

**GOLD BEACH CITY COUNCIL  
MINUTES FROM SPECIAL HEARING, MAY 10, 2007**

Present: Mayor Karl Popoff and Councilors: Sue Johnson, Don Flynn, David Alexander, positions #3 & #4 currently vacant.

Staff: Planning Director Dave Pratt, County Counsel Jerry Herbage, Associate Planner Jodi Ferrin

RECONSIDER THE DECISION ON CONDITIONAL USE PERMIT GBC-0601 & GBA-0601, TO AUTHORIZE THE USE OF AN EXISTING SINGLE-FAMILY DWELLING AS A VACATION RENTAL DWELLING ON A PARCEL WITHIN THE RESIDENTIAL (1-R) ZONE LOCATED AT 94446 TOM CAT HILL HEIGHTS

Mayor Karl Popoff called the meeting to order at 7PM and asked everyone to stand for the pledge of allegiance to the flag. Roll call.

Popoff stated the purpose of the special hearing for consideration on written arguments to the record. Popoff turned the presentation over to the Planning Director Dave Pratt. Pratt deferred to County Counsel Jerry Herbage.

Herbage discussed the procedure and gave a brief history on the council actions pertaining to this matter. On February 16<sup>th</sup>, 2007 the Council, on advice from Herbage had withdrawn from LUBA, their decision for reconsideration. On April 11<sup>th</sup>, 2007 the council met to discuss procedural issues. The council voted to allow written arguments on the record only to be submitted no later than April 27<sup>th</sup>. The council would then reconsider their original decision on May 10<sup>th</sup>. Herbage said this was not a evidentiary hearing but a hearing for a decision.

Herbage said written arguments were received from the applicant's attorney, Isa Taylor. That was the only submission. He said this would be received as part of the record. Herbage noted there were persons present in the audience. He reminded the council that no testimony would be received tonight but the audience could observe. He said the council was now at the jury stage in a trial.

Herbage advised the council that, by law, they were allowed to communicate with staff. Discussion with staff is not considered ex-parte contact, however no new evidence could be presented.

Herbage told the council that after they passed a motion tonight they would need to direct staff to prepare an order and bring it back to the council. Herbage said the council would need to set a date to approve the order. At the previous hearing, the applicant, John Upshur, had allowed an additional sixty days to finish processing the application. He said the council had until July 20<sup>th</sup> to submit the order and record back to LUBA. He said the county was currently inundated with Measure 37 claims so requested that the council postpone the adoption of the order until at least June. Discussion on the next hearing date.

Popoff asked Pratt if had anything he wished to add. Pratt directed the council to a brief memo from staff. He stated the only written argument received was from Isa Taylor, the applicant's attorney. He pointed out the two options the council had: approve the conditional use and allow Upshur to operate the vacation rental, or affirm the Planning Commission denial of the permit.

Popoff asked Associate Planner Jodi Ferrin if there was anything she had for the council. Ferrin said she felt the record spoke for itself and the permit should be denied. Ferrin said it was telling that the attorney's argument was brief and that they only addressed two issues. She felt it was important to note that the applicant's argument was: who has the right to define excessive traffic and what the residential character of the neighborhood is. Ferrin said the council gets to decide. That was within their duties to interpret their ordinance. She felt there was plenty of evidence in the record to support a definition of excessive traffic and how to define the residential character of Tom Cat Hill. She felt there was ample evidence in the record to deny the appeal.

Popoff asked the council members if they had any questions or comments. Councilor Sue Johnson said she read the material. She felt the argument that they attorney made was based purely on supposition and that was not going to enter into her decision. She said she was ready to make a motion.

Councilor Don Flynn had no questions or comments. Councilor David Alexander had a few comments. Alexander said he read the attorney's letter and had a few questions of Herbage. He asked Herbage about the traffic issue. He said he saw a worst case scenario of ten adult renters, driving ten cars at one time. Discussion on the traffic issue. Herbage advised Alexander that if the council chose to approve the vacation rental dwelling then the use must comply with the ordinance, which includes the traffic issue and the transient tax requirement. Herbage said there was case law (*Hicks v Marion County*) that states that past acts can be considered into their decision. Herbage said a finding could be made from the record that there had been problems with compliance in the past.

Alexander pointed to the argument in the letter that "vacation renters probably create less trips to and from the house on a daily basis than use by virtually any family (with regular commutes to work, errands, school, visit by friends and family, etc)." He felt that did not carry a lot of weight since most vacationers are constantly on the road to events, shopping and meals.

The last point he wished to make was that it was the council's duty to define the residential character of the neighborhood. He felt it was the duty of the council to look out for the best interest of the whole neighborhood not just one home. Herbage said vacation rentals can be more like a motel and less like a home depending on how the business is run. He felt as long as the argument was sufficiently made, LUBA would accept it.

Finally, Alexander said he was very concerned about Upshur's interpretation that 10 persons (in the original conditions of approval) meant 10 adults and that children were not counted. He was concerned that was not addressed in the attorney's final argument. Herbage reminded the council that they could review past practices in their final decision.

Popoff asked Herbage “what leg” Upshur had to stand on at LUBA. Herbage said that whatever the council decided, staff would insure that the best possible material was presented to LUBA for their decision. Herbage told the council if they voted to approve the permit they must have findings for each approval criterion. If the council votes to deny the permit then they only need “one item that sticks” meaning that the council must find that the applicant does NOT meet at least one of the criterion, and clearly define that. He stated again that staff would do the best for the council either way.

**MOTION:**

**Councilor Sue Johnson made a motion for the Gold Beach City Council to affirm the Planning Commission’s decision on GBC-0601 to deny the use of an existing single-family dwelling as a vacation rental dwelling under Gold Beach Zoning Ordinance GBZO under Section 6.040(3) for property within a Residential (1-R) zone located at 94446 Tom Cat Hill Heights, Curry County Assessor Map 3614-31BB tax lot 1603. The motion was seconded by Councilor Don Flynn.**

**Mayor Karl Popoff asked if there was any discussion on the motion. No discussion. Popoff called for the question: UNANIMOUS.**

Discussion on preparation of final order and timeline.

**MOTION:**

**Councilor David Alexander made a motion to have the City Council direct staff to prepare the decision the council reached to affirm the Planning Commission’s decision on GBC-0601 and have the documents to the City Council for its regular meeting on June 11<sup>th</sup>, 2007. Councilor Don Flynn seconded the motion.**

Discussion on the motion. Popoff wondered about the timeline to get the item on the agenda. It must be to the city sooner than the actual meeting date. Alexander and Flynn withdrew the motion.

**MOTION:**

**Councilor David Alexander made a motion to direct staff to prepare the documents required affirm the Planning Commission’s decision on conditional use permit GBC-0601 to deny the use of an existing single family dwelling as a vacation rental to have the documents to the Council before its June 11<sup>th</sup>, 2007 meeting for consideration at the June 11<sup>th</sup>, 2007 regular Council meeting. Councilor Don Flynn seconded the motion.**

Discussion on the motion. Vote: UNANIMOUS

Popoff asked if there was anything further. Pratt stated that staff had received a fax communication late last night however the document came in after the required close of the record and it was not entered into the record.

Meeting adjourned at 7:29PM.

Approved by the Gold Beach City Council on June 11, 2007.



Karl Popoff, Mayor

ATTEST:



Shirley Walker, Recorder