

1. Agenda Packet

Documents:

[COMPLETE_PLANNING_COMMISSION_PACKET-4-19-16.PDF](#)

2. Meeting Materials

Documents:

[STAFF_REPORT_CUP_SOUTH_TANK_4-16.PDF](#)

[PLANNERS_REPORT-4-16.PDF](#)

[LETTER_GRINNELL_RE_CONDITIONAL_USE_PERMIT_COY_STANK-4-16.PDF](#)

[PC_MINUTES-4-19-16.PDF](#)

[PC_WS_MINUTES-4-19-16.PDF](#)

[INDUSTRIAL_USES_MEMO-4-16.PDF](#)

[MEMO_FORMULA_BUSINESS_REGULATIONS-4-16.PDF](#)



CITY OF YACHATS
Planning Commission
April 19, 2016
Civic Meeting Room - Yachats Commons

WORK SESSION – 2:00 P.M.

Definition of Industrial Use
Formula Business Regulations
Building on Slopes
Additional Code Amendment Items

REGULAR MEETING – 3:00 P.M.

- I. Announcements and Correspondence
- II. Minutes
 - Regular Meeting and Work Session – February 16, 2016
 - Work Session – March 15, 2016
- III. Citizen's Concerns
- IV. Public Hearings
 - A. Case File #1-CU-PC-16 City of Yachats Conditional Use Application
- V. Planner's Report – Larry Lewis
- VI. New Business
- VII. Other Business
 - A. From the Commission
 - B. From Staff

Next Meeting Date: May 17, 2016

This meeting is open to the public and all interested citizens are invited to attend. This meeting will be audio taped. All items to be considered by the Commission must be given to the City Office one-week prior to the meeting. Minutes of all public meetings are available for review in the City Office. The facility is handicap-accessible; individuals needing assistance please contact the City Recorder at (541) 547-3565, or Oregon Relay 1-800-735-2900 (T.D.D.) two days in advance. The City of Yachats does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or any other legally protected status.

Posted on April 12, 2016

Nancy Batchelder, City Recorder

April 5, 2016

To: Yachats Planning Commission

From: Larry Lewis, City Planner

Re: Industrial Uses

At the March work session, the Planning Commission discussed the need for a definition of industrial use. The purpose for this is to help expand commercial activity and retail sales. There is an ongoing trend for entrepreneurs and retailers to manufacture, fabricate and assemble goods in the location that retail sales are occurring. One suggestion was to establish a maximum percentage of the business that could be used to produce products while maintaining the retail commercial use. For example, a restaurant could produce a sauce to bottle and sell in small quantities. Another example is a brew pub where the manufacturing of beer is conducted on the site where the retail sales and/or restaurant is located. Another example is the manufacturer of craft items that are sold in the retail store.

Waldport is currently addressing this issue. Currently, goods offered for retail sales in the C-1 zone are not allowed to be produced, manufactured, fabricated or assembled on the site. A proposed amendment to the C-1 zone has been drafted. The proposed amendment would allow manufacturing, fabricating, assembling, and storage as long as it does not exceed 50% of the total floor area of the building and provided it occurs within an enclosed building. This would be a new Use Permitted Outright in the C-1 zone and is proposed to read as follows:

The manufacture, fabrication and/or assembly of those goods offered for sale on the premises that are permitted for sale in the C-1 zone, provided all manufacturing, fabricating, assembling, and storage not exceed 50% of the total floor area of the establishment and provided further that it shall occur within an enclosed building.

This is one option that can be discussed, along with other options, at the April 19th work session.

April 6, 2016

To: Yachats Planning Commission

From: Larry Lewis, City Planner

Re: FORMULA BUSINESS REGULATIONS

The City Council and the Planning Commission have recently discussed a concern about ‘formula businesses’ establishing in Yachats that would result in an adverse impact to the village character of the city. This memorandum provides a summary of the issue and provides example language from five cities that have implemented formula business regulations*.

SUMMARY

A growing number of cities are enacting policies that restrict the proliferation of “formula businesses” – stores and restaurants that have standardized services, décor, methods of operation, and other features that make them virtually identical to businesses elsewhere.

Many formula retailers and restaurant are increasingly locating in downtown business districts. Once formula businesses arrive, it is not uncommon to see additional formula businesses. This sometimes leads to a “squeezing out” of independent businesses, and can result in a transformation (change in character) of a downtown district.

This can have long-term economic consequences as the downtown district loses its distinctive appeal and no longer offers opportunities for independent entrepreneurs. Low-margin businesses that meet the basic needs of the neighborhood and city may be pushed out as the area attracts more formula restaurants and stores. Additionally, a concern is that formula businesses tend to be fair-weather friends and can disappear quickly when the economy contracts or their corporate strategy shifts.

To prevent and mitigate these problems, some cities have adopted ordinances that prohibit formula businesses, cap their total number, or require that they meet certain conditions in order to open. A ban on formula businesses does not prevent a chain business from coming in, but it does require the business to be distinct – in name, operations, and appearance – from all of its other outlets. There are a few examples of a chain complying with a formula business ordinance by opening a unique outlet, however they often refuse to veer from their cookie-cutter formula and opt not to open.

If a city chooses to enact a formula business ordinance, there are legal issues that need to be addressed. A city should articulate within the ordinance, the public purposes the law will serve and specify how the restrictions will fulfill those purposes. This is key to crafting a sound ordinance that will not be susceptible to legal challenges. The ordinance should reference the city’s comprehensive plan and goals within the plan that formula business restrictions will help to fulfill. These commonly include:

- Maintaining the unique character of the community and the appeal of the downtown area,

* This summary and examples are extracted from the Institute for Local Self-Reliance.

- Protecting the community’s economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs,
- Fostering businesses that serve the basic needs of the city, rather than those oriented toward tourists or regional shoppers.

EXAMPLE REGULATIONS

Example formula business regulations from different cities are provided below. These are not the complete regulations for each of the cities however they do provide various examples of regulations that have been implemented.

Carmel, CA

In the mid-1980’s this city became the first in the country to enact a formula restaurant ban, which prohibits fast food, drive-in and formula food establishments. In Carmel, a business is considered a formula restaurant if it is “required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, employee uniforms, interior décor, signage or exterior design,” or “adopts a name, appearance or food presentation format which causes it to be substantially identical to another restaurant regardless of ownership or location.”

Calistoga, CA

1. Add to the Definitions Section 17.04, 17.04.132 Business, Formula to read as follows:

“Formula Business” shall mean a business which is required by contractual or other arrangement to maintain any of the following : standardized services, decor, uniforms, architecture, signs or other similar features. This shall include but not be limited to retail sales and service, visitor accommodations, wholesale and industrial operations.

2. Add to the Definitions Section 17.04, Section 17.04.616 Restaurant, Formula to read as follows:

“Formula Restaurant” shall mean a restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off the premises and which is required by contractual or other arrangement to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms, architecture, or similar standardized features.

WHEREAS, the City Council has now amended the City’s General Plan Policy and Program Document including policies pertaining to the quality of life desired in Calistoga by maintaining a friendly, slow-paced, rural, small town atmosphere and further detailing policies aimed at reinforcement of the downtown as the commercial and cultural center of the community; and

WHEREAS, the City Council finds that these policies are necessary to preserve the unique and historic character of Calistoga’s downtown commercial district, including regulating the aspect of businesses, services and merchandise that is reflective of the

history and people of the community and which has become a cornerstone of the visitor industry which is a key component in the City's economy; and

WHEREAS, the City Council further finds that certain formula business establishments, e.g. formula food businesses do not reflect the unique character of the community and desired aesthetic ambience of the commercial areas of the city in that they offer rushed, ready made meals from formula menus identical to similarly decorated units located in other communities and thus cannot contribute to the established uniqueness which the Council finds necessary to maintain a viable visitor industry in Calistoga; and

WHEREAS, the City Council further finds that the scale and design of improvements of existing development is an important factor in the overall aesthetic character of the community and that refinements in the City's Zoning Ordinance are necessary to insure that new development is in scale and in harmony with Calistoga; and

WHEREAS, the City Council has considered the importance of the pace of change in the non-residential sector of the community in order to maintain the character of Calistoga as well as the ongoing vitality and viability of the existing historic downtown commercial district.

Sanibel, FL

WHEREAS, the City of Sanibel was created in large part to allow the planning for the orderly development of an island community known far and wide for its unique atmosphere and unusual natural environment and to insure compliance with such planning so that these unique and natural characteristics of the island shall be preserved; and

WHEREAS, the City and island's unique character, consisting of large wildlife and preservation areas, quiet beaches and passive relaxation opportunities, supported by the Sanibel Plan, the Beach Management Plan, the Land Development Code and all ordinances of the City, is not only important for its own sake, but is also in a sense Sanibel's stock in trade; and

WHEREAS, the City has undertaken to write a Vision Statement which reflects the public's desire to remain a small town community, remain unique through a development pattern which reflects the predominance of natural conditions and characteristics over human intrusions, and avoid "auto-urban" development influences; and

WHEREAS, the same characteristics which make Sanibel Island unique and desirable as a place in which to live and which to visit, place it in danger of losing its uniqueness and desirability; and

WHEREAS, one of the threats to Sanibel's uniqueness and natural relaxed atmosphere is the potential proliferation of "formula" restaurants; and

WHEREAS, such types of restaurants diminish the unique character of the island by offering standardization of architecture, interior design and decor, uniforms and the like;

110) Formula restaurant. An eating place that is one of a chain or group of three (3) or more establishments and which satisfies at least two of the following three descriptions:

- a. it has the same or similar name, tradename, or trademark as others in the chain or group;
- b. it offers either of the following characteristics in a style which is distinctive to and standardized among the chain or group:
 - 1. exterior design or architecture;
 - 2. uniforms, except that a personal identification or simple logo will not render the clothing a uniform;
 - 3. it is a fast food restaurant.

York, ME

One excerpt... York has retained a large concentration of historic buildings and locally owned businesses, and that the town's unique character is important to York's "collective identity as a community."

Winslow, WA (Bainbridge Island)

In 1989, after a public hearing in which comment was overwhelmingly opposed to additional formula take-out food restaurants, the city council adopted an ordinance prohibiting such businesses on the grounds that they "are automobile rather than pedestrian-oriented businesses" and the city's comprehensive plan "calls for pedestrian orientation and a village atmosphere."

