



## CITY of THE DALLES

313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125  
PLANNING DEPARTMENT

### CITY OF THE DALLES PLANNING COMMISSION MINUTES

**Thursday, June 19, 2014**

City Hall Council Chambers

313 Court Street

The Dalles, OR 97058

*Conducted in a handicap accessible room*

6:00 PM

#### **CALL TO ORDER:**

Acting Chair Whitehouse called the meeting to order at 6:00 PM.

#### **BOARD MEMBERS PRESENT:**

Dennis Whitehouse, Chris Zukin, Mark Poppoff, John Nelson

#### **BOARD MEMBERS ABSENT:**

Bruce Lavier, Jeff Stiles

#### **STAFF MEMBERS PRESENT:**

Planning Director Richard Gassman, City Attorney Gene Parker, City Engineer Dale McCabe, Administrative Secretary Carole Trautman

#### **APPROVAL OF AGENDA:**

It was moved by Zukin and seconded by Nelson to approve the agenda as submitted. The motion carried unanimously; Lavier and Stiles absent.

#### **APPROVAL OF MINUTES:**

It was moved by Nelson and seconded by Poppoff to approve the June 5, 2014 minutes as submitted. The motion carried unanimously; Lavier and Stiles absent.

#### **PUBLIC COMMENT:**

None

#### **LEGISLATIVE HEARING:**

**Application Numbers:** ZOA 86-14, **Zoning Ordinance Amendment and CPA 41-14, Comprehensive Plan Amendment; Darci Rudzinski of Angelo Planning Group; Request:** This application is for a map amendment to the City's Comprehensive Plan and Land Use and Development Ordinance (LUDO) to change the zoning on 1.75 acres of tax lot 1700 from Parks and Open space to General Commercial, and to modify the Community Facility Overlay on Tax Lot 1700 to exclude the area subject to the rezone. Property is located at 807 Webber Street, The Dalles, Oregon and is further described as 2N 13E 33C tax lot 1700. Property is zoned "P/OS" – Parks and Open Space with a Community Facilities Overlay.

Director Gassman highlighted his staff report. He pointed out that the portion of the subject property is basically unused, and the intent of the request was to increase the size of the armory's portion of the property. Gassman said it made sense for the portion of property not in use to be changed to commercial property; the

City lacked commercial property, especially in that area, Gassman indicated. If approved, Gassman said, the County would go through a lot line adjustment process in the location of the grade change.

Commissioner Nelson asked if the City could find another parcel that could be added as a Parks and Open Space zone if the application was approved. Gassman said that was a good question, but the City had not tried to acquire others areas to make up for the subject property. He indicated that the parks were owned and operated by the Northern Wasco County Parks and Recreation District (NWCPRD), and the City's role in regulating parks was somewhat limited. Nelson said this request made sense for this particular parcel, and he asked if the County had other areas that could be turned over for Parks and Open Space because he did not like the idea of losing park space. Gassman said staff was not aware of any property owned by the County that would be suitable. Commissioner Poppoff suggested that another portion of County-owned property adjacent to Kramer Field off of Walnut Street could be considered. Gassman said staff could research that if that was the Commission's desire.

### **Testimony**

#### **Proponents**

Darci Rudzinski, Angelo Planning Group, 921 SW Washington Street, Portland, Oregon, summarized the application request. Ms. Rudzinski stated it was the County's intent to have a more income-generating site that would meet economic development policies and conform with local Land Use Development and Ordinance requirements. She emphasized that the proposed change would not decrease active park land, and in the preliminary application meeting with staff and agencies it was made clear that there would be little to no impact to active park lands.

Tyler Stone, 511 Washington Street, The Dalles, Oregon, stated that this request was the end of a much larger project in relocating the armory to the college site, and he encouraged the Planning Commission to approve the request in order to complete the entire project.

Jim Wilcox, 416 West 7<sup>th</sup> Street, The Dalles, Oregon, stated he supported the application because of the physical and geological separation of the parcel of land. He said this request would assist in growing the tax base.

John Huffman, 2321 East 9<sup>th</sup> Street, The Dalles, Oregon, advised the Planning Commission that he had been working with Dan Durow and Scott Green on the Riverfront Trail expansion where seasonal use of the trail would be expanded a month or so on either end of the season for Parks and Open Space usage. He suggested that these efforts could be considered a different and viable resolution regarding the "no net loss" of parks land.

#### **Opponents**

None

Acting Chair Whitehouse closed the public hearing at 6:20 PM.

