

From: [Lance Bloch](#)
To: [Kimmie Jackson](#)
Subject: Fwd: Residential Unroofed Barriers - Fences, Hedges and Walls
Date: Sunday, April 11, 2021 6:55:34 AM

Kimmie, Could you add this letter to the packet for the Planning Commission meeting on the 20th?

Thank You,
Lance

----- Forwarded message -----

From: **Douglas Conner** <lemoco@me.com>
Date: Sat, Apr 10, 2021, 2:43 PM
Subject: Re: Residential Unroofed Barriers - Fences, Hedges and Walls
To: Lance Bloch <lancebloch1@gmail.com>

Lance,

Thanks for the information. I'd like to make a constructive suggestion.

My specific complaint is caused by the inconsiderate use of an, unregulated, unroofed barrier. But my complaint is justified and valid because Goal A of the Comprehensive Plan promises to protect scenic views - the very thing the barrier obstructs. Since Title 9 ordinances are, technically, the implementation of land use policy, I find it more logical to propose amendments to Title 9 in the context of the goals, policies, and proposed actions enumerated in the Comprehensive Plan.

One proposed action under Goal A is to develop view protection strategies, and it seems reasonable that limiting the height of unroofed barriers could be an element of that strategy. By engaging the public about "View Protection Strategies", rather than the narrower focus on "Fences, Hedges, and Walls", the Commission can widen the conversation, get a better idea of the kind of issues people are dealing with, and actually implement an action specifically called for in the Comprehensive Plan.

Why not kill two birds with one stone?

Doug

On Apr 3, 2021, at 11:24 AM, Lance Boch <lancebloch1@gmail.com> wrote:

Doug,
I wanted to let you know that the Planning Commission is currently working on a review of City of Yachats ordinances relating to "Fences, Hedges, and Walls". We are presently putting together a survey of the Yachats citizens relating to this topic. I have heard discussion by the City Council on the topic of citizen surveys and public

hearings. Perhaps we can combine our efforts to survey our neighbors on multiple topics.

The Planning Commission wants to do the survey as a lead in to a public hearing on "Fences, Hedges, and Walls". This will be followed up by consideration of changes to city ordinances.

However, this will not address all of the topics you brought up. I noted that you addressed your email to the city's enforcement officer. The actions of the Planning Commission will not answer the issues concerning enforcement. However, if we can clarify city ordinances, and make explicit what is currently implicit, we may make enforcement somewhat easier.

Please be patient. I know the wheels grind slowly. The issue is being addressed.
Lance Bloch, Planning Commission Chair

On Fri, Apr 2, 2021 at 10:21 AM Douglas Conner <lemoco@me.com> wrote:

Matt,

I am providing this narrative, at your request, to describe our experience navigating a land use issue that arose when Sherry and I moved into our new home in 2016. Because of recent changes in the City Council and staff, and because the responsibility for conducting the three phases of land use (planning, implementation, and administration), belong to different entities within our Council/City Manager form of government, I will also provide this information to the City Council, Planning Commission, City Planner, and City Manager, all in the hope that they will understand that you alone cannot resolve this issue – however, we both thank you for trying.

The bone of contention is the permissible height of unroofed barriers in residential neighborhoods. What are the permissible heights of fences, hedges, and walls in residential zones? This is a question that commonly arises with the issuance of new residential building permits, and it is a question we asked City Planner Larry Lewis when we built our home on Lemwick Lane, because we couldn't find an answer in Title 9 – Zoning and Land Use. The answer we received turned out to be demonstrably wrong, and we will demonstrate why it was, and continues to be, wrong.

The issue arose because our neighbor maintains, and continues to maintain, a fence immediately adjacent to the boundary between our two residential properties. His fence is a continuous, unroofed, vegetative barrier that stands eight feet tall. The barrier completely obscures visual access along the entire western depth of our property - ocean view property only a few hundred feet from the water. We inquired about the permissibility of sight-obscuring fences in residential zones, and the City responded by saying that eight-foot-tall sight-obscuring barriers are

permitted; apparently anywhere, except where restricted by the Clear-Vision standard – and I'll get around to that later.

It is true, that stripped of all nuance, the statement that eight-foot fences are allowed in Yachats is true. But that doesn't mean they are automatically allowed in residential zones. Eight-foot tall, sight-obscuring barriers are an element of commercial and public facilities standards, not residential. I've been arguing for several years that the purported eight-foot standard is arbitrary because it is not found in our municipal code. And just a few weeks ago, the Planning Commission confirmed that, indeed, the claim that eight-foot fences hedges and walls are permitted in residential neighborhoods is not supported by the Yachats municipal code. The Planning Commission determined that our Yachats Municipal Code, including Title 9, does not cover residential unroofed barriers of any kind.

The City argues that since our municipal code does not prohibit sight-obscuring barriers in residential zones, they are therefore allowed. However, this argument is directly contradicted by YMC 9.88.140 which says that anything not covered by Title 9 is, by default, not permitted, unless it is permitted by a unanimous vote by the City Council, after a public hearing. But for the past five years, Yachats has worked to preserve the barrier, while denying Sherry and I due process. There has been no public meeting. There has been no public vote.

