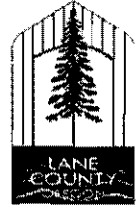


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AGENDA COVER MEMORANDUM



Memo Date: August 16, 2010
Public Hearing Date: August 25, 2010

TO: Board of County Commissioners
DEPARTMENT: Public Works, Land Management Division, Planning Department
PRESENTED BY: Stephanie Schulz, Associate Planner
AGENDA ITEM TITLES: **Ninth Reading/ Public Hearing/ Possible Action: Ordinance No. PA 1249 / In The Matter Of Co-Adopting The Florence Realization 2020 Comprehensive Plan and Associated Refinement Plans To Complete Periodic Review Tasks As Applicable Within The Urban Growth Boundary (UGB) Outside Florence City Limits And Adopting Savings and Severability Clauses (File No. PA 08-5363, Florence) (PM & NBA 11/5/08, 11/25/08, 12/10/08, 4/8/09, 7/22/09, 12/2/09, 2/17/10, 5/ /10)**

Eighth Reading/ Public Hearing/ Possible Action: Ordinance No. 7-08 / In The Matter Of Amending Chapter 10 of Lane Code To Revise And Add Provisions For The Interim Urbanizing Combining District (/U) Applicable Within The Florence Urban Growth Boundary. (LC 10.122-10, 10.122-13, 10.122-14, 10.122-15, 10.122-30, 10.122-31) (PM & NBA 11/05/08; 11/18/08; 4/8/09, 7/22/09, 12/2/09, 2/17/10, 5/ /10)

I. AGENDA ITEM SUMMARY

Ordinance No. PA 1249: Board co-adoption of the Florence Comprehensive Plan 'Realization 2020' and these associated refinement plans applicable within the Florence UGB:

- Transportation System Plan
- Wastewater Facilities Plan
- Water Facilities Plan
- Stormwater Management Report
- Stormwater Design Report for the North Spruce Street LID.

Ordinance No. 7-08: Board adoption of amended provisions in Lane Code Chapter 10 for application within the Florence Urban Growth Boundary.

II. BACKGROUND/HISTORY OF BOARD ACTION

May 19, 2010: The Board continued public hearings on Ordinance No. PA 1249 and Ordinance No. 7-08. At the end of testimony, the Board held the hearings open and scheduled additional readings for August 25, 2010. Written testimony received since May 19th by the Land Management Division is submitted to the record and attached. City of Florence has proceeded with implementation of a groundwater monitoring and study program under federal grant funding from the EPA to the Siuslaw Estuary Partnership. Lane County Environmental Services staff is participating in the study, coordinated with both city of Florence and the Heceta Water District under Board approved

Intergovernmental Agreement adopted on May 19, 2010. The IGA describes the testing and monitoring program for collecting up to date data on the current situation to inform any future measures or regulations for groundwater protection.

III. TIMING/IMPLEMENTATION

This application was submitted to the Board for co-adoption as a Florence Periodic Review Work Task and has been under review by the Board for co-adoption since 2008. On August 12, 2010, Florence sent the attached Notice of Completed Work Task 8 to the Department of Land Conservation Development requesting acknowledgement of completion of this periodic review work task for application within the city limits of Florence. In order for Realization 2020 to have applicability within the urban growth boundary of Florence, the Board will need to co-adopt the Realization 2020 Plan.

The Board could make a decision today. If there is additional direction to staff for revisions, or need to consider recent input to the process or discussion with city of Florence, additional readings would be set for a date certain prior to considering adoption of the Policy Ordinance and accompanying Lane Code text amendments.

