

SUMMARY NOTES
Neskowin Citizen Advisory Committee Meeting
December 3, 2016

The Neskowin Citizen Advisory Committee (NCAC) convened for their regular bi-monthly meeting at 9 a.m. on December 3, 2016, at the Neskowin Fire Station. The meeting was led by NCAC Chair Richard Hook. Attending were Bill Busch, David Kraybill, Earl Ingle, Jr., Jim Ullrich, Guy Sievert, Ellen Gaddy, Steve Ostrin, Herb Crew, Lynn McClenahan, Greg Smith, Andreas von Forester, Jim Boyer, Roger Wickland, Bob Schlicting, Susan Amort, Sherry and Lloyd Van Roekel, Tom Zellner, Spencer Powell, Cameron Nagel, Dean Elliot, Shelley Stoll, Ron Wojtowicz, Trudie and John Metschan, Barb Triplett, Tom Prehoditch, Genie and Frank Ullrich, Jeff Walton, Alex Sifford, Joan Kingsley, and Jean Cameron.

The draft summary notes of the October NCAC meeting were approved as drafted.

Update on the application for a proposed subdivision at the Cove, South Beach - presented by Dave Kraybill

- Dave Kraybill reported that roughly 40 persons attended the November 10 meeting of the Tillamook Planning Commission, which was a hearing on the application for the Proposal Rock Cove development. This included two attorneys representing local citizens.
- Dave reviewed the following questions raised at the Planning Commission meeting (he noted that County staff is still working with County Counsel on the legal issues):
 1. Who owns the rip-rap? Who is responsible for repair of the rip-rap and culvert if damage occurs during/after construction? Since the riprap is west of the Allgood's home and all other beachfront homeowners are responsible for maintaining the riprap in front of their property, it seems like it is the Allgood's responsibility, but they have not given the developer an easement for the culvert.
 2. What is the County's liability if the preliminary plat is approved and the lots created are "unbuildable"?
 3. Can a *Condition of Approval* be crafted to prohibit fill in the wetlands? Further research by County staff indicates that the answer is "no"; i.e., if the Planning Commission crafts a *Condition of Approval* that, for example, requires the houses to be built on piles, there is nothing to prevent a new property owner from petitioning the Oregon Department of State Lands (DSL) to fill in their lot. DSL is expected by County staff to provide guidance on the wetland/fills issues before the 12/8 meeting of the Planning Commission.
 4. Liability Issues: Who is responsible for drainage onto the beach and damage to rip rap as a result of this development?
 5. Is the application still valid/active? At what point do the Coastal Hazard rules kick in, specifically the lot prohibition language in the (Nesk-CH) zone and determination of whether or not the lots can be built upon? County staff reported that they received an e-mail from the applicant's lawyer within the required timeframe, asking whether the application was complete. Both of the attorneys hired by citizens said that the application was submitted three days late, making it void by State law. Furthermore, if this is approved, would construction on each lot then be subject to the Coastal Hazard rules?
 6. Are pilings considered to be fill?
 7. Road Maintenance Agreement: Can a *Condition of Approval* be crafted to ensure future participation in road maintenance as well as payment of maintenance dues for the South Beach Road Association by the developer and property owners?
 8. Legal concerns about access and maintenance of the culvert: the applicant's attorney has stated that by right the developer has a perpetual easement. The LDO requires easement agreements for access and maintenance of off-site facilities. Does the developer have to have a documented easement to access/maintain the off-site drainage facilities? There is no documented easement agreement (see #1 above).

