ENDORSED Filed 12-19 **JOSEPHINE VELTRI** County Clerk

COMMISSIONERS PRESENT:

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Jerry A. Dove, Chairperson Ida A. Lane, Vice-Chairperson Kenneth M. Burdick, Commissioner

STAFF PRESENT:

William K. Sargent, County Counsel Paul Levesque, Executive Assistant Leota Leake, Recording Secretary

STAFF PRESENT FOR PORTIONS OF MEETING: Sheriff Don Watters; Sara Charlton, Library Administrator; Sue Cameron, Health Department Administrator; Vic Affolter, Community Development Director

GUESTS: See Guest List Attached.

<u>CALL TO ORDER:</u> By Chairperson Dove at 9:03 a.m. in the Justice Courtroom.

ITEM NO. 1: CONSIDERATION OF APPROVAL OF COMMISSION PROCEEDINGS FOR SEPTEMBER, 1992: Commissioner Lane moved to approve the Commission Proceedings, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed the Commission Proceedings for September, 1992.

ITEM NO. 2: CONSIDERATION OF APPROVAL OF BOARD OF COMMISSIONERS' MINUTES FOR SEPTEMBER 9, 21, 23, 28, 29 AND 30, 1992: Commissioner Burdick moved to sign the minutes, Commissioner Lane seconded, passed with three aye votes.

The Commissioners signed the minutes later in the day.

ITEM NO. 3: CONSIDERATION OF ORDER APPOINTING A PHYSICIAN ADVI-SOR MEMBER TO THE TILLAMOOK COUNTY QUALITY ASSURANCE COMMITTEE: Commissioner Burdick moved to appoint James L. McMillan as the Physician Advisor Member to the Tillamook Quality Assurance Committee, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-144.

ITEM NO. 4: CONSIDERATION OF ORDER APPOINTING MEMBERS TO THE TILLAMOOK COUNTY RECYCLING ADVISORY COMMITTEE: Commissioner Lane moved to sign the order appointing Kevin M. Kacmarsky and Kris Woolpert as members to the Tillamook County Recycling Advisory Committee, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-145.

ITEM NO. 5: CONSIDERATION OF ORDER RECLASSIFYING EXPENDITURE APPROPRIATIONS IN THE GENERAL FUND - PARKS DEPARTMENT: Commissioner Burdick moved to sign the order, Commissioner Lane seconded, passed with three aye votes.

The Commissioners signed Order #92-146.

ITEM NO. 6: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND -PARKS DEPARTMENT DUE TO GRANT RECEIPTS FOR THE PACIFIC CITY RESTROOM PROJECT: Commissioner Lane moved to sign the order, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-147.

ITEM NO. 7: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND -SHERIFF'S DEPARTMENT DUE TO GRANT RECEIPTS FOR OPERATION VIGI-LANCE: Commissioner Burdick moved to sign the order, Commission Lane seconded, passed with three aye votes.

The Commissioners signed Order #92-148.

ITEM NO. 8: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND BY \$3,800 DUE TO RECEIPT OF A FEDERAL GRANT FOR EARTHQUAKE PRE-PAREDNESS BROCHURES: Commissioner Lane moved to sign the order, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-149.

ITEM NO. 9: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND -COMMUNITY DEVELOPMENT DEPARTMENT DUE TO GRANT RECEIPTS FOR AGGRE-GATE MEDIATION: Commissioner Burdick moved to sign the order, Commissioner Lane seconded, passed with three aye votes.

The Commissioners signed Order #92-150.

ITEM NO. 10: CONSIDERATION OF ORDER TRANSFERRING FUNDS BETWEEN BUDGETED LINE ITEMS - BUILDING MAINTENANCE: Commissioner Lane moved to sign the order, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-151.

ITEM NO. 11: CONSIDERATION OF ORDER TRANSFERRING FUNDS BETWEEN BUDGETED LINE ITEMS - EQUIPMENT MAINTENANCE: Commissioner Burdick moved to sign the order, Commissioner Lane seconded, passed with three aye votes.

