Agenda Item 4 – Public Comment
July 29-31, 2009 LCDC Meeting
6 pages

Harbor Community Action Committee

P.O. Box 7102
Brookings OR 97415
(541) 412-1200

Chair John VanLandingham and Commissioners
Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

July 13, 2009

Dear Chair VanLandingham and Commissioners,

The Commission is traveling to Brookings/Harbor in Curry County which is the last stop and Gateway to the beautiful Southern Oregon Coast. Therefore, I am including a letter for your information and background regarding the Harbor Hills - an ongoing public interest case.

It is our hope that you will take a drive along Harbor Hills Heights Road, enjoy the view and appreciate the topography. It was here that a slide occurred this winter, approximately 3,000 tons of mud and debris took four days to clear.

McVay Creek Road, the other entrance further south is gated. In 2003 the road was reconstructed and the developer received several violations from DEQ and a violation from the ACOE. Today we understand the road is in poor condition and it is unlikely that you would be welcome to use it.

I wish you a safe and successful journey to our community.

Sincerely,

Yvonne Maitland

Yvonne Maitland
HCAC – Secretary.

Harbor Community Action Committee
P.O. Box 7102
Brookings OR 97415
(541) 412-1200

Chair, Commissioner Waddle and Vice-Chair, Commissioner Rhodes,
P.O. Box 748
94235 Moore Street
Gold Beach, OR 97444

February 28, 2009.

Dear Commission Chair Waddle and Commissioner Rhodes,

Brookings Mayor Pat Sherman: "We also continue to believe that the unique site in the Harbor Hills and the concerns raised by the citizens demanded that the council attach conditions of approval that were tailored to address the situation. The conditions laid out the council's commitment to the safety of future citizens and the financial well-being of the city. They affirmed the council's commitment to honor the promises made to the people of Brookings-Harbor when the property was included in the Urban Growth Area. In short, we developed guidelines to assure that the property would be developed to the highest standards that are consistent with our community's values." [Coastal Pilot, Public Forum March 18, 2006.]

The city was clearly protecting public trust when it unanimously approved HW3's annexation with conditions. (see attached Condition 9) The developer withdrew his application citing the city's conditions as **"restrictive and unprecedented"** and went to the county so he could deviate from the strict standards set by the city. HW3 achieved the goal with the 'discretionary' MUMP provision. In addition, the County does not have System Development Charges.

Citizen's beliefs and expectations were that Harbor Hills would be developed to the **highest standards** based on concerns regarding steep, unstable slopes. Mass Movement (USGS Geologic Hazard Map), Rapidly Moving Landslides (Provisional Map) and the recently mapped Statewide Landslide Inventory Data for Oregon (SLIDO) provide information concerning the risks of building high density housing on the western slopes of Harbor Hills. The core issue of public safety, paramount to deliberations and decisions regarding the draft MUMP zone Ordinance, is strict adherence to regulations.

The 'discretionary' provision does not fulfill the acknowledged obligations for the Harbor Hills. The changes to county policy were made to satisfy special interests. The ordinance also assumes that "one size fits all" something previous commissioners commented on, criticizing the DLCD and state policy for not recognizing the differences that exist between cities. Gold Beach, Port Orford and Brookings have different populations, requirements, policies and economic needs making each city unique.

The **Harbor Hills Special Plan Area** (HHSPA) includes the **Area of Special Environmental Concern** which is on the western slopes of Harbor Hills in the Brookings UGB. It is the only area in Curry County with this designation and "shall be so designated on the Comprehensive Plan." The Harbor Bench is the only area receiving

state and county protective measures from flooding and depletion of the Bench aquifer. The CSWMP, a separate document only applies to the western slopes of Harbor Hills. It is unique in all of these aspects. Giving flexibility to developers by deviating from current county standards as the 'discretionary' provision allows, is a major change in policy contrary to protecting public trust. It was crafted with direct input from HW3's representative, who also gave the commissioners the MUMP acronym.

HCAC sincerely trusts that you will vigorously address the 'discretionary' provision of the draft MUMP, the process and justification of deviating from established standards in the topographical, hydrological and geological constrained Area of Special Environmental Concern. As you know, the key elements of a plan must provide a factual base, background and inventory documents. The 'discretionary' alternative for developers and future builders in Harbor Hills is to selectively pick less strict standards for urban development in landslide territory. Monitoring and regulatory oversight will be costly and therefore non-existent.

How does the MUMP address the acknowledged limitations for residential development that exist for Harbor Hills? LCDC, the Court of Appeals and Brookings' UGB Amendments and Findings (Goal 14 and 2) have committed to such limitations. County Counsel, Gerard Herbage prepared Curry County's Intervenor Brief and included safeguards for development on Harbor Hills. The scrutiny the Harbor Hills UGB received, together with the support and merit of explicit Court findings and directives were agreed to by all parties. This factual information was brought up by HCAC but was not discussed at work sessions either by County Commissioners, Planning Commissioners or staff.

It is political hypocrisy to be supportive of sustainable development, flexibility, urban livability on an unstable hillside while ignoring the imposed limitations above. Public consequences are already evident as the county has stated that it will not maintain roads in the Harbor Hills UGB. The intent of the county as we understood was to simply provide for additional planning in the UGB areas, not to give a blanket variance to HW3. What kind of regulatory tool is the 'discretionary' provision?

We all need meaningful standards when reviewing HW3's Master Plan. Please redirect that focus on citizens' rights, community values and concerns which you undoubtedly share.