### **DELIBERATION:**

Commissioner Whitehouse said he felt the request was an easy decision, Zukin agreed. Zukin said it was logical, and it would benefit the City. Regarding acquiring additional Parks and Open Space, Zukin said he felt it should not be considered as part of this decision. However, he said the Commission might want to encourage the County to look at other available property that could be used.

It was moved by Zukin and seconded by Nelson to recommend approval to City Council of ZOA 86-14 and CPA 41-14, Angelo Planning Group on behalf of Wasco County, based upon the findings of fact and criteria as set forth in staff's report. After further discussion the motion was approved unanimously; Lavier and Stiles absent.

## **QUASI-JUDICIAL HEARINGS:**

**A. Application Number: APL 28-14; Randolph Hager; Request:** Appeal of a land use decision dated March 17, 2014, regarding minor partition application #MIP 311-14. Property is located at 2804 E. 10<sup>th</sup> Street, The Dalles, Oregon, and further described as 1N 13E 1C tax lot 500. Property is zoned "RH" – Residential High Density District.

Acting Chair Whitehouse read the public hearing rules and asked if the Commissioners had any ex-parte contact, bias, or conflict of interest that would hinder them from making an impartial decision. None were noted. There were no challenges of the qualifications of the Planning Commissioners from the audience.

Acting Chair Whitehouse opened the public hearing at 6:29 PM.

Director Gassman said there were no written comments submitted by notified parties, and he presented a history of the parcel and the subsequent minor partition of the subject parcel. In summary, Gassman said, the accessory dwelling unit (ADU) now met the requirements for a stand-alone single family dwelling unit and, therefore, system development charges (SDCs) were now required. He recommended approval of the appeal so that two conditions of approval in the original approval could be changed: 1) Condition of Approval #5, regarding a secondary access, Gassman proposed adding the words "at this time." He said Mr. Hager was concerned he would never be allowed to have a second access point off of East 10<sup>th</sup> Street. Gassman indicated that Mr. Hager never previously asked for a second access point, but he could in the future with the proposed word change; and 2) Condition of Approval #7, regarding the 10 foot public utility easement, Gassman reported that he received confirmation from North Wasco County Public Utility District that they did not need the easement on Mr. Hager's side of East 10<sup>th</sup> Street, and the City would be willing to delete this Condition of Approval.

Director Gassman explained that the appellant did not wish to pay the service development charges, and he did not want to be annexed into the City. Gassman said annexation was a standard City policy, and the City opposed changes to those two Conditions of Approval. He said Mr. Hager was only being charged for one lot, the new single family dwelling unit. Gassman said the parcel was adjacent to City limits.

### **Testimony:**

#### **Proponents**

Randolph G. Hager, 2804 East 10<sup>th</sup> Street, The Dalles, Oregon, stated Conditions of Approval numbers 1, 2, 4 and 6 of the Notice of Decision for application #MIP 311-14 were fulfilled. Regarding Condition #3, Mr. Hager said there were no annexation requirements specific to partitions, nor would it benefit the City for tax lots located by cherry orchards. His property taxes would increase on the two lots, but would fail to provide any additional services. Mr. Hager pointed out that the LUDO language in Section 9.020.020 stated that the City "may" require annexation." He felt the word "may" was significant. There were no immediate plans to develop services in his area on East 10<sup>th</sup> Street until the City had funds available for street maintenance and improvements, he stated. Regarding Conditions of Approval #4 and #5, Mr. Hager stated that he had previous conversations with the Planning Director prior to the development of the ADU and was told he could only have one access point off of East 10<sup>th</sup> Street. Regarding Condition of Approval #7, Mr. Hager stated that no easement was needed by Wasco County Public Utilities District. Mr. Hager indicated Condition of Approval #8 would be addressed by another audience participant. He said the minor partition did not change the usage of the ADU, and the assessment must have had to be a valid assessment at the time of its construction and could not be a delayed assessment in consideration of the fact that no initial assessment was ever made. In conclusion, Mr. Hager said his understanding of SDCs were that they were required upon the issuance of a building permit. The building permit for the ADU did not require SDCs, and they, therefore, could not be required retroactively.

Jim Wilcox, 416 West 7<sup>th</sup> Street, The Dalles, Oregon, stated that, as former Mayor, there were four separate decisions by City Council over the years where it was determined that a building permit would trigger SDCs, because drawing lines on a map does not change things. Mr. Wilcox said there was no logic in charging SDCs

retroactively. In regards to an additional access point, he encouraged the Commissioners to add it as a Condition of Approval now.