WHEREAS, as a result, the City Council of the City of Winslow, Washington, now finds that formula take-out food restaurants represent a type of business that is automobile-oriented or of a particular nature that the existence of one such restaurant in the High School Road zone is a sufficient maximum number of that use for the village character of Winslow to be preserved. That other or additional restaurants of that type in all zones should not be permitted hereafter; that expansion in number of such establishments should be disallowed entirely in order to establish at this time, an optimal mix of pedestrian-oriented and other kinds of commercial and retail establishments; that to preclude further development of such restaurants in a town of this size prevents commercial overconcentration of automobile-oriented businesses and of that type of retail service establishment and will provide for smaller neighborhood-style pedestrian and other kinds of retail outlets to best serve the varied needs of Winslow residents and consumers.

STAFF REPORT

Conditional Use Application

APPLICANT: City of Yachats

REQUEST: The applicant is requesting a conditional use permit to construct a water storage tank. A governmental structure or use of land and public utility facility requires a conditional use permit in the R-1 Residential Zone.

A. REPORT OF FACTS

1. Property Location: The subject property is located at the east end of Crestview Drive; and described on the Lincoln County Assessor's Map 14-12-34AD as Tax Lot 204.
2. Zoning: Residential Zone R-1
3. Plan Designation: Residential
4. Lot Size and Dimensions: The lot totals approximately 16,433 square feet with average dimensions of 98' x 163'.
5. Existing Structures: None.
6. Topography and Vegetation (paraphrased from the geologist report): The site is located on the side of a hill. The terrain surrounding the footprint dips steeply to the west. Therefore, two cut benches were excavated by the City for drilling access. The site was previously covered by scattered fir trees, ferns, salmonberry bushes and duff, similar to the surrounding area. At the time of the geology exploration, most of the ground surface consisted of soil exposed by the recent grading work.
7. Surrounding Land Use: Surrounding lands generally consist of single family dwellings, undeveloped residential zoned land, and forested lands to the east.
8. Proposed Utilities: Water and sanitary sewer facilities are available to the site.
9. Development Constraints: Development constraints include steep slopes.

B. EVALUATION OF REQUEST

1. Applicant's Proposal: The applicant submitted the required application form, engineering plans, Foundation Investigation and Seismic Hazard Study, and letter from the Oregon Health Authority.

2. Relevant Yachats Municipal Code Criteria (relevant to this application)

a. Chapter 9.04.030 Definitions

“Public utility facility” means a pipe, transmission line, treatment facility, storage facility, substation, tower or other structure designed to provide the public with electricity, gas, heat, steam, water, communication, sewage collection or other similar service.

b. Chapter 9.12 R-1 Residential Zone

Section 9.12.030 Conditional uses permitted:

A. Governmental structure or use of land; and public utility facility

Section 9.12.040 Standards

B. Yards. The minimum yard requirements in the R-1 zone shall be as follows:

1. Front yard shall be a minimum of twenty (20) feet.
2. Each side yard shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater.
4. The rear yard shall be a minimum of ten feet, except that on a corner lot it shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater.

C. Building Height. No building in the R-1 zone shall exceed a height of thirty (30) feet from finished grade or from natural grade, see Chapter 9.52.180.

D. Lot Coverage. Structures, including, but not limited to buildings, porches and decks shall not occupy more than thirty (30) percent of the total lot area.

c. Section 9.52.050 Hazard areas.

A. Responsibility shall fall on the developer to ensure proper safeguards are taken when developing in any hazard zone whether earthquake, fault lines, landslide, erosion or flood hazard areas. The city accepts no liability. Prior to development the following, but not limited to minimum, shall be required:

3. On slopes of twelve (12) percent and greater: gross excavation or fill of greater than forty (40) cubic yards, removal of more than two thousand five hundred (2,500) square feet of vegetative cover (as measured along the slope), road construction and/or building which entails any fill or excavation on a site shall be subject to conditions, restrictions and recommendations outlined by the site analysis report. This report shall be completed within the past five years by a state of Oregon certified engineering geologist. In addition, the planning commission or its designee may also require that the development adhere to additional standards as provided in writing by the Yachats department of public works. At the completion of the project, the developer shall provide certification from the geological consultant and the Yachats department of public works, stating that the conditions and recommendations of the report and public works have been met.

d. Chapter 9.52.170 General exceptions to building height limitations.

Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles and other similar objects not used for human occupancy are not subject to the building height limitations of this title.

e. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits.

Conditional uses listed in this title may be permitted, enlarged, altered or denied by the planning commission in accordance with the standards and procedures set forth in this chapter.

- A. In taking action on a conditional use permit application, the planning commission may either permit or deny the application. The planning commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88.
- B. In permitting a conditional use or the modification of a conditional use, other than a manufactured dwelling, manufactured dwelling park or multifamily dwelling, the planning commission may impose, in addition to those standards and requirements expressly specified by this title, additional conditions which are considered necessary to protect the best interests of the surrounding city as a whole. These conditions may include, but are not limited to the following:
1. Increasing the required lot size or yard dimensions;
 2. Limiting the height of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the street width;
 5. Increasing the number of required off-street parking spaces;
 6. Limiting the number, size, location and lighting of signs;
 7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
 8. Designating sites for open space;
 9. Setting a time limit for which the conditional use is approved;
 10. Regulation of noise, vibration, odors and sightliness;
 11. Requiring surfacing of parking areas;
 12. Regulation of hours of operation and duration of use or operation;
 13. Such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
 14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

Section 9.72.040 Time limit on a conditional use permit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for an additional period not to exceed six months on request.

Section 9.72.050 Standards and procedures governing conditional uses.

In addition to the standards of the zone in which the conditional use is located and the other standards of this title, conditional uses shall meet the following standards:

- C. Standards for public utility facilities such as electric substation or transformer, public water supply reservoir or pumping station, or public sewage disposal plant or pumping station; radio or television tower or transmitter; or governmental structure or use of land:
1. In a residential zone, all equipment and material storage shall be within an enclosed building;
 2. Workshops shall not be permitted in a residential zone;
 3. Public utility facilities shall be screened and provided with landscaping;
 4. The minimum lot size requirement may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent or nearby property.

3. **Public Testimony Received:** At the time this staff report was prepared, the City had not received any written testimony.

C. STAFF ANALYSIS

1. **Request and Recent History of Property.** The applicant is requesting a conditional use permit to construct a water storage tank. A governmental structure or use of land; and public utility facility requires a conditional use permit in the R-1 Residential Zone.

In 2011, the Planning Commission approved a 2-lot partition that created the subject tax lot. The partition approval included a 20 foot wide access easement from the end of Crestview Drive through tax lot 202 to tax lot 204.

2. **R-1 Standards.** If approved, the structure should at minimum, meet R-1 residential standards. The R-1 standards and proposed water storage facility are identified in the table below:

	R-1 Standard	Proposed Water Storage Tank
Min. Front Yard	20'	35'
Min. Rear Yard	10'	29'
Min. North Side Yard	1' for every 3' of bldg. height 14'-4" w/ 43' bldg ht.	20'
Min. South Side Yard	1' for every 3' of bldg. height 14'-4" w/ 43' bldg ht.	±100'
Max. Building Height	N/A*	N/A*
Max. Lot Coverage	30%	6%

- * Chapter 9.52.170 General exceptions to building height limitations states, in part, that projections such as domes and other similar objects not used for human occupancy are not subject to the building height limitations of this title.
- 3. **Hazard Area.** Per Chapter 9.52.050, a geotechnical analysis report shall be provided for proposed development on slopes 12% and greater. The applicant had a geotechnical report prepared for the proposed development. Design and construction shall adhere to recommendations of the geologist, including but not limited to observations and inspections during construction.
- 4. **Public Utility Facility Conditional Use Standards**
Conditional Use Section 9.72.050.C identifies four standards that public utility facilities shall meet. The standards are identified below in *italics* and followed by a staff response.
 - 1. *In a residential zone, all equipment and material storage shall be within an enclosed building;*
Staff Response: All equipment and material storage shall be within an enclosed building.
 - 2. *Workshops shall not be permitted in a residential zone;*
Staff Response: No workshop is proposed.
 - 3. *Public utility facilities shall be screened and provided with landscaping;*
Staff Response: Fencing and landscaping shall be provided to screen the facility.
 - 4. *The minimum lot size requirement may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent or nearby property.*
Staff Response: The lot exceeds the minimum lot size.
- 5. **Building Permit.** Yachats Municipal Code Section 9.72.030 states that building permits for all or any portion of a conditional use shall be issued only on the basis of the plan as approved by the Planning Commission. The Planning Commission should consider that this requirement is satisfied with this proposed application unless a substantial change to this plan occurs.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

- 1. This Conditional Use approval is based on the approved site plan and meeting R-1 Residential standards, i.e. minimum 20' front yard, 10' rear yard, side yards of 1' for every 3' of building height, and maximum 30% lot coverage. The proposed 43' high water storage tank meets the general exception for building height because it is a dome structure not used for human occupancy.

**#1-CU-PC-16 Conditional Use Permit Application
City of Yachats South Water Tank
April 19, 2016 Planning Commission Meeting**

