

MINUTES

Creswell Planning Commission and
Creswell Community Center – 99 South First Street
Creswell, Oregon

October 18, 2012
7:00 p.m.

PLANNING COMMISSIONERS PRESENT: Blake Oelke, Alan Pointer, Lloyd Safley, Gary Ludeke, Dan Stockbarger, Commissioners; Lauren Sommers and Carrie Connelly, City Attorneys, Denise Walters, Creswell Planning Staff

PLANNING COMMISSIONERS ABSENT: David Christopher, Dennis Grice

Commissioner Oelke convened the meeting of the Creswell Planning Commission (CPC) at 7:00 p.m.

I. MINUTES OF August 16, 2012

Commissioner Safley, seconded by Commissioner Pointer, moved to approve the August 16, 2012 meeting minutes as submitted. The motion passed unanimously.

II. AUDIENCE (comments on anything NOT on the agenda)

None.

III. COMMISSIONER COMMENTS

Commissioner Safley commented that the August 16, 2012 minutes were very well written. Commissioner Oelke said there was a lot of information in the minutes and helpful to persons not able to attend.

IV. POLL MEMBERS FOR CONFLICTS OF INTEREST

None.

V. CONTINUED BUSINESS – Year Round Mobile Food Vendors

Ms. Walters thanked the audience for attending and pointed out the materials available. She had provided a Memo dated October 10, 2012 to the Commission regarding year round mobile food vendors. She said the material was important because it differed from what had been provided earlier. She introduced Lauren Sommers and Carrie Connelly, City Attorneys, who were present to answer questions.

- **Memo on Creswell Development Code and Options**

Ms. Walters explained that nuances in terms such as “use”, “development”, “permit” and “regulate” had emerged, which shifted the interpretation of the current Creswell Development Code (CDC) in relation to mobile vendors from what the Commission heard at the July and August 2012 meetings.

Because the CDC did not specifically address mobile vending there was a provision for a Code interpretation whereby the Planning Director or Planning Commission could issue an interpretation of the use. There were a series of considerations when categorizing a use to figure out how something not identified in the Code could fit into an existing defined use:

- The description of the activity in relationship to the characteristics of each use category. Ms. Walters said use categories were uses such as sales and service and entertainment.
- The relative amount of site or floor space and equipment devoted to the activity
- Relative amounts of sales from each activity
- The customer type for each activity
- The relative number of employees in each activity
- Hours of operation
- Building and site arrangement
- Vehicles used with the activity
- The relative number of vehicle trips generated by the activity
- How the use advertises itself
- Signs
- Whether the activity would function independently of other activities on the site

Ms. Walters said, when looking at the considerations, one interpretation could be made that a mobile vendor was like any other retail sales and service. The only difference was they were not located in a brick and mortar, but the actual use was the same. Another interpretation could be that of a temporary use, or a special or seasonal event, such as the Farmer’s market.

Ms. Walters said up to this point the discussion had been about mobile food vendors, but there could be other types of vendors as well. It would be the same type of retail use regardless of the specific item(s) sold (lamps, food, tools, etc.).

Next Ms. Walters addressed the question of development. She said the Code defined development as “fill, grading, and all improvements on a site, including heavy equipment crossings, buildings, and other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities.” Within that, “structure” was referenced and defined as “any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs, and other similar objects.” She said mobile vending carts did not fit into the definition of development nor of structure.

Ms. Connelly said that initially the City was looking at the use and the type of land use review all in one analysis and the two may be better considered when separated. One part was to determine if the use was allowed under the Code. A stumbling block was determining what kind of land use review process would be applied given mobile food units not meeting the definition of development. A site review seemed excessive and overly expensive for the issues of a mobile vendor. She said they had separated use and development so the Commission could evaluate them separately.

Ms. Walters pointed out there was a question of how mobile vendors were regulated in other jurisdictions. She had broadened her look at other areas in the region that allowed mobile vending and how they regulated them. She had information on Portland, Salem, Hillsboro and Corvallis. Generally, those cities had determined mobile vending to be an allowed use in commercial zones. Regulation and development considerations were handled like a business license or permitting process, not a land use process. That was the trend being seen in the region.

Ms. Connelly explained that even though other areas did not consider it a land use process, there were still land use elements involved, such as setbacks, transportation impacts, and vision clearance. However, they were treated as a licensing process, not a land use application.

Commissioner Safley asked if cities like Veneta, Junction City or Oakridge had been looked at, because of their relative size to Creswell.

