



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

May 5, 2008

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Lincoln County Plan Amendment
DLCD File Number 002-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 16, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Laren Woolley, DLCD Regional Representative
Stuart Cowie, Lincoln County

<paa> ya

FORM 2

DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

DEPT OF
ADD OR 2008
LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: LINCOLN COUNTY Local File No.: 2-ZC-PC-07
(If no number, use none)

Date of Adoption: 04/16/08 Date Mailed: 04/24/08
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12/07/07

- Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

THE LINCOLN COUNTY ZONING MAP IS AMENDED FROM P-F (PUBLIC FACILITIES) TO RR-10 (RURAL RESIDENTIAL) ON PROPERTY IDENTIFIED ON LINCOLN COUNTY ASSESSOR'S MAP 8-11-32 AS TAX LOT 301

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

SAME

Plan Map Changed from: N/A to N/A

Zone Map Changed from: P-F to RR-10

Location: LINCOLN COUNTY ASSESSOR'S MAP 8-11-32 TAX LOT 301 Acres Involved: 1.41 AC

Specify Density: Previous: — New: 10 AC FOR NEW LOT

Applicable Statewide Planning Goals: GOAL # 14 (URBANIZATION)

Was an Exception Adopted? Yes: No:

DLCD File No.: 002-07 (16574)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

OREGON PARKS & REC. DEPT.

Local Contact: STUART COWIE Area Code + Phone Number: 541-265-4192

Address: 210 SW 2ND ST.

City: NEWPORT Zip Code+4: 97365

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 452

COPY

4 _____
5
6 **Amending the Lincoln County Zoning Map from P-F (Public Facilities) to RR-10 (Rural**
7 **Residential) on property identified on Lincoln Assessor's Map 8-11-32 as Tax Lot 301, Case**
8 **File #02-ZC-PC-07 and declaring an emergency.**
9 _____

10 WHEREAS on February 11, 2008, the Lincoln County Planning Commission held a public
11 hearing to consider the request by applicant Kenneth Dimick (Agent Jeff Evans) for a zone change
12 from P-F (Public Facilities) to RR-10 (Rural Residential) on property identified on Lincoln
13 County's Assessor's Map 8-11-32 as Tax Lot 301, Case File #02-ZC-PC-07. The subject property
14 is an ocean front parcel located west of Highway 101 directly across from the south entrance of
15 Fogarty Creek State Park; and

16 WHEREAS the Planning Commission unanimously voted to recommend approval of the
17 request and adopted findings, conclusions, and a final order on February 25, 2008, and forwarded
18 that recommendation to the Board of Commissioners; and

19 WHEREAS there was no appeal of the Planning Commission's decision;

20 NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

21 **SECTION 1.**

22 1. The Planning Commission's recommendation is adopted, and the Lincoln County Zoning
23 Map is amended from P-F (Public Facilities) to RR-10 (Rural Residential) on property identified on
24 Lincoln County Assessor's Map 8-11-32 as Tax Lot 301, Case File #02-ZC-PC-07.

25 2. The findings and conclusions supporting this action are adopted as set forth in Exhibit
26 "A" attached hereto and incorporated herein.

27 3. The Department of Planning and Development shall amend the official zoning maps and
28 shall forward a copy of this ordinance to the Department of Land Conservation and Development.

1 4. Copies of this ordinance shall also be forwarded to the applicant and his agent; County
2 Surveyor; County Assessor; Lincoln County Department of Planning and Development, and County
3 Counsel.

4
5 **SECTION 2.**

6 This Ordinance being necessary for the immediate preservation of the public peace, health
7 and safety, an emergency is declared to exist, and this Ordinance shall take effect upon its passage.

DATED this 16th day of April, 2008.