The Commissioners signed Order #92-152.

ITEM NO. 12: CONSIDERATION OF ORDER TRANSFERRING FUNDS BETWEEN BUDGETED LINE ITEMS - MUSEUM TECHNICIAN POSITION FILLED WITH A CLERK 3: Commissioner Lane moved to sign the order, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-153.

ITEM NO. 13: CONSIDERATION OF ORDER TRANSFERRING FUNDS BETWEEN BUDGETED LINE ITEMS - HEBO SERVICE DISTRICT: Commissioner Burdick moved to sign the order, Commissioner Lane seconded, passed with three aye votes.

The Commissioners signed Order #92-154, HSD #3.

ITEM NO. 14: CONSIDERATION OF ORDER TRANSFERRING FUNDS BETWEEN BUDGETED LINE ITEMS WITHIN THE SOLID WASTE EXPENDITURES BUDGET: Commissioner Lane moved to sign the order, Commissioner Burdick seconded, passed with three aye votes.

The Commissioners signed Order #92-155, SWSD #9.

ITEM NO. 15: CONSIDERATION OF A GRANT APPLICATION FOR A FEDERAL GRANT TO CONSTRUCT THE WINKLEMAN COUNTY LIBRARY: Mr. Levesque said the Winkleman County Library had received the grant, and this was an application to receive the funding.

Mr. Baumgardner said this funding would be in the amount of \$112,000 which would allow the shell of the building to be built. This building could then be used for fund raising.

Mr. Baumgardner discussed signing a 50 year lease with Tillamook County at \$1.00 per year. This would satisfy the government requirement that this funding not be used to build a building for a private group. He said grant management would be provided by the County.

Mr. Baumgardner said approximately \$27,000 in donated material would be received. The library board hoped to start construction by spring of 1993.

Commissioner Burdick moved to authorize the Chairperson to sign the request for the grant funding, Commissioner Lane seconded, passed with three aye votes.

The Chairperson signed the application.

Ms. Charlton, Tillamook County Library Administrator also signed the application.

ITEM NO. 16: MISCELLANEOUS PUBLIC WORKS: Commissioner Burdick said the department would complete the center line painting project in one more day. Chairperson Dove had attended the Road Department safety meeting at which they had stated that more black top had been laid this year than ever before.

Mr. Levesque said work on the Donald Place Road had been completed, but aprons had not been done at all the driveways. There was an inconsistency in the treatment of residents residing on the road. Chairperson Dove said the Road Department was doing as-

phalt jobs, but inconsistently doing the aprons. Commissioner Burdick said aprons should be done on all driveways where new asphalt jobs were done.

SITTING AS THE BOARD OF THE SOLID WASTE SERVICE DISTRICT

ITEM NO. 17: MISCELLANEOUS SERVICE DISTRICT MATTERS: Mr. Lee Walker, City Sanitary Service, presented a letter to the Commissioners requesting a fee increase at the north County Transfer Station. The letter reflected the cost and revenue of the Transfer Station. Chairperson Dove had attended the meeting at Nehalem, and related that the Mayor supported City Sanitary Service's request.

Mr. Walker said he would be attending other meetings in north County, and would be discussing the information regarding the cost of maintaining the north County Transfer Station.

Chairperson Dove said City Sanitary Service was requesting an increased tipping fee of \$.50 per cubic yard at the north County Transfer Station.

There was a consensus to consider the fee increase after the scheduled meetings in north County had been held.

SITTING AS THE BOARD OF THE HEBO SERVICE DISTRICT

ITEM NO. 18: MISCELLANEOUS SERVICE DISTRICT MATTERS: Mr. Levesque said he had been requested by the Hebo Service District Advisory Committee to propose an order dealing with water usage charges when a leak in the water line occurred. They felt that when a leak was located in a user's water line and the leak was repaired immediately, presentation of proof of the repair having been made would modify the total water used and a credit would be given the account. This would eliminate a leak impairing a person's ability to pay their billing, and would also encourage immediate repairs.