Ms. Walters said Veneta did not consider mobile vendors development and did address them.

Ms. Connelly said her experience was that the smaller cities tried not to get involved. If a private property owner wanted to allow mobile vendors on their property the city would not get involved.

Commissioner Oelke said it seemed they had found no area which disallowed mobile vendors in some way and Ms. Connelly responded yes, they were being allowed in some way and it was just a matter of how it was structured.

As an example, Ms. Walters said Cottage Grove allowed mobile vendors in certain areas with very limited standards.

Commissioner Oelke asked if there were legal issues in not allowing mobile vendors.

Ms. Connelly said, after citing Oregon case law, if a jurisdiction had a good reason to eliminate a use, they could, so long as there was a rational basis for exclusion. Ms. Connelly said Creswell did have the authority to prohibit mobile vendors within City boundaries, as long as it could identify a rational basis for the exclusion, which could be difficult. If the community found there was a benefit to prohibiting the use and it could be articulated into findings that supported it, it could be prohibited.

In response to Commissioner Stockbarger, Ms. Connelly explained they could not simply put into the Code that mobile vendors were prohibited. They would have to identify and justify the reasoning and how it would or would not benefit the community. She said it was a constitutional right to be able to do what you want with your property. If the City was going to prohibit someone from doing something on their own property, there had to be a very good reason. There were legal issues to be considered in this matter.

Ms. Walters then addressed the options available to the Commission. There were three options available as the Code was currently written. The first option was to issue a non-enumerated use designation of mobile food units, basically interpreting mobile food vendors as retail sales and service which was an allowed use in a commercial zone. Since mobile units were not considered development by the Code, no review process would be triggered. Mobile food vending would be allowed as a year round use.

Ms. Walters said a second option was to make an interpretation that mobile vendors were a seasonal, special event or temporary use, and use the temporary use permit process. That approach had a 30 consecutive day limit, which would not work for someone who wanted to remain longer.

Commissioner Oelke asked what was allowing the two mobile food vendors to be currently operating.

Ms. Walters responded that both vendors had talked with her and asked the permit process. Both vendors wanted to remain longer than the 30 days allowed by the temporary use permit. Since she did not know what existing process could apply to this case and it was decided to let them remain until the City could determine what to do.

Ms. Walters said options had also been discussed for amending the Development or Municipal Code. Those options were:

- Option A - amend the Development Code to specifically enumerate mobile vendors as a use and make it subject to land use review or clarify no review was required
- Option B - amend the Development Code to add another temporary use category provision and extend the timeline. Mobile Vendors would be interpreted as a seasonal, special event and allowed for a longer period of time period than was currently in the Code
- Option C – amend the Development Code to add a new specific use category for mobile vendors and identify specific development standards.
- Option D – a Municipal Code addition adopting a permitting process. This would be more like a business license program and could include setbacks, parking standards and reporting requirements.

Ms. Sommers explained that regarding the options to amend the Code, the Commission was not limited to those options presented and the options could be combined. Or, she said, they could do nothing about the use designation and use the existing Code and go through the use interpretation process but separately create a business use permitting process.

Ms. Walters said her concern with using the Development Code to permit/regulate mobile food units was any decisions would be subject to appeal with the Land Use Board of Appeals. There was a cost factor and she wondered if it was appropriate for what they were trying to accomplish. The Municipal Code may be the more appropriate venue to regulate mobile food units if they determined the use to be allowed.

Commissioner Oelke asked if the public in attendance had questions or comments.

Larry Duncan, 629 Mary Neal Lane, Creswell, said he thought the hot dog stand on the corner of Highway 99 and Oregon Avenue looked like something you would see in Baja, Mexico. He did not care what other communities did, he cared about Creswell. Looking through the Memo, it looked to him like the options presented would require amendments to the Development Code and he did not see why they were making special provisions for that. He said if the hot dog stand could be there, then he could put one anywhere he wanted to as well.

Jim Hawkins, 1080 Cedar Court, Creswell, said he owned Jimmy Dogs Hot Dog stand and was here as a serious business owner. His intent was to have a community everyone was pleased with, but not everyone could be pleased. His intent was not short term and special events, but long term. His intent was to develop his business, and from the standpoint of affordability, he was not ready to spend \$40,000 to \$50,000 for a commercially built mobile, although in other cities they were very successful. He would like to have a mobile unit that he could grow and do so in the community where the population of the community was happy with that. He said he had a tremendous amount of support in the community. He was paying his bills with just four hours of noon hour traffic from his hot dog stand. People had asked him to continue his business as they loved his food and what he was doing. He said he had no problem

with competition and no issues if some did not like the way a mobile cart looked. If other restaurants were suffering because of competition from his business, it was free enterprise, and maybe they needed to step up. He felt he was a success and he would like to be present year round and comply with regulations. Regarding time issues, he said he could not survive unless he could work 5-6 days a week. He thought what the Commission was doing, from the standpoint of government, was good, but he asked that they please not complicate things and try to keep it simple. He was already licensed in Lane County and had no problem with becoming licensed in the City of Creswell.

