

Columbia River Gorge Commission

Meeting Minutes

June 8, 2004

A complete record of this meeting is available on audiotape

Location: Columbia River Discovery Center, 5000 Discovery Drive, The Dalles, Oregon

Time: 9:00 a.m.

MEMBERS IN ATTENDANCE

Kenn Adcock

Doug Crow

Judy Davis

Kim Titus for Dan Harkenrider

Jane Jacobsen

Walt Loehrke

Joyce Reinig (9:00 a.m. - 3:20 p.m.)

Dave Robertson

Anne Squier

Wayne Wooster

MEMBERS ABSENT

Michael Farrow (excused)

Joe Palena (excused)

Kathy Sheehan (excused)

STAFF PRESENT

Allen Bell, Senior Planner

Martha Bennett, Executive Director

Brian Litt, Senior Planner

Jeffrey Litwak, Counsel

Kathy Obayashi-Bartsch, Administrative Assistant

AUDIENCE PRESENT

Baker, Nathan. Friends of the Gorge (FOCG)

Banks, Peter. Skamania County

Grimmett, Michael. Multnomah County

Lichtenthaler, Eric. Corbett, Oregon

Liepper, Bob. Troutdale, Oregon

Mazeski, Mark. Skamania County Planning Department

Miller, Bobbie. Columbia Gorge United

Nicklaus, Brian. Stevenson Washington

Peterson, Tom. The Dalles Chronicle

Pizannelli, Phil. Corbett, Oregon

Silverman, Geoff

Thiemann, Phyllis. Columbia River Gorge Visitors Association

Tokos, Derrick. Multnomah County Planning Department
Witherspoon, Karen. Skamania County Planning Department

Others were present during the day.

Approval of Minutes

Chair Squier asked the Commission to review and comment on the draft minutes.

March 23, 2004 Special Meeting

Commissioner Davis said the second sentence on page 20 should be 200 sq. ft. not 2000 sq. ft. Chair Squier asked that this item be checked for accuracy. Commissioner Reinig made a motion to adopt the minutes with one possible correction and Commissioner Adcock seconded the motion. A voice vote was taken, and the motion passed unanimously.

April 27, 2004 Special Meeting

Commissioner Davis said the motion by Commissioner Loehrke on page 12 appears to be incomplete and asked for a correction to conform to the sense of the tape recording. Commissioner Reinig made a motion to adopt the minutes with this correction and Commissioner Jacobsen seconded the motion. A voice vote was taken, and the motion passed unanimously.

May 11, 2004 Regular Meeting

Commissioner Adcock made a motion to adopt the minutes as drafted and Commissioner Reinig seconded. A voice vote was taken, and the motion passed unanimously.

Public Comment

Phil Pizannelli read from prepared testimony concerning commercial outdoor events in the Scenic Area. He expressed concern that the Commission made a late hour decision after he believed the issue had been settled at previous meetings. He said that urban areas should be the places for this type of activity and asked how bed and breakfasts got lumped in with wineries for hosting events. He said the decision is inconsistent with the Act and said only a few people would benefit financially from this decision.

Eric Lichtenthaler of Corbett, Oregon read from prepared testimony concerning commercial outdoor events in the Scenic Area. He said that commercial events are not in line with the Act. He said people who have large homes and land may now consider having such commercial events and that the counties will have difficulty controlling this type of use and a great deal of energy will be spent on this issue.

Bob Leipper of Troutdale, Oregon thanked the Commission and Oregon State Parks for the tour of Vista House. He said it would be helpful to have better signage for such attractions. He said there are no signs to Crown Point from I-84. He encouraged the Commission to ask both states for better signage to such attractions as Crown Point.

Bobbie Miller of Columbia Gorge United referred to a letter to the Governor in which past Gorge Commissioners express their support in building a casino in Cascade Locks. Chair Squier said the Commission has no position on this issue other than the position regarding the conversion of General Management Area (GMA) lands to trust status. Miller said the Commission has taken a step to promote economic development in the Gorge with their decision to allow commercial events and asked about the status of the Scenic Implementation Handbook. Martha Bennett, Executive Director said it was scheduled to be completed at the end of 2005 and several stakeholders would be involved in its development.

Chair Squier then recognized and thanked Commissioner Robertson for his service on the Commission and presented him with a plaque from the Commission honoring that service. She said his term is expiring and this may be his last meeting. Bennett said she appreciated Commissioner Robertson's hard work and his dedication to the Commission. She said it was notable that he is so well liked and that often resulted in keeping others focused on the issue at hand and not on personalities. Commissioner Robertson thanked everyone for being a part of the Commission and for their work on many complex issues.