A discussion followed regarding the proposed order.

Mr. Levesque said he would work on the order, and return with a draft to present to the Board of Commissioners.

SITTING AS THE BOARD OF COMMISSIONERS

<u>UNSCHEDULED:</u> DISCUSSION CONCERNING GOATS KILLED BY DOGS IN BAY <u>CITY:</u> Chairperson Dove said Ms. Hester had attended the Bay City Council meeting and had again been told that the County was responsible for reimbursement for the loss of her goats. It was indicated that Tillamook County collected the dog license fees for Bay City dogs, even though they had an ordinance in effect.

Mr. Levesque said in Tillamook City, if dogs had a City license, they were not required to purchase a County license.

Chairperson Dove requested Mr. Levesque to check with the County Clerk regarding the collection of dog license fees in Bay City.

Counsel Sargent said Bay City had their own ordinance, and the statute clearly stated that they were responsible for payment of the expense of animals killed within the city limits of Bay City.

UNSCHEDULED: DISCUSSION OF HEROIC ACT AND PRESENTATION OF <u>PLAQUE</u>: Sheriff Watters said he had attended this meeting to discuss something which had occurred which did not require a lot of fanfare. He felt something should be done about the incident, and he wanted to put it in the record. Sheriff Watters read a description of what had occurred on September 28th, 1992 on the Trask River Road regarding Commissioner Kenneth Burdick's involvement in removing some women and children from a potentially serious situation. Sheriff Watters presented a plaque to Commissioner Burdick denoting the County's gratitude for his unselfish efforts on behalf of others in need.

<u>UNSCHEDULED: DEAD GOAT ISSUE (CONT'D):</u> Mr. Levesque said even though Bay City had an ordinance, the County Clerk collected fees from all cities except Tillamook City. Commissioner Burdick said if the County was collecting license fees for dogs in Bay City, Ms. Hester should receive reimbursement for the death of her goats from the County.

Commissioner Lane moved to reimburse Ms. Hester for her animal loss, Commissioner Burdick seconded, passed with three aye votes.

Chairperson Dove recessed the meeting at 10:02 a.m. to an Executive Session, pursuant to ORS 192.660(1)(h).

The Commissioners adjourned to reconvene at 1:30 p.m. for a Public Hearing: Appeal AP-CU-92-28.

The minutes of this portion of the meeting were taken by Barbara Legoo.

ITEM NO. 19: PUBLIC HEARING APPEAL: AP-CU-92-28 of the Tillamook County Planning Commission's decision of denial of Conditional Use Request CU-92-28 and a Preliminary Subdivision "Ocean Bay Condominiums" which requested construction of a 24 unit condominium structure and associated facilities to be located on 18 acres in a R2-PD zone on property located between Oceanside and Netarts. Dale Marshall, appellant. Lynda Willard is staff person.

Chairperson Dove reconvened the meeting at 1:36 PM. He informed the audience that a sign up sheet was being circulated among the audience for those present and for those who wanted to testify.

Chairperson Dove stated that staff would provide applicable criteria to the audience regarding this agenda item. Chairperson Dove then read aloud the statement regarding evidence and testimony which is required by ORS 197.763.

During the reading of the statement, Lynda Willard, Senior Planner handed out applicable criteria to the audience.

Ms. Willard had submitted a packet containing her staff report to the Board members for their review before the hearing.

Ms. Willard identified the site on a zoning map which she had on display. She also identified The Capes Development on the map as well as the communities of Oceanside and Netarts.

Ms. Willard referred to her staff report and noted that the Nature of Request, Applicable Ordinance Provisions from the County Land Use Ordinance and the Comprehensive Plan Ordinance were all identified in her staff report. She then outlined several Findings of Fact also listed in her staff report.

Ms. Willard said reports regarding the beach and dune and geologically sensitive area were included in the packet given to the Board and identified with yellow paper. She stated that the developer did not submit any proposed development covenants, conditions and restrictions for the project.

Ms. Willard said that the day before this hearing, the developer had submitted a summary of justification of the conditional use appeal regarding topography and drainage. It was noted that the Board had received the information last evening.

