

MINUTES
DRAFT UNTIL APPROVED BY THE COUNCIL
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444
MONDAY, JULY 27, 2009
SPECIAL MEETING: 5:30 P.M.
PUBLIC HEARING: 6:30 P.M.

CALLED TO ORDER BY MAYOR WERNICKE AT 5:33 P.M.

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
Mayor James Wernicke	X	_____
Council Position #1 Sue Johnson	X	_____
Council Position #2 Larry Brennan	X	_____
Council Position #3 Peter Peterson	X	_____
Council Position #4 John Truesdell	X	_____
Council Position #5 David Alexander	X	_____
Planning Staff	X	_____

****NOTE:** If anyone wishes to address this Governing Body, please present a completed "Business from the Audience" request to the Mayor at this time. Your request will be added under the CITIZEN COMMENTS section of our agenda. Comments and participation from the audience shall be limited to 5 minutes without redundancy.

SPECIAL ORDERS OF BUSINESS:

INTERVIEW APPLICANTS FOR PLANNING COMMISSION VACANCY

1. 5:30 - Julian Starr
2. 5:45 - Carol Fetzer
3. 6:00 - Brent Thompson
4. 6:15 - Linda Alexander

Starr did not show up for the interview and Alexander withdrew her application.

The Council interviewed Carol Fetzer and Brent Thompson.

MOTION:->Truesdell moved to appoint Carol Fetzer to the open position on the Planning Commission, second by Peterson. Johnson, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

This portion of the meeting was concluded at 6:10 P.M.

Council took a break.

The Pledge of Allegiance and Roll Call were taken again.

FILLING OF CITY ADMINISTRATOR POSITION

MOTION:->Johnson moved to offer the job to Ellen Barnes at a beginning salary of \$55,000 per year, plus a one time up to \$1,000 moving expenses (receipts required) and there will be no guarantee of when or if she will get her next raise.

Second by Peterson.

Truesdell-for clarification we should add "and to receive all customary benefits"

Wernicke add "and to begin as soon as possible". Johnson said yes, add the clarification and comments to her motion.

Peterson-We expect her to start the job ASAP, no later than September 1st. Johnson agreed.

It was decided to make another motion with everything in it.

Johnson withdrew her motion and Peterson withdrew his second.

MOTION:->Alexander moved that the council the mayor, on behalf of the city council, offer to city administrator applicant, Ellen Barnes, the position of city administrator with a starting salary of \$55,000 per year, plus benefits, in addition, the mayor is authorized to offer up to \$1,000 in moving expenses, upon submission of receipts. The council expects the administrator to begin as soon as possible, but no later than September 1, 2009, second by Johnson. Johnson, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

The mayor stated he would contact Ms. Barnes either tonight or tomorrow.

PUBLIC HEARINGS:

CONSERVATION LINE

WERNICKE-Opened the public hearing at 6:30 p.m.

Wernicke stated: This public hearing is a review of the Planning Commission recommendation regarding a surveyable location of the Beaches and Dunes Conservation zone line. Following the public hearing, the Council will decide whether to: accept the Planning Commission recommendation or devise an alternate surveyable location of the zoning line. Written and oral testimony will be accepted by the council.

Our Planning Staff will give their report and then we will have public comments.

WERNICKE asked if anyone in the audience wished to comment?

NOTE:->The planning staff report, public comments and discussion & decision (if any) are attached as Exhibit B.

WERNICKE-Closed the public hearing at _____ p.m.

DISCUSSION & DECISION (if any) re CONSERVATION LINE
(Attached as Exhibit B)

ANNOUNCEMENTS

The next regular meeting for the Gold Beach City Council is scheduled for Monday evening, AUGUST 10, 2009 in the Council Chambers of City Hall, 29592 Ellensburg Ave., at 6:30 P.M.

ADJOURNED at _____ p.m.

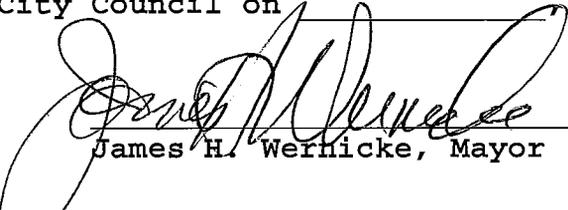
The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call (541) 247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of Discrimination should be sent to: USDA, Director, Office of Civil Rights, Washington, D.C. 20250-9419

FAX: Media

POST: City Hall: Post Office: www.cityofgoldbeach.us

Passed by the Gold Beach City Council on _____ 2009.