LINCOLN COUNTY BOARD OF COMMISSIONERS


TERRY N. THOMPSON, Chair


DON LINDLY, Commissioner


BILL HALL, Commissioner

ATTESTED TO:


Judy Eames, Recorder

APPROVED AS TO FORM:


Wayne Belmont, County Counsel

BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

February 11, 2008

Applicant: Kenneth Dimick
Agent: Jeff Evans

) Case File #02-ZC-PC-07
) Findings, Conclusions and
Final Order

Nature of the Application:

The applicant is requesting a zone change from P-F (Public Facilities) to RR-10 (Rural Residential).

Relevant Facts:

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

1. The subject property is an ocean front parcel located west off of Highway 101 directly across from the south entrance of Fogarty Creek State Park. The property is further identified on Lincoln County Assessor's Map 8-11-32 as tax lot #301.
2. The subject property is approximately 1.41 acres in size and is located between two pieces of property owned and maintained by the Oregon State Parks and Recreation Department, which has devoted the land for public use as Fogarty Creek State Park.
3. The zoning of the property is P-F (Public Facilities).
4. The Comprehensive plan designation is DR (Dispersed Residential).
5. No structures currently exist on the lot.
6. Details of the applicant's proposal can be found in the staff report and in evidence submitted which is by reference incorporated into the record herein.
7. A public hearing to consider the request was held before the Lincoln County Planning Commission on February 11, 2008. All interested parties were given an opportunity to testify.
8. Staff presented a brief review of the application. The applicant is requesting a zone

EXHIBIT

Page 1 of 5

change from P-F to RR-10. Staff explained it is the position of the applicant that the property was zoned in error. While analyzing the application staff examined two factors; the first being the applicants date of acquisition and secondly, the history of the zoning on the lot. The applicant obtained the property in 1964 at a time when zoning did not exist on the lot. In 1974 the parcel including surrounding property was zoned R-1. In 1980 with the adoption of the comprehensive plan the property changed zoning again to P-F. Staff explained that at that time it would have been against county policy to rezone a privately owned residential lot to a public facilities zoning. It is staff's belief that the lot was mistakenly identified as property owned by the Oregon State Parks and Recreation Department. Had the lot not been zoned P-F it is staff's belief that the parcel would have been zoned RR-2, consistent with the underlying comprehensive plan designation dispersed residential.

9. Staff explained the purpose of requesting the RR-10 zone designation in substitute of another residential zone was to comply with the requirements of OAR 660-004-0040(7)(i).
10. Jeff Evans, an associate with Davis Wright Tremaine acting as agent for Kenneth Dimick, gave testimony on behalf of the request. Mr. Evans summarized the need for the request based on the error in the zoning that took place in 1980 as summarized by the planning staff. Mr. Evans explained that he was aware of agency comments presented from ODOT and the Oregon State Parks and Recreation Department. He let the commission know he had addressed access issues with ODOT and was prepared to address additional concerns from the Parks Department at a later date, when or if the applicant is prepared to develop the lot. He stated that although these comments were important they were not relevant criteria required for the zone change that was laid out before the planning commission for this specific application.
11. There was no other oral testimony either in support or in opposition of the application.
12. There were no additional letters of concern submitted by neighbors or other agencies.
13. No party requested a continuance of the public hearing or for the record to remain open.

Relevant Criteria

Lincoln County Development Code:

- A. **Lincoln County Code, Section 1.1235 Quasi-Judicial Amendments:** A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that:

- 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
- 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
- 3) The zoning previously adopted for the area was in error; or
- 4) There is a public need for the change being sought.

B. Lincoln County Code, Section 1.1377 Public Facilities Zone P-F: In a P-F zone, the following regulations shall apply:

(1) Uses Permitted Outright:

The following existing uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facility intended for use by the public.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Beach front protective structures.

(2) Conditional Uses Permitted:

Expansion of existing facilities that would substantially increase overall capacity or the conversion of one outright use to another may be permitted when authorized in accordance with the provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699 and 1.1901 to 1.1999.

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facilities.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Conversion of one outright use to another outright use.