On behalf of HCAC would you accept an invitation to a Town Hall meeting in Harbor arranged at your convenience? If you have any questions I would be more than happy to answer them. We look forward to your response.

Sincerely,

Yvonne Maitland

Yvonne Maitland
HCAC Secretary.

ADDENDUM:

Parametrix Significant Findings February 7, 2007 - In response to EGR Associates.

"The CSWMP... does not meet the intent of the county to minimize impacts of development on the Harbor Hills Bench area, nor does it provide a set of tools that can be used by the county for managing future development.
To meet the desired intent will require extensive added work in the CSWMP... to be done by an independent consultant instead of a consultant working for a developer."

Parametrix Peer review and comments (CSWMP – September 10, 2007)

Parametrix: "*...interprets the JMA requirements to include standards and specifics. CSWMP authors... making recommendations and suggestions rather than providing what we believe are needed to protect the resources...*
Parametrix: *... and fundamental information was not provided and prevents a thorough technical CSWMP review."*

Missing information: A Map of Potentially 'Unstable Areas', 'Avoidance Areas' and 'Stable Areas'.

"No discussion or analysis concerning the appropriateness of infiltration relative to the slope stability of the soils in HHSPA. This is an important consideration because slope failures could be catastrophic...

Our professional opinion as to what will provide the greatest degree of protection and future guidance to Curry County..."

DLCD review and comments May 6, 2008.

"... EGR failed to meet the expectations... The document does not effectively provide a basis for Curry County to make decisions on the appropriateness of future development proposals within the Harbor Hills Special Plan Area...
It [CSWMP] does not include the analysis that is critical to the county's role in facilitating sound development on the Harbor Hills."

These comments emphasize the importance of providing standards and specifics in the HHSPA. HCAC respectfully asks that you assure citizens that strict compliance with the law, established county codes and regulations extend the **"greatest degree of protection."** Discretionary codes, applied to steep marginal land are ineffective when "...they (developers) can write their own code, basically." Planning Director. And "allow a lot of creativity." County Counsel. (March 27, 2007 transcript)

Borax voluntarily left 50% + of its 553 acres in Open Space because of severe slopes and other constraints. The Borax/LUBA appeal and following remand acknowledged that variances to existing city codes were considered "implausible." Standards that differ or vary (variances) must be 'equal to or better than' the existing standards. Exactly what HW3's representative did not want. The 'equal to or better than' standards were negated by staff and Commissioners. (March 27, 2007 transcript)

Would a "reasonable person" accept or consider this good planning in Harbor Hills, a mass movement and geologic hazard zone?

It has become clear that HW3 does not intend to follow the Court of Appeals directives. Why has staff not required HW3 at the very least to delineate the Area of Special Environmental Concern?

Brookings Draft Conditions of Approval for HW3's Annexation, March 3, 2006.

City Condition 9.

The annexation does not authorize a specific number of dwelling units. The Public Facilities Plan estimate of the number of dwelling units allocated to the subject property will be used as a basis for approval of the Master Plan of Development. The west facing hills is a mixture of steep, unbuildable areas that will only be used for roads and utilities and flatter, buildable areas. The location of dwelling units shall be consistent with the rationale that was the basis for including the slopes of the subject property in the Urban Growth Area. Specifically, "these unbuildable lands, while they will not be able to accommodate structures, will be necessary for the logical and orderly extension of roads and utilities to the ridge tops and flatter areas where building will occur. Inclusion will also maintain the visual aesthetics by retaining a significant open space buffer between the developed areas especially along the slopes of the Harbor Hills; this will also serve to preserve wildlife habitat. To exclude this land would make the boundary very confusing and illogical and land use planning would be very difficult and inefficient. Leaving it out could raise issues concerning urban facilities outside the urban growth boundary." (Goal 14 UGB Amendment, p. 25). The number of dwelling units and the buildable area within the annexed area will be determined by analyses, including but not limited to, geologic hazard reports, engineering of roads and utilities, Water System Master Plan, Wastewater System Master Plan, City Council policy regarding the Chetco River fisheries, and requirements of the Comprehensive Surface Water Management Plan.

Pat Sherman
PO Box 1140
Brookings, OR 97415
psherman99@verizon.net
Phone: 541-412-8840 (W)

July 12, 2009

Oregon Land Conservation and Development Commission
Attention: Chair John Van Landingham
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

Re: LCDC meeting in Brookings

Chair and Members of the Committee,

Please include this letter as part of the packet for the LCDC meeting to be held in Brookings July 29-31, 2009.

I would like to briefly address the Commission during the public comments portion of the agenda at the LCDC meeting scheduled for Brookings.

I am currently writing a narrative about what happened during two quasi-judicial hearings in Brookings in 2008-2009 but have not completed the work in time to submit the narrative in advance of the meeting. During my participation in the hearings I and other citizens encountered numerous problems that impeded, frustrated and discouraged public participation.

I was twice elected mayor of the City of Brookings, and served in that capacity for over three years from 2005 to 2008. I have remained active in city issues since my resignation in March, 2008. I have identified problems related to land-use hearings in Brookings that may be similar to problems encountered elsewhere in the state. It is my hope that the Board of Commissioners will read my narrative in a timely manner and give fair consideration to any suggestion offered. At the Commissions pleasure, I will make myself available for questioning at future LCDC meetings.

Sincerely yours,

Pat Sherman

Pat Sherman