ATTEST:


James H. Wernicke, Mayor


Shirley Walker, Recorder

CITY OF GOLD BEACH
City Council
Conservation Zone Line with Public Comments
July 27, 2009

This record of the hearing is not a transcript; audiotapes are available at the office of the Curry County Public Services, Curry County Courthouse Annex, 94235 Moore Street, P.O. Box 746, Gold Beach, OR 97444.

Council Members Present: Mayor James Wernicke, David Alexander, John Truesdell, Peter Peterson, Larry Brennan, Sue Johnson
Planning Staff: Curry County Associate Planner Jodi Fritts, and Clerk, Diana DeLong

Mayor James Wernicke opened the meeting at 6:30 p.m., explained the purpose of the hearing and asked Planner Jodi Fritts, to review the staff report and supplemental material.

Fritts briefly noted previous information distributed and reviewed supplemental information and Planning Commission recommendation.

Supplemental communications included the following:

1. Letter dated July 23, 2009, Dave Perry, DLCD
2. Letter with attachment, dated July 22, 2009, Jon Younce, Manager Pacific Reef
3. Letter with attachments, dated July 24, 2009, Don & Cindy Swan
4. Letter with attachment, dated July 27, 2009, Jon Younce
5. Letter with attachment dated July 27, 2009 Jon Younce
6. Plat overlay on aerial photo of GB 15 LLC (former *Beachhouse/Chives*) and beach photographs

Fritts elaborated on comments received in the letter submitted by Dave Perry, which addressed the proposed recommendations, noting that Dave Perry was not in favor of calling out property exceptions. Fritts reviewed the Planning Commission zone line recommendation being the easterly edge of the conservation line defined at a distance of 100', directly east of the surveyed statutory vegetation line at any given point, except for the following parcels, which had acknowledged predeterminations: the Snazuk property, South Beach Park and the property owned by Gold Beach 15 LLC. Fritts commented that she and Director, David Pratt had made a field visit to review the recommended exception parcels property lines. Both parcels, Snazuk's and South Beach Park would have little impact. Snazuk's property had surveyor pins visible. Fritts said that GB 15 LLC with the recommended 100' from the vegetation line would be impacted and were told several years ago where the line would be. Fritts referred council to item #6 above and 6-1 for a visual of the plat map overlay, showing the area affected. Fritts suggested, on that particular parcel they keep the exception recommendation.

Councilor John Truesdell questioned Fritts asking that if planning approved the development, in the first place, if it was locked-in.

Fritts responded by saying that Gold Beach LLC hadn't filed a final plat, because it has gone to LUBA for appeal, but they had invested a lot of money in developing the property.

Councilor Larry Brennan asked if the State had made a determination on the property owned by Gold Beach 15 LLC.

Fritts said they had, and she felt that the State should stand by the decision made. She said Dave Perry, DLCDC, Calum Stevenson, State Parks & Recreation, herself and the property owner were present for the decision. Fritts noted a follow-up letter to Dave Perry concerning that determination in 2005.

Mayor Wernicke asked if the person, who authored the letter, dated July 23, 2009, had made the original determination.

Fritts responded by telling him that Dave Perry, DLCDC, had been present the day of the site visit in 2005, and wrote the most recent correspondence.

Councilor Peter Peterson asked how much of a difference in footage there would be.

Fritts thought the difference might be as much as 50', which led to a discussion about the possibility of Gold Beach 15 LLC suing the City if their exception denied by DLCDC. Discussion ensued.

Councilor David Alexander asked from the proposed 100' line, the line would be 50' westerly from the property owned by Gold Beach 15 LLC.

Fritts explained that the determination made in 2005 would stand and clarified existing stake and marker monuments at the statutory vegetation lines.

Councilor Truesdell reported exparte contact through a prior proposal and site inspection with Fritts to locate survey pins when he was on the Gold Beach Planning Commission and another site inspection with Fritts on July 20, 2009, but spoke with no one. He felt that he could be fair and impartial. There were no challenges from the audience.