C. Lincoln County Code, Section 1.1357 Rural Residential Zone RR-10:

In the RR-10 zone the following regulations shall apply;

(1) Uses Permitted Outright:

The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) One single-family dwelling unit.
- (b) Farm and forest use.
- (c) A recreational vehicle or other approved temporary housing to be used for dwelling purposes, during the construction of a single-family residential dwelling unit for which a building permit has been issued. The use shall not exceed a period of one year.
- (d) Beachfront protective structures.

(2) Conditional Uses Permitted:

The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:

- (a) Cemetery.
- (b) Church, non-profit religious or philanthropic center.
- (c) Community center.
- (d) Day nursery, nursery school-kindergarten, day care center, or similar facility.
- (e) Governmental structure or use.
- (f) Home occupation.
- (g) Nursing home, retirement home or similar facility.
- (h) Golf course and ancillary uses, but excluding golf driving range, miniature golf course or similar facility.
- (i) Private school.
- (j) Public or private utility facility.
- (k) Radio or television transmitter or tower.
- (L) Transfer station.
- (m) Excavating, filling, dredging or wetland drainage.
- (n) Recreational vehicle on an individual lot.
- (o) Aquaculture facilities.
- (p) Mining.
- (q) Boarding of horses for profit.
- (r) Pilings, piers, docks, and similar in-water structures.
- (s) Heliports.
- (t) Recreational vehicle park.
- (u) Bed and Breakfast Inns.

(3) Standards:

Except as provided in LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999 the following standards shall apply:

- (a) Lot Size:
The minimum lot size shall be 10 acres.
- (b) Yards, Special Setbacks:
Yards and special setbacks shall be the same as required in an R-1 zone.
- (c) Height:
No structure shall exceed 30 feet in height.
- (d) Lot Width to Depth Ratio:
Lots shall have an average width to depth ratio not in excess of 1 to 6.

Findings:

The Commission Finds:

1. The Commission finds that the subject property was zoned P-F in error, as the P-F zone is not applied to privately owned lands.
2. The request to change the zone to RR-10 conforms to the Lincoln County Comprehensive Plan designation of Dispersed Residential and is in accord with the Statewide Planning Goals.

Conclusions:

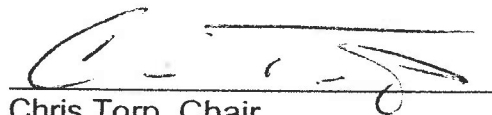
The record and findings support the conclusion that:

1. Substantial evidence in the record demonstrates that the subject property's current P-F zoning was assigned in error.
2. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Comprehensive Plan goals and policies.
3. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Statewide Planning Goals.

Order:

It is hereby ORDERED by the Lincoln County Planning Commission that Case File 2-ZC-PC-07 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the zone designation from P-F to RR-10.

This ORDER was presented to and approved by the Lincoln County Planning Commission on February 25, 2008.



Chris Torp, Chair
Lincoln County Planning Commission

BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

February 11, 2008

Applicant: Kenneth Dimick

Agent: Jeff Evans

) Case File #02-ZC-PC-07

) Findings, Conclusions and
Final Order

Nature of the Application:

The applicant is requesting a zone change from P-F (Public Facilities) to RR-10 (Rural Residential).

Relevant Facts:

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

1. The subject property is an ocean front parcel located west off of Highway 101 directly across from the south entrance of Fogarty Creek State Park. The property is further identified on Lincoln County Assessor's Map 8-11-32 as tax lot #301.
2. The subject property is approximately 1.41 acres in size and is located between two pieces of property owned and maintained by the Oregon State Parks and Recreation Department, which has devoted the land for public use as Fogarty Creek State Park.
3. The zoning of the property is P-F (Public Facilities).
4. The Comprehensive plan designation is DR (Dispersed Residential).
5. No structures currently exist on the lot.
6. Details of the applicant's proposal can be found in the staff report and in evidence submitted which is by reference incorporated into the record herein.
7. A public hearing to consider the request was held before the Lincoln County Planning Commission on February 11, 2008. All interested parties were given an opportunity to testify.
8. Staff presented a brief review of the application. The applicant is requesting a zone