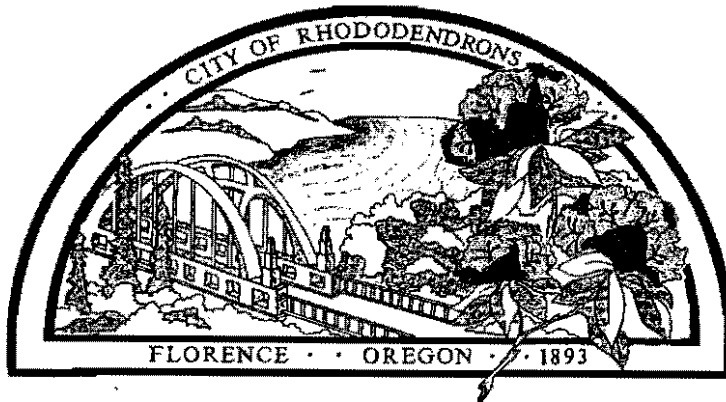
IV. ATTACHMENTS

Attachment 1—DLCD Notice of Completed Work Task No. 8 from Florence

Attachment 2 – Email correspondence from Daniel Stotter to Board

REC'D AUG 18 2010

ATTACHMENT 1



City of Florence

Community Development Department
Planning, Building Inspection and Economic Development

250 Highway 101
Florence, OR 97439-7628
TDD: (541) 997-3437

PH: (541) 997-8237
PH: (541) 997-2053
FAX: (541) 997-4109

August 12, 2010

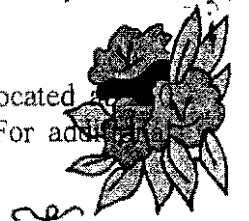
NOTICE OF COMPLETED WORK TASK 8

On December 23, 2009, the Florence City Council adopted Ordinance No. 18, Series 2009, which amended the Florence Realization 2020 Comprehensive Plan, Chapters 2, 6, 12 (Appendix 12), and 14. The City adopted these amendments to respond to concerns raised during Lane County's adoption process of the Florence Realization 2020 Comprehensive Plan and generally:

1. **Chapter 2 – Land Use:** changes language related to the West 9th Street planning area to reflect rezoning and redevelopment of Park Village subdivision and related housekeeping amendments.
2. **Chapter 6 – Air, Water, and Land Quality:** Established a program to test the water quality of our aquifer, the source of Florence's drinking water. The testing program would also detect contamination of Heceta Beach.
3. **Appendix 12 – Transportation System Plan:** Added clarification of terms and insertion of explanatory text.
4. **Chapter 14 – Urbanization:** Changes: (1) prohibit the City from using the Island Annexation Method (a method in State law which gives property owners no vote in an annexation); (2) prohibit future land divisions prior to annexation to the City; (3) require referrals to Lane County and to Heceta Water District, for properties within the District; and (4) require that properties be annexed to the City in order to receive a full range of urban services.

At the end of last year, the City held off stating that we had completed periodic review work task 8 because the City was expecting the Lane County Board of Commissioners to co-adopt our Comprehensive Plan. However, after more hearings, the County has not yet made a decision. The City is therefore, going ahead and submitting our ordinance to the Department of Land Conservation and Development (DLCD) for acknowledgement. If you believe the city did not satisfactorily complete the work task, or that the Comprehensive Plan Amendments adopted in Ordinance No. 18, Series 2009 do not comply with the statewide planning goals, you may submit an objection to DLCD.

You may review Ordinance 18 and related documents at Florence City Hall located Highway 101. Copies are available for purchase at a cost of \$.20 per page. For addi



information, call the Community Development Department, at 541-997-8237 or e-mail sandra.belson@ci.florence.or.us.

To file an objection, you must do three things. **First**, address these requirements in your objection:

1. Show how you participated in the city's periodic review process, either by testifying at a public meeting or by sending written comments about the work task, and
2. Explain your objection to the action taken by the city. Be specific and try to relate the objection to a specific law or rule that has been violated, and
3. Recommend a specific change to the work task that would resolve your objection.

Second, submit the written objection(s) to:

Attention: Periodic Review Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

DLCD must receive the objection no later than 21 days from the date the notice was mailed by the local government (i.e., postmark date on the envelope).

Third, send a copy of the objection to the Florence Community Development Department, 250 Highway 101, Florence, OR 97439, attn: Sandra Belson.