Karen Aman, 205 Second Avenue, Creswell, said she was the owner of Old Time Scoops, a brick and mortar restaurant. She had been in business for four years. Her hot dog sales had dropped 92 percent since Jimmy Dogs opened and he had taken a lot of her business. Regarding Mr. Hawkins' comment that she "step it up", she had done so by adding to her menu. She said her business was struggling. She also had a lot of community support. She said Jimmy Dogs was allowed to have a sign out, and she was not because she was on the wrong side of the tracks. She said she has to pay an extra fee to the City to have tables and chairs out and asked if Jimmy Dogs had to pay for that as well.

Bill Spencer, 32718 Teaberry Road, Creswell. Mr. Spencer asked if he wanted to put a mobile unit on his tire store lot and have fewer parking spaces, would the City look at that. He thought it should be the landowner that held responsibility for the parking, not the vendor.

Ms. Connelly said that was a good point and many cities allowed issues such as that to be dealt with between the landowner and the vendor.

Ms. Sommers said in order for a vendor to locate on private property they could not take up necessary parking and it referenced back to land use standards.

Commissioner Safley asked if a three or six month time limit could be implemented for mobile vendors, with a renewal process so it would be reviewed to see if there were complaints regarding parking or traffic issues. Ms. Connelly responded yes. He then asked if the City, in the permit process, could allow only a certain number of permits at one time, other than special permits.

Ms. Connelly said that could be accomplished through spacing requirements. Ms. Sommers added there could be requirements for vendors to not locate on the same block, or there could be something like a mobile food court where all food vendors assembled.

Mr. Spencer asked about the sign Ms. Aman had referred to as not being able to have on her business, and Ms. Connelly indicated she or Ms. Walters would look into the sign codes.

- **Commissioner Discussion**

Commissioner Oelke said he was favoring Option D so long as they could still review setbacks and standards. He saw prohibiting mobile vendors as legally problematic. Commissioner Pointer agreed and favored a time limit.

Commissioner Ludeke thought they were getting too involved with details and were not looking at the big picture. He said they were a Planning Commission and their function was the big picture. He was seeing two competing ways of doing business; brick and mortar and mobile vendors. It seemed to him the emphasis should be on the big picture and did they conflict with each other. He thought they had to support one or the other in their policies. He saw nothing wrong with either, realized it was a tough issue and said they should stay focused on what the community wanted.

Commissioner Stockbarger said he would hate to see the Commission do anything that would put anyone out of business. He would also hate to see them, as an agency, restrain trade as that was not what the Country was based on.

When asked by Commissioner Oelke, Ms. Connelly explained that only the “use” piece of the Development Code would require amending. The permitting piece, i.e., setbacks and fees, would be done through the Municipal Code. The first step was to define the use.

In response to a poll by Commissioner Oelke, there was consensus from the Commission members that Option D, to adopt a permitting process that was more like a business license process than a land use process, was a starting point.

Ms. Walters said she understood that she was to come back to the next meeting with a permitting scheme under Option D. Commissioner Oelke also asked staff to bring back recommendations on where mobile vendors could be located. Ms. Walters was also asked to come back with clarification on the term “use” process.

Ms. Connelly said there were two pieces of analysis; the first was regulating the use and the other was the review process and how mobile vendors would be allowed. Right now they were focusing on the second part, the permitting piece.

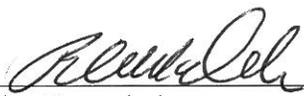
For the next meeting, Ms. Connelly asked Commission members to focus on Paragraph 3 on Page 3 of the Memo and think about if they wanted the use to be permanent or addressed in the temporary use permit. Commissioner Stockbarger’s initial thought was that it should be permanent, and Commissioner Oelke said he thought that was probably the way the Commission would go.

VI. NEW BUSINESS

None.

VII. ADJOURNMENT

Commissioner Oelke adjourned the meeting at 8:48 p.m.



Planning Commission



Date

(Recorded by Ginger Morton)