Commissioner Zukin asked Mr. Wilcox if there was intent to circumvent the process. Mr. Wilcox said he would not judge people's intent, and in Mr. Hager's case, circumstances changed. Zukin said this could be a loop hole in the code.

Mr. Hager concluded by presenting a history of the property development and subsequent minor partition. Commissioner Zukin said it was evident by Mr. Hager's testimony that there was probably no intent to circumvent the process. Mr. Hager explained it was more a matter of time issues and rising costs.

Taner Elliott, 397 Summit Ridge Drive, The Dalles, Oregon, reiterated that this was a standard line in the dirt. He said that if the Commission followed the standard House Bill procedure, there was not much to be said. Mr. Elliott stated that charging SDCs did not sound right.

### Opponents

None

Zukin asked what the financial impact would be for annexation and additional system development charges. Director Gassman said it would not be possible to calculate, because he did not know the property's assessed value. But, he said, the cost would be significant. Gassman also advised that the LUDO allowed the City to require annexation, and it had been the standard policy to require annexation at the time of property development. Mr. Hager said there was no development at this time. It appeared the only desire for annexation was to increase his property taxes \$1,200-1,500 a year.

Acting Chair Whitehouse closed the public hearing at 7:16 PM.

Director Gassman pointed out that he disagreed with several statements he heard during testimony that the minor partition did not change the status or use of the property. He said two things would change. If the smaller structure was not considered an ADU, it could be expanded. Also, he said, the ADU, by its hybrid nature, had special requirements, one of which was that the owner must live in either the main structure or in the ADU. Currently, Mr. Hager lived in the ADU. But if the structure was not considered an ADU, the property owner could rent out both units. Therefore, Gassman stated, he considered those changes as significant changes in the status of the structure.

City Attorney Parker disagreed with Mr. Wilcox's statements regarding the City Council's decision on SDCs in regards to House Bill 3479. System development charges were not discussed as part of that house bill, as Mr. Wilcox indicated, and the City Council did not determine that SDC's would not be required to be paid. The Council's discussion on minor partitions focused on the street improvement requirements.

Commissioner Nelson commented that no matter which way Mr. Hager entered into this endeavor, the end result was that there were two parcels that could be sold, and structures that could be added onto and developed. He said if the Commission now relieved Mr. Hager of SDC charges, he would have an advantage in that he would have a structure without having to pay the normal fees and comply with the law. Commissioner Zukin agreed. He said it was not a matter of circumvention, but a matter of timing that the development still occurred. There were now two single family units, and it did not seem fair not to charge. Zukin said he had mixed feelings on annexation. Even though it was a City policy, code used the word "may." Mr. Hager said if his property was annexed, it would be an island annexation, the only parcel on the south side of East 10<sup>th</sup> in his area. Commissioner Poppoff said he felt the annexation requirement should be deleted.

It was moved by Zukin and seconded by Poppoff to approve APL 28-14 as follows: 1) include Conditions of Approval 1 & 2 as listed in staff's report; 2) eliminate Condition of Approval #3 requiring the Consent to

Annex; 3) include Condition of Approval #4 as listed in staff's report; 4) amend Condition of Approval #5 to read, "a new access point may be allowed on East 10<sup>th</sup> Street at this time with the approval of appropriate documents"; 5) include Condition of Approval #6 as listed in staff's report; 6) eliminate Condition of Approval #7; and 7) include Condition of Approval #8 as listed in staff's report. The motion carried unanimously; Lavier and Stiles absent.

**B. Application Number: APL 27-14; Elk Horn Development, LLC; Request:** Appeal of a land use decision dated March 25, 2014, regarding minor partition application #MIP 312-14. Property is located at 1611 Thompson Street, The Dalles, Oregon, and is further described as 1N 13E 11 AB tax lot 900. Property is zoned "RL"- Residential Low Density District.

Acting Chair Whitehouse asked if the Commissioners had any ex-parte contact, conflict of interest or bias that would hinder them from making an impartial decision. Nelson said he was involved in the pre-application meeting a long time ago, but he was not on the Planning Commission at the time. City Attorney Parker asked Nelson if he believed such contact would affect his ability to be unbiased. Nelson said it would not. Acting Chair Whitehouse asked if any audience members wished to challenge the qualifications of any of the Commissioners. None were noted.

Acting Chair Whitehouse opened the public hearing at 7:34 PM.