See Oregon Administrative Rule Chapter 660, Division 25 for specific requirements for participating in periodic review. Note especially OAR 660-025-0140 regarding objections to work task submittal. http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_025.html

If you have questions about DLCD's review of this work task, please contact the city's DLCD Regional Representative: Dave Perry dave.perry@state.or.us or 541-574-1584.

Dear Lane County Board of Commissioners:

I am writing as a further follow-up to the Board's continued co-adoption review of the City of Florence's proposed Comprehensive Plan Amendments, and more specifically, the City's proposal seeking to add new Annexation Policies in furtherance of its agenda to expand the boundaries of the City of Florence via annexing residential lands currently under the jurisdiction of Lane County which are outside of the City, and within the UGB, via forced annexations.

I would urge the County Board to deny the City of Florence's proposed Comprehensive Plan Annexation Policies at this time, as the current language still does not provide an acceptable or reasonable limitation on the forced annexation of areas where the majority of county resident electors strongly oppose annexation to the City of Florence.

While at first glance, the City's currently proposed policies might appear to allow annexations only when supported by a majority of residents, by expressly allowing annexations of territory to the City of Florence, other than health hazard annexations per ORS 222.840, only under methods that "require a majority of consents" and by expressly excluding "island annexations" per ORS 222.750, a close review of the City's Comprehensive Plan proposal demonstrates that, in fact, allowing **all** forms of annexations that require a majority of consents will allow the City to continue to undertake forced annexations that are opposed by the majority of residents and electors living in the areas sought to be annexed by the City of Florence.

The City of Florence is clearly disingenuous by not admitting to Lane County that of the various forms of annexation procedures that require consent under state law, there are two very different types of consents, only one of which is based on the consent of a majority of elector residents:

(1) A "triple majority" annexation procedure that requires consent of "more than half of the owners of land in the territory proposed to be annexed, who also own more than half of the land in the territory proposed to be annexed and of real property therein representing more than half of the assessed value of all real property in the territory proposed to be annexed." *See* ORS 199.490(2)(a)(A).

(2) A "double majority" annexation procedure that requires consent of more than half of the electors and the owners of more than half of the territory proposed to be annexed. *See* ORS 199.490(2)(a)(B).

While the latter ORS 199.490(2)(a)(B) "double majority" procedure requires the consent of a majority of the elector residents to approve an annexation, the ORS 199.490(2)(a)(A) "triple majority" procedure allows a few wealthy developers who own large tracts of valuable real estate to initiate annexation without regard to the position of the majority of resident electors. Under the triple majority annexation consent procedure described above, the minority of owners can dictate over the majority of residents to cause a forced annexation of county residents into the city.

Therefore, Lane County should co-adopt Comprehensive Plan language that allows for the City of Florence to use the "triple majority" consent annexation, which does not require

consideration of the views of elector residents, only for vacant or undeveloped properties, such as vacant farm, forest or industrial lands, and where there is no need to consider the position of the impacted local resident electors, and should only co-adopt Comprehensive Plan language that expressly does not allow the “triple majority” consent process to be used for areas with resident electors, who will clearly be directly impacted, and should therefore certainly have a direct and proportional say in the outcome of any annexation decisions of their homes and property.

I would urge the Board to reject co-adoption of the City of Florence’s proposed annexation policies in the Florence 2020 Comprehensive Plan until such time as the City of Florence agrees to modify it’s Comprehensive Plan language to expressly require consent of a majority of the resident electors for any developed or occupied properties that are currently under the county’s jurisdiction that will be directly impacted by a proposed annexation (except under circumstances where there is sufficient evidence to support a health hazard annexation under ORS 431.705 criteria and procedures).

