

CITY OF PORT ORFORD PLANNING COMMISSION  
MINUTES OF MEETING

January 4, 3:30 p.m.  
Regular Meeting, virtually held  
555 W. 20<sup>th</sup> Street  
Port Orford, Oregon

1. Call to Order.

The regular meeting of the City of Port Orford Planning Commission was called to order Tuesday, January 4, 2022, at 3:30 p.m. by Chair Nieraeth.

Those members present were: Chair Nieraeth, Vice Chair Berndt, Comm. Thelen, Comm. Rossi, Comm. Schofield, Comm. Jezuit.

City staff present were: Crystal Shoji, Legal Counsel Kudlac.

Others present:

2. Planning Chair Comments.

Chair Nieraeth addressed council members and asked them to return at 5:00 p.m. for the workshop. She addressed the numbered topics on the agenda and made changes to the numbering.

3. Additions to the Agenda: A community member is attending for a public comment. This will be added following the approval of minutes. Comm. Berndt moved to approve the agenda with amendments with Comm. Thelen as second. *Motion carried 5-0.*

Discussion: None.

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Yes</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>		

4. Approval of Minutes November 2, 2021: Comm. Berndt moved to approve Planning Commission meeting minutes of the November 2, 2021, meeting with Comm. Rossi as second. *Motion carried 5-0*

Discussion: None.

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Yes</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>		

5. Public Comment:

Penelope (Penny) Suess, Port Orford resident, made a statement regarding the request for extensions of CUP 16-02 and CUP 16-03 on today's agenda. In 2020, Elk River Property

Development received a third one-year extension of its conditional use permits for construction of a pipeline to carry recycled water from Port Orford's wastewater treatment plant through the city with a planned terminus on leased farmland to the north. The 2020 extension expired on April 11, 2021. Ms. Suesse stated, as recorded in a City Council decision order signed on June 29, 2020, by any plain reading of that fact the pipeline project died on April 12, 2021 for lack of a further extension. The CUPs are no longer in effect. Ms. Suesse stated Port Orford municipal code does not allow for extensions for such permits for longer than one year nor do they renew automatically. The applicant must come back to the Planning Commission every year that it wishes to keep its permits in effect. ERPD is now asking for a fourth extension more than eight months beyond the expiration date of the previous ones. She feels that ERPD should not be excused from failure to officially notify Port Orford of a major change in their application, which is the resignation of the project engineer. Ms. Suesse shared that no substantive report on the progress of the project has ever been offered, but only statements that nothing has been accomplished due to circumstances. She reported a new application must be submitted for consideration based on current facts and with participation of the new engineering firm and permits from outside agencies such as DEQ.

Ann Vileisis expressed appreciation to the Commission for their excellent work in 2021. She feels the Port Orford Planning Commission made great improvements in developing a more robust and straight forward public process, collaborating with City Council, conducting research, holding public meetings and making recommendations. She expressed Chair Nieraeth in particular for her leadership and members for their contributions. She hopes the commission continues to work on updates and fixes in the coming year. Ms. Vileisis commented briefly on the conditional use permit extension. She stated commissioners are being asked to extend an application that expired last spring. She hopes the commissioners think about the need to be consistent and fair and follow the local ordinances.

Jim Haley appreciates the comments about the application being past due. He has consulted with the land use attorney who might be in attendance. He stated the application went to LUBA over the word "and." He stated they prevailed on that January 22, 2021. That ended litigation. He gave referrals that provide timelines for the applications and permits. He advised it is a long process and they are still working on it. They are working forward with the application for DEQ. COVID had not helped any.

6. Elections of 2022 Planning Commission Officers. (Chair, Vice Chair, Secretary):

Comm. Thelen nominated Krista Nieraeth for the position of Planning Commissioner Chair.

Comm. Jezuit seconded the nomination of Krista Nieraeth. ***Nomination held 5-0.***

Discussion: Krista Nieraeth accepted the nomination.