Director's Report-

Bennett reminded Commissioners to submit their expense reports as the end of fiscal year is approaching. She said the Executive Committee is meeting with counties and groups about the budget proposal. She said the next Commission meeting would include election of officers for the year and adopting the budget request for Oregon and Washington.

National Scenic Area Manager's Report-

Kim Titus said the Secretary of Agriculture has delegated the concurrence with the Management Plan to the Regional Forester. Scenic Area staff will be briefing the Regional Forester in July. The Forest Service is working with the Confluence project and artist, Maya Lin, on a possible installation at the Sandy River Delta. She said they are working with the transportation authorities on the I-84 interchange for the Sandy River delta area to address some safety issues. Titus said the Forest Service has three other ongoing projects: replacing the water system at Multnomah Falls; an invasive weed environmental assessment; and training more staff to work on consistency reviews as Plan Review is now complete. Commissioner Crow asked about the noxious weeds project and Titus explained it's an environmental assessment for treating known infestations by using herbicides or other treatments, and they are working with the counties.

Appeal Hearing -- Joseph A. and Sandra Bacus v. Skamania County-- CRGC No. COA-S-04-01

NOTE: The audio tapes and the final order serve as the record of the hearing. These are available at the Gorge Commission office.

Chair Squier introduced the next order of business which was an appeal hearing- Joseph A. and Sandra Bacus v. Skamania County-CRGC No. COA-S-04-01. Participation in the appeal was limited to the parties: Joseph A. and Sandra Bacus and Skamania County. This hearing involved an appeal by Mr. and Mrs. Bacus of a single family dwelling approved on Lot two of Patricia Short Plat off Sprague Landing Road in Skamania County. The applicant was Bradley Andersen. The applicant is not a party to the appeal. The hearing was held pursuant to the Commission's rules for appeals of county decisions (Commission Rule 350-60).

Chair Squier said both parties had received the notice of hearing which outlined the proceedings and noted some of the issues to be heard today are similar to another contested case previously heard by the Commission-CRGC No. COA-S-01-04 in June 2002. The testimony received during the prior hearing was not an ex-parte communication. Squier also noted that Mr. Bacus provided public comment about issues surrounding the fill that he is concerned with during public comment sections of Commission meetings prior to June 2002.. Chair Squier introduced the parties and legal counsel:

- Joseph A. Bacus representing himself and Sandra Bacus
- Peter Banks representing Skamania County

Chair Squier asked Commissioners to disclose conflicts of interest or ex parte contacts. Commissioner Crow said he has heard from Mr. Bacus before as Chair Squier noted and knows him personally as well. Commissioner Loehrke said he knows Mr. Bacus personally and professionally but has not discussed the issue with him. There were no objections from either party. Neither party wished to raise objection to any prior contacts.

Chair Squier then asked the parties to address objections to exhibits Mr. Bacus wished to submit and Skamania County's argument that the Bacuses did not object to the findings. She ruled on the exhibits, allowing exhibits 2 through 5, which were attached to the Bacus' brief. The parties stipulated that an enlargement of Exhibit 8 (from the Board of Adjustment hearing) might be used for illustrative purposes only. Squier ruled that the Bacuses properly preserved error.

Chair Squier said each party would have 20 minutes for oral argument and/or rebuttal. She said that no questions or discussion from the Commission would be allowed as this was to be uninterrupted oral argument. She said the Commissioners may ask the parties questions prior to arguments and may ask questions after the oral arguments. The parties will have up to two minutes to respond to any questions asked after the conclusion of oral argument. Several Commissioners asked questions of the parties.

Mr. Bacus presented his oral argument for 20 minutes.

Chair Squier called for a break at 10:30 a.m. and reconvened the meeting at 10:50 a.m. She asked the Commissioners not to discuss the case during the break.

Mr. Banks presented his oral argument.

Chair Squier said there would now be time for questions, and each party would be allowed two minutes to respond to each question.

Several Commissioners asked questions of the parties and the parties were each given two minutes to respond to each question.

Chair Squier thanked the parties and said it was now time for deliberation. She asked Litwak for his suggestion as to how to proceed with 12 assignments of error and said he had broken these into five general areas:

1. Was the hearing de novo?
 - were the Bacuses allowed a fair amount of time?
 - were they denied the right to present rebuttal evidence?
 - Was there a shift in the burden of proof from the applicant to the appellant?
2. Did Skamania County properly consider whether the subdivision was legally created?
3. Did Skamania County commit procedural errors during the review of the land use application?
4. Should the decision run with the land?
5. Do highway demolition spoils on the property qualify as fill?

