commission. In this case, the City Council should provide direction and/or questions for the Planning Commission. The applicant would need to agree to an extension to the 120-day completion date for the City to make a final decision from January 18, 2011 to April 14, 2011. This would allow the Planning Commission adequate time to reconsider the application at their February 15, 2011 meeting and allow time for the City Council to act on any subsequent appeal that may be made from any party providing testimony. The applicant would need to sign this agreed upon extension prior to January 18, 2011.

ENCLOSURES

Applicant's January 4, 2011 Submittal (narrative and site plan)

Applicant's November 28, 2010 Appeal Statement re Conditional Use Permit

Planning Commission Findings and Conclusion

Applicant's Supplemental Argument concerning Conditional Use Permit (received October 20, 2010)
(Planning Commission) Staff Report

Minutes of the October 19, 2010 Planning Commission meeting

DEBORAH K. SCHRAM

December 22, 2010

City Council
City of Yachats
PO Box 345
Yachats, OR 97498

Re: Conditional Use Permit – 615 Lemwick Lane

Dear City Council:

Would you want a recreational vehicle parked on a lot across from your custom built home? We think not. With property values declining throughout the country and particularly here in Yachats, we do not feel that allowing this variance to the Municipal Code is a prudent thing to do to the neighborhood and the city of Yachats.

The Yachats Municipal Code regarding zoning and land use was written for a reason and we do not feel that anything has changed to cause you to deviate from the original decision. Consequently, we urge you to support the Yachats Planning Commission's decision to deny the request of the applicant and protect our neighborhood of higher-end, ocean view properties.

Thank you for your consideration.

Sincerely,

- / n

Deborah K. Schram

John W. Schram

DEC 23 2010

Kathleen & Quinton Smith
Carla & Kevin Chambers
Craig & Jane Reynolds
487 Lemwick Lane
Yachats, Ore.

Jan. 5, 2011

Yachats City Council
441 U.S. Highway 101 – PO Box 345
Yachats, Ore., 97498

This letter is in regard to the appeal by Steven and Crystal Buel-McIntire of the Planning Commission's rejection of a conditional use permit to park a recreational vehicle on their lot on Lemwick Lane. You are hearing that appeal Thursday, Jan. 13, 2011.

Although our representative, Quinton Smith, testified to the Planning Commission in October, the time and date of the City Council hearing prohibits us from testifying in person. Please accept this letter as our testimony.

A bit of background. Kathleen Smith, Carla Chambers and Craig Reynolds are the owners of three lots to the east of Buel-McIntire's property; one other lot separates these properties. This is the property formerly owned by Nancy and Richard Reynolds. Nancy, as you may remember, served on the Planning Commission, the City Council and two terms as mayor. Both are now deceased and their three children now own and use the house and property.

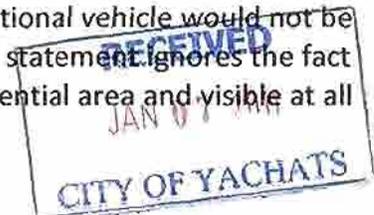
We stated our objections to the Buel-McIntire proposal to the Planning Commission. Nothing said by the applicant during that hearing, later in their post-hearing letter or in their notice of appeal to the City Council has done anything to change our minds or the issues involved.

As I told the Planning Commission, I remember conversations with Nancy Reynolds years and years ago when the city was debating how Yachats should develop. Should the city allow travel trailers and recreational vehicles as living units on residential lots or should there be a higher standard? The planning commission and city council back then adopted the higher standard and it is our belief that Yachats and its many neighborhoods are better for it.

The "visual character" that Yachats has built into its planning documents is highly important to us and our neighbors on Lemwick Lane. Much of that is because the city does not allow – except when constructing a permanent structure – the use of recreational vehicles as living quarters. The Buel-McIntire application would set a precedent to a policy that has helped make Yachats a truly unique and uniquely livable community. We do not want to see a breakdown in this code and the downgrading of neighborhoods with recreational vehicles being used as either temporary or permanent living quarters.

We would like to also address several arguments made in the original Buel-McIntire application and appeal.

