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CITY OF YACHATS
PLANNING COMMISSION
Work Session
April 21, 2015
Minutes

Vice Chair Christine Orchard called the April work session to order at 2:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Orchard, Lawrence Musial, Katherine Guenther, Nan Scott, Ken Aebi, Lawrence Musial, Ron Urban and Shelly Shrock. Also present, City Planner Larry Lewis.

The Commission discussed the answers they had developed for the questions asked as part of the Proposed Stream Amendments at the February Work Session and made the following changes:

Yachats River Setback – The Planning Commission is no longer recommending changing the setback from the Yachats River from 50’ to 75’. Based on additional research it has been determined that the Yachats River does not exceed an average flow of 1,000 cubic feet per second. Therefore, the setback does not have to be increased to 75’.

Previously Approved Planned Unit Developments – The Planning Commission recommends that future construction within an approved PUD must conform to the approved PUD decision. To the extent the Code amendments are inconsistent with the approved PUD decision, future construction can proceed under the PUD decision rather than the inconsistent amended Code standards.

Questions regarding Yachats River:

1. *The wording of the draft ordinance allows for pruning of vegetation within 10 ft of a building. What about planting of vegetation, such as flower beds, close to buildings – will this continue to be allowed, and if so under what conditions?*

Answer: Planting is not currently allowed unless the plants are native riparian plants as per Code Section 9.52.070(D) (3). Pre-existing gardens can continue to be maintained.

2. *Will the continued existence of the riverbank path on our property (approximately parallel to the river) be affected? If so, how?*

Answer: The path is a pre-existing and non-conforming use and will be allowed to continue. There will be no change.

3. *Much of the existing riverbank path lies within 75 ft of the riverbank. Will Quiet Water's currently permitted mowing zone, up to the path, be affected? If so, how?*

Answer: The path is a pre-existing and non-conforming use and will be allowed to continue. There will be no change. In addition, it is unlikely that the setback will be changed to 75’ based on the corrected information received regarding flow rate of the river.

4. *The draft ordinance on page 4 refers to the “permitted use of a lot existing prior to the establishment of this amended ordinance”. For an existing unimproved lot in Quiet Water, is the*

1 construction of a house considered to be a “permitted use”, or does this term actually refer to a
2 building permit per se? In other words, may a current lot owner build on their lot even if a part of
3 the building falls within the 75 ft zone? In considering requests for building permits, is the
4 Planning Commission likely to grant reasonable exceptions, or will the new restrictions be
5 strictly enforced?
6

7 **Answer:** Undeveloped lots may be built on. Refer to Code Section 9.52.070 (D) (3) (a)(b)(c).
8

9 **NOTE:** The Planning Commission will likely withdraw the 75' setback based on the corrected
10 information regarding flow rate.
11

12 **Question:** Regarding Agency Creek, is a property owner able to keep the waterway clear of
13 vegetation or will property owners not be allowed to clear and therefore let the vegetation grow
14 over on its own? A hedge within the stream setback will be left and not maintained?
15

16 **Answer:** Removal of non-native noxious and invasive vegetation is allowed as per Code
17 Section 9.52.070(C) (3) and Section 9.52.070(D) (2) (e) (5) with a permit.
18

19 **Question:** Proposed language state a drainage easement 10 feet on center shall be
20 maintained. This is in conflict with do not remove vegetation. What is meant by ‘maintain’?
21 Does this also mean the outer 10 feet of grass is to be left to grow uncontrolled?
22

23 **Answer:** As per Code Section 9.52.070(D) (4) (b) the easement will be maintained, and will not
24 change. Removal of vegetation is not restricted for a drainage way.
25

26 **Question:** Request the Planning Commission confirming that, in light of the Creekside PUD and
27 Fisterra PUD land use decisions made prior to these amendments nothing in the amendments
28 will apply to the previously approved Creekside PUD.
29

30 **Answer:** The Planning Commission recommends that future construction within an approved
31 PUD must conform to the approved PUD decision. To the extent the Code amendments are
32 inconsistent with the approved PUD decision, future construction can proceed under the PUD
33 decision rather than the inconsistent amended Code standards.
34

35 **Questions regarding Agency Creek**

36 1. We have a bridge spanning the creek, as well as a garden shed on the south side of the
37 creek, within 25 feet of the creek’s centerline. How might these amendments affect
38 maintenance or, if necessary, replacement of these existing structures?
39

40 **Answer:** The bridge and shed would be considered a pre-existing and nonconforming use (per
41 Code Section 9.76) and would continue to be allowed.
42

43 2. A hedge parallels the top of the south side of the stream bank for part of our property
44 and lawns on both sides of the creek. Will these amendments force us to 1) replace this with
45 native vegetation or 2) obtain permits in order to maintain them in a reasonable manner?
46

47 **Answer:** The hedge is considered a pre-existing and nonconforming use and would continue to
48 be allowed.
49

50 3. The stream bank, at least on the north side, is held in place chiefly by invasive
51 blackberries, which we trim or dig out on a regular basis. It is our concern that removing too

1 many of them may destabilize the bank. While we detest these plants, we're not sure how to
2 address this matter, especially within the guideline of the amendments, nor are we entirely sure
3 that this issue would fall within the purview of the amendments.
4

5 **Answer:** Noxious plants may be removed and replaced with native riparian plants, with a permit
6 per Code Section 9.52.070(C) (3).
7