Notices of the request were sent to 47 individuals and agencies, and Ms. Willard stated that responses were included in their packets. Comments received recently were given to the Board

before the hearing today. Ms. Willard then identified all zone designations surrounding the site and they included Rural Residential, Medium Density Residential with a Planned Development Overlay, and Forest.

Regarding access to the subject site, Ms. Willard said it is obtained from Highway 131 also known as Netarts-Oceanside Highway, east onto Grand Avenue then north on Highland Drive to the south. She identified these locations on the display map.

Ms. Willard stated that the developers were granted approval for a zone change in 1982 for a development which would contain 125 dwelling units and a community lodge.

A petition in opposition had been submitted to staff by near by property owners.

Ms. Willard then outlined the Conclusions section of her staff report for the benefit of all present. Section 3.080 requires that staff submit copies of the proposal to County agencies for comment and Ms. Willard verified this had been done. Comments from those agencies were contained in the staff report in the Board's packets.

Ms. Willard went on to explain that Section 6.040 requires that six criteria must be met by the applicant. Going through the criteria, she said staff determined criteria 4, "The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.." had not been met by the applicant.

Ms. Willard then stated that after testimony given at the Planning Commission hearing was taken into consideration, staff and the Planning Commission felt that criteria 6, "The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the future.." had also not been met.

In conclusion, Ms. Willard stated that staff recommended denial of the Conditional Use Request and the Preliminary Subdivision Plat.

Ms. Willard said that if the Board approved the appeal and overturned the Planning Commission decision, she suggested they consider the conditions contained within the Preliminary Subdivision Report.

At this time, Chairman Dove read aloud the request for the benefit of all present.

Robert B. Martin, architect for the proposed development, told the Board that the development would take up only a portion of the 18 acre parcel. He identified the most flat portion of the parcel on the display map, saying it was the most logical area to develop.

Mr. Martin went on to say that the proposed structure will consist of 24 units in 3 stories that will not exceed the height limitation of 35 feet. He added that the zoning would allow the owner to develop the 18 acres into 124 separate units, but it was felt it would be better to have one structure.

Mr. Martin discussed items including: criteria will be met if they haven't already; the road will be 24 feet wide and built to County standards; there will be a great deal of open space; the structure will be for single family ownership only; CCR's will describe no renting of units; criticism of the design; landscaping and design; and concerns about the water and existing road.

Regarding the water situation at the site, Mr. Martin read aloud a resolution for annexation to the Netarts Water District which indicated the District was ready to supply water to the members of the Avalon Water Corporation. Mr. Martin noted that the resolution was signed by all members of the Netarts Water District on April 10, 1972.

Mr. Martin reminded the Board that all criteria and conditions will have to be accomplished before any permits are issued by the County, so it is apparent everything will have to be done according to code. He added that all roads will be completed before construction of the structure because vehicles will have to be able to drive up the hill. Mr. Martin said the construction would be done in approximately 9 months.

Mr. Martin said the road could be continued onto the subject site if that was the desire of staff. Ms. Willard confirmed that the roads would have to be completed before construction of any structure and it is one of the suggested conditions of approval, if approval of the request were given.

Jerome Beier, 4990 West Grand Avenue, told the Board that he had testified before the Planning Commission and was grateful that the staff report and Planning Commission found that the development cannot meet all the criteria. Mr. Beier went on to say that those who signed the petition, mentioned earlier in the meeting, felt that the development could not fit into the character of the neighborhood since it is all single family dwellings.

Mr. Beier also discussed the road conditions, which he feels is very inadequate, as well as the increased traffic to be generated by such a development. He continued by saying that he felt the

public is entitled to depend on the zoning system to protect their rights as well as the developer's rights. Mr. Beier added that the zoning is for single family dwellings and he felt it should stay that way. He also discussed the existing and proposed road situation and accesses. Mr. Beier also wondered what the future plans will be for the balance of the property.

