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October 11, 1982

Yachats Planning Commission
City of Yachats
P. O. Box 67
Yachats, Oregon 97498

Re: Quiet Water/Building Permit Application

Dear Planning Commission Members:

Subsequent to my letter to Michiko Ryan regarding the Quiet Water/Building Permit Application, dated September 14, 1982, I have been requested by the attorney for Quiet Water to review additional documentation regarding the Quiet Water planned unit development application. As a result of review of this additional documentation, my opinion regarding lot coverage requirements set forth in the September 14, 1982 is hereby modified.

I have received from the City Recorder copies of the following documents:

1. Planning Commission minutes of September 26, 1979.
2. "Application Supplemental: Quiet Water Project".

I have also located a copy of the "proposed declaration of protective covenants, conditions and restrictions" which were attached to and made a part of the "Application Supplemental: Quiet Water Project."

As a result of a review of the above documents, it is my conclusion that the lot coverage requirements of the Yachats Zoning Ordinance are superseded with respect to the Quiet Water Subdivision by the provisions of the covenants, conditions and restrictions. As stated in my letter of September 14, 1982, once a plan has been approved in final, all of the items not specifically considered by the Planning Commission and provided for in the final plan are required to comply with the strict requirements of

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the Yachats Zoning Ordinance. (Emphasis added). The questions is thus whether or not the lot coverage requirements were specifically considered by the Planning Commission in the approval of the Quiet Water planned unit development application.

Under Section 7.030(3)(a), the Planning Commission is charged with approving, conditionally approving, disapproving or postponing a decision on the preliminary plan. Once the Planning Commission makes its decision, that plan becomes effective on the 31st day after rendered, unless the decision is appealed. Subsection (3)(c) permits the Planning Commission to refer the matter to the City Council with an advisory recommendation.

The preliminary plan application must contain certain data, as listed in Section 7.030(1) of the Zoning Ordinance. Subsection (1) requires that the preliminary plan include the proposed use, location, dimensions, height and type of construction of all buildings. The question is then whether or not the preliminary plan application contained therein data setting forth the proposed location of the buildings. The applicant's "application supplemental: Quiet Water project" is apparently the preliminary plan application which was submitted by the applicants in compliance with Section 7.030(1). Attached to the application as an appendix is the proposed declaration of protective covenants, conditions and restrictions. Section 4 of the declaration sets forth certain conditions pertaining to "standard" platted lots. Subsection (a)(1-3) discuss the setback requirements of the standard lots. Subsection (a)(4) requires a minimum of 25 percent of the total area of the lot be used for landscaping. Subsection 4(b) discusses certain conditions relating to "cluster" lots. Subsection (b)(2) and (3) discuss the setback requirements and the landscaping requirement. By reading these two provision together, I think they fairly well address the lot coverage requirements.

In the findings of fact and conclusions adopted by the Planning Commission on December 20, 1979, the Planning Commission found that the proposed planned unit development complied with the requirements of Article VII in all of its particulars.

I note in the Planning Commission minutes dated September 26, 1979 Commissioner Ken Leedy asked "for clarification of 35 foot combined front and back yard setback." This indicates to me that the Planning Commission members reviewed the Declaration of Covenants and considered those covenants when considering whether

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or not the preliminary plan submitted by Quiet Water complied with the Article VII requirements of the Zoning Ordinance.

Based upon the foregoing, I am of the opinion that a building permit application which meets the lot coverage requirement of the Declaration of Covenants should be issued by the City, in that the provisions of the Declaration of Covenants relating to lot coverage and yard setbacks were adopted by the Planning Commission as part of the preliminary plan. One should note that this opinion merely concludes that the necessary items contained in the Declaration of Covenants which go to satisfying the enumerated items of Section 7.030 or other particular requirements found in Article VII of the Zoning Ordinance are to be considered adopted and approved by the City. Where provisions of the Declaration of Covenants do not go to meeting the requirements of Article VII, the City has not adopted and will not enforce those portions of the Declaration of Covenants. Furthermore, by adoption of the Declaration of Covenants the City is not adopting the method and procedure by which to request a variance of the Declaration, as the Ordinance does not empower the City to delegate another body to determine whether or not a variance should be granted. In other words, if a property owner of Quiet Waters seeks a variance of the expressed requirements of the Declaration of Covenants, I would suggest the property owner obtain not only the variance from the Quiet Water Architectural Review Committee, but also from the City of Yachats.