Fritts suggested that all Councilors disclose their attending the site visit on June 25, 2009, and those speaking with Mr. Younce during that visit. Councilors who attended the site visit disclosed likewise, and agreed that they could be fair and impartial. There were no challenges from the audience.

Mayor Wernicke asked about verifying the vegetation line markers.

Fritts said that she could not definitively locate all of the markers, briefly explained what was found, and said she would speak with the county surveyor about it.

Mayor Wernicke asked if the state representatives who represent our area were familiar with the area owned by Gold Beach 15 LLC.

Fritts thought that Calum Stevenson was familiar.

Councilor Brennan disclosed his relationship as subcontractor for a contractor who had provided services for Pacific Reef. He felt he could be fair and impartial. No challenges were heard from the audience.

PUBLIC COMMENT (20:06)

Kosh, David, *Attorney for GB LLC* - Urged the council not to deviate from the Planning Commission's recommendation. Referencing the letter of determination, Exhibit B-3, dated January 31, 2005, written after a meeting and site visit on the property with Dave Perry, DLCD, and Calum Stevenson, State Parks. He continued that the conservation zone line was determined to be 50' east of the vegetation line, derived from state survey coordinates, and based on that determination, all conditions satisfied and the final plat approved for recording. Because it is had a final decision, the final plat should be recorded.

Commenting briefly with regard to the appeal, he said there was nothing, in LUBA's rules that provide for an automatic stay of decision. It is final, and in affect, unless the people who appealed to LUBA apply for a stay of decision. They had not done so. The decision is final unless a higher court determines otherwise.

Kosh wanted to demonstrate where the actual vegetation line began and drew an illustration of the shoreline. Kosh showed the base of the fore-dune to the statutory vegetation line at 160', an additional 50' to the DLCD determined conservation zone line and another 50' to the proposed line. He commented that he saw no reason for the additional 50' outlined by Dave Perry, in the letter written July 23, 2009; and speculated that Dave Perry didn't understand or remember that he was already on the property and made a determination. He continued that they are not requesting an exception, only the 210' from the base of the fore-dune previously determined. He referred to a diagram showing the preliminary plat property overlay, saying the Diamond Loop improvements made and developed. The lots varied in depth on Diamond Loop, lots from the frontage to the statutory vegetation line were 125'-135' in length, and they already carved off 50' of that for the conservation zone line; leaving 75-85'. If they went back another 50' then there would only be 25-35' of depth, which would render the lots unusable. He reiterated their request, that they continue development with the previous determination. There were no questions for Mr. Kosh.

Jim Gardner, *Attorney for Pacific Reef Resort* - thanked the council for taking time to do a site visit of the properties and said that the beach-line/vegetation line varied for each property. He commented that the planning commission recommendation, June 2009, had no adopted findings and expressed the following concerns:

- **Item 6. (page 2) - referring to the current conservation line located 150' east of statutory vegetation line** but said it's hard to locate if you are not a surveyor and noted that the line moves and the only way to know where it is would be is if it was surveyed as Mr. Younce had done at Pacific Reef.
- **Item 6. (page 2) - referring to "takings"** said it was a legal opinion given by a nonprofessional, not a legal determination.
- **Three (3) exceptions** - he felt the exceptions appropriate because there had been a significant amount of money invested and the city and state decision made.

He continued by saying that the decision is a historical precedent on the three properties and the conservation line is 50' east. He continued by using the Crissey Field project for comparison and commented that the State of Oregon had set a precedent; and if DLCD discriminates against other properties, he felt it would be a potential *takings* and equal protection argument.

Based on the scientific evidence the beach is accreting, and urged the council to look at everything. Also, nothing was mentioned about Goal 9.