Gail Bergevin, Oceanside resident and business owner, said she felt the reason the developer is planning a multi unit dwelling rather than individual residences is because of monetary reasons. She said it was cheaper to build one large unit than several onefamily dwellings. She added that CC & R's are not enforced unless attorney's are involved. Ms. Bergevin also discussed the road situation.

Charles Wall, Oceanside resident, objected to the request because he believed the area would remain single-family dwellings when he bought his property. He said he also felt the structure would change the character of the neighborhood. Mr. Wall agreed with the statements made by Mr. Beier.

Priscilla Nunez, owner of property on Highland St., also expressed concern that the property will not remain single family zoning. She added that she does not like the idea of such a large structure being virtually at her front door. Ms. Nunez stated she felt this sort of development would lead to situations such as exists in Cannon Beach and Seaside with the condos ultimately being vacation rentals. She also voiced concern regarding traffic.

There was concern from the audience regarding how many more units will be constructed after this "phase I" is completed.

Al Krampert, Chairman of the Netarts Water Board, showed the Board the size of the Marshall file dealing with the Water Board. He indicated that it was the largest file they have. Mr. Krampert said there has been a great deal of time and money trying to get the project underway as far as water source is concerned. He then gave a history of the events which have taken place regarding Mr. Marshall supplying a water tank for his previous development. He said a 35,000 gallon water tank was to be installed, but Mr. Marshall has never installed the tank.

Mr. Krampert discussed the lack of water pressure in the area, size of water lines, site of water tank, lack of response by Mr. Marshall regarding water storage or pressure problem, and read a letter to the Board from the Netarts Water District asking the Board to deny the request until all problems are resolved.

Copies of Mr. Krampert's file will be submitted to the Planning staff and included in the record.

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Kathy Gorham, Netarts resident, said those residing in Netarts are affected by what happens in Oceanside. She stated she felt staff had done an excellent job in determining that the development does not meet all criteria and she thought the Board should support the decision of denial. Ms. Gorham also wondered what the next development phase would be as well as agreeing that such a development is not compatible with the neighborhood. She asked the Board to deny the request.

Mr. Krampert stated that \$2,000 was spent on a survey regarding the water tank mentioned earlier, as well as \$500 per year for two years for a lease to Zellerbach Corporation in order to put the water tank at the designated site.

At this time Chairman Dove closed the meeting to testimony and opened the meeting to rebuttal.

Dale Marshall, owner of the subject site, gave a history of events dealing with the Avalon Group which consisted of Percy Simmons, Collier and Meyer, Hawkins and Wilkerson, John Griffith and himself. Mr. Marshall said the group formed the Avalon Water Corporation with the Netarts Water District putting a 12,000 gallon water tank on the hill with a pump.

Mr. Marshall told the Board that he felt he was being singled out from the other members of the group to supply another tank because his property was located higher. He said the Netarts Water District took over the Avalon Water Corporation. He referred to a letter written by the Netarts Water District which led Mr. Marshall to believe water would be supplied to lots in his subdivision at that time.

Mr. Marshall then discussed the size of the proposed water line, cost, pump, prepaid hookups, elevation of the property, storage tank, and continued with a history of the water problem.

Chairman Dove stated that the Board must consider criteria rather than take into consideration events which happened years ago. Mr. Marshall said he just wanted people to know what he had to go through regarding the water situation.

Mr. Martin said there is a Planned Development overlay on the property, and it seemed to him there should be no problem in getting a planned development on the site. He added that otherwise there should never have been a zone change to include a PD overlay.

Mr. Marshall gave a copy of the annexation of the Avalon Water Corporation into the Netarts Water District to the Board and the audience. This was made a part of the record.

Ms. Willard told the Board that all the evidence submitted to staff and the Planning Commission indicated that this is Phase I of the development. She was not sure what Phase II and Phase III would consist of, if ever submitted.

Ms. Willard said that during the Planning Commission hearing, Condition 17 was added to the Conditions of Approval in her staff report dealing with CC & R's. The condition is that the units are to be owner occupied and will not be rented or time-shared. She added that in that way, it will become enforceable by staff.