Respectfully,

Daniel J. Stotter
Stotter & Associate LLC
(541) 738-2601
dstotter@qwestoffice.net

SCHULZ Stephanie E

From: FLEENOR Bill A
Sent: Sunday, August 15, 2010 8:42 PM
To: Daniel Stotter; VORHES Stephen L
Cc: HANDY Rob M; SORENSON Pete; DWYER Bill J; STEWART Faye H; Michael Lilly; RICHARDSON Liane I; HOWE Kent; SCHULZ Stephanie E
Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Mr. Stotter,

I understand how you must feel, sitting on the sidelines looking in to a process that superficially appears to not be going in the direction you or your client may intend. Fortunately, we have a democratic process that is taking place, wherein, the process that is unfolding, al-be-it, is grinding slow, is none-the-less grinding fine.

As far as staffs participation in this matter, it has been appropriate and professional, and I see no fault or blame to be placed at their feet. The Board of County Commissioners is fully responsible for any and all activities that take place, or do not take place, and in that vein, I think it would be appropriate to place any blame, found or non-founded, at our feet.

I'm confident we will have a work product that represents the best compromise our legislative process can deliver, but it does take time, and it does take resources; both of which our county counsel's office are sadly lacking. I anticipate we will have an opportunity to provide direction and guidance to staff, at our next public hearing, that will hopefully allow all parties to come to a resolution of this well overdue matter.

In the mean time, I respectfully suggest you vent your frustration and anger at me, or the BCC, so we can maintain the highest level of professionalism possible during these very difficult economic times.

My best,

Bill F.

From: Daniel Stotter [dstotter@qwestoffice.net]
Sent: Sunday, August 15, 2010 3:05 PM
To: VORHES Stephen L
Cc: HANDY Rob M; FLEENOR Bill A; SORENSON Pete; DWYER Bill J; STEWART Faye H; Michael Lilly; RICHARDSON Liane I; HOWE Kent; SCHULZ Stephanie E
Subject: Re: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Thanks Stephen. My read is that several members of the County Board are currently asking you to assist them with legal assistance in advance of the next public hearing meeting. Of course it is completely your call as to whether you want to oblige those members of the Board of Commissioners on that request, but it does seem reasonable to me for the Board to be able to request advance legal assistance from county counsel in this matter, since they are the governing body for Lane County, and since that would promote more informed decision-making at the upcoming hearing.

I know that some other counties and cities have legal counsel that are quite willing to provide advance legal assistance to their governing bodies in advance of decisions when that is requested, and I think that can be very helpful to promoting good decision-making, but perhaps that is not Lane County Counsel's practice. In my humble opinion, it would probably be very frustrating to serve on the Lane County Board of Commissioners if the county's attorneys (county counsel) did not want to provide advance legal assistance, but it appears there are some folks in the county staff who actually prefer to keep the Board less informed - I do not favor that approach.

08/16/2010

Sincerely,

Daniel J. Stotter
Stotter & Associates LLC

----- Original Message -----

From: VORHES Stephen L
To: 'Daniel Stotter'
Cc: HANDY Rob M ; FLEENOR Bill A ; SORENSON Pete ; DWYER Bill J ; STEWART Faye H ; Michael Lilly ; RICHARDSON Liane I ; HOWE Kent ; SCHULZ Stephanie E
Sent: Sunday, August 15, 2010 2:18 PM
Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Thanks for the message, Dan. I appreciate your observations. As you might recall, the Board did not direct staff to work with the city on alternate annexation policy language and the city proposal did not involve any county staff efforts beyond transmitting the letter to the Board. The Board will have an opportunity to do so when they take this up on the 25th of this month. My concern mostly runs to making sure the record includes all the materials reviewed by the Board as the decision maker in case the matter gets appealed. It also helps to inform the Board if folks know what is being proposed and they can respond. I appreciate your including me in messages so we can be sure that materials get included in the record that has been developed in this matter. Sorry to have missed your call on Friday, I was at the OSB Real Estate and Land Use Section CLE until yesterday. I will try to call you tomorrow to talk further. Thanks.

--Stephen

From: Daniel Stotter [mailto:dstotter@qwestoffice.net]
Sent: Saturday, August 14, 2010 10:53 AM
To: VORHES Stephen L; HANDY Rob M; FLEENOR Bill A; SORENSON Pete; DWYER Bill J; STEWART Faye H
Cc: Daniel Stotter; Michael Lilly
Subject: Re: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Thanks - It is quite interesting that the county staff will always assist the applicant (City of Florence) on drafting / discussions of proposed language but not other members of the public on this issue.