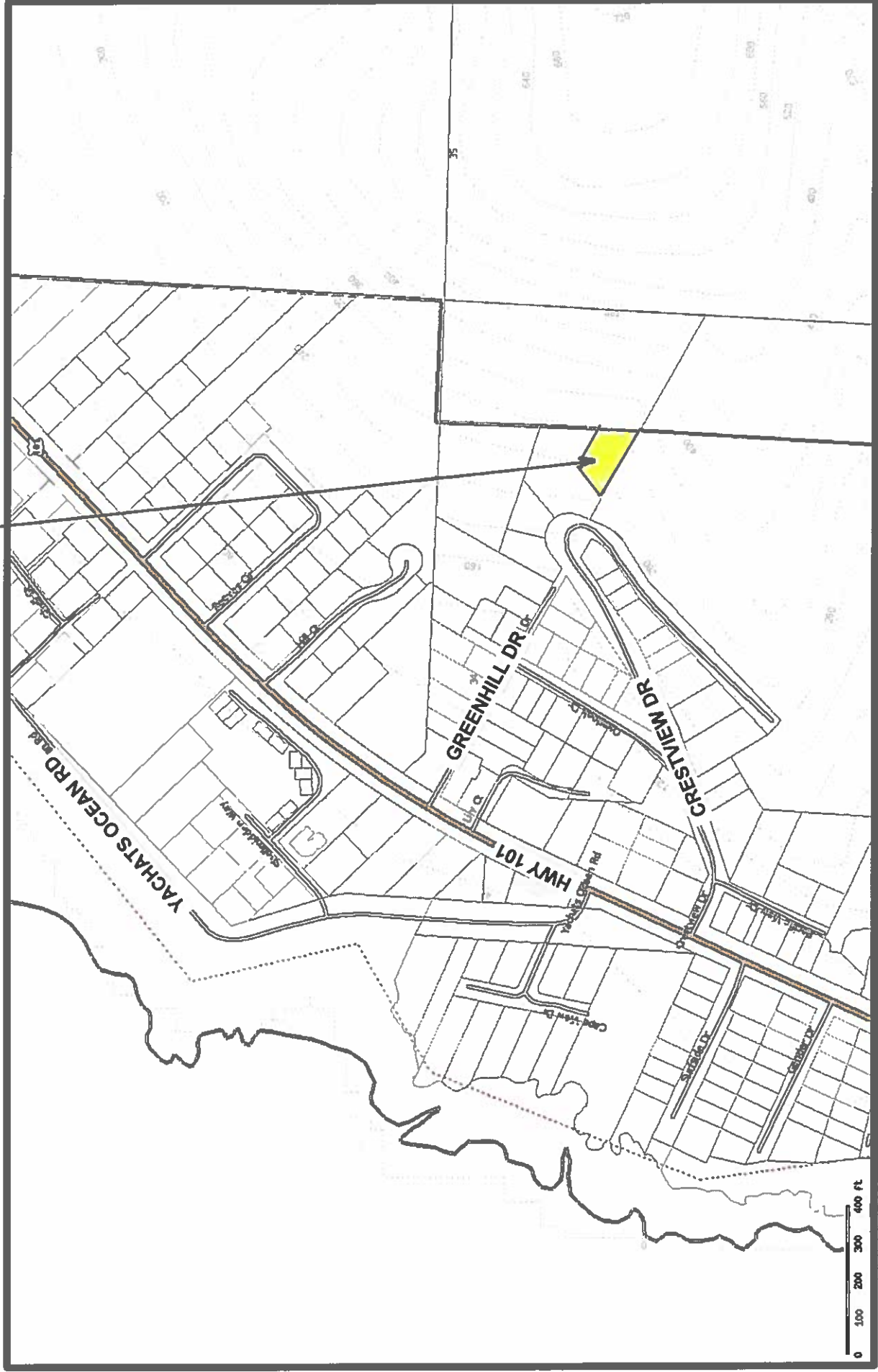
2. Design and construction shall be in conformance with geologist recommendations identified in the submitted Foundation Investigation and Seismic Hazard Study.
3. The proposed development shall adhere to all public facility conditional use standards, i.e. all equipment and material shall be within an enclosed building, there shall be no workshop, and fencing and landscaping shall be provided to screen the facility.
4. Prior to building construction, a building permit shall be issued for the approved plan. Any substantial change in the plan shall require review and approval by the Planning Commission.

Submitted by,

Larry Lewis,
City Planner

Enclosures: Vicinity Map
Water Storage Tank Site Plan
Water Storage Tank - Elevation

Tax Lot 204



Printed 03/29/2016

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PRELIMINARY



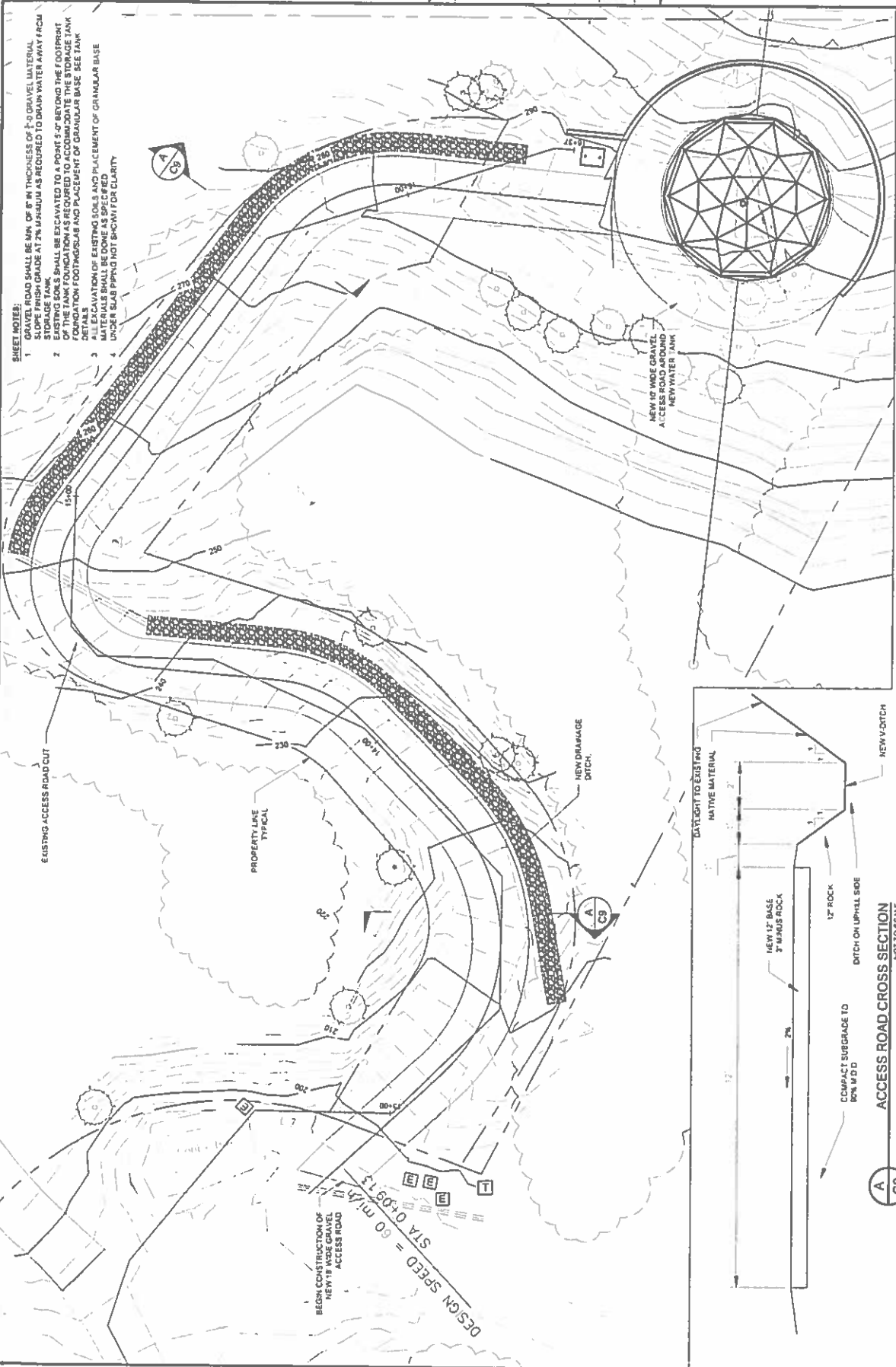
Civil West
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609 Hubert Street
Newport, Oregon 97366

REV.	DATE	DESCRIPTION
BY		
CHKD		
APPD		
DATE	10/01/2017	
PROJECT NO.	1701-002	
DATE		
BY		
CHKD		
APPD		

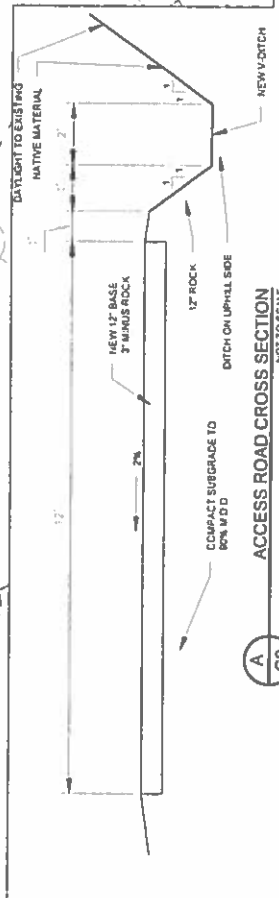
CITY OF YACHTS
LINCOLN COUNTY
SOUTH TANK & PUMP STATION WATER
IMPROVEMENTS
ACCESS ROAD PLAN

C9
MARCH 2018



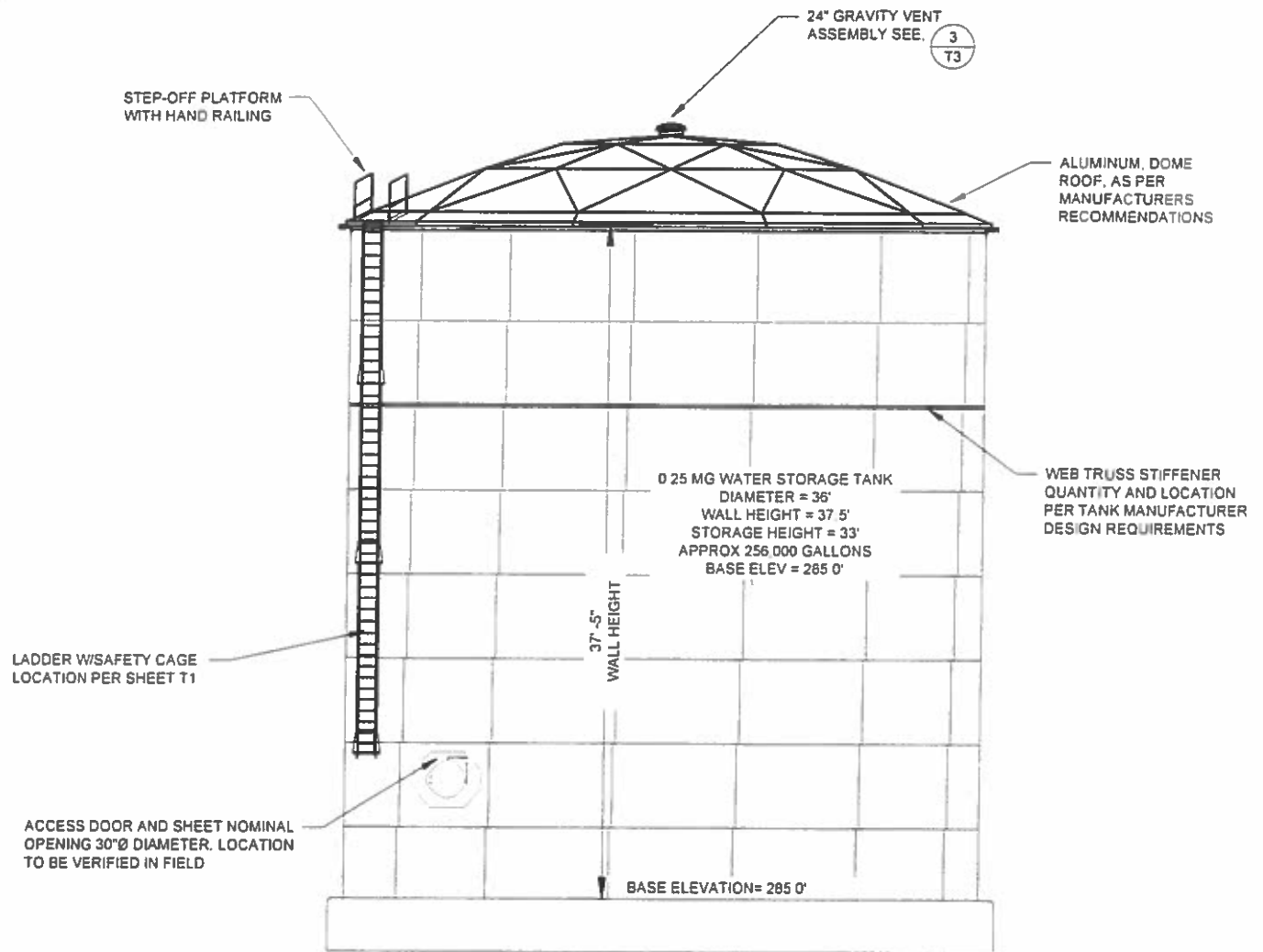
ACCESS ROAD PLAN
SCALE 1" = 20'