9. Is a permit is required from DSL before subdivision? See also previous questions about *Conditions of Approval* and whether piles are considered as “fill.”
 10. Since the applicant submitted a plan to repair the crushed culvert pipe under the Allgood’s property, will a permit be required from State Parks? A letter from State Parks dated September 9, 2016 states that “if there is no change in the size and location of the existing improvement, and nothing new is proposed on the Ocean Shore, there will be no need for a new Ocean Shore Alteration Permit.” However, the pipe outlet at the beach has been crushed by the weight of the riprap. State Parks is expected by County staff to provide guidance on this issue before the 12/8 meeting. Dave noted that the applicant’s hydrologist has determined that the culvert will function in its current damaged condition.
 11. Is the pipe useful, given that under the worst storm conditions the ocean water level will be above the height of the pipe at discharge?
 12. Are the roads wide enough in South Beach? County staff continues to claim it does not have jurisdiction, since these are private roads.
- Dave reported that one of the Planning Commissioners said at the meeting that they have never heard such excellent oral and written testimony for this type of application. “So,” Dave said, “all of your involvement and energy has been noticed!”
 - He reported that the next Planning Commission meeting on this application was scheduled for December 8 at 7 p.m. at the County Courthouse. (This meeting was subsequently cancelled due to inclement weather and rescheduled for December 15th.)
 - Dave and Richard Hook noted that the NCAC had revised their initial comment letter on this proposal to address new issues; these revised comments are available at <http://www.co.tillamook.or.us/gov/ComDev/documents/planning/Mapped%20Applications%202014/Proposal%20Rock%20Submission%202/Testimony.pdf>.
 - Richard Hook called for a show of hands of those in attendance who oppose the Proposal Rock Cove application; 22 persons were opposed.

Update on the application for a proposed subdivision at Seashore Woods, Neskowin North

- Richard Hook reported that this process is moving slowly. The application has not been completed and a Planning Commission hearing has not been rescheduled since the spring.
- Planning staff are still requesting information from the applicant, including a request for a map combining wetland and hazard information.
- The initial application will expire in January.
- Information is posted on the Tillamook County Department of Community Development website: (<http://www.co.tillamook.or.us/gov/ComDev/Planning>).

Hawk Creek water quality issues

- Richard Hook reported that the Oregon Health Authority (OHA), the Oregon Department of Environmental Quality (ODEQ), and the Neskowin Regional Sanitary Authority (NRSA) have all been involved in testing over the past few months.
- OHA was testing on the beach for enterococcus bacteria and did post one warning this summer.
- The Nestucca/Neskowin/Sand Lake Watershed Council cooperates with the Tillamook Estuary Program and ODEQ to test samples from the Salem Avenue bridge as well as from the confluence of Hawk and Neskowin creeks. Hawk Creek at the Salem Ave. Bridge has been showing elevated enterococcus bacteria concentrations during the summer months since the Tillamook Estuaries Partnership began sampling in 2014.
- NRSA has conducted tests upstream on Hawk Creek as well as on its tributaries (Butte Creek and Kiwanda Creek. Elevated levels of *E-coli* were found in Hawk and Butte Creeks, but not in Kiwanda. The source of this elevated bacteria is undetermined at this time.

- Richard is planning a meeting in January or February with Oregon State Parks, U.S. Fish and Wildlife, NRSA, OHA and ODEQ to discuss findings to date and develop a plan to locate and mitigate the source(s).
- He noted that the water quality standards are changing; further testing may indicate more violations of the new, lower, standards.
- Earl Ingle stated that NRSA may be able to run DNA tests to help determine the sources. This is expensive testing, at about \$700/sample. Someone stated that perhaps the Neskowin Community Association would be willing to help fund this.
- It was noted that a primary issue of concern is water quality in Hawk Creek before it reaches the confluence with Neskowin Creek, since many children and dogs like to play there. Since OHA only posts warnings for beach water warnings, authority to post warning for that section needs to be determined.

Application to remodel/expand the Hawk Creek Café

- Richard Hook explained that two applications have been filed by the Hawk Creek Café. One application requires an administrative review of a request to expand the building. The other application requests a variance from the additional parking spaces required by the expansion.
- Richard also noted that he had spoken with Mike Herbel, who could not be at this meeting, and who expressed opposition to the expanded parking, since parking is already a problem in the area.
- Frank Ullrich, the Café owner, introduced Tom Golden, the designer of the proposed upgrade. Mr. Golden explained that the expansion would increase kitchen and storage space and add a second floor on the south side for an office and employee space. The customer service area would be expanded by enclosing the existing deck and adding additional open deck to the north.
- He also explained that the existing building doesn't meet the required 50' setback from the creek, but the northern expansion will be further from the creek. The bathroom and entrance will both be expanded for handicap access.
- Mr. Golden explained that the expansion would require an additional eight parking spaces; he is negotiating with ODOT for access to parking near the bus stop. There are a total of 70 parking spaces in the ODOT area plus the State Parks Wayside. He also noted that Neskowin Shores has verbally agreed to give 8 spaces to the Café. They are requesting a variance, since the Café is close to the residential area, thus allowing for pedestrian access.
- He explained that they are providing information to local residents and relevant agencies. December 6th is the closing date for comments on the application.
- Earl Ingle stated that getting a parking spot is not the issue – it's getting a table!
- Richard Hook called for a show of hands in support of the two applications; there were 30 votes in support, none in opposition, and one abstention.