change from P-F to RR-10. Staff explained it is the position of the applicant that the property was zoned in error. While analyzing the application staff examined two factors; the first being the applicants date of acquisition and secondly, the history of the zoning on the lot. The applicant obtained the property in 1964 at a time when zoning did not exist on the lot. In 1974 the parcel including surrounding property was zoned R-1. In 1980 with the adoption of the comprehensive plan the property changed zoning again to P-F. Staff explained that at that time it would have been against county policy to rezone a privately owned residential lot to a public facilities zoning. It is staff's belief that the lot was mistakenly identified as property owned by the Oregon State Parks and Recreation Department. Had the lot not been zoned P-F it is staff's belief that the parcel would have been zoned RR-2, consistent with the underlying comprehensive plan designation dispersed residential.

9. Staff explained the purpose of requesting the RR-10 zone designation in substitute of another residential zone was to comply with the requirements of OAR 660-004-0040(7)(i).
10. Jeff Evans, an associate with Davis Wright Tremaine acting as agent for Kenneth Dimick, gave testimony on behalf of the request. Mr. Evans summarized the need for the request based on the error in the zoning that took place in 1980 as summarized by the planning staff. Mr. Evans explained that he was aware of agency comments presented from ODOT and the Oregon State Parks and Recreation Department. He let the commission know he had addressed access issues with ODOT and was prepared to address additional concerns from the Parks Department at a later date, when or if the applicant is prepared to develop the lot. He stated that although these comments were important they were not relevant criteria required for the zone change that was laid out before the planning commission for this specific application.
11. There was no other oral testimony either in support or in opposition of the application.
12. There were no additional letters of concern submitted by neighbors or other agencies.
13. No party requested a continuance of the public hearing or for the record to remain open.

Relevant Criteria

Lincoln County Development Code:

- A. **Lincoln County Code, Section 1.1235 Quasi-Judicial Amendments:** A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that:

- 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
- 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
- 3) The zoning previously adopted for the area was in error; or
- 4) There is a public need for the change being sought.

B. Lincoln County Code, Section 1.1377 Public Facilities Zone P-F: In a P-F zone, the following regulations shall apply:

(1) Uses Permitted Outright:

The following existing uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facility intended for use by the public.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Beach front protective structures.

(2) Conditional Uses Permitted:

Expansion of existing facilities that would substantially increase overall capacity or the conversion of one outright use to another may be permitted when authorized in accordance with the provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699 and 1.1901 to 1.1999.

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facilities.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Conversion of one outright use to another outright use.

C. Lincoln County Code, Section 1.1357 Rural Residential Zone RR-10:

In the RR-10 zone the following regulations shall apply;

(1) Uses Permitted Outright:

The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) One single-family dwelling unit.
- (b) Farm and forest use.
- (c) A recreational vehicle or other approved temporary housing to be used for dwelling purposes, during the construction of a single-family residential dwelling unit for which a building permit has been issued. The use shall not exceed a period of one year.
- (d) Beachfront protective structures.

(2) Conditional Uses Permitted:

The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:

- (a) Cemetery.
- (b) Church, non-profit religious or philanthropic center.
- (c) Community center.
- (d) Day nursery, nursery school-kindergarten, day care center, or similar facility.
- (e) Governmental structure or use.
- (f) Home occupation.
- (g) Nursing home, retirement home or similar facility.
- (h) Golf course and ancillary uses, but excluding golf driving range, miniature golf course or similar facility.
- (i) Private school.
- (j) Public or private utility facility.
- (k) Radio or television transmitter or tower.
- (L) Transfer station.
- (m) Excavating, filling, dredging or wetland drainage.
- (n) Recreational vehicle on an individual lot.
- (o) Aquaculture facilities.
- (p) Mining.
- (q) Boarding of horses for profit.
- (r) Pilings, piers, docks, and similar in-water structures.
- (s) Heliports.
- (t) Recreational vehicle park.
- (u) Bed and Breakfast Inns.