1
C9



ACCESS ROAD CROSS SECTION
NOT TO SCALE

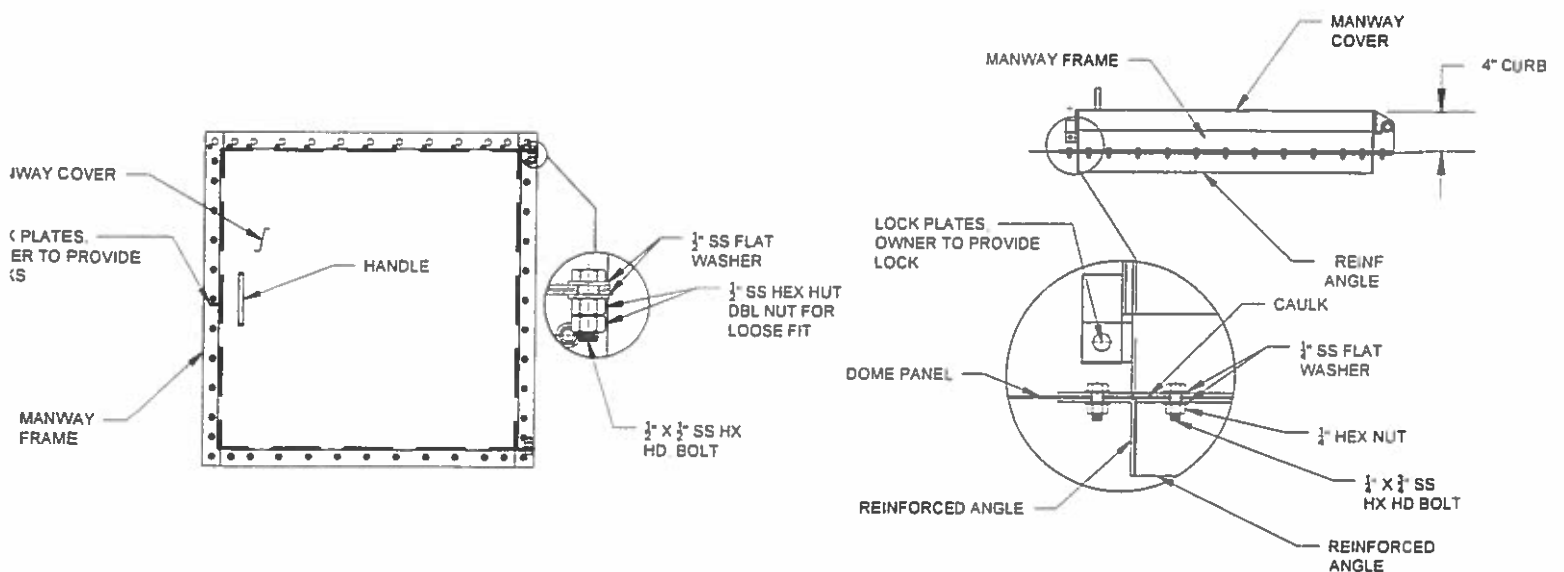
A
C9



1
T4

WATER STORAGE TANK - ELEVATION

VERTICAL SCALE: 1" = 10'
HORIZONTAL SCALE: 1" = 10'



2
T4

30" SQUARE ALUMINUM MANWAY

NOT TO SCALE

Larry Lewis, City Planner
City of Yachats
441 Hwy 101 N.
P.O. Box 345
Yachats, OR 97498

Dear Mr. Lewis:

I am submitting comments on the Conditional Use Application by the City of Yachats to construct a water storage tank, Case File #1-CU-PC-16, for the hearing today on this application, at the request of Clifford Grinnell, owner of the adjacent parcel to the south of the subject application, and in my own name as a beneficiary of a trust for a share of the Grinnell parcel.

This proposal to construct a water storage tank is a worthwhile public facility improvement, but it is a significant effort and involves significant cost, and must be done properly for lasting value. The water tank is to be located in a hazard area of steep slopes, and constitutes a very large weight loading on such steep slopes. It is critical that all geotechnical requirements and review and approval standards that would be applicable to any private development be followed for the public facility.

Adequate access is necessary for such a public utility facility and for the users of the nearby properties, especially the ability for opposing vehicles (utility vehicles, construction vehicles, and residential vehicles) to pass comfortably and to have all-season access. As such, the access along Crestview Drive and any other roads utilized to access the water tank site must be a minimum width of 20 ft paved with asphalt concrete, and additionally be wider around the hairpin turn in Crestview Drive to a width of 24 ft around and near the turn. The improved roadway needs to extend a minimum of 25 ft past the water tank access driveway. The access driveway needs to be paved from the edge of the roadway to the street right-of-way line. Any gate on the access driveway needs to be at least 30 ft from the edge of the roadway. Adequate setbacks and vegetative screening of the water tank and roads must be preserved along the south (southwest) side of the site. If vegetative screening is disturbed, it must be replaced with substantial screening. General site security fencing should be located on the tank facility side of vegetative screening buffers.

On the table on page 4 of 6 in the Staff Report showing R-1 Standards and the Proposed, the setbacks for the proposed water storage tank appear to be in error as compared to tank location on the access road plan shown following the Staff Report narrative. In the access road plan, the front setback, from Crestview Drive, is the largest dimension, and the rear (east) and south side (southwest) setbacks are the smallest. The minimum setbacks per the R-1 Standards are inadequate for such a massive structure in a residential zone, especially this water tank. The staff report omits a site plan, which precludes a full review of the siting. A full site plan should be part of this application.

I request these comments be considered by the Planning Commission at the public hearing for this application. Thank you.

Roy Grinnell
17500 SE 46th St.
Bellevue, WA 98006

City of Yachats

2016 LAND USE / BUILDING PERMIT ACTIVITY

For the Period February 9, 2016 through April 5, 2016

Date	Application/ Activity	Owner/Applicant	Tax Map/Lot Location	Zoning	Description	Status
2/10/16	Building Permit	Kerry Kemp	14-12-27DA/11400 420 W. 1 st St	R-1	Retaining wall repair/addition and decking	Approved 2/16/16
3/1/16	Building Permit	David Roberts	14-12-27AC/3600 933 Ocean View Dr	R-1	Frame new roof over existing roof	Approved 3/1/16
3/29/16	Conditional Use	City of Yachats	14-12-34AD/204 East end of Crestview Drive	R-1	Conditional Use application to construct a water storage tank.	Pending 4/19/16 Planning Commission meeting

STAFF REPORT

Conditional Use Application

APPLICANT: City of Yachats

REQUEST: The applicant is requesting a conditional use permit to construct a water storage tank. A governmental structure or use of land and public utility facility requires a conditional use permit in the R-1 Residential Zone.

A. REPORT OF FACTS

1. Property Location: The subject property is located at the east end of Crestview Drive; and described on the Lincoln County Assessor's Map 14-12-34AD as Tax Lot 204.
2. Zoning: Residential Zone R-1
3. Plan Designation: Residential
4. Lot Size and Dimensions: The lot totals approximately 16,433 square feet with average dimensions of 98' x 163'.
5. Existing Structures: None.
6. Topography and Vegetation (paraphrased from the geologist report): The site is located on the side of a hill. The terrain surrounding the footprint dips steeply to the west. Therefore, two cut benches were excavated by the City for drilling access. The site was previously covered by scattered fir trees, ferns, salmonberry bushes and duff, similar to the surrounding area. At the time of the geology exploration, most of the ground surface consisted of soil exposed by the recent grading work.
7. Surrounding Land Use: Surrounding lands generally consist of single family dwellings, undeveloped residential zoned land, and forested lands to the east.
8. Proposed Utilities: Water and sanitary sewer facilities are available to the site.
9. Development Constraints: Development constraints include steep slopes.

B. EVALUATION OF REQUEST

1. Applicant's Proposal: The applicant submitted the required application form, engineering plans, Foundation Investigation and Seismic Hazard Study, and letter from the Oregon Health Authority.

2. Relevant Yachats Municipal Code Criteria (relevant to this application)

a. Chapter 9.04.030 Definitions

“Public utility facility” means a pipe, transmission line, treatment facility, storage facility, substation, tower or other structure designed to provide the public with electricity, gas, heat, steam, water, communication, sewage collection or other similar service.

b. Chapter 9.12 R-1 Residential Zone

Section 9.12.030 Conditional uses permitted:

A. Governmental structure or use of land; and public utility facility

Section 9.12.040 Standards

B. Yards. The minimum yard requirements in the R-1 zone shall be as follows:

1. Front yard shall be a minimum of twenty (20) feet.
2. Each side yard shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater.
4. The rear yard shall be a minimum of ten feet, except that on a corner lot it shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater.

C. Building Height. No building in the R-1 zone shall exceed a height of thirty (30) feet from finished grade or from natural grade, see Chapter 9.52.180.

D. Lot Coverage. Structures, including, but not limited to buildings, porches and decks shall not occupy more than thirty (30) percent of the total lot area.

c. Section 9.52.050 Hazard areas.