I suggest that the Planning Commission adopt a motion to reconsider the building permit application in question, and reconsider the application in light of this revised opinion.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,

MINOR, YECK & BEESON, P.C.


Evan P. Boone

EPB/skk

cc: Dennis Bartoldus

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October 21, 1982

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Yachats Planning Commission
City of Yachats
P. O. Box 67
Yachats, Oregon 97498

Re: Quiet Water/Decks

Dear Planning Commission Members:

On October 21, 1982 Mr. Bartoldus delivered to me a copy of his written testimony in support of a building permit filed with the Yachats Planning Commission regarding a dwelling to be built in the Quiet Water Subdivision.

In my letter of October 11, 1982 to you, I discussed the lot coverage requirements. I also discussed, on page 3, the "construction of deck." After review of Mr. Bartoldus' written testimony, no additional facts have been brought to my attention which would change my opinion that the Yachats zoning ordinance is applicable to the building permit application, and that the zoning ordinance provides that any deck constructed above the ground must be outside of the required set back requirements unless a variance of the applicable yard requirement is obtained.

The building permit application proposes that decks be built to the side yard property line. Mr. Bartoldus indicates that "items which would normally be at ground level are not discussed in the ordinance." (Page 2). I disagree with this conclusion, in that the definition of "yard", appearing on page 81 of the ordinance, states:

"A space other than a court on the same lot with a building open from the ground." (Emphasis added.)

It is my interpretation of this definition that projections into a side yard are not permitted, unless otherwise expressly provided for in the zoning ordinance. Mr. Bartoldus is correct, in that the only reference I find to projections into side yard is Section 4.010. By specifically listing certain architectural features, and not listing decks, my interpretation of "yard" is reaffirmed.

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The fact that the color slides of a similar development showed decks extending to the property line is not persuasive. First, I do not believe the color slides of a similar development constitute part of the "preliminary plan" of the Quiet Water Development. Obviously the developer did not plan to building the identical development in Yachats. It is not the function of the Planning Commission during the preliminary plan consideration to determine what elements of a similar development the developer intends to incorporate into the preliminary plan and what elements are not intended to be incorporated.

Secondly, the developer may have testified at the planned unit subdivision hearing that the objective of the plan unit development was to encourage diversity, any such "diversity" must be submitted in the preliminary plan so that the public and Planning Commission will have an opportunity to review and determine whether or not the proposed "diversity" is compatible with the City's overall housing scheme.

Where the preliminary plan application of a planned unit subdivision has not set forth the specific items as required by Section 7.030, the development of any residences in the subdivision must conform with the zoning ordinance. A building permit applicant cannot seek to avoid the requirements of the zoning ordinance if the preliminary plan application does not speak to the proposed request, merely by claiming that the proposal "promotes diversity." The purpose of the planned unit subdivision provisions in the zoning ordinance is to promote diversity, but any items which would propose a different type of construction than otherwise permitted by the zoning ordinance should be addressed in the preliminary plan application. Once the preliminary plan application is approved, any item not specifically covered by the preliminary plan application must comply with the zoning ordinance, unless a variance is granted.

It is therefore my opinion that the building permit application requesting an above ground deck to be constructed to the property line is not allowed by the Yachats zoning ordinance, unless the applicant obtains a variance from the yard requirement.

Sincerely,

MINOR, YECK & BEESON, P.C.

/s/Evan P. Boone

Evan P. Boone

EPB/skk

cc: Dennis Bartoldea