(3) Standards:

Except as provided in LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999 the following standards shall apply:

(a) Lot Size:

The minimum lot size shall be 10 acres.

(b) Yards, Special Setbacks:

Yards and special setbacks shall be the same as required in an R-1 zone.

(c) Height:

No structure shall exceed 30 feet in height.

(d) Lot Width to Depth Ratio:

Lots shall have an average width to depth ratio not in excess of 1 to 6.

Findings:

The Commission Finds:

1. The Commission finds that the subject property was zoned P-F in error, as the P-F zone is not applied to privately owned lands.
2. The request to change the zone to RR-10 conforms to the Lincoln County Comprehensive Plan designation of Dispersed Residential and is in accord with the Statewide Planning Goals.

Conclusions:

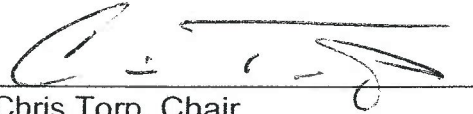
The record and findings support the conclusion that:

1. Substantial evidence in the record demonstrates that the subject property's current P-F zoning was assigned in error.
2. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Comprehensive Plan goals and policies.
3. Substantial evidence in the record demonstrates that the change to RR-10 is in accord with the Statewide Planning Goals.

Order:

It is hereby ORDERED by the Lincoln County Planning Commission that Case File 2-ZC-PC-07 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the zone designation from P-F to RR-10.

This ORDER was presented to and approved by the Lincoln County Planning Commission on February 25, 2008.



Chris Torp, Chair
Lincoln County Planning Commission

NOTICE

OF PUBLIC HEARING AFFECTING THIS AREA

- APPLICANT:** Kenneth Dimick
Agent: Jeff Evans
Case File # 02-ZC-PC-07
- REQUEST:** Applicant requests a zone change from P-F (Public Facilities) to RR-10 (Rural Residential).
- APPLICABLE CRITERIA:** Lincoln County Code:
1) Quasi-Judicial Amendments: Section 1.1235
2) P-F (Public Facilities): Section 1.1377
3) RR-10 (Rural Residential): Section 1.1357
- LOCATION:** The subject property is an ocean front lot located west off of Highway 101 directly across from the south entrance of Fogarty Creek State Park. The property is further identified on Lincoln County Assessor's Map 8-11-32 as tax lot #301.
- APPLICATION MATERIALS:** Copies of the staff report for this case may be purchased at the Lincoln County Planning Department, 210 SW 2nd Street, Newport, Oregon, seven days prior to the hearing. **Written testimony submitted in advance of the hearing is encouraged. The chair reserves the right to limit the time allowed for oral testimony.** The application, all documents and evidence submitted to date by or on behalf of the applicant, and applicable criteria are available for inspection at the Planning Department at no cost or can be purchased for individual use.
- TESTIMONY:** Testimony can be submitted in written or oral form. Letters should be sent to Lincoln County Planning Department; oral testimony will be taken during the course of the public hearing. Failure to raise an issue in a hearing, either in person or in writing, or failure to provide statements or evidence sufficient to afford the Planning Commission an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.
- CONTACT:** Stuart Cowie, Associate Planner at (541) 265-4192.
- TIME/PLACE OF HEARING:** **Monday, January 28, 2008 at 7:30 p.m.** in the Lincoln County Courthouse, Board of Commissioner's Conference Room, East Entrance, 225 W. Olive Street, Newport, Oregon. Any person having interest in this matter may attend and be heard, or they may submit testimony in writing to be entered into the record.

STAFF REPORT

Lincoln County Planning Commission Action

APPLICANT: Kenneth Dimick
AGENT: Jeff Evans

REQUEST: Applicant requests a zone change from P-F (Public Facilities) to RR-10 (Rural Residential).