A. Responsibility shall fall on the developer to ensure proper safeguards are taken when developing in any hazard zone whether earthquake, fault lines, landslide, erosion or flood hazard areas. The city accepts no liability. Prior to development the following, but not limited to minimum, shall be required:

3. On slopes of twelve (12) percent and greater: gross excavation or fill of greater than forty (40) cubic yards, removal of more than two thousand five hundred (2,500) square feet of vegetative cover (as measured along the slope), road construction and/or building which entails any fill or excavation on a site shall be subject to conditions, restrictions and recommendations outlined by the site analysis report. This report shall be completed within the past five years by a state of Oregon certified engineering geologist. In addition, the planning commission or its designee may also require that the development adhere to additional standards as provided in writing by the Yachats department of public works. At the completion of the project, the developer shall provide certification from the geological consultant and the Yachats department of public works, stating that the conditions and recommendations of the report and public works have been met.

d. Chapter 9.52.170 General exceptions to building height limitations.

Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles and other similar objects not used for human occupancy are not subject to the building height limitations of this title.

e. Chapter 9.72 Conditional Uses (relevant sections)

Section 9.72.010 Authorization to grant or deny conditional use permits.

Conditional uses listed in this title may be permitted, enlarged, altered or denied by the planning commission in accordance with the standards and procedures set forth in this chapter.

- A. In taking action on a conditional use permit application, the planning commission may either permit or deny the application. The planning commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88.
- B. In permitting a conditional use or the modification of a conditional use, other than a manufactured dwelling, manufactured dwelling park or multifamily dwelling, the planning commission may impose, in addition to those standards and requirements expressly specified by this title, additional conditions which are considered necessary to protect the best interests of the surrounding city as a whole. These conditions may include, but are not limited to the following:
1. Increasing the required lot size or yard dimensions;
 2. Limiting the height of buildings;
 3. Controlling the location and number of vehicle access points;
 4. Increasing the street width;
 5. Increasing the number of required off-street parking spaces;
 6. Limiting the number, size, location and lighting of signs;
 7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
 8. Designating sites for open space;
 9. Setting a time limit for which the conditional use is approved;
 10. Regulation of noise, vibration, odors and sightliness;
 11. Requiring surfacing of parking areas;
 12. Regulation of hours of operation and duration of use or operation;
 13. Such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
 14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

Section 9.72.040 Time limit on a conditional use permit.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for an additional period not to exceed six months on request.

Section 9.72.050 Standards and procedures governing conditional uses.

In addition to the standards of the zone in which the conditional use is located and the other standards of this title, conditional uses shall meet the following standards:

- C. Standards for public utility facilities such as electric substation or transformer, public water supply reservoir or pumping station, or public sewage disposal plant or pumping station; radio or television tower or transmitter; or governmental structure or use of land:
1. In a residential zone, all equipment and material storage shall be within an enclosed building;
 2. Workshops shall not be permitted in a residential zone;
 3. Public utility facilities shall be screened and provided with landscaping;
 4. The minimum lot size requirement may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent or nearby property.

3. **Public Testimony Received:** At the time this staff report was prepared, the City had not received any written testimony.

C. STAFF ANALYSIS

1. **Request and Recent History of Property.** The applicant is requesting a conditional use permit to construct a water storage tank. A governmental structure or use of land; and public utility facility requires a conditional use permit in the R-1 Residential Zone.

In 2011, the Planning Commission approved a 2-lot partition that created the subject tax lot. The partition approval included a 20 foot wide access easement from the end of Crestview Drive through tax lot 202 to tax lot 204.

2. **R-1 Standards.** If approved, the structure should at minimum, meet R-1 residential standards. The R-1 standards and proposed water storage facility are identified in the table below:

	R-1 Standard	Proposed Water Storage Tank
Min. Front Yard	20'	35'
Min. Rear Yard	10'	29'
Min. North Side Yard	1' for every 3' of bldg. height 14'-4" w/ 43' bldg ht.	20'
Min. South Side Yard	1' for every 3' of bldg. height 14'-4" w/ 43' bldg ht.	±100'
Max. Building Height	N/A*	N/A*
Max. Lot Coverage	30%	6%

- * Chapter 9.52.170 General exceptions to building height limitations states, in part, that projections such as domes and other similar objects not used for human occupancy are not subject to the building height limitations of this title.
- 3. **Hazard Area.** Per Chapter 9.52.050, a geotechnical analysis report shall be provided for proposed development on slopes 12% and greater. The applicant had a geotechnical report prepared for the proposed development. Design and construction shall adhere to recommendations of the geologist, including but not limited to observations and inspections during construction.
- 4. **Public Utility Facility Conditional Use Standards**
Conditional Use Section 9.72.050.C identifies four standards that public utility facilities shall meet. The standards are identified below in *italics* and followed by a staff response.
 - 1. *In a residential zone, all equipment and material storage shall be within an enclosed building;*
Staff Response: All equipment and material storage shall be within an enclosed building.
 - 2. *Workshops shall not be permitted in a residential zone;*
Staff Response: No workshop is proposed.
 - 3. *Public utility facilities shall be screened and provided with landscaping;*
Staff Response: Fencing and landscaping shall be provided to screen the facility.
 - 4. *The minimum lot size requirement may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent or nearby property.*
Staff Response: The lot exceeds the minimum lot size.
- 5. **Building Permit.** Yachats Municipal Code Section 9.72.030 states that building permits for all or any portion of a conditional use shall be issued only on the basis of the plan as approved by the Planning Commission. The Planning Commission should consider that this requirement is satisfied with this proposed application unless a substantial change to this plan occurs.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

- 1. This Conditional Use approval is based on the approved site plan and meeting R-1 Residential standards, i.e. minimum 20' front yard, 10' rear yard, side yards of 1' for every 3' of building height, and maximum 30% lot coverage. The proposed 43' high water storage tank meets the general exception for building height because it is a dome structure not used for human occupancy.

**#1-CU-PC-16 Conditional Use Permit Application
City of Yachats South Water Tank
April 19, 2016 Planning Commission Meeting**

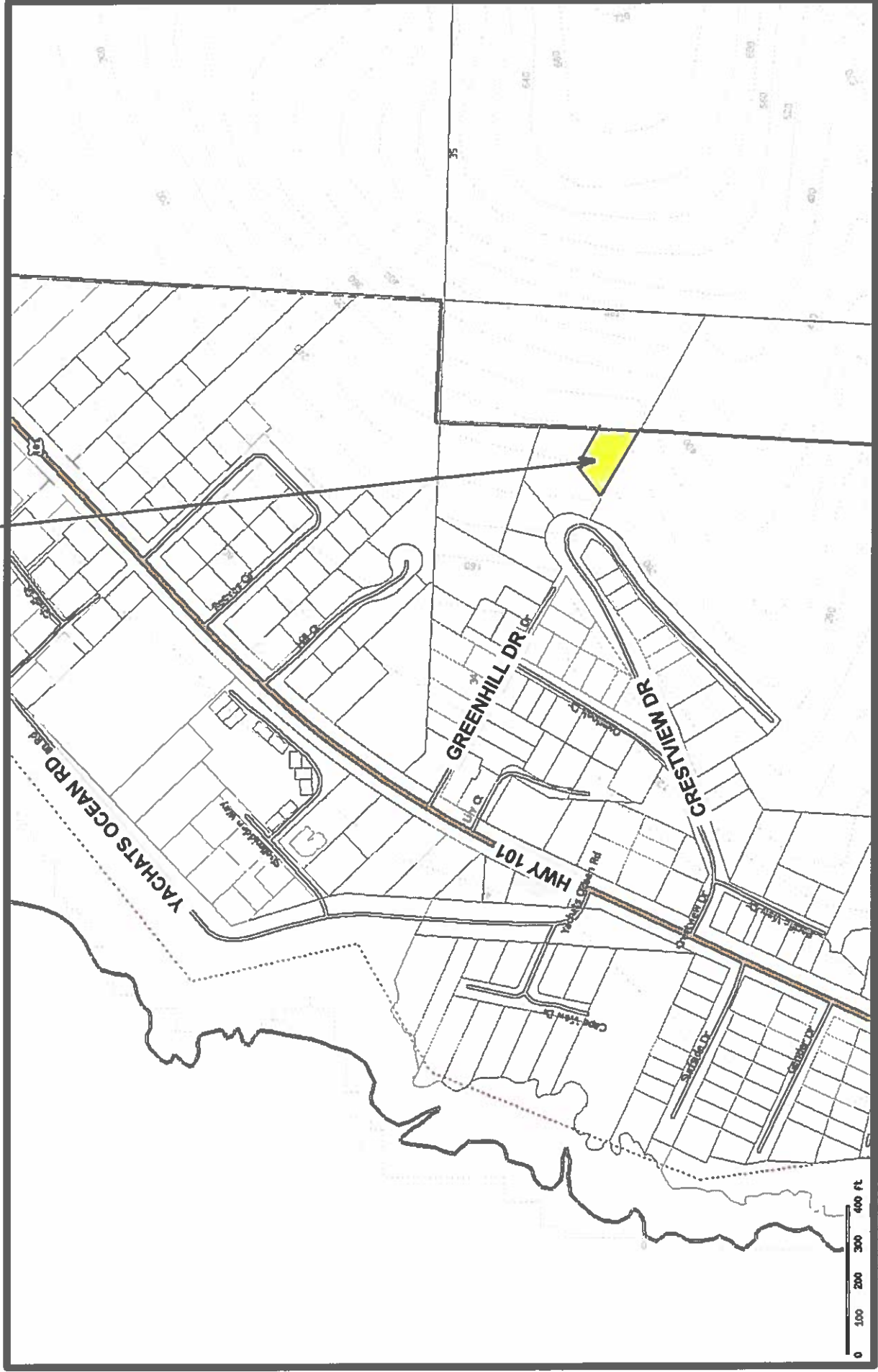
2. Design and construction shall be in conformance with geologist recommendations identified in the submitted Foundation Investigation and Seismic Hazard Study.
3. The proposed development shall adhere to all public facility conditional use standards, i.e. all equipment and material shall be within an enclosed building, there shall be no workshop, and fencing and landscaping shall be provided to screen the facility.
4. Prior to building construction, a building permit shall be issued for the approved plan. Any substantial change in the plan shall require review and approval by the Planning Commission.

Submitted by,

Larry Lewis,
City Planner

Enclosures: Vicinity Map
Water Storage Tank Site Plan
Water Storage Tank - Elevation

Tax Lot 204



Printed 03/29/2016

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PRELIMINARY

Civil West

Engineering Services, Inc.