Jon Younce, Manager Pacific Reef – thanked the council for taking time to do a site visit and stressed the importance of the matter. Younce said that the 100’ setback recommendation from the planning commission, he believed, was a compromise rather than a consensus. He thought it arbitrary to the particulars of any one property, and the Pacific Reef property arbitrary for the following reasons:

- The 2003 report flawed, in its conclusion of the Pacific Reef property, and the lines weren’t based on science. The 2006 report attempted to correct the error, but he believed that no decision be made based on a document with such an egregious error. In the recommendation, it said that Dr. Busch agreed with the 2003 report, but he was only referring to the Snazuk property.
- Only one planning commission member visited the properties and that member thought the line should be at 50’ rather than 100’. The compromise leaves the setback at 50’ on some properties and arbitrarily on others at 100’; he wants the same treatment that others had received.
- The findings don’t address economic issues, Goal 9. Younce then referred to the New York Times issue and other photographs that he submitted. He brought up the buffer area and commented that the vegetation line intended to be the buffer area.

After he carefully reviewed their plans, and limited to 100’, he said that they would have to eliminate four of the units planned; taking a lot of income from them and Gold Beach. They could cram the units together but either option is not in their best interest.

Jim Freedman – talked about earthquakes, Tsunami’s and the possibility of liquefaction and damage caused by them. He wondered why anyone would want to build so close to the beach. He read excerpts from *Ghosts of a Dream*, by Ray Moretti.

David Snazuk, Landowner/Developer - clarified his property line 75-100 from the vegetation line and asked that the council accept their property as originally requested. He referred to a letter written in 2000, by Planner Dianne Snow, about meeting with Dave Perry, DLCD, on November 11, 2000, and their determination of his property, city fill permits and an email from Dave Perry. He talked about the geology, and how the beach-line was originally set at 16’, above mean sea level, but the beach accreting and that the line now behind the Dune. He reiterated that the beach is accreting but there are different building techniques to address liquefaction.

Mayor Wernicke asked if Snazuk had done anything special to their property.

Snazuk said that they had begun to fill the area in 1991 to get above the stabilized dunes. In 2000, there was a question of where the line was. Dave Perry, DLCD, came out and they continued to fill and do more work after that visit. Their property lines up with Sebastian Shores but the beach-line curves a bit and a portion of their property affected by the 100’ setback. They would like to continue with the original exception.

Councilor Truesdell asked if he had final approval on the plat.

Snazuk said they went to the planning commission and told that they could go ahead with development and in the final stage approve the final plat.

Mark Rasmussen, N Bank Rogue - talked about renewable resources for his grandchildren and said no one speaks for the beach and the ecological health of the beach. He said that the decision should be well thought regarding the environmental issues that surround the decision. He said the beach belongs to the people of Oregon and reiterated the importance of their decision.

Mayor Wernicke asked Rasmussen if he realized that it was private property they were discussing and asked if he was suggesting the city purchase the south beach property and dunes for protection. **Rasmussen** said he would be the first one to vote for it.

Councilor Alexander asked Planner Fritts if the planning commission required an environmental study as a part of the permitting process.

Fritts responded that a site-specific geological report within a certain area required, but the statutory vegetation line is the protected area for habitat /wildlife. One cannot go into the deflation plain or the fore-dune areas, because they are already protected.

Rasmussen challenged Planner Fritts about her personal opinions in the matter.

Fritts responded by saying that her personal opinions had never been expressed and clarified her position as planner for the city, regulating agencies requirements and the scientific data in hand.

Mayor Wernicke commented that there was confusion from the State as to where they stand on the matter from one day to the next.

Councilor Alexander clarified that if the 100' line approved, there would be a definable surveyable line, so that the question, where is the line, answered.

Councilor Truesdell clarified that the state requested that we have a definable line based on the surveyed state vegetation line.

Fritts said that this has been going on for years. The state understands that we have scientific studies and wants us to adopt a line based on a study. What the state does not understand is that even if we adopt a line, we can't answer the question, where is the line. The state line isn't easily located. Although the state does not require surveying, the survey would provide monuments for a measureable, locatable line that will benefit landowners and city development.

Angela Harrelson, President Gold Beach Chamber Commerce/Owner Real Estate Brokerage—said she had expertise in economic and land use data and the impact on local residents. Many elected officials ran on a platform of change in economic development and revitalization of the city. She continued by saying that little has been addressed about Goal 9 of the Oregon Administration Rules (OAR), which addresses strategic planning and economic growth in the area. Goal 9 along with a comprehensive plan and policies should contribute to a stable and healthy economy. The comprehensive plan should have emphasis on expansion of increased productivity from existing industries and firms as a need to strengthen local and regional economic development. She said that gold beach has only one industry, tourism, and we need to expand on our tourism as much as we can for future generations. Planning decisions directed toward diversification and the improvement of the economy, and planning areas considered a major determinant in planning decisions.