Comm. Thelen	<u>Yes</u>	Comm. Nieraeth	<u>Abstain</u>	Comm. Berndt	<u>Yes</u>
Comm. Rossi	<u>Yes</u>	Comm. Schofield	<u>Yes</u>	Comm. Jezuit	<u>Yes</u>

Comm. Thelen nominated Pamela Berndt for the position of Vice Chair with Comm. Rossi as second. *Nomination held 5-0.*

Discussion: None. No additional nominations.

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Abstain</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>	<b>Comm. Jezuit</b>	<b><u>Yes</u></b>

Addressing secretary status, Legal Counsel Kudlac responded advising a staff member has usually served as secretary. Chair Nieraeth nominated Jessica Ginsburg to be secretary of the Planning Commission with Comm. Rossi as second. *Nomination held 6-0.*

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Yes</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>	<b>Comm. Jezuit</b>	<b><u>Yes</u></b>

7. Review of Planning Commission Applications for Appointment: Two commissioners are at the end of their terms, Chair Nieraeth's term ends in March and Commissioner Berndt ends in February.

Comm. Thelen moved to send Krista Nieraeth's and Pamela Berndt's applications to the city council for approval with Comm. Rossi as second. *Motion carried 6-0.*

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Yes</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>	<b>Comm. Jezuit</b>	<b><u>Yes</u></b>

8. Public Hearing: None.

9. Planning Matters

A. Conditional Use Permit Extension 16-02 and 16-03 Approval: Planner Shoji presented a staff report for the benefit of background. The City of Port Orford received a request for a one-year extension of time on land use approval of CUPs 16-02 and 16-03. The approvals for construction were granted in April of 2017 to the applicant, Elk River Development, LLC. The letter asking for another extension at this time is attached. Port Orford municipal code chapter 17.32, Conditional Uses, states authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, the Planning Commission may extend the authorization for an additional period not to exceed one year upon written application to the Planning Commission.

Background information presented by Planner Shoji: One-year extensions were granted in 2018, 2019 and 2020. In 2020, the approval was appealed to the City Council and ultimately to LUBA. As a result, the permit was approved January 22, 2021. Attorneys verified that while the application is at LUBA, it is not available for renewal, which according to the applicant the renewal is proposed for January 22, 2021. It is being brought before the Planning Commission now so it can be approved. The purpose for the extension is to allow for state permits, DEQ permits, etc. Most jurisdictions have this wording to allow people to finish their projects. Many times, the applicants do not have control over what is going on with their projects. People are usually denied only when

they are not moving forward in any way or not attempting to move forward. For that reason, Planner Shoji has a recommendation that the extension be granted as requested. Port Orford municipal code referring to right of review is attached and presented to councilors. Legal Counsel Kudlac clarified the status of the application during review by LUBA and ruling that the application is timely filed. **Discussion will be continued after the workshop.**

10. Workshop: See minutes.

Conditional Use Permit Extension 16-02 and 16-03 Approval continued: Comm. Schofield moved to approve conditional use permit extension 16-02 and 16-03 as of January 22 with Comm. Jezuit as second. ***Motion carried 6-0.***

Discussion: Comm. Thelen asked and Legal Counsel Kudlac confirmed the permit is currently valid due to a prior lag. The current renewal can be renewed as of January 22. Comm. Berndt reminded the public had questions, such as who the engineer will be. Legal Counsel Kudlac stated the applicant is not required to provide the information; however, they are present. Bill Close, attorney for applicant is present and summarized the state of the law. Jim Haley stated they are interviewing engineers currently. Dyer is not available since they are involved with the city. Once an engineer is accepted, an application to DEQ will be submitted then to a city engineer for approval.

<b>Comm. Thelen</b>	<b><u>Yes</u></b>	<b>Comm. Nieraeth</b>	<b><u>Yes</u></b>	<b>Comm. Berndt</b>	<b><u>Yes</u></b>
<b>Comm. Rossi</b>	<b><u>Yes</u></b>	<b>Comm. Schofield</b>	<b><u>Yes</u></b>	<b>Comm. Jezuit</b>	<b><u>Yes</u></b>

11. Public Considerations: None.

11: Chair Nieraeth adjourned the November 2, 2021, meeting at 5:55 p.m.