

**MINUTES**

SPECIAL COUNCIL MEETING  
OF  
JULY 2, 2013  
5:30 P.M.

CITY COUNCIL CHAMBER  
CITY HALL  
313 COURT STREET  
THE DALLES, OREGON

**PRESIDING:** Mayor Steve Lawrence

**COUNCIL PRESENT:** Bill Dick, Dan Spatz, Tim McGlothlin, Linda Miller

**COUNCIL ABSENT:** Carolyn Wood

**STAFF PRESENT:** City Manager Nolan Young, City Attorney Gene Parker,  
City Clerk Julie Krueger, Public Works Director Dave  
Anderson, Planning Director Dick Gassman

**CALL TO ORDER**

The meeting was called to order by Mayor Lawrence at 5:30 p.m.

**APPROVAL OF AGENDA**

It was moved by Dick and seconded McGlothlin to approve the agenda as presented. The motion carried unanimously, Wood absent.

**DISCUSSION ITEM**

Discussion Regarding the Effects of House Bill 3479

Mayor Lawrence explained he had called the special meeting to allow the City Council to have a

discussion regarding the possible effects of HB 3479. He said the City Council could only discuss matters in a public meeting and he believed it was important to have a discussion right away due to current applications that could be impacted by the Bill.

Mayor Lawrence provided a written document reviewing the history and provisions relating to partitions (attached at Exhibit A). He described the items included in his memo.

City Attorney Parker reviewed the staff report, noting the language in the Bill was very specific and clear. Parker discussed the Land Use Development Ordinance (LUDO) conditions that remained in effect and said staff had determined that Mr. Dennee would need to install the public improvements, or agree to install them in the future, to receive approval of his partition application.

Parker recommended the Council proceed with the scheduled work session with the Planning Commission to express their comments and concerns and to allow the process for LUDO amendments to take place. He said he could not advise the Council to follow alternative C to not require installation of the improvements, again saying the best option would be for the Council to have a discussion regarding their intentions with the Planning Commission.

Mayor Lawrence said if condition number 6 of Mr. Dennee's minor partition approval was no longer valid, due to the new law, it could not be amended now. City Attorney Parker said the LUDO required that the improvements be done and that condition could not be ignored.

Lawrence pointed out that the requirement for installing infrastructure improvements pertained to subdivisions, not minor partitions.

Councilor Spatz questioned why a task force had not been put in place, as recommended by the Planning Commission, to discuss standards, costs and methods of determining the cost of development fees. Spatz said it would be a good idea to have a special task force work on such a complex issue. He said he had thought the citizens were satisfied with the language developed and was surprised to hear special legislation had been developed to change it.

City Manager Young explained that in many ways, the Planning Commission did act as a task force and that they had the training, background and experience to work on development issues so a separate task force was not necessary. Young said with the passage of the House Bill, many of the issues that a task force would study were no longer pertinent.

Mayor Lawrence said he had thought the Council previously discussed and agreed that a partition was a line on the ground, and if there was no new development, the partition should be allowed.

Councilor Dick agreed with the Mayor's statement and said he believed th Council had previously agreed that they did not consider a minor partition to be considered development. Dick said he was not in favor of requiring full improvements to approve a minor partition.

It was the consensus of the Council that simple partitions should be allowed without the burden of paying development fees and that those fees should be charged when a person applied for a building permit.

City Manager Young recommended the City Council delay any decision on the application by Mr. Dennee until they had an opportunity to meet with the Planning Commission on July 18. He agreed with City Attorney Parker that removal of condition #6 of Mr. Dennee's application did not invalidate the remaining conditions and said the City needed to work within its existing laws.

Councilor Spatz asked if there was a specific deadline Mr. Dennee was trying to meet in completing his partition. City Attorney Parker said he believed it was a property tax issue and that the deadline had been July 1.

Mayor Lawrence asked what repercussions would occur if the City Council allowed Mr. Dennee's partition to move forward.

City Attorney Parker said if the application didn't comply with the City's laws, it could be legally challenged. He again urged the City Council to delay any decisions until after their meeting with the Planning Commission and a final resolution on the LUDO amendments.

Councilor Spatz said there didn't seem to be any good options, but that Alternative C was the least bad option.

City Manager Young said to stay within the law, the Council should adopt the staff recommendation and delay a decision until after meeting with the Planning Commission and developing amendments to the LUDO.

It was moved by Spatz and seconded by McGlothlin to direct staff that the LUDO provisions were to be interpreted such that an applicant was not required to either install the improvements or enter into a deferred development agreement at the time of approval of a minor partition for the existing application of John Dennee.

Councilor Dick said he was in support of making amendments to the LUDO and asked how long the process would take to complete. Planning Director Gassman said, providing the required public notices and the Planning Commission and City Council hearings, it would most likely be approved in October.