Director Gassman stated no written comments were received. Staff recommended approval since they would be recommending a different set of Conditions of Approval for the application decision. Gassman gave a history of the parcel development. He noted that there was a significant change to Condition of Approval #7 regarding a Delayed Development Agreement (DDA) requirement. Gassman said once the applicant changed application from a subdivision to a minor partition, the City agreed to drop the other DDAs for the other lots, but would require a DDA for the lot with the house on it. Zukin asked if the DDA was not required earlier because it was a subdivision at the time. Gassman said staff had been attempting to work with the applicant, but circumstances got complicated.

### Testimony

#### Proponents

Tanner Elliott, 397 Summit Ridge Drive, and Alex Hattenhauer, 122 West 17<sup>th</sup> Street, The Dalles, Oregon, stated that the real options on Thompson Street and residential infill improvements are twofold: 1) forming a Local Improvement District (LID); or 2) the City would take the responsibility neglecting Thompson Street, of which neither options would probably not ever happen. He said he had a problem with the entire case scenario of signing a DDA, because it would "handcuff" them from selling the existing house. Zukin said one solution would be to create a DDA that included a cap. Mr. Elliott responded that the Planning Department needed a true understanding of the House Bill.

#### Opponents

None

John Huffman, 2321 East 9<sup>th</sup> Street, The Dalles, Oregon presented a brief history on the formulation of House Bill 3479. He stated it seemed the City was struggling on how to implement the House Bill by coming up with other mechanisms in substitution of the Waivers of Remonstrance. He urged the City and community to come together for the sake of development.

Nelson asked Mr. Huffman if he had compared The Dalles process for development with any other city in the state in regards to fees and requirements before the House Bill was written. Nelson said he did not think The Dalles was way out of line in its process. Mr. Huffman explained that Mr. Hunicutt and others testified that The Dalles process was different than any other community, but he admitted he was not a planning expert regarding

Waivers of Remonstrance and LIDs. Zukin said it was a “spot law” that made a spot decision on one city’s ordinance. He explained that the City was working through the minor partition law at the time the House Bill was created. He disagreed with the opinion that the Waiver of Remonstrance was the same as a DDA, because a DDA could define what a property owner could anticipate. He said that if developers and the City didn’t agree to do anything down the road, and no agreement was drawn up at the time of the building permit, then it wouldn’t get done.

Zukin suggested drafting a DDA with a cap for Mr. Elliott. Both Director Gassman and City Attorney Parker indicated the City could negotiate a cap now, but they would be hesitant to do so now because it was too soon to get a sense of direction of residential infill policy revisions.

Acting Chair Whitehouse closed the public hearing at 8:09 PM.

**Deliberation**

Poppoff commented that since there was a house on the property originally and the developers simply replaced a house, it would be inappropriate to require a DDA at this point in time. Nelson asked if the DDA could be re-written to allow the terms of the DDA to be changed dependent upon the results of the residential infill policy amendments. City Attorney Parker stated the nature of Condition of Approval #7, in his opinion, showed flexibility.

Director Gassman said the reason for Condition of Approval #7 was that code requires that the construction of a dwelling unit that replaces an existing unit requires street improvements. He suggested two options for moving forward: 1) create a DDA that could be re-negotiated after City Council adopts amended residential infill policies; or 2) create a DDA that would be subject to change based upon the City Council’s determination, or where the least restrictive infill policies would apply.

After further discussion, it was moved by Zukin and seconded by Poppoff to approve APL 27-14, to include all of the Conditions of Approval, with the modification that the Planning Commission recognizes that a DDA will be negotiated, and if the appellant is not willing to come to a resolution within 60 days, the appellant may come before the Planning Commission at such time. The motion carried unanimously; Lavier and Stiles absent.

**RESOLUTION:**

It was moved by Zukin and seconded by Nelson to adopt P.C. Resolution 539-14, regarding ZOA 86-14 and CPA 41-I4, as submitted. The motion carried unanimously; Lavier and Stiles absent.

**STAFF COMMENTS:**

Director Gassman said that the resolutions for the two appeals would be presented at the next meeting.

Gassman advised that the City Council would be conducting a work session on June 30, and the Planning Commissioners were welcome to attend. A review of the City Council’s work session would be the agenda item for the Planning Commission’s July 17 meeting, he said.

**COMMISSIONER COMMENTS:**

Commissioner Nelson asked if staff would look at potential Parks and Open Space areas owned by the County. Director Gassman said staff would discuss Poppoff’s suggestion with the County.

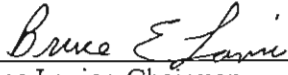
**NEXT MEETING:**

July 3, 2014

**ADJOURNMENT:**

Acting Chair Whitehouse adjourned the meeting at 8:47 PM.

Respectfully submitted by Administrative Secretary Carole Trautman



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Bruce Lavier, Chairman