A. REPORT OF FACTS:

1. **Lot Size:** Approximately 1.41 acres.
2. **Property Location:** The subject property is located west off of Highway 101 directly across from the south entrance of Fogarty Creek State Park (Figure 1). The property is further identified on Lincoln County Assessor's Map 8-11-32 as tax lot #301.
3. **Zoning Designation:** P-F (Public Facilities)
4. **Plan Designation:** D-R (Dispersed Residential)
5. **Topography & Vegetation:** The subject property is an ocean front lot covered in native vegetation (Figure 2). It is fairly level and maintains the same elevation as Highway 101 until it drops from a steep ocean bluff approximately 30 feet tall onto Fogarty Creek Beach below (Figure 3).
6. **Surrounding Land Use:** The subject parcel is surrounded by property owned and maintained by the Oregon State Parks Department. These properties, which surround the parcel to both the north and south, are designated for public use as part of Fogarty Creek State Park.
7. **Existing Structures:** Currently no structures are located on the property. However a large corridor used for the purpose of running overhead power lines does exist across the front of the property parallel with Highway 101 (Figure 4). This corridor is maintained by the Lincoln PUD through a specific easement authorizing the aforementioned use.

B. EVALUATION OF THE REQUEST:

1. **Agency Comments:**
 - a. **Oregon Department of Transportation Dist. #4:** *"There is significant confusion over the access rights to the subject property. In order to adequately answer the questions, I suggest Mr. Dimick should submit an*

- (a) Public parks and playgrounds, swimming pools, golf courses or similar recreation facilities.
- (b) Public schools and associated facilities.
- (c) Hospitals.
- (d) Government use.
- (e) Solid waste disposal site.
- (f) Conversion of one outright use to another outright use.

c. **Lincoln County Code, Section 1.1357 Rural Residential Zone RR-10:**

In the RR-10 zone the following regulations shall apply;

(1) Uses Permitted Outright:

The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999:

- (a) One single-family dwelling unit.
- (b) Farm and forest use.
- (c) A recreational vehicle or other approved temporary housing to be used for dwelling purposes, during the construction of a single-family residential dwelling unit for which a building permit has been issued. The use shall not exceed a period of one year.
- (d) Beachfront protective structures.

(2) Conditional Uses Permitted:

The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:

- (a) Cemetery.
- (b) Church, non-profit religious or philanthropic center.
- (c) Community center.
- (d) Day nursery, nursery school-kindergarten, day care center, or similar facility.
- (e) Governmental structure or use.
- (f) Home occupation.
- (g) Nursing home, retirement home or similar facility.
- (h) Golf course and ancillary uses, but excluding golf driving range, miniature golf course or similar facility.
- (i) Private school.
- (j) Public or private utility facility.
- (k) Radio or television transmitter or tower.
- (L) Transfer station.
- (m) Excavating, filling, dredging or wetland drainage.
- (n) Recreational vehicle on an individual lot.
- (o) Aquaculture facilities.
- (p) Mining.
- (q) Boarding of horses for profit.
- (r) Pilings, piers, docks, and similar in-water structures.
- (s) Heliports.
- (t) Recreational vehicle park.
- (u) Bed and Breakfast Inns.

(3) Standards:

Except as provided in LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to

permitted through the proper county review and building permit process.

All application materials are enclosed for commissioner's review.

D. SUMMARY AND CONCLUSION:

The applicant has requested a zone change from P-F (Public Facilities) to RR-10 (Rural Residential). The basis for said request being that the property was zoned in error.

The Planning Commission should review the application, as well as written and oral testimony, to determine whether or not the requested zone change is supported by substantial evidence. A motion to approve or deny the request should state the facts relied on and conclusions reached, and direct staff to prepare findings to implement the decision. In any event, the decision will serve as a recommendation to the Board of County Commissioners.

Submitted by:

Stuart Cowie
Associate Planner



Figure 1 - View of property from across Hwy 101 at the South Fogarty Creek Park entrance.



Figure 2 - View of property from the east side of Hwy 101.



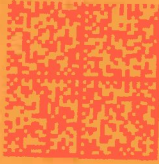
Figure 3 - View of the property from the beach detailing the ocean bluff.



Figure 4 - View of the Lincoln PUD overhead power line corridor crossing the subject property.



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