The Commission began its deliberation.

Chair Squier recessed the meeting for lunch at 12:45 p.m. and directed Commissioners not to discuss the hearing during their break. She reconvened the meeting at 1:45 p.m.

Commissioner Wooster offered a motion as follows:

The Commission concludes the hearing was de novo and denies assignment of error #1.

The Skamania County Board of Adjustments properly relied on the fact the lot is final and deny assignment of error #2, and by doing so also deny assignments of error #5-#10.

The grading plan was adequate enough to allow interested persons to generally understand the content, the application was complete for the purpose of sending notice, thereby supporting the Skamania County Board of Adjustment's finding and deny assignment of error # 3

The consultation for sensitive wildlife was sufficient and deny assignment of error #12

The approval runs with the land and deny assignment of error #4

The fill material was addressed in the application but the material cannot be allowed for the development and the matter should be remanded. Remand the decision based on assignment of error #11.

Commissioner Reinig seconded the motion.

Commissioner Robertson said he supports the motion.

Commissioner Crow said he does not support the motion as there are real issues pertaining to burden of proof and the county processes used.

Commissioner Adcock said he supports the motion with the exception of the fill issue. Commissioner Adcock made a motion to suspend debate and to vote on the main motion. Commissioner Reinig seconded. Squier noted that a 2/3rd vote is needed for a motion to close debate.

The motion failed 5 to 4.

Kenn Adcock -aye

Doug Crow -no

Judy Davis-aye

Jane Jacobsen-no

Walt Loehrke-aye

Joyce Reinig-aye

Dave Robertson-no

Anne Squier-no

Wayne Wooster-aye

Commissioner Robertson said the burden of proof question doesn't really pertain if the county acted properly in determining the short plat and lots were valid.

There being no further discussion, Chair Squier restated the main motion as follows: To deny all assignments of error except assignment of error #11. With respect to assignment of error #11, the use of existing fill was addressed in the application materials but according to the definition in the Plan and ordinance such material is precluded from use as fill and the matter is remanded to the Skamania County Board of Adjustment.

A vote was taken and passed 6 to 3.

Kenn Adcock-aye

Doug Crow-no

Judy Davis-aye

Jane Jacobsen-no

Walt Loehrke-aye
Joyce Reinig-aye
Dave Robertson-aye
Anne Squier-no
Wayne Wooster-aye

Chair Squier directed the Commission's legal counsel to draft an order and thanked the parties and Commissioners. She called for a break at 3:20 p.m. and reconvened the meeting at 3:30 p.m.

Consistency Determination for Multnomah County Ordinances

Litwak said Multnomah County has submitted three ordinances and referred to a staff report summarizing these ordinances (see attachment A) for the Commission's review and determination of consistency with the Management Plan and Act. The ordinances involve charging of fees and enforcement in Multnomah County, Oregon. Litwak reviewed each of the ordinances, and said staff recommends that all are found to be consistent with the Plan and the Act.

Derrick Tokos and Michael Grimmatt from Multnomah County thanked the Commission for their consideration of the ordinances and said they concur with staff recommendations as outlined by Litwak. Tokos provided further detail on ordinances 1031 and 1032 and said with Michael, the county now has staffing for code compliance.

Chair Squier asked for public comment.

Bob Leipper of Troutdale, Oregon said this new language creates too much opportunity for political manipulations. He said outstanding proven violations are never really addressed in the new ordinance and creates a clean slate. He said there is a backlog of 500 cases. He supports having a dedicated staff person for code compliance and the ordinance for the charging of fees. He said under the code compliance manual, the violation records are to be kept confidential. Chair Squier asked for clarification as to whether we have the code compliance manual or the code itself. Litwak said the Commission has the actual code.

Commissioner Loehrke said he appreciates Mr. Leipper's comments and concerns. He made a motion to adopt the ordinances. Commissioner Jacobsen seconded the motion.

The motion passed unanimously.

Kenn Adcock-aye
Doug Crow-aye
Judy Davis-aye
Jane Jacobsen-aye
Walt Loehrke-aye
Dave Robertson-aye
Anne Squier-aye
Wayne Wooster-aye

Other Business

Bennett said the annual agency audit report was provided and the Commission had no management findings or audit notes. She said there is an Executive Committee meeting on June 23rd at the Commission office, scheduled to begin at 9:00 a.m.

Chair Squier adjourned the meeting at 4:00 p.m.

The next regular meeting is scheduled for 7/13/04 at The Best Western Hood River Inn, Hood River Oregon

Minutes taken by Kathy Obayashi-Bartsch
Minutes approved on July 13, 2004