MINUTES (Continued)  
Special Council Meeting  
July 2, 2013  
Page 4

Councilor McGlothlin said he wanted to remove barriers for Mr. Dennee and that it was important to reduce infill costs to property owners to encourage development and to provide fairness to everyone.

The motion to direct staff that the LUDO provisions were to be interpreted such that an applicant was not required to either install the improvements or enter into a deferred development agreement at the time of approval of a minor partition for the existing application of John Dennee was voted on and carried; Miller abstaining, Wood absent.

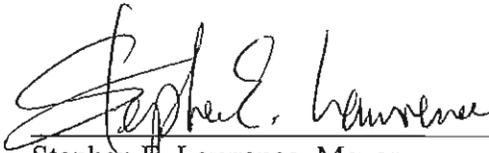
**ADJOURNMENT**

Being no further business, the meeting adjourned at 6:30 p.m.

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Submitted by/  
Julie Krueger, MMC  
City Clerk

SIGNED:

  
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Stephen B. Lawrence, Mayor

ATTEST:

  
\_\_\_\_\_  
Julie Krueger, MMC, City Clerk

REVIEW OF  
HISTORY AND PROVISIONS RELATING TO PARTITIONS

PREPARED BY MAYOR STEVE LAWRENCE

2007

**Resolution 07-007 - Implementation Policy for LIDs**

For Waivers of Local Improvement District Non-Remonstrance Agreements still in effect after review, a letter went to property owners offering them an opportunity to prepay to the City LID fund an amount equal to the cost of proposed improvements on a front footage basis, or participate in a later LID.

Annually, the City Council was to hold a public hearing to develop a five year Capital Improvement Plan for future residential LIDs. This never happened.

**The 2007 Task Force** recommended the City no longer use non-remonstrance agreements and recommended the City not initiate LIDs except in emergency or upon voluntary request of owners.

**LUBA provision 6.110 Waiver of Right to Remonstrate**  
(amended after resolution 07-007) Only eliminates waivers for dwelling building permits or single family accessory structures. Keeps them for planning actions or requires a payment into the City's local improvement fund. The entire provisions relate to LIDs. (a partition is a planning action)

2010

**Resolution 10-007** Sets street improvement guidelines for what streets. Recommendations or descriptions vary from full improvement to deferred, or status quo or partial or minimal.

2012

**9-14-2012 Staff Report on Infill Recommendations**

Describes current practice: Developer required to install 1/2 street for entire frontage or pay into LID fund. Includes someone who files for for a partition.  
(p. 3-4)

States “City has not expressly prohibited the City’s use of non-remonstrance agreements (p. 5)

Discusses **Resolution 07-1276** which proscribes requiring a non-remonstrance agreement prior to permitting or land us approval. Discusses when payment would be due.

**Recommendation of Staff :** Recommends the obligation to pay for improvements or install “attaches” upon filing a partition or any further development with payment due in lump sum at development; before sale, at sale, when there is an LID or 10 years after. (p9)

Suggests that the Council resume annual review of LID prioritization plans (11)

### **10-31-2012 Memo from Garrett Chrostok**

Again, proposes a staff recommendation for partitions that payment would be due upon the first occurrence of one of four alternatives. Council rejected this proposal at its meeting 11-14-2012.

Council directed staff to prepare a new ordinance that provided:

1. Fee attaches at partition but is not due until an LID or development is sought;
2. Landowners on corner lots be assessed only on 1 side;
3. Decks and small additions cause no assessment;
4. Any partition must waive right to object to LID.

### **1-30-2013 Staff Proposal submitted to Council 2-11-2013**

Makes proposal for partitions that if owner elects to defer payment at either time of approval of partition, building permit or formation of LID, they would have to sign a non-remonstrance agreement at the time of application approval (p.2)

Proposes adding sale to trigger for payment. (3)

Council instructs staff to bring back ordinance without sale in it. Never brought back.

### **3-15-2013 Dick Gassman Memo for LUDO Residential Partition Approval Amendment**

Relates history and states, “currently non-remonstrance agreements are prohibited by City Ordinances for all forms of residential planning actions.” “Currently --

minor partitions must fulfill their street improvement obligations at time of development application approval.” They either have to install themselves if an approved design is in place or pay into an LID fund.

Memo goes on to say that under the proposed LUDO amendment the property owner for a partition will not have to install improvements or pay into LID fund, prior to receiving approval for residential partition (p. 2)

“If the applicant elects to defer his/her obligation, he/she must sign a non-remonstrance agreement prior to receiving approval for the partition.”  
Could be due if owner applies for a building permit or formation of LID (p.3)

#### **4-4-13 Presentation to Planning Commission**

Dick Gassman submits proposal for minor partitions to pay if:

1. LID initiated or
2. development of dwelling on property, at which point the applicant would:
  - a. either put improvements in or;
  - b. put into development fund and
  - c. full property frontage would be “encumbered.”