Ms. Willard said all streets, utilities, water and sewer will have to be in place or bonded to 110 percent of the cost with each special district's approval. Ms. Willard went on to say that the Avalon Subdivision was approved not because of the letter from the Netarts Water District since the letter was written in 1973 and the subdivision was approved in 1969 or 1970.

Regarding Mr. Martin's statement pertaining to the Planned Development Overlay, Ms. Willard said the Planned Unit Development can be any uses or conditional uses contained within the Land Use Ordinance with the exception of the M1 and ML zones. In other words, she said, there are a variety of uses that can occur within a PUD.

Mr. Martin said CC & R's have to be approved by the state because they are security and they are bindable.

Chairperson Dove closed the meeting to all public testimony.

Commissioner Lane said she is concerned about the water situation more than anything. She understood that the developer would have to supply a water tank in order for the development to proceed. She also mentioned that the elevation is steep and not very stable.

There was a short discussion regarding the gallons per minute needed for the development. It was noted a Geologic Hazard Report done by Handforth, Larson and Barrett was a part of the staff report.

In answer to Chairperson Dove's question regarding the length of time Mr. Martin has been in the area, he answered he has been in Oregon all his life and has worked up and down the coast for many years. Chairman Dove pointed out that Mr. Martin had written that he felt Netarts should take some responsibility of the roads. Mr. Martin answered that he was referring to the people of Netarts, knowing Netarts is not an incorporated city.

Commissioner Burdick said "water" is not listed in the criteria, so he felt it should not be made a issue.

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Chairperson Dove stated that he did not see anything in any of the most recent submitted material that would change the Planning Commission's decision. He went on to say that the Board must base its decision on the criteria rather than sympathetic stories regarding roads, for instance.

Commissioner Lane said a 24 unit development and many things going into effect all at the same time would surely impact the neighboring residents. She also expressed concern for fire protection if the condominium were to ever catch fire.

Commissioner Burdick said he also felt the area would be adversely impacted because of limited access in case of a disaster.

Commissioner Lane stated she felt she would have to support the Planning Commission's decision based on all material submitted to the Board.

Chairperson Dove entertained a motion not to override the Planning Commission's decision.

Commissioner Lane so moved. Commissioner Burdick seconded the motion and it carried 3 - 0.

Chairperson Dove recessed the meeting at 2:52 PM.

Respectfully submitted by

Balbara Legod

UNSCHEDULED: DISCUSSION CONCERNING COURT CASES IN MANZANITA: Judge Gahagan had been contacted by Randy Kugler regarding some Manzanita City ordinances which needed to be enforced. There was no court in north County. Counsel Sargent saw no reason that Justice Court could not handle any cases which came up. Chairperson Dove asked how the payment of fines would be handled. Judge Gahagan said the fines would be split the same as other city fines. She felt it would be a 50% split.

There was a consensus to allow Justice Court to handle citations on enforcement of ordinances in Manzanita.

UNSCHEDULED: DISCUSSION CONCERNING COUNTY COUNSEL'S CONTINUANCE ON ENFORCEMENT OF LAND USE VIOLATION: Counsel Sargent expressed concerns regarding his continuance in enforcing this matter. The Board of Commissioners expressed their desire for his continuance in this enforcement issue.

Mr. Affolter expressed some concerns regarding the handling of the matter.

Counsel Sargent said he had no conflict of interest, and was not working for the violator.

There was a consensus to have Counsel Sargent go forward with the matter. A structure adjourned the meeting at 3:40 p.m.

RESPECTFUI III submitted this <u>//</u> day of October, 1992.

lerk: Josephine Veltri

By Leota Leake, Recording Secretary & Special Deputy

APPROVED BY:

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rry/A. Dove

Ida A. Lane

Kenneth M. Burdick

TILLAMOOK COUNTY BOARD OF COMMISSIONERS

MEETING

GUEST LIST

BOARD OF COMMISSIONERS' MEETING DATE: OCTOBER X, 1992

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