1. In the original application, Buel-McIntire said the recreational vehicle would not be visible to the public because it is on a private road. That statement ignores the fact that the trailer would be parked in the middle of a residential area and visible at all



- times by its neighbors. The Buel-McIntire lot is also highly visible from the popular 804 Trail.
2. Buel-McIntire stated the trailer should be allowed because of the “very substantial investment” he and his wife made in purchasing their lot. As we all know, cost or location of a lot in Yachats has no bearing on what you can do with it. Everyone on the street made a substantial investment in their property and have come to use their property without setting up house in a travel trailer.
 3. Buel-McIntire says putting a recreational vehicle on the property should be allowed because their travel trailer is “not unsightly” but a nice, 5-year-old well-maintained trailer. The subjective condition of Buel-McIntire’s trailer or any recreational vehicle is not at debate – what is at issue is whether any type of recreational vehicle should be allowed as living quarters in a neighborhood of single family dwellings.
 4. Buel-McIntire states that the city’s comprehensive plan protecting the “visual character” of the neighborhood doesn’t apply to “occasionally parking an RV” on their property. Residents up and down Lemwick Lane disagree with the applicant on that – a recreational vehicle in the middle of their neighborhood within sight of the Pacific Ocean would certainly damage the visual character of the area.
 5. In an Oct. 24, 2010, post-hearing letter to the Planning Commission, Buel-McIntire objected to property owners beyond 100 feet of their property being notified of the hearing. The arrogance of that objection is simply stunning. Not only is this a neighborhood issue but a citywide issue and, of course, goes against everything ingrained in Oregon’s long record of open records, open meetings and public involvement.
 6. And, finally, in that same letter Buel-McIntire said that the Planning Commission and City Council must promote “justice” in its planning codes and ordinances. That too is an odd argument, a grasping at straws. What “justice” means to one person asking to degrade an entire neighborhood would be an “injustice” to city residents up and down Lemwick Lane.

In closing, we object to this appeal and of allowing recreational vehicles to be used as living quarters (except when building a permanent structure) in Yachats. We support city codes and ordinances that protect neighborhoods and help establish and preserve the city’s unique spot on the beautiful Oregon Coast.

Quinton & Kathleen Smith, Gresham, Ore.

Carla & Kevin Chambers, Carlton, Ore.

Craig & Jane Reynolds, Sammamish, Wash.

Richard E. & Carolyn A. Koonce

January 3, 2011
Case File #1-CU-PC-10 Conditional Use Permit.
City of Yachats, OR

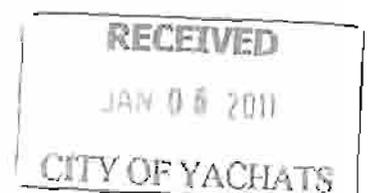
This letter is in reference to the conditional use permit for the site located at 615 Lemwick Lane.

It is my understanding that the applicant has no intention of building a permanent home on this lot in the immediate future. If this is the case there is no need for a "temporary living purposes". There are plenty of hotels in the city that if used would, at least, provide some tax income to the City. The decision by the Planning Commission to deny this use should be upheld.

A trailer or any temporary structure placed on this lot would degrade all of the homes in this area and would be an eyesore that would also impact the 804 trail.

We own the property at 551 Lemwick Lane and will be directly affected by an unsightly temporary structure placed on this lot. As a result we strongly oppose approval of this request. Thank you for your consideration.

Richard E. Koonce



January 7, 2011

Larry Lewis
City Planner
City of Yachats
441 HWY 101 N
Yachats, OR 97498

Dear Mr. Lewis,

I received the Notice of Public Hearing for an appeal to overturn the decision of the Planning Committee regarding the application of a conditional use permit for property located at 615 Lemwick Lane.

It is unfortunate that Mr. and Mrs. Buel-McIntire insist on wasting the time of the City Council members and taxpayer's money by appealing the correct decision of the Planning Committee of October 19, 2010. In addition, it is unfortunate to waste my time and the time of the Lemwick Lane and Coolidge Lane neighbors by needing to write yet another letter expressing our thoughts regarding the request.

I am opposed to the overturning of the Planning Commission decision denying the request of the conditional use permit for several reasons.