541-268-8601

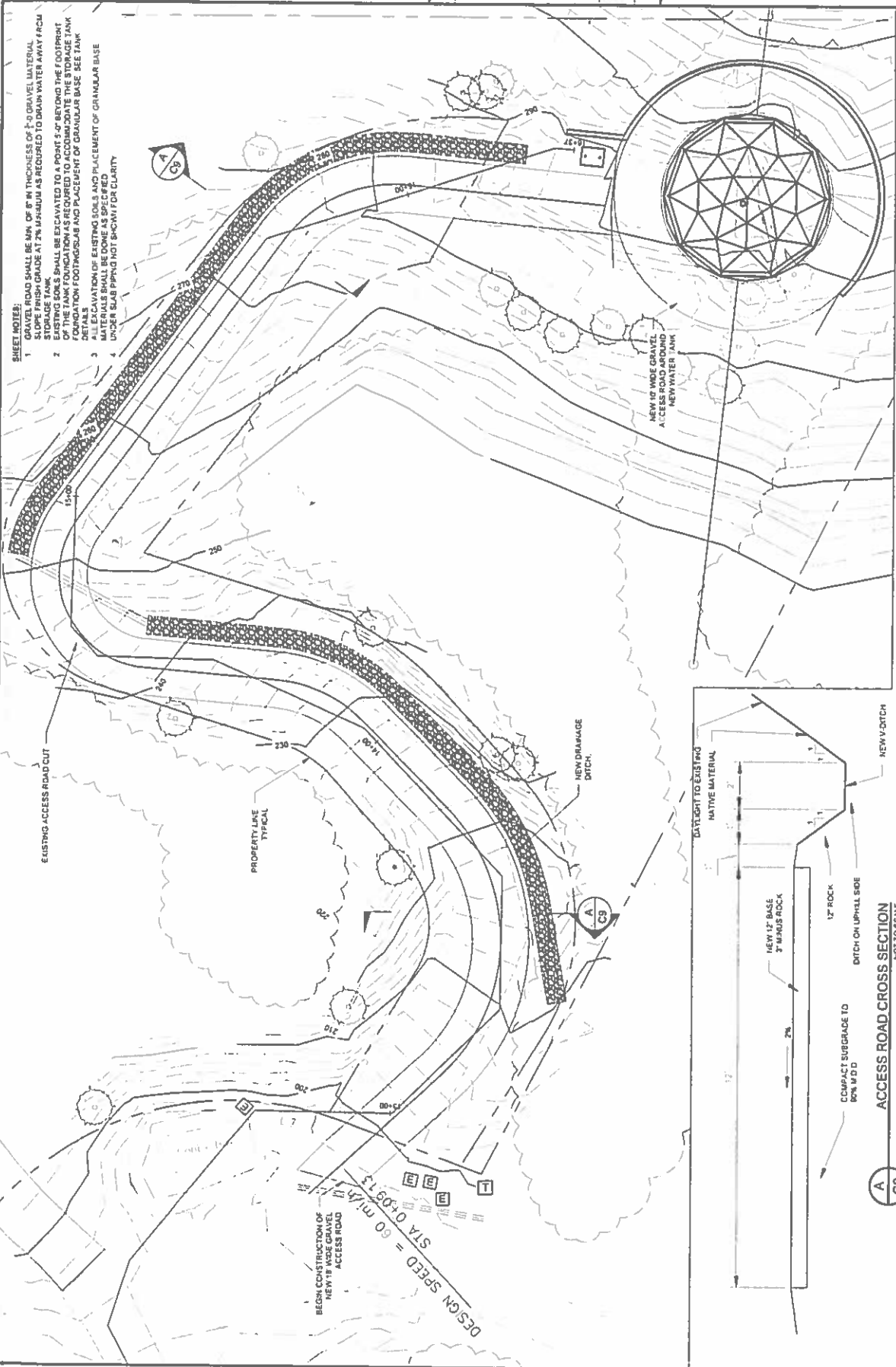
www.civilwest.com

609 Hubbard Street
Newport, Oregon 97366

REV.	DATE	DESCRIPTION
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CHKD		
APP'D		
DATE	10/01/2017	
PROJECT NO.	1601-002	
DATE		
BY		
CHKD		
APP'D		
DATE		

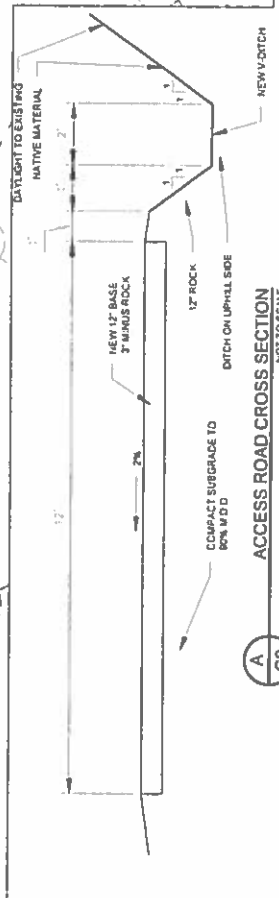
CITY OF YACHTS
LINCOLN COUNTY
SOUTH TANK & PUMP STATION WATER
IMPROVEMENTS
ACCESS ROAD PLAN

C9
MARCH 2018

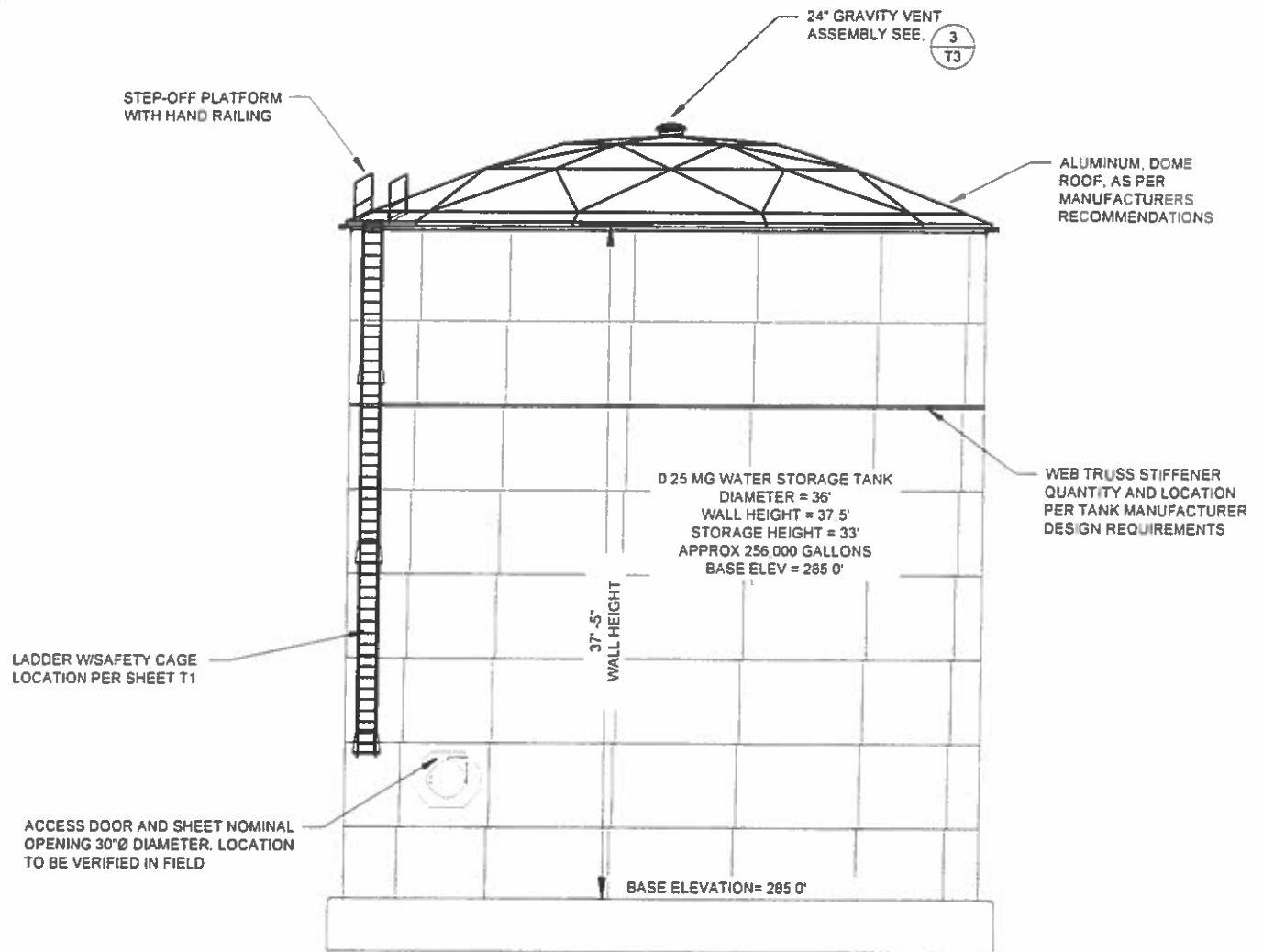


ACCESS ROAD PLAN
SCALE 1" = 20'