She spoke about 27 different sites/communities based in tourism along the coast saying that each community had a 50' setback from the vegetation line and used the vegetation line as their model. With the environmental impact, the friends of Oregon sued the State of Oregon and agreed that the high vegetation line was the definitive line. She said that if the line suitable to the Friends of Oregon then it should be suitable for the City of Gold Beach. Continuing, she spoke about Bandon Dunes, their zoning for its use, and the benefits of the development to Bandon.

Councilor Sue Johnson asked how far the setback was for that development.

Harrelson said 50' off the vegetation line determined after many environmental impact studies and referred to NOAA and the information derived from it; from the Fairgrounds south to Sebastian State Park wasn't a high impact area.

Councilor Truesdell asked if there were other communities where the 50' standard differed.

Harrelson corrected Truesdell by telling him they were tourism sites and that there were exceptions but not standards. **Harrelson** spoke about the many studies done and environmental organizations that determined the 50' setback along the coast and that we shouldn't re-invent the wheel.

Larry Kammer, Land Surveyor/Owner/Developer reviewed some of the OAR Goals and said Goal 9, Economic Development be taken seriously by council. Kammer said that DLCDC made a determination and requested consistency with regard to the 50' setback; taking advantage of the preservation and future economic survival. He said he loved the beaches in Gold Beach but an extra 50' to accomplish plans in progress is to the benefit of the city and future generations.

Mayor Wernicke called for break.

Mayor Wernicke reopened the meeting asking if there were any further comments. None heard **Mayor Wernicke** closed public hearing at 8:10 pm and asked the council how they wanted to proceed.

MOTION

Councilor Peterson made a motion to schedule a work-session for more discussion.

Councilor Johnson seconded the motion

Discussion: Councilor Truesdell clarified the council would be continuing for their discussion. Councilor Alexander clarified that work-sessions opened to the public.

Motion passed unanimously.

Mayor Wernicke clarified that the work-session to be noticed.

MOTION

Councilor Peterson made a motion to adjourn.

Councilor Brennan seconded the motion.

Motion passed unanimously.

Adjourned: 8:12 pm

June 2009
Recommendation to the Gold Beach City Council
By
City of Gold Beach Planning Commission

The Planning Commission makes the following recommendation to the City of Gold Beach Council regarding the requirement that the Beaches and Dunes Conservation Zone line shall be surveyable:

The Planning Commission recommends that the easterly edge of the Conservation Zone Line be defined at a distance of 100' directly east of the surveyed statutory Vegetation Line at any given point, except for the following parcels which have acknowledged predeterminations:

3715-01DC-00301, currently owned by Robert & David Snazuk
3715-01DC-00302, South Beach Park and Visitor Center
3715-01DB-01214, 01215, 01217 currently owned by Gold Beach 15 LLC

(A map depicting the recommended line is attached as EXHIBIT A.) In large packet from Jodic

The Planning Commission bases this recommendation on the following facts contained within the record of the proceedings:

1. The Vegetation Line (or Beach Bill line) is a documented, surveyed line contained in Oregon Revised Statutes Chapter 390.770 (points: Cu-7-347 to Cu-7-356.)
2. Measuring the current scaled Conservation Line from the Hwy 101 right-of-way was determined to be an inadequate method to locate the zone line since the right-of-way varies in width in several locations¹.
3. The Conservation line proposed in the 2003 Beach Erosion Hazard-Risk Assessment Technical Report prepared by Chuck Nordstrom and Ron Sonnevil is located west of this 100' offset line on all properties except for map/TL: 3715-01AC 500
4. In making this recommendation, the Planning Commission relied on the 2003 Nordstrom/Sonnevil technical report rather than the 2006 Sonnevil update for the following specific reasons:
 - a. The 2003 report was prepared by two licensed geologists: Chuck Nordstrom and Ron Sonnevil. The 2006 report was updated by only Ron Sonnevil.
 - b. The 2006 report References section omits the co-author of the 2003 report Nordstrom and appears to indicate the 2003 report was a solo effort prepared exclusively by Terra Firma Geologic (Sonnevil)².
 - c. The purpose of the 2006 update was to re-survey the 2003 beach profiles under winter conditions and compare the two profiles³. Utilizing the winter beach profiles, the Moderate Hazard Risk area between the 2003 and 2006 reports did not change significantly⁴.
 - d. The 2006 update appears to be subjective, rather than objective in its conclusions.
 - e. The 2006 update included an additional Hazard/Risk area that was not included in the 2003 report. The 2006 update included a calculation that, according to the