1. As stated in Yachats Municipal Code (YMC) Standards:

**a. Chapter 9.16 R-2 Residential Zone
Section 9.16.010 Purpose.**

This residential zone is intended to provide a quality environment for medium density, urban single-family residential uses and other compatible land uses determined to be desirable and/or necessary.

The homes surrounding the Lemwick lot are quality, high-end homes. The granting of the permit would seriously detract from the views and negatively impact property values of the surrounding homes. I am a supporter of the view shed preservation program for our nearby mountains, "View the Future". Allowing a recreational vehicle to park on the lot for temporary housing would negatively affect the "view shed" of the surrounding neighborhood.

The lot is visible not only by the residents but also by the local lodges and the walkers on the 804 Trail. Yachats is dependent on its tourism and the lot is located near 3 prominent lodges. The 804 Trail is a well-used walking trail enjoyed by visitors and residents alike.

The RV will negatively impact the experience of local residents and the tourists. The RV will be VERY visible by the 804 Trail. I have walked the trail countless times and can attest to this fact.

As stated in the previous letters of the residents of Coolidge Lane and Lemwick Lane, the RV is **NOT A DESIREABLE** use of land in this area.

**2. Comprehensive Plan Goal G. Control of Urban Growth and Form Policy 7.
The City shall encourage improvement of the community's visual character.**

The parking of a recreational vehicle does not improve the community's visual character, in fact it would do just the opposite. Not only would the vehicle detract from the community's visual character, but once the recreational vehicle leaves the property, the unsightly RV footprint on the landscape would remain. If the vehicle is allowed for no greater than 120 days per year at 90 day intervals, then the remaining 245 days, the residents and tourists would see the remains of the RV parking, such as soil degradation, destroyed landscaping, unsightly cement pad and gravel, and possible vehicle residue such as oil stains, etc. Either way, the lot would be unsightly, both when the RV is parked there and when it is not.

3. Development shall occur in accordance with the submitted site plan, i.e. gravel surface with two access locations on Lemwick Lane and one access location on Coolidge Lane. An alternative to this condition is to limit access to one or two locations and/or to specify where the recreational vehicle will be placed on the property.

This is a major issue. Access from Coolidge Lane would be virtually impossible. Coolidge Lane is not a street, but only a 16-foot easement and with overhanging trees. In order to access the Lemwick lot from Coolidge Lane, the recreational vehicle would need to maneuver a sharp, narrow, 90 degree turn directly in front of my house. The turn would be virtually impossible without driving onto private property and destroying the landscaping on private property along the road. There is a power pole and power lines located at this corner. This would make a very dangerous situation for the RV to turn this corner. Having maneuvered my vehicle many times around this turn, I can attest to the fact that it is a difficult sharp turn for a passenger vehicle, let alone a 27-foot travel trailer and the truck pulling it. Also, Coolidge Lane is not paved, so any attempt for the large, heavy 27-foot RV to drive on Coolidge Lane would further degrade the already-rutted road. **Access from Coolidge Lane is absolutely unacceptable.**

Rebuttals of Applicants dated October 19, 2010 from online document
<http://www.yachatsdocuments.info/library/Download.aspx?docid=2214>

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I have seen the photos submitted by the applicants of their 2006 27-foot Rainier Dutchmen RV and it is not compatible in any way with the look of homes located in the immediate area which are valued above \$500M. I have read the rebuttal of Mr. Buel-McIntire on page 2 and he indicates that the general public does not see the lot. I beg to differ because the lot is indeed visible from the 804 Trail. However, it is indeed unfortunate that he does not regard that his future neighbors residing on Lemwick and Coolidge Lanes have the right to an acceptable "view shed". The residents are also members of the "general public". He also states that improving his lot for his RV would "improve the visual character". **This is quite laughable if anyone would think that placing a cement pad with temporary landscaping and parking a 2006 27-foot RV is considered "improving the visual character" of the lot. Amazing!!!**