Hills of Neskowin's request to withdraw from the NRSA tax district

- John Metschan introduced himself as a past President of the Hills of Neskowin Owners Association (HNOA) and the current Treasurer of the Board of Directors. He noted that his family has been coming to Neskowin since he was 4 years old, and that he has lived here since 2006.
- He explained that the HNOA had approached the Neskowin Regional Sanitary Authority (NRSA) and requested to be removed from their permanent tax district, since the Hills of Neskowin receives no service from NRSA and the NRSA has not indicated any intention of extending service north to this development. Furthermore, each lot in the Hills of Neskowin is sized for septic systems; those that have been developed have septic systems in place. There is no expectation or desire for service from NRSA.
- Mr. Metschan stated that Oregon Revised Statute 450.840 (2) states that "The cost of operation and maintenance of sewage disposal systems and drainage systems shall be borne by the area directly benefited by such systems."
- The NRSA Board turned down this request, so the HNOA approached the Tillamook County Commissioners to request removal from the tax district. At their November 2nd meeting, the Commissioners approved the

request on a 2/1 vote, conditional on whether 15% of the eligible voters within the NRSA district (40 estimated) request a special election. That did occur; the NRSA submitted 44 verified residents' signatures in favor of putting this question on the ballot in the spring of 2017.

- Mr. Metschan also noted that the tax district was established in 2006 and the permanent tax was intended to pay off a construction bond that has now been retired.
- Susan Amort, a new member of the NRSA Board, was asked to explain the decision to put this question on the ballot. She noted that 48 signatures were collected, although only 39 were required. She also explained that it is the right of local voters to decide such issues and to utilize the ballot option offered by the Commissioners.
- Ms. Amort also noted that the NRSA had not levied 2016 taxes on properties in the areas not currently served by the District. All operations are funded by rates and fees. Current permanent tax funds are being set aside for capital development so that the service area can be expanded; everyone in the tax district is helping to pay for that.
- Guy Sievert noted that his HOA on Neskowin Crest would probably be the first to benefit IF a sewer line were extended up 101; however, they don't expect that to happen and would also like to be removed from the tax district. He expressed the opinion that North Neskowin should be the first area to receive expanded service, since septic fields along Hawk St. are known to overflow during winter flooding.
- Shelley Stoll of the NRSA Board explained that expansion will largely be driven by developers installing the infrastructure as new housing goes in.
- The following comments were provided by members of the Hills of Neskowin Owners' Association:
 - Ms. Ellen Gaddy encouraged the NRSA to simply follow the state law.
 - Ron Wojtowicz expressed concern that bringing the sewers into the Hills of Neskowin would tear up the streets as well as properties.
 - Jean Cameron explained that she had paid a total of \$1,414 in taxes to NRSA in the past nine years, thus helping to pay off the construction bond while receiving no service from the district. By comparison, she had paid only \$1,049 to the Water District over the same period, and she does get service from the water district. She also stated that "Regarding any obligation which the Hills of Neskowin property owners are perceived to have to the sanitary district in the name of clean water, it's worth noting that when we go to the Café, the store, or the golf course – or even when we pay our water bills, the NRSA's service fees and taxes for those entities are – or should be - included in what we pay." She further observed that "the property owners in the Hills of Neskowin do not expect other property owners in the Neskowin area to subsidize our septic systems in the name of clean water."

Other

- Bill Busch recommended that the topic of the Enhanced Sheriff's District be added to the February agenda.

The Neskowin Citizen Advisory Committee meeting was adjourned at approximately 11 a.m. The next NCAC meeting will be February 4th at 9 a.m. at the Neskowin Fire Hall.

Respectfully submitted,
Jean Cameron, Secretary
Neskowin Citizen Advisory Committee