¹ The current zoning maps identify the highway an even width throughout town, however the actual right-of-way varies in width.

² The REFERENCES section of both reports acknowledge co-authors or additional authors of a single work.

³ Introduction, Page 1, 2006 Technical Report Update

⁴ Figure 7, Page 11, 2006 Technical Report Update

report, “is consistent with other Oregon coast studies...”⁵ This calculation used the same wave calculations as the Moderate Hazard Risk area but included a 6 foot drop of the beach profile from a proposed Cascadia Subduction Zone (CSZ) Earthquake. The Planning Commission discounted this calculation for the following reasons:

- i. It is believed that if a CSZ earthquake event does occur any development west of Hwy 101, and indeed most of downtown Gold Beach, would be disastrously affected and should therefore not be considered in a model designed to predict beach *erosion*.
 - ii. In July 2005, Jonathan Allan (co-author of many of the reference documents for both 2003 & 2006 Gold Beach reports) of the Department of Geology and Mineral Industries (DOGAMI) prepared a Technical Report to the Oregon Parks and Recreation Department for the Evaluation of Coastal Change and the Potential for Erosion During Extreme Storms at Crissey Field. The report does not include a CSZ event variable. The report was prepared for the new Welcome Center located south of Brookings. The report only offers High Hazard risk zones: no moderate or low hazard⁶.
 - iii. The 2007 technical report comments from R.E. Busch PhD of Busch Geotechnical Consultants, and oral testimony received from Dr. Busch support the conclusions and recommendations contained in the original 2003 Nordstrom/Sonnevil report⁷.
5. Prior on-site determinations that have been made for the excluded parcels mentioned in the recommendation, by Department of Land Conservation and Development (DLCD) with Oregon Park and Recreation (OPRD) and city staff, have set an approved precedence to locate the Conservation Line approximately 50'-75' east of the statutory Vegetation Line. The proposed 100' easterly offset is a more conservative compromise to accurately survey the Conservation Line.
 6. The City's current, scaled Conservation line appears to be located approximately 150' east of the statutory Vegetation Line. The 100' proposed offset from the Vegetation Line is more generous than the current scaled line. Because the recommended line is westerly of the present line, the “takings” argument is a non-issue⁸.

BACKGROUND:

The Planning Commission has reviewed this matter several times since receiving the original 2003 technical report. Workshops and public hearings to discuss the Conservation Line with the Commission members and the interested public have generated a large volume of testimony and data. A great deal of time and effort has been devoted by the Planning Commission to ensure that all pertinent information has been thoroughly reviewed, discussed, and discounted or incorporated into this recommendation. The Planning Commission, in making this recommendation, has made a concerted effort to formulate a

⁵ Methods, Page 1, 2006 Technical Report Update

⁶ The DOGAMI report was presented to the Planning Commission in previous CON zone hearings and again as part of the May 18, 2009, supplemental packet.

⁷ Busch provided written and oral comments to the Planning Commission during the 2007 hearings and again testified at the May 18, 2009 hearing. The 2007 written comments were included as part of the May 18, 2009, supplemental packet.

⁸ If a jurisdiction changes the permissible uses on property without justification it could potentially be subject to a “takings” claim—in a nutshell: you have “taken” the property without just compensation for the loss.

recommended line that: is supported by data in the record; attempts to address both development and conservation concerns; will be legally defensible; and will be acceptable to DLCD. Each Planning Commission member had strong feelings on where to locate a surveyable line but a consensus was reached that all members felt—while not their personal choice, was a recommendation that was supported by the record.