I would also note that the City of Florence has not provided my office (or other interested parties) with any of their communications with the County on this issue.

Also, I recall the Board expressly ruling that they were acting on this matter as a legislative and not as a quasi judicial decision, which as you know does allow for direct communications with the decision makers outside of the public hearing process.

Sincerely,

Daniel J. Stotter
Stotter & Associates LLC

----- Original Message -----

From: VORHES Stephen L
To: HANDY Rob M ; FLEENOR Bill A ; Daniel Stotter
Cc: RICHARDSON Liane I ; HOWE Kent ; SCHULZ Stephanie E
Sent: Saturday, August 14, 2010 10:29 AM
Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10

08/16/2010

Agenda

Thanks for the messages, Dan and Commissioners. At this point, I would recommend refraining from the appearance of deciding anything outside of the Board meeting at which the Florence planning effort is next considered. I will send the messages from Mr. Stotter to county and city staff so the proposal is available to everyone in the process. We are still trying to determine what e-mail messages were reviewed by the Board from Mr. Stotter around the IGA for the water quality study and the city folks would like to know what issues those raised. The same will no doubt be true of this exchange. Thanks.

–Stephen

From: HANDY Rob M

Sent: Saturday, August 14, 2010 9:54 AM

To: FLEENOR Bill A; Daniel Stotter

Cc: VORHES Stephen L; RICHARDSON Liane I

Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

I would be agreeable to having Mr. Vorhes look into this further.

Thanks, all.

-Rob

lane county:

working
for you

Rob Handy

Lane County Commissioner

Public Service Building

125 East Eighth Avenue

Eugene, Oregon 97401

(541) 682-4203 phone

(541) 682-4616 fax

Rob.Handy@co.lane.or.us

All communication with a Lane County Commissioner becomes part of the public record and is not confidential. Please keep this in mind in all communications.

From: FLEENOR Bill A

Sent: Friday, August 13, 2010 10:26 AM

To: Daniel Stotter

Cc: SORENSON Pete; HANDY Rob M; DWYER Bill J; STEWART Faye H; VORHES Stephen L; RICHARDSON Liane I

Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Mr. Vorhes,

Based upon Mr. Stotter's comments below, and if there is a majority on the BCC who wish to have this language drafted, what would you need to make this happen?

Many thanks,

Bill F.

From: Daniel Stotter [dstotter@qwestoffice.net]

Sent: Friday, August 13, 2010 10:11 AM

To: FLEENOR Bill A

Cc: SORENSON Pete; HANDY Rob M; DWYER Bill J; STEWART Faye H; VORHES Stephen L; Daniel Stotter
Subject: Re: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Dear Commissioner Fleenor et. al:

Thanks for forwarding my email to county counsel for input (Mr. Vorhes was also included in my initial email).

I wanted to inform the Board and County Counsel that:

(1) my suggestion of Comprehensive Plan annexation policy language employing a selected subset from all available state law / statutory annexation procedures is also the approach that is currently advocated by the City of Florence (for example, their proposal excludes ORS 222.750 "island annexations) - the only difference is which statutory sections are included / excluded in the proposed Comprehensive Plan policies.

(2) my email below was not intended to be the actual language to be employed within the Comprehensive Plan. However, I am confident that county counsel can draft appropriate language to implement the annexation policy suggested below if that is the Board of Commissioners direction, and I certainly can assist the county in drafting proposed plan language if that would be of assistance.

Respectfully,

Daniel J. Stotter
 Stotter & Associate LLC
 (541) 738-2601
 dstotter@qwestoffice.net
 \$B!! (B

----- Original Message -----

From: FLEENOR Bill A
To: Daniel Stotter
Cc: SORENSON Pete ; HANDY Rob M ; DWYER Bill J ; STEWART Faye H ; VORHES Stephen L
Sent: Friday, August 13, 2010 8:40 AM
Subject: RE: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Mr. Vorhes,

Is Mr. Stotter's proposed language (in bold below) legally possible and defensible?