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On page 4 of his rebuttal, Mr. Buel-McIntire indicates that he and his wife have made a large investment in the lot and therefore should use it as they see fit. Yes, economic times are difficult, however, the residents on Lemwick and Coolidge Lanes have made substantially larger investments by actually constructing very nice permanent homes and have been paying higher taxes much longer than the applicants have. He states that we have no right to tell him what he can or cannot do because he has made the financial investment. He also states that we can voice our rightful opinions but "such opinions should not be controlling as he or she has no economic risks at stake". This is very wrong since the residents do have economic risks at stake. We are trying to protect our economic stake in our own homes that are located near the Lemwick lot. The neighbors regard this application as a **direct assault on the value of our property**. It is again unfortunate that the applicants do not see this fact. It is not a "completely reasonable expectation" to use the property as the applicants wish to the detriment of the property values of the surrounding neighbors. The residents have made a substantial investment in our homes and the parking of an RV and creating a cement pad on the applicant's lot will seriously detract from our property values should any of us decide to sell. A future buyer would not welcome a private RV park in their neighborhood where homes are of high value.

I am indeed happy to read that the applicants will eventually build a “very modern and contemporary home”. The neighbors will welcome such a nice addition to the neighborhood when the permanent structure is actually built.

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The vehicle must be hooked up to city sewer and water.

The applicants do not agree with this requirement due to the “occasional use...and the RV is fully self-contained.”

The RV in question is a travel trailer and while it has self-contained water and sewage tanks they will only be good for a few days of "dry camping". To have any reasonable use of the site there would have to be water, sewer and electric hookups. Unless they have a generator, which would be a problem in itself, they would have only a few battery-powered lights. Holding tanks might last a week. These trailers are meant to be parked where there are hookups.

So are we, the neighbors, expected to hear and tolerate the noises that an RV makes such as generator noises for power if the RV is not hooked up to city services? Since the applicants makes reference to allowing a visitor to park at the owner’s lot, section 9.68.060 which states that the visitor RV must use the sanitation facilities within the lot owner’s home. A visiting RV can also be self-contained but this regulation exists. You cannot have it both ways. **If the permit application is accepted (which would be wrong and unfair to the local residents), the RV must be hooked up to city services.**

Conclusion

In an area of high-end, quality homes, the permit approval would basically allow the owner to convert their property to a private RV park. We bought our lots and built our homes in a residential neighborhood of nice homes with lovely views. Since the Lemwick lot is so visible to the local residents, tourists, and nearby lodges, to allow a private RV park would be incompatible with the neighborhood feel and blatantly unfair to the local residents and set an undesirable precedent for other areas in the city. If Yachats is the “Gem of the Central Oregon Coast”, it begins with its wonderful views. An RV parked two lots away from the water along a visible walking path is absolutely unacceptable.

Please do not overturn the original Planning Committee decision of October 19, 2010 and deny the conditional use permit.

We, the existing residents of Lemwick and Coolidge Lanes, have rights to lovely views and to the protection of OUR substantial financial investment in our homes in Yachats.

Sincerely,

Linda Fava

Yachats, OR 97498

Mailing address:



City of Yachats

441 Hwy 101 N.
P O Box 345
Yachats, OR 97498

January 11, 2011

To: Yachats City Council
From: Larry Lewis, City Planner
Re: Staff Report – Case File #1-CU-PC-10
Appeal of Planning Commission Decision

In the January 4, 2011 Memorandum/Staff Report three City Council Decision Options for the appeal of Case File #1-PC-CU-10 were identified. This memorandum identifies a fourth option which I strongly recommend the City Council consider.

Reverse the Planning Commission Decision with a Time Limit on the Conditional Use Approval
Reversing the Planning Commission's decision with a time limit for the conditional use approval would result in the applicant receiving a conditional use permit to park a recreational vehicle on their property for temporary living purposes for a specified period. Yachats Municipal Code Section 9.72.010(B)(9) states that a condition of approval for a Conditional Use may include "Setting a time limit for which the conditional use is approved."

In this case, the City Council could make a motion stating that:

Based on submitted evidence the City Council finds the request satisfies applicable criteria, therefore, the request is approved based on conditions. In accordance with Yachats Municipal Code Section 9.72.010(B), the City Council finds that in order to protect the best interests of the surrounding city as a whole the conditional use permit shall be valid for a one year period. This approval is based on the seven conditions identified in the city planner's January 11, 2011 memorandum.