8 4. Is there an actual problem with Agency Creek, which seems to be more of a drainage
9 ditch than an actual stream? While we appreciate the sentiment of the amendments (i.e. clean
10 water flowing into the ocean), we don't observe any behavior among residents on our particular
11 creek that seems to warrant the scope of the proposed amendments.
12

13 **Answer:** The Ordinance seeks to standardize all creeks within the City as identified in the LWI
14 and to adhere to the State Planning Goals.
15

16 **Question:** Why is the Planning Commission proposing changes?
17

18 **Answer:** The Ordinance seeks to standardize all creeks within the City as identified in the LWI
19 and to adhere to the State Planning Goals. And, to make it easier for staff to enforce.
20

21 **Question:** What parts of Agency Creek will have setback regulations – all of Agency Creek, all
22 open areas of the creek (exclude underground parts), or all open areas excluding open
23 concreted areas?
24

25 **Answer:** The setbacks will apply to all open areas of any identified streams, excluding the
26 underground parts. The concreted areas would be considered open.
27

28 **Question:** Will established non-native landscaping not be able to maintained, e.g. at Bayview
29 Terrace and Hwy 101, Overleaf Village, Gender Creek, etc?
30

31 **Answer:** The landscaping is considered preexisting and nonconforming and would continue to
32 be allowed (per Code Section 9.76).
33

34 **Question:** Will construction of a house (on an undeveloped lot) be allowed within the stream
35 setback? Will landscaping and pathways alongside a house be allowed?
36

37 **Answer:** The Planning Commission is no longer recommending changing the Yachats River
38 setback from 50' to 75' will not likely change the setback to 75' due to the corrected stream flow
39 information and previously approved Quiet Water Planned Unit Development. A site
40 plan/building permit application is needed to determine if landscaping and pathways alongside a
41 house can be approved.
42

43 **Question:** What is the actual cubic flow per second of water in the Yachats River? What is the
44 history of how the different CFS estimates were determined?
45

46 The original estimate in the LWI was a mathematical error, and the City has received a letter
47 from the consultant explaining that and correcting the flow rate.
48

49 **Note:** The City contracts with the Oregon Water Resources to maintain a flow monitor on the
50 Yachats River, which has been in place for two years or so.
51

1 **Answer:** Does the LWI report show all creeks on its map?

2
3 **Answer:** The LWI may not show all the creeks on the map.

4
5 **Question:** “Designated” creeks – What does it mean? Who is designating? On what basis?
6 Why are some creeks deemed worthy of protection and others not?

7
8 **Answer:** The Planning Commission used the term to get away from the terms perennial or
9 intermittent and was based on the LWI stream map. All the streams that are shown on the LWI
10 map are on the Designated Creek Streams Map (attached) and will be protected, to varying
11 degrees.

12
13 **Question:** What is to happen when a house on Gender Creek starts to collapse in the creek
14 because of bank erosion? Will the City of Yachats pay for the damage? Will the City of
15 Yachats allow “riprap” protection to be installed for every house on Gender Creek by way of a
16 “Hardship variance”? Are all citizens of Yachats to be taxed to pay for the houses of people
17 who live on Gender Creek?

18
19 **Answer:** This question is not relevant to the existing Ordinance or the proposed Amendment;
20 however the Ordinance states the purpose is to protect the natural drainage ways and
21 properties adjacent to those drainage ways.

22
23 Riprap would be allowed outside of the setback area, only.

24
25 Other questions are outside the Planning Commission’s jurisdiction.

26
27 **Questions:**

- 28
- 29 • Who will pay for very expensive remediation of slumping creek banks? City of Yachats
30 or individual homeowners?
 - 31 • Is the City possibly negligent if it does not consult with any expert when writing setback
32 code for creeks?
 - 33 • What is the plan for enforcement? Who is responsible? What qualified person will mark
34 the riparian areas/corridors/zones? When will that happen? How will it happen? What
35 will be the penalty provided for violation of setbacks? Or is the plan to not enforce any of
36 these setback regulations?
 - 37 • Who is considered to be “a person qualified to do such a delineation”?

38 **Answer:** Current Code Sections 9.52.070(D) (2) (a), (b) and (c) outlines who is qualified and
39 the processes to be followed; and, would be part of the building permit process.

40
41 Enforcement is outlined in Code Section 9.52.070(C) (3).

42
43 **Questions regarding Agency Creek at the corner of Hwy 101 and Aqua Vista Loop:**

44 1. Is the open 5-7 feet open creek subject to the amendment requirement of 25 feet from
45 the center of the creek?

46
47 **Answer:** Yes.

1 2. *If it is subject to that, what happens to land use decisions made prior to changes like*
2 *this? Are they still honored? (Would affect previously approved and required parking area for*
3 *commercial buildings).*

4
5 **Answer:** Yes.

6
7 3. *As has happened in the past with Planning Commission decisions, will existing*
8 *conditions be grandfathered?*

9
10 **Answer:** Yes.

11
12 4. *Do you know, as a culvert on a highway right of way, who is responsible for this section*
13 *of the creek?*

14
15 **Answer:** ODOT would be responsible.

16
17
18 The work session was adjourned at 2:55 p.m.

19
20
21
22 _____
23 Christine Orchard, Vice Chair

24
25
26 Attest:

27
28
29
30 _____
31 Nancy Batchelder, City Recorder