C9



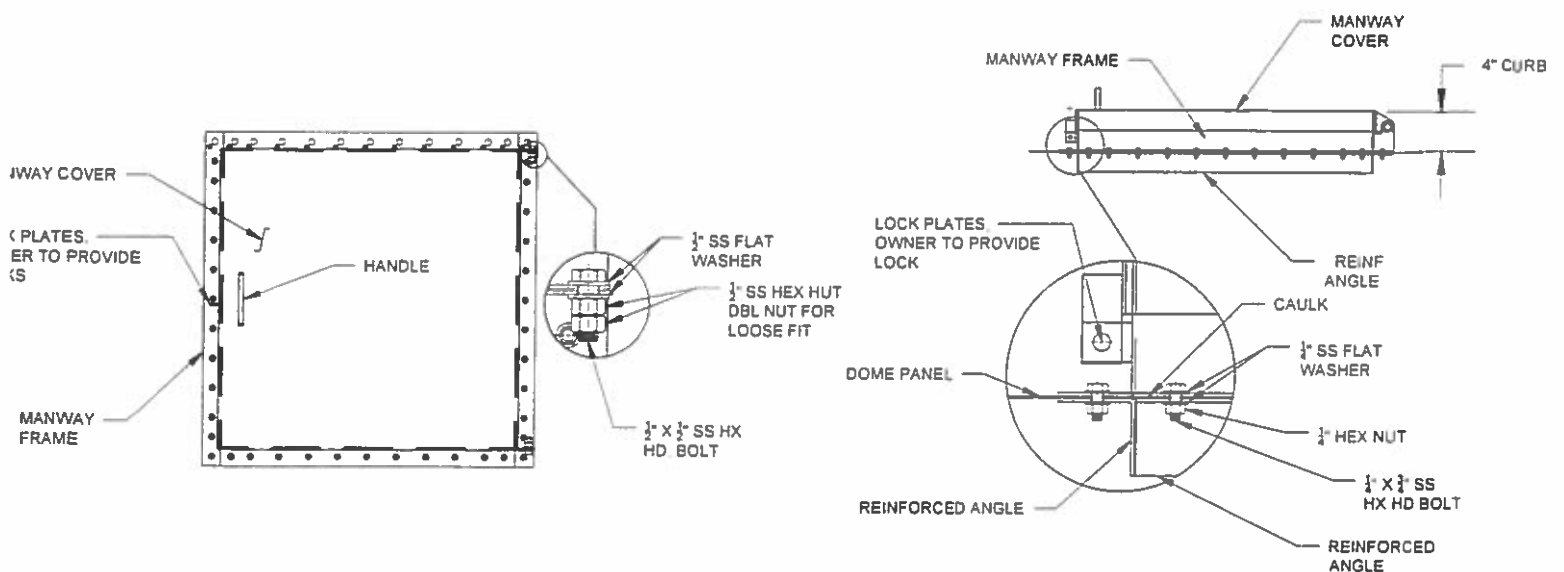
A
C9



1
T4

WATER STORAGE TANK - ELEVATION

VERTICAL SCALE: 1" = 10'
HORIZONTAL SCALE: 1" = 10'



2
T4

30" SQUARE ALUMINUM MANWAY

NOT TO SCALE

City of Yachats
2016 LAND USE / BUILDING PERMIT ACTIVITY

For the Period February 9, 2016 through April 5, 2016

Date	Application/ Activity	Owner/Applicant	Tax Map/Lot Location	Zoning	Description	Status
2/10/16	Building Permit	Kerry Kemp	14-12-27DA/11400 420 W. 1 st St	R-1	Retaining wall repair/addition and decking	Approved 2/16/16
3/1/16	Building Permit	David Roberts	14-12-27AC/3600 933 Ocean View Dr	R-1	Frame new roof over existing roof	Approved 3/1/16
3/29/16	Conditional Use	City of Yachats	14-12-34AD/204 East end of Crestview Drive	R-1	Conditional Use application to construct a water storage tank.	Pending 4/19/16 Planning Commission meeting

Larry Lewis, City Planner
City of Yachats
441 Hwy 101 N.
P.O. Box 345
Yachats, OR 97498

Dear Mr. Lewis:

I am submitting comments on the Conditional Use Application by the City of Yachats to construct a water storage tank, Case File #1-CU-PC-16, for the hearing today on this application, at the request of Clifford Grinnell, owner of the adjacent parcel to the south of the subject application, and in my own name as a beneficiary of a trust for a share of the Grinnell parcel.

This proposal to construct a water storage tank is a worthwhile public facility improvement, but it is a significant effort and involves significant cost, and must be done properly for lasting value. The water tank is to be located in a hazard area of steep slopes, and constitutes a very large weight loading on such steep slopes. It is critical that all geotechnical requirements and review and approval standards that would be applicable to any private development be followed for the public facility.

Adequate access is necessary for such a public utility facility and for the users of the nearby properties, especially the ability for opposing vehicles (utility vehicles, construction vehicles, and residential vehicles) to pass comfortably and to have all-season access. As such, the access along Crestview Drive and any other roads utilized to access the water tank site must be a minimum width of 20 ft paved with asphalt concrete, and additionally be wider around the hairpin turn in Crestview Drive to a width of 24 ft around and near the turn. The improved roadway needs to extend a minimum of 25 ft past the water tank access driveway. The access driveway needs to be paved from the edge of the roadway to the street right-of-way line. Any gate on the access driveway needs to be at least 30 ft from the edge of the roadway. Adequate setbacks and vegetative screening of the water tank and roads must be preserved along the south (southwest) side of the site. If vegetative screening is disturbed, it must be replaced with substantial screening. General site security fencing should be located on the tank facility side of vegetative screening buffers.

On the table on page 4 of 6 in the Staff Report showing R-1 Standards and the Proposed, the setbacks for the proposed water storage tank appear to be in error as compared to tank location on the access road plan shown following the Staff Report narrative. In the access road plan, the front setback, from Crestview Drive, is the largest dimension, and the rear (east) and south side (southwest) setbacks are the smallest. The minimum setbacks per the R-1 Standards are inadequate for such a massive structure in a residential zone, especially this water tank. The staff report omits a site plan, which precludes a full review of the siting. A full site plan should be part of this application.

I request these comments be considered by the Planning Commission at the public hearing for this application. Thank you.

Roy Grinnell
17500 SE 46th St.
Bellevue, WA 98006

CITY OF YACHATS
PLANNING COMMISSION
April 19, 2016
Minutes

The April 2016 meeting of the Yachats Planning Commission was called to order by Chair Nan Scott at 3:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Scott, Ken Aebi, Ron Urban, Shelly Shrock, Helen Anderson, and John Deriberprey. Absent: Christine Orchard. Audience – 6.

I. Announcements and Correspondence – None.

II. Minutes

- **Regular Meeting and Work Session – February 16, 2016**
- **Work Session – March 15, 2016**

Motion to adopt, Aye – 6, No – 0, Absent – 1(Orchard).

III. Citizen's Concerns – None.

IV. Public Hearings

A. Case File #1-CU-PC-16 City of Yachats Conditional Use Application

Scott opened the Public Hearing for the Conditional Use Permit Application.

Scott explained that the purpose of the hearing is to consider the application made by the City of Yachats for a Conditional Use Permit for the South Reservoir Project. Scott asked if anyone wished to object to the jurisdiction of the Commission to hear this matter. There were none.

Scott asked if any Commissioner wished to make any disclosure, or abstain from participating or voting on this application because: of possible financial gain resulting from this application, because you own property within the area entitled to receive notice of this hearing; because you have a direct private interest in the proposal; or because you have determined that you cannot be impartial?

Shrock recused herself from the discussion and voting because her house is below the tank site.

Scott asked if any Commissioner needs to declare any contact, written, oral or otherwise, prior this hearing, with the applicant, appellant, any other party involved in this, or any other source of information (outside of staff) regarding the subject of this hearing? If so, please state with whom you had contact and what was said. There were none.

1 Scott asked if the Commission has been given all testimony that has been submitted to
2 date.

3
4 Batchelder said that they had everything that the City had received, which was one
5 letter that had been received by email just prior to the meeting.

6
7 Scott gave the Commissioners a few minutes to read that one letter.

8
9 Scott said that the public hearing process would be as follows:

- 10 a. Staff will identify the relevant criteria and summarize the staff report.
- 11 b. The applicant will have the opportunity to present the request and address
12 questions.
- 13 c. Proponent, then opponents, then people who are neutral will have
14 opportunity to speak.
- 15 d. The applicant will then have the opportunity to rebut any opponent
16 testimony.

17
18 In the absence of the City Planner, the City Recorder reviewed the relevant criteria that
19 would be used to consider the application and said that the staff report and the Seismic
20 report and the Geo-Tech report, which are in the Document Library will be what the
21 Planning Commission will rely on when making their decision.

22
23 Scott opened the public testimony portion of the hearing. Scott asked everyone
24 addressing the Planning Commission to come forward and complete the sign-in sheet.

25
26 Scott asked the applicant to provide any additional information.

27
28 Water Treatment Plant Operator and Public Works Department Lead, Rick McClung
29 said that the City of Yachats is building a 250,000 gallon treated water reservoir south of
30 the Yachats River Bridge, which will be beneficial to the community. It will offer more
31 storage during a drought and will provide water to the people living south of the bridge
32 should anything happen to the line crossing the bridge.

33
34 McClung said that a geo-tech study has been completed and the ground is suitable for
35 the tank and the tank is being designed to be seismically resistant.

36
37 McClung said that the drainage from the road would go down Crestview Drive, as well
38 as a waterline.

39
40 Scott asked if there were any proponents that wished to testify. There were none.

41
42 Scott asked if there were any opponents that wished to speak.

43
44 Dean Shrock said that he is not opposed, but he does have some questions.

45
46 Shrock asked if a fire truck will be able to get up to the tank site.

1
2 Shrock also wants to know if the City's insurance would cover the homes below the tank
3 if it should fail.
4

5 Larry Nixon said that he was on the City Council when the original water system was
6 built; and, in 1989, they wanted to build a reservoir south of the bridge, but there was no
7 money to do so.
8

9 Nixon said that he is the property owner adjacent to the tank site and the runoff and
10 drainage has been addressed by the engineers.
11

12 Nixon said that he has high confidence in the type of construction that will be used for
13 the tank. He has concerns about the site for the pump station, but not the site of the
14 reservoir.
15

16 Doug Rawson said that he is not opposed to the project but he does have concerns
17 about the drainage and the use of Crestview for heavy equipment. He is also
18 concerned about the noise from the pump station if is placed where planned in the
19 switchback. He just wants to know that people below the tank are safe.
20

21 Shrock asked how loud the pump station would be.
22

23 McClung said that the pump stations the City has now are not loud, in fact a person has
24 to walk right up to them before they can hear them.
25

26 Shrock said that currently the emergency supply container is blocking a private property
27 easement.
28

29 McClung said that it will actually be easier for the property owners to access their
30 property once the pump station is constructed.
31

32 Scott said that they have been asked to continue the hearing until the May 17 meeting.
33

34 Motion to continue the Hearing to May 17, 2016, Aye – 5, No – 0, Absent – 1 (Orchard),
35 Abstain – 1 (Shrock).
36

37 **V. Planner's Report** – Larry Lewis – Attached, in writing.
38

39 **VI. New Business** – None.
40

41 **VII. Other Business**

42 **A. From the Commission**
43

44 The Commission discussed having an extended work session or a special work session
45 until they get caught up on the items they need to work on.
46

1 There was consensus to have a special work session on May 24, 2016 at 9 a.m.

2
3 B. From Staff – None.

4
5 The meeting was adjourned at 3:57 p.m.