Conditions of Approval

1. This conditional use permit is approved for one year from the date the City Council Findings and Conclusion are signed by the Mayor or designated City Councilor.
2. Development shall occur in accordance with the site plan dated 1/3/11 (received by the City 1/4/11), including but not limited to a gravel drive with two access locations on Lemwick Lane, no access to Coolidge Lane, a wood fence along the north property line, and landscaping as shown on the site plan. The applicant shall be responsible for maintaining the gravel drive, fence, and landscaping.
3. Prior to any development on the property, storm drainage improvements shall be constructed in accordance with approval by the City Public Works Director.
4. A parking permit shall be obtained from the city recorder. Fees shall be set by the city council.

5. As agreed by the applicant in their January 4, 2010 submittal, the permit is effective for parking ninety (90) days per calendar year with no more than thirty (30) consecutive days for any one stay.
6. The vehicle must be hooked up to city sewer and water.
7. A lot owner may permit a visitor to park his or her recreational vehicle on the owner's lot for dwelling purposes provided the duration of stay for parking and dwelling in the recreational vehicle does not exceed two weeks.

City staff is directed to prepare the City Council's Findings and Conclusions, and have the Mayor or designated City Councilor review and sign the Findings and Conclusions on or prior to the January 18, 2011 120-day completion date.

The City Council may also want to consider directing the Planning Commission to pursue an amendment to the Yachats Zoning and Land Use Code that eliminates Recreational Vehicles as a Conditional Use in the R-2, R-3, and R-4 Residential Zones.

January 10, 2010

To: Larry Lewis, City Planner
Members of the Yachats City Council
Members of the Yachats Planning Commission,

We recently received a Notice of Public Hearing for an appeal to overturn the decision of the Planning Commission regarding a request for a conditional use permit to temporarily park and live in a recreational vehicle on property located at 615 Lemwick Lane. We wrote to the commission at the time of the initial public hearing to voice our concerns and are now writing again to re-iterate them as well as to address additional issues raised in the appeal.

First, we want to thank the commission for its careful, balanced and far-sighted consideration in making the original decision to deny the permit. We are grateful for your commitment to protect the interests of not just the established neighborhood in this particular situation, but the future of the surrounding city as a whole. As the Commission's original decision stated, granting this permit does set a precedent and would open the City up to this type of use everywhere in the city. It truly is in opposition to Yachats' comprehensive plan and the goals of the Urban Renewal District.

In the Buel-McIntire's original application, they stated that they have "rarely found an Oregon location that (they) like to frequent more than Yachats," and that they "love the neighborly community." No doubt, they are drawn, as we all are, to the unique character of Yachats and the qualities that set it apart from other coastal communities. While other towns with less vision have grown to include endless rows of condominiums, RV vacation resorts and soulless strip malls, Yachats clearly remains a community of friends, neighbors and families dedicated to preserving the town's creative nature, culture, beauty and strong sense of community. Hopefully the applicants can understand our view that permitting the equivalent of multiple-vehicle private RV parks on vacant lots in Yachats – and particularly in areas highly frequented by tourists, a mainstay of the local economy – is in direct conflict with that culture and the vision that keeps Yachats so appealing.

We understand and empathize with the applicants' desire to visit Yachats frequently and to develop their property, but that can be easily managed by parking their RV at one of many approved RV camping locations within minutes of the City – from Sea Perch RV Park and Cape Perpetua campground to the south to Tillicum and Beachside parks to the north.

Since our previous letter and the earlier findings of the Commission addressed the issues of the "view shed" and RVs detracting from the area's visual character, we will assume you have read them already and not rehash them in detail here. However, there were several points in the Buel-McIntire's subsequent comments on the Staff report that we would like to address:

1. The Buel-McIntire's statement that the site is tucked out of view of visitors walking the 804 trail is not accurate. We walk this trail daily and the lot is fully visible and in the middle of a cluster of architecturally interesting permanent residences that invariably draw the eye of anyone passing by. Thousands of people staying at the Adobe, Fireside and Overleaf walk this section of the trail each year. We can also see the trail from our home on Coolidge Lane and noticed last week that, in just an hour's time, 5 parties stopped along the trail to photograph, not the ocean, but the houses in the neighborhood. This is a common daily occurrence, which just speaks to the point that this stretch of the trail influences people's perception and memories of Yachats and the images they share with potential future visitors.
2. Perhaps one of the primary issues causing a difference of opinion between the Buel-McIntires and others in the neighborhood is the definition of "visual character." While the applicants see their RV as attractive and well cared (which it certainly appears to be for those who appreciate RVs) many in the neighborhood instead see transient RV parking (regardless of the condition of the vehicle) as conceptually and visually out of character with the established family homes surrounding it. There is concern also, that additional vehicles owned by friends or family of the Buel-McIntires could be parked on the site (with no guarantee as to the condition of those vehicles) and that the condition of the property once the vehicle departs will be decidedly unsightly compared to the surrounding area. And this, of course is linked to the larger issue of this permit creating a precedent that could result in RVs in virtually any condition being able to park on vacant lots throughout the city.
3. The applicants are now evaluating access to their property from Coolidge Lane. We cannot overstate what an unfortunate move this would be. First, there is not adequate room to maneuver a vehicle from Coolidge without driving onto neighbors' property (opening the possibility of damaging driveways and/or landscaping), but more importantly, Coolidge is in extremely degraded condition with deep ruts and potholes that only get worse when traversed by large vehicles and heavy equipment. Please do not allow this access, which would cause considerable grief for all parties involved, including residents at the East end of the road who could be impacted by further damage to the road.
4. While initially concerned about the applicants' refusal to meet the requirement for hooking up to city sewer and water, we are now more concerned by their statement that the RV is self-contained. If that is the case, will those of us living on nearby property be subjected to the noise of a generator rather than the sound of the waves? If this is the case, please remember the commission's responsibility to consider noise regulation when granting or denying permits.

We have tried to be open-minded and considerate of the Buel-McIntires' viewpoint and to weigh it carefully against our own, remembering how strongly we were pulled to this community before finally making the move. Although their intention is to build a vacation

house rather than a full time permanent residence, we will be neighbors during the time they spend in Yachats and we look forward to a friendly relationship and to their involvement in the community. However, after considerable time reviewing this situation again, we see nothing in the appeal that should override the Commission's original finding: Granting the permit sets a precedent that could prove detrimental to the overall community's visual character and allowing the permit does not support Yachats' Comprehensive Plan or the goals of the Yachats Urban Renewal District. We still believe also that parking a recreational vehicle on this particular property would create a negative perception for local residents in the context of the surrounding neighborhood and for visitors to the area. As the original decision to deny the permit stated, the proposed use is not compatible land use that is desirable and/or necessary in this single family residential neighborhood.

Thank you for your consideration and the opportunity to comment. We sincerely hope that you will not overturn the original Planning Commission decision made in November denying the conditional use permit.

With best regards,

Curtis and Jan Brown

To: Yachats City Council, Nancy Batchelder City Recorder, Larry Lewis Planner and the members of the Yachats Planning Board

From; Ron Spisso, Carol McWilliams Owners of home at 610 Lemwick Lane

Date: Jan. 12, 2011

Subject: Comments about Steven and Crystal Buel-McIntire request for Conditional Use Permit at 615 Lemwick Lane, Yachats, Oregon.

Thank you for having comprehensive information on the city planning site.

After review of the documents, these are our concerns:.

1. We have objections to siting a recreational vehicle on the property because it appears that the owners do not have a building permit and have not indicated that they are planning on obtaining a permit. If and when a building permit is issued we would not object to a temporary RV to aid in building.
2. We object to allowing an RV on the site year after year. If approved the permit would be create a de facto RV park which we feel is incompatible with our neighborhood.
3. We purchased this lot because of the views and because it was surrounded by custom residential homes. We feel that allowing yearly use of our neighbor's property for a recreational vehicle will in fact change the permitted use of the property and will have a detrimental effect on value of our property and our ability to sell it at some future date.
4. If I am not mistaken the planning board in recent years has placed a restriction on our property. Although we are zoned for two-family use the required lot size has been increased in our area. This indicates to us that the planning board wants to preserve the custom single family use in the area and sets a precedent along those lines.
5. Please deny the conditional use permit.

Sincerely,

Carol McWilliams and Ron Spisso

610 Lemwick Lane

Yachats, Oregon 97498

30049 Spencer Creek Rd

Alsea, Oregon 97324