The proposal was defeated and commission wanted joint meeting with City Council and suggested council needed to address all related issues.

#### **May 22, 2013 letter from Garrett to Senators**

States that current LUDO requires partitioners must bring entire frontage up to standards if an approved engineering design in place or make a payment in lieu. Adopted by council at recommendation of task force in 2007.

Also states that City Council directed staff to move forward with LUDO amendment. (Minutes of February 11, 2013 indicate council wanted proposal to come back to Council.)

#### **Undated letter to Sen. Ferrioli**

“...there are large portions of our community without an approved design in place - some developers only have the payment in lieu option, which sparked the controversy ...”

The proposed LUDO amendment requires signing non-remonstrance agreement and makes payment due on construction or LID.

**June 7, 2013 Letter to Kitzhaber from Nolan Young**

Asks for veto

States “Prior to 2007, developers ...satisfied their local improvement obligation through the signing of a non-remonstrance agreement.”

Community experimented with a somewhat unique approach ..to allow a fee in lieu.”

2007 policy did not prove successful - it became burdensome on large lot owners.

2012 work session developed LUDA amendment:

- to install - pay the fee - or sign non-remonstrance agreement - “to receive partition approval.”

**June 19, 2013 Memo to Mayor and City Council**

Removal of the “in lieu of payments” HB 3479 leaves the only option available to people who wish to partition is to install the improvements.

If there is no engineering and not willing to pay for engineering - no partition.

“We will be going to Planning Commission to propose amendments.”

**Memo by Garrett for 7-18-2013 meeting with Planning Commission.**

“This memo presents a new concept for residential infill development - compliant with HB 3479B while meeting City’s development objectives. Staff seeks comment and direction on this new approach.

Council had proposed an amendment which was submitted to DLCD in Feb. 2013, went through planning in April and scheduled for public hearing in May.

The new law ...prohibits The Dalles from requiring residential partitioners to make a payment in lieu or to sign non-remonstrance agreements as a condition of approval.

This proposal would allow developers to install improvements instead of the City. Responsibility to install or pay would attach at the partition stage. If engineering is in place, developer would pay or enter into “deferred development agreement.”

If no engineering, only option is “deferred development agreement.” To give owners notice that improvements required at permit.

## **June 20, 2013 Legal opinion to Nolan Young and Dick Gassman**

Opinion considers John Dennee partition filed and Administrative Decision issued 8-9-2009. It required street, sidewalk and storm improvements paid into fund for both 10th and Morton Streets. (Condition #6)

Since HB 3479, there cannot be a waiver of remonstrance or payment in lieu into fund but nothing in bill prevents City from requiring installation of the street improvements as a condition of approval.

### **Following LUDO provisions cited:**

#### **Ludo 9.030.030 (A) (8) Partition Applications**

The tentative plat shall include (8) Location of all existing and proposed streets - which shall meet requirements of Chapter 10 - construction detail required prior to issuance of permit.

#### **Ludo 9.030.050 9B)(2)**

Any required improvements not completed shall be subject to the Agreement of Improvement provisions 9.040.050(H)  
(9.040.010 - refers to subdivisions or major replats only)  
9.040.050 relates to subdivision application.

#### **Ludo 9.030.050 (C)(1) Final Plat Approval (for partitions)**

“The applicant has installed or agreed to install required improvements in accordance with Chapter 10, Improvements Required with Development. (Definition of development includes dividing parcel into 2 or more lots.)  
(This is copy attached to Memo which differs from LUDO book)

#### **Ludo 10.030(A) Timing of Improvements**

Refers to 9.040.060(H) which applies to subdivision plat review.

#### **Ludo 10.060 (C)(1) Street Requirements**

Where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to city standards along full frontage of the property concurrent with development or a non-remonstrance agreement for future street improvements (including Local Improvement Districts) shall be

signed by the property owner(s) and recorded with the deed, per the provisions of Section 6.110. (This is different than the book.)

**Final Opinion:** “Even with the invalidation of Condition #6, the 4 provisions of the LUDO cited are still valid.”

Memo states as follows:

John Dennee has three options?

1. improve the abutting street;
2. enter into delayed (deferred?) development agreement with city for full installation;
3. gain approval for LID without any provision for prepayment of assessments into a fund.

Question: Can a decision be amended after the fact?

What is the intent of HB 3479?

What is the spirit of the law?

How can we work to allow partitions to go forward without onerous provisions?

If development costs are required when someone wants to build a residence, why not just inform them at the time of getting a building permit?