6
7
8
9 _____
Nan Scott, Chair

10
11
12 _____
13 Nancy Batchelder, City Recorder

CITY OF YACHATS
PLANNING COMMISSION
Work Session
April 19, 2016
Minutes

The April 2016 work session was called to order at 2:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Ron Urban, Nan Scott, Ken Aebi, Shelly Shrock, Helen Anderson, and John Deriberprey. Absent: Christine Orchard.

I. Definition of Industrial Use

The Commission discussed the possible ways to define what type of business would be industrial and how to determine the difference between an industrial business and a commercial business.

The Commission reviewed the memo City Planner Larry Lewis prepared regarding Industrial Uses and how Waldport is dealing with this issue.

It was noted that the current Municipal Code allows for small scale, nonpolluting light industrial uses that are compatible with existing and anticipated land uses as a conditional use in a C-1 Zone, but there is no definition for light industrial use.

It was also noted that at some point according to their business plan the brewery might need to apply for a conditional use permit before they can increase their beer production based on that Code standard.

It was discussed that the effluent discharged into the sewer system may need to be included as part of the criteria for the definition.

Urban said that the main reason for discussing this is to control the atmosphere of the community, including protecting the water.

Aebi said that he thinks the City also needs to protect the businesses in town.

II. Formula Business Regulations – Continued to the May Work Session.

III. Building on Slopes - Continued to the May Work Session.

IV. Additional Code Amendment Items - Continued to the May Work Session.

The work session was adjourned at 2:55 p.m.

Ron Urban, Vice Chair

Attest:

Nancy Batchelder, City Recorder

April 5, 2016

To: Yachats Planning Commission

From: Larry Lewis, City Planner

Re: Industrial Uses

At the March work session, the Planning Commission discussed the need for a definition of industrial use. The purpose for this is to help expand commercial activity and retail sales. There is an ongoing trend for entrepreneurs and retailers to manufacture, fabricate and assemble goods in the location that retail sales are occurring. One suggestion was to establish a maximum percentage of the business that could be used to produce products while maintaining the retail commercial use. For example, a restaurant could produce a sauce to bottle and sell in small quantities. Another example is a brew pub where the manufacturing of beer is conducted on the site where the retail sales and/or restaurant is located. Another example is the manufacturer of craft items that are sold in the retail store.

Waldport is currently addressing this issue. Currently, goods offered for retail sales in the C-1 zone are not allowed to be produced, manufactured, fabricated or assembled on the site. A proposed amendment to the C-1 zone has been drafted. The proposed amendment would allow manufacturing, fabricating, assembling, and storage as long as it does not exceed 50% of the total floor area of the building and provided it occurs within an enclosed building. This would be a new Use Permitted Outright in the C-1 zone and is proposed to read as follows:

The manufacture, fabrication and/or assembly of those goods offered for sale on the premises that are permitted for sale in the C-1 zone, provided all manufacturing, fabricating, assembling, and storage not exceed 50% of the total floor area of the establishment and provided further that it shall occur within an enclosed building.

This is one option that can be discussed, along with other options, at the April 19th work session.

April 6, 2016

To: Yachats Planning Commission

From: Larry Lewis, City Planner

Re: FORMULA BUSINESS REGULATIONS

The City Council and the Planning Commission have recently discussed a concern about ‘formula businesses’ establishing in Yachats that would result in an adverse impact to the village character of the city. This memorandum provides a summary of the issue and provides example language from five cities that have implemented formula business regulations*.

SUMMARY

A growing number of cities are enacting policies that restrict the proliferation of “formula businesses” – stores and restaurants that have standardized services, décor, methods of operation, and other features that make them virtually identical to businesses elsewhere.

Many formula retailers and restaurant are increasingly locating in downtown business districts. Once formula businesses arrive, it is not uncommon to see additional formula businesses. This sometimes leads to a “squeezing out” of independent businesses, and can result in a transformation (change in character) of a downtown district.

This can have long-term economic consequences as the downtown district loses its distinctive appeal and no longer offers opportunities for independent entrepreneurs. Low-margin businesses that meet the basic needs of the neighborhood and city may be pushed out as the area attracts more formula restaurants and stores. Additionally, a concern is that formula businesses tend to be fair-weather friends and can disappear quickly when the economy contracts or their corporate strategy shifts.

To prevent and mitigate these problems, some cities have adopted ordinances that prohibit formula businesses, cap their total number, or require that they meet certain conditions in order to open. A ban on formula businesses does not prevent a chain business from coming in, but it does require the business to be distinct – in name, operations, and appearance – from all of its other outlets. There are a few examples of a chain complying with a formula business ordinance by opening a unique outlet, however they often refuse to veer from their cookie-cutter formula and opt not to open.

If a city chooses to enact a formula business ordinance, there are legal issues that need to be addressed. A city should articulate within the ordinance, the public purposes the law will serve and specify how the restrictions will fulfill those purposes. This is key to crafting a sound ordinance that will not be susceptible to legal challenges. The ordinance should reference the city’s comprehensive plan and goals within the plan that formula business restrictions will help to fulfill. These commonly include:

- Maintaining the unique character of the community and the appeal of the downtown area,

* This summary and examples are extracted from the Institute for Local Self-Reliance.

- Protecting the community’s economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs,
- Fostering businesses that serve the basic needs of the city, rather than those oriented toward tourists or regional shoppers.

EXAMPLE REGULATIONS

Example formula business regulations from different cities are provided below. These are not the complete regulations for each of the cities however they do provide various examples of regulations that have been implemented.

Carmel, CA

In the mid-1980’s this city became the first in the country to enact a formula restaurant ban, which prohibits fast food, drive-in and formula food establishments. In Carmel, a business is considered a formula restaurant if it is “required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, employee uniforms, interior décor, signage or exterior design,” or “adopts a name, appearance or food presentation format which causes it to be substantially identical to another restaurant regardless of ownership or location.”

Calistoga, CA

1. Add to the Definitions Section 17.04, 17.04.132 Business, Formula to read as follows:

“Formula Business” shall mean a business which is required by contractual or other arrangement to maintain any of the following : standardized services, decor, uniforms, architecture, signs or other similar features. This shall include but not be limited to retail sales and service, visitor accommodations, wholesale and industrial operations.

2. Add to the Definitions Section 17.04, Section 17.04.616 Restaurant, Formula to read as follows:

“Formula Restaurant” shall mean a restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off the premises and which is required by contractual or other arrangement to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms, architecture, or similar standardized features.

WHEREAS, the City Council has now amended the City’s General Plan Policy and Program Document including policies pertaining to the quality of life desired in Calistoga by maintaining a friendly, slow-paced, rural, small town atmosphere and further detailing policies aimed at reinforcement of the downtown as the commercial and cultural center of the community; and

WHEREAS, the City Council finds that these policies are necessary to preserve the unique and historic character of Calistoga’s downtown commercial district, including regulating the aspect of businesses, services and merchandise that is reflective of the

history and people of the community and which has become a cornerstone of the visitor industry which is a key component in the City's economy; and

WHEREAS, the City Council further finds that certain formula business establishments, e.g. formula food businesses do not reflect the unique character of the community and desired aesthetic ambience of the commercial areas of the city in that they offer rushed, ready made meals from formula menus identical to similarly decorated units located in other communities and thus cannot contribute to the established uniqueness which the Council finds necessary to maintain a viable visitor industry in Calistoga; and

WHEREAS, the City Council further finds that the scale and design of improvements of existing development is an important factor in the overall aesthetic character of the community and that refinements in the City's Zoning Ordinance are necessary to insure that new development is in scale and in harmony with Calistoga; and

WHEREAS, the City Council has considered the importance of the pace of change in the non-residential sector of the community in order to maintain the character of Calistoga as well as the ongoing vitality and viability of the existing historic downtown commercial district.

Sanibel, FL

WHEREAS, the City of Sanibel was created in large part to allow the planning for the orderly development of an island community known far and wide for its unique atmosphere and unusual natural environment and to insure compliance with such planning so that these unique and natural characteristics of the island shall be preserved; and

WHEREAS, the City and island's unique character, consisting of large wildlife and preservation areas, quiet beaches and passive relaxation opportunities, supported by the Sanibel Plan, the Beach Management Plan, the Land Development Code and all ordinances of the City, is not only important for its own sake, but is also in a sense Sanibel's stock in trade; and

WHEREAS, the City has undertaken to write a Vision Statement which reflects the public's desire to remain a small town community, remain unique through a development pattern which reflects the predominance of natural conditions and characteristics over human intrusions, and avoid "auto-urban" development influences; and

WHEREAS, the same characteristics which make Sanibel Island unique and desirable as a place in which to live and which to visit, place it in danger of losing its uniqueness and desirability; and

WHEREAS, one of the threats to Sanibel's uniqueness and natural relaxed atmosphere is the potential proliferation of "formula" restaurants; and

WHEREAS, such types of restaurants diminish the unique character of the island by offering standardization of architecture, interior design and decor, uniforms and the like;

110) Formula restaurant. An eating place that is one of a chain or group of three (3) or more establishments and which satisfies at least two of the following three descriptions:

- a. it has the same or similar name, tradename, or trademark as others in the chain or group;
- b. it offers either of the following characteristics in a style which is distinctive to and standardized among the chain or group:
 1. exterior design or architecture;
 2. uniforms, except that a personal identification or simple logo will not render the clothing a uniform;
 3. it is a fast food restaurant.

York, ME

One excerpt... York has retained a large concentration of historic buildings and locally owned businesses, and that the town's unique character is important to York's "collective identity as a community."

Winslow, WA (Bainbridge Island)

In 1989, after a public hearing in which comment was overwhelmingly opposed to additional formula take-out food restaurants, the city council adopted an ordinance prohibiting such businesses on the grounds that they "are automobile rather than pedestrian-oriented businesses" and the city's comprehensive plan "calls for pedestrian orientation and a village atmosphere."

WHEREAS, as a result, the City Council of the City of Winslow, Washington, now finds that formula take-out food restaurants represent a type of business that is automobile-oriented or of a particular nature that the existence of one such restaurant in the High School Road zone is a sufficient maximum number of that use for the village character of Winslow to be preserved. That other or additional restaurants of that type in all zones should not be permitted hereafter; that expansion in number of such establishments should be disallowed entirely in order to establish at this time, an optimal mix of pedestrian-oriented and other kinds of commercial and retail establishments; that to preclude further development of such restaurants in a town of this size prevents commercial overconcentration of automobile-oriented businesses and of that type of retail service establishment and will provide for smaller neighborhood-style pedestrian and other kinds of retail outlets to best serve the varied needs of Winslow residents and consumers.