Thanks,

Bill F.

"Therefore, Lane County should co-adopt Comprehensive Plan language that allows for the City of Florence to use the "triple majority" consent annexation, which does not require consideration of the views of elector residents, only for vacant or undeveloped properties, such as vacant farm, forest or industrial lands, and where there is no need to consider the position of the impacted local resident electors, and should only co-adopt Comprehensive Plan language that expressly does not allow the "triple majority" consent process to be used for areas with resident electors, who will clearly be directly impacted, and should therefore certainly have a direct and proportional say in the outcome of any annexation decisions of their homes and property. I would urge the Board to reject co-adoption of the City of Florence \$B!G (Bs proposed annexation policies in the Florence 2020 Comprehensive Plan until such time as the City of Florence agrees to modify it \$B!G (Bs Comprehensive Plan language to expressly require consent of a majority of the resident electors for any developed or occupied properties that are currently under the county \$B!G (Bs jurisdiction that will be directly impacted by a proposed annexation (except under circumstances where there is sufficient evidence to support a health hazard annexation

under ORS 431.705 criteria and procedures)."

From: Daniel Stotter [dstotter@qwestoffice.net]

Sent: Thursday, August 12, 2010 6:02 PM

To: FLEENOR Bill A

Cc: SORENSON Pete; HANDY Rob M; DWYER Bill J; STEWART Faye H; VORHES Stephen L; Daniel Stotter

Subject: Florence 2020 Comprehensive Plan Annexation Policies / Ordinance PA 1249 - 8/25/10 Agenda

Dear Lane County Board of Commissioners:

I am writing as a further follow-up to the Board \$B!G (Bs continued co-adoption review of the City of Florence \$B!G (Bs proposed Comprehensive Plan Amendments, and more specifically, the City \$B!G (Bs proposal seeking to add new Annexation Policies in furtherance of its agenda to expand the boundaries of the City of Florence via annexing residential lands currently under the jurisdiction of Lane County which are outside of the City, and within the UGB, via forced annexations.

I would urge the County Board to deny the City of Florence \$B!G (Bs proposed Comprehensive Plan Annexation Policies at this time, as the current language still does not provide an acceptable or reasonable limitation on the forced annexation of areas where the majority of county resident electors strongly oppose annexation to the City of Florence.

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The City of Florence is clearly disingenuous by not admitting to Lane County that of the various forms of annexation procedures that require consent under state law, there are two very different types of consents, only one of which is based on the consent of a majority of elector residents:

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(2) A "double majority" annexation procedure that requires consent of more than half of the electors and the owners of more than half of the territory proposed to be annexed. See ORS 199.490(2)(a)(B).

While the latter ORS 199.490(2)(a)(B) "double majority" procedure requires the consent of a majority of the elector residents to approve an annexation, the ORS 199.490(2)(a)(A) "triple majority" procedure allows a few wealthy developers who own large tracts of valuable real estate to initiate annexation without regard to the position of the majority of resident electors. Under the triple majority annexation consent procedure described above, the minority of owners can dictate over the majority of residents to cause a forced annexation of county residents into the city.

Therefore, Lane County should co-adopt Comprehensive Plan language that allows for the City of Florence to use the "triple majority" consent annexation, which does not require consideration of the views of elector residents, only for vacant or undeveloped properties, such as vacant farm, forest or industrial lands, and where there is no need to consider the position of the impacted local resident electors, and should only co-adopt Comprehensive Plan language that expressly does not allow the "triple majority" consent process to be used for areas with resident electors, who will clearly be directly impacted, and should therefore certainly have a direct and proportional say in the outcome of any annexation decisions of their homes and property.

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Respectfully,
Daniel J. Stotter
Stotter & Associate LLC
(541) 738-2601
dstotter@qwestoffice.net
\$B!! (B