Our land use policies have the force of law. As a matter of fact, according to the DLCDD, the land use policies outlined in our Comprehensive Land Use Plan are enforceable, and do not require enabling ordinance to be enforced. The Comprehensive Land Use Plan describes the scenic environment as our most valuable natural resource, and Goal A obligates the City to protect scenic views. The Plan expressly proposes the development of view protection strategies, including, but not limited to, tree trimming standards. But despite a land use goal to protect views, there is no protection in the city of Yachats for river, estuary, shoreline, and ocean views from residential properties. Instead of protecting views, the city is protecting view obstructions. If you doubt this assertion, stop by my place and have a look at my obstructed ocean view.

In 2016 there was only one municipal code that limited the height of fences, hedges and walls between residential uses. YMC YMC 9.52.030(B) limited fences, hedges, and walls to three feet in the front

yard setback. So I requested, at the very least, that YMC 9.52.030(B) be enforced. But the City refused to enforce YMC 9.52.030(B) because, they said, Lemwick Lane is a private street. It is a fact that every square inch of the state of Oregon is regulated under land use, and the scope of our Comprehensive Land Use Plan covers every square inch of land within the city limits. Private streets are not exempt from Title 9 ordinance, and our ex-City Planner and Planning Commission both disagreed with the ex-City Managers decision not to enforce. But the ex-City Manager just ignored the ex-City Planner, Planning Commission and me and refused to budge. I personally asked the last City Council to break the deadlock, but Mayor Moore declined to do so, and left the deadlock in place – and it continues today.

While refusing to enforce YMC 9.52.030(B), the City began the process of moving YMC 9.52.030(B) into the Clear-Vision standard. The Planning Commission made specific changes intended to break the deadlock, and open the way for enforcement. They changed the definition of “Street” to explicitly include private streets. The Planning Commission also inserted language into the Clear-Vision standard to explicitly state that it applies to all streets (public and private.) The Planning Commission also expanded the Clear-Vision standard to include the intersection of streets and driveways.

The amended Clear-Vision standard was transmitted to the City Council, where it languished for a year before being voted on. Oct. 16, 2019, Planning Commission Chair Anderson made clear to the City Council that the changes in the ordinance were intended to specifically address my specific complaint, and the ongoing enforcement deadlock. The Planning Commission intended that the amended ordinance would apply to the specific hedge that the City had been protecting.

Prior to the vote, ex-Mayor Moore, who is neighbors with the hedge owner, asked for a change to the language of ordinance. He said he was concerned that perpendicular hedges might be unfairly swept up in the Clear-Vision standard. It is a strange concern because the Clear-Vision standard is based on the area inside a right-triangle, which of course has two sides that intersect at right angles – parallel and perpendicular. It is also unclear why he was only concerned about hedges, and not fences or walls. It is also unclear why the ordinance wasn't remanded back to the Planning Commission for the change, as is required by YMC 9.84.20C. I was on the Planning Commission at the time, and I certainly would have object to the Mayor's changes, but since the ordinance wasn't remanded back to the Planning Commission, my voice, and that of the rest of the Commission, was circumvented.

All of those ambiguities aside, the ordinance was approved with the Mayor's stipulated changes, and became law, but enforcement still didn't occur. When I asked Mayor Moore why the three-foot height limit still wasn't being enforced, he said that the changes he had asked for, protecting perpendicular hedges, disqualified my complaint. Ostensibly, the Planning Commission still disagrees with the ex-Mayor's interpretation of the new ordinance – that it nullifies the Planning Commission's stated intent - but the ex-Mayor's interference has effectively re-established the deadlock – which I believe was his intent.

So, for the past five years, the City of Yachats, has enforced what is not law, and refused to enforce what is law, and in doing so have diminished the value of our property, diminished our enjoyment of our property, and diminished the livability of Yachats in general, not to mention keeping the general public in the dark about the entire issue. I have formally applied to initiate an amendment to Title 9 under YMC 9.84. I'm asking the City, as an affected property owner, to develop reasonable, and enforceable standards for residential unroofed barriers, and to do so in accordance with our land use policies and procedures. So far, I've received no response, confirmation, or acknowledgment from the City at all. We consider the lack of response to be very unprofessional, and a harbinger of the City's intent. We believe a representative government should be responsive to the legitimate concerns of its citizens, and we are disappointed by the dismissive treatment we have faced here in Yachats.

There are two things that need to happen:

1. Enforce the Clear-Vision Standard as interpreted by the Planning Commission, rather than the ex-Mayor's interpretation.
2. Make a public and transparent land use decision (hopefully a decision based on land use policy) as to the permissibility of using sight-obscuring barriers in residential zones, and formalize that decision by passing a land use ordinance which reflects that decision, and applies to everyone – not just Sherry and I.

We think that allowing sight-obscuring barriers in residential zones is a terrible idea, and is not only incongruent with our land use goal of

preserving the scenic environment, but myopically dismissive of the expectations that people have about the use and enjoyment of their property. The Comprehensive Land Use Plan describes, perfectly, land use on the west-side of Hwy 101 as: "taking advantage of private property available for river, estuary and ocean shoreline views". If taking advantage of available views is a salient feature of property use in Yachats, then the City should be enthusiastic about minimizing the adverse impacts that sight-obscuring barriers obviously have on that use.

Thank You,

Doug Conner and Sherry Smith

490 Lemwick Lane

Yachats