



PLANNING COMMISSION REGULAR SESSION MINUTES ~ APPROVED
THURSDAY, AUGUST 27, 2015 AT 6:00 PM
City Hall ~ 82877 Spruce St., Westlake, OR 97493

The proceedings of the Dunes City Planning Commission were recorded and are on file at Dunes City Hall. Upon approval by the Planning Commission, these minutes will be available online at www.dunescity.com.

1. CALL TO ORDER

The August 27th Planning Commission Regular Session was called to order by Vice Chairman Ken Henderson at 6:00 pm.

2. ROLL CALL

Roll Call was taken by Administrative Assistant Rapunzel Oberholtzer.

Present: Vice Chairman Ken Henderson, Commissioner Norman Martin and Commissioner Bonnie Allen. (As of October 3rd, 2014, there is one vacancy.)

Absent and Excused: Chairman Paul Gargis.

Others Present: Administrative Assistant Rapunzel Oberholtzer, Administrative Assistant Renee Green, LCOG City Planner Jacob Callister, LCOG staff attorney Gary Darnielle, Dunes City resident Richard Strongegger, and several other citizens.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Commissioner Allen made a motion to approve the Agenda. Commissioner Martin seconded the motion. The motion passed by unanimous vote.

5. APPROVAL OF THE CONSENT AGENDA

A. Planning Commission Regular Session Meeting Minutes of July 23, 2015

Commissioner Allen made a motion to accept the Consent Agenda as presented without further discussion. Commissioner Martin seconded the motion. The motion passed by unanimous vote.

6. ANNOUNCEMENTS /CORRESPONDENCE

Administrative Assistant Rapunzel announced that the City is moving forward with the proposed new septic system maintenance ordinance and submitted the required Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation to DLCDC on August 18. The Planning Commission will hold the first evidentiary hearing on the proposed ordinance during its regular meeting beginning at 6:00 pm on October 22.

Vice Chairman Henderson asked if there were any applicants for the Planning Commission vacancy. To date, there have been no applications submitted to the City.

7. CITIZEN INPUT – None

8. PUBLIC HEARING

A. Conditional Use Permit Application from Richard Stronegger

Vice Chairman Henderson read from the prepared script for Planning Commission public hearings.

“This evening we have a public hearing on a request for a Conditional Use Permit for a parking pad and covering located at 82868 Lake Boulevard in Dunes City as applied for by Richard Stronegger.

“These proceedings will be recorded.

“This hearing will be held in accordance with the land use procedures required by the City and the State of Oregon. This is a Type III Quasi-Judicial Procedure.

“Staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the Planning Commission must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria which you believe applies to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City and parties involved an opportunity to respond to the issue would preclude an appeal based on that issue.

“Any party interested in a land use matter may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Commissioner’s bias, prejudgment, conflict of interest, or other facts from which the party has concluded that the Commissioner will not make a decision in an impartial manner.”

Vice Chairman Henderson asked if any Commissioner wished to declare a conflict of interest, bias or ex-parte contact. Commissioners Martin and Allen did not.

Vice Chairman Henderson asked if any member of the public wished to challenge a Commissioner's impartiality. No one did.

Vice Chairman Henderson opened the hearing for the Conditional Use Permit at 6:09 pm and asked for the Staff Report.

Jacob Callister, the Dunes City Planner from LCOG, introduced himself and Gary Darnielle, a member of LCOG's legal staff. Mr. Callister explained that this particular application has a somewhat complicated history and the Staff Report weighs the facts against the criteria.

Mr. Callister read key highlights of the application's history from the Staff Report, noting that pictures of the structure and surrounding area were included in the Exhibits for the Staff Report. "In October of 2012 the City contacted Mr. Stronegger regarding an unpermitted structure on his property. The structure was (clearly and undisputedly) located within the Riparian Overlay Zone and the Shoreland portion of the Open Space Overlay Zone. The structure's sensitivity is primarily related to the further grading and hardening of an area that was already impacted." Mr. Callister pointed out that before the structure was built, the area was used for storage which had some impact on the land.

Mr. Callister went on to read, "On November 6th, 2012, the City received an application for a Conditional Use Permit from Mr. Stronegger." He explained that initially the City viewed the Conditional Use Permit application process as a potential mechanism for legitimizing the structure. He went on to note that the materials required for the application were not received from the applicant and the application lapsed after 180 days.

Mr. Callister explained that in September of 2013 Mr. Stronegger submitted a Conditional Use Permit application and the required supporting material, but the structure had already been completed. The structure is a 17-foot wide by 31-foot deep, by 16-foot high building set back from the existing paved road by about 48 feet and is 10 to 15 feet from the shore of the Siltcoos River. He went on to note that the Planning Commission held a public hearing in October of 2013 to hear evidence and testimony and concluded to recommend denial of the application to the Dunes City Council. When the Council met in November, it passed a motion to deny the application based on its failure to meet the City Code variance criteria. Mr. Callister explained that this was a unique situation because there is a component of the conditional use that links to the variance; the conditional use doesn't require a variance but requires consistency with variance criteria. He went on to note that, with the denial of the application, the City pursued enforcement against Mr. Stronegger in the form of a letter informing him that he was to remove the structure or face the possibility of a fine.

Mr. Callister went on to explain that in the Spring of this year Mr. Stronegger re-applied for a Conditional Use Permit, as is allowed by Dunes City Code. He clarified that the original application process in 2013 was fully completed and this application is new, starting the process again. He also explained that while it is not a common occurrence it is not so very unusual for people to apply for permits after a structure has been built in an

attempt to legitimize the building and it is germane to this issue. He added that this meeting was unique in that not only is there a permit application for a structure that is already built, but also this is the second application for a permit for the building. In this situation, he noted, the City is in a problem solving mode trying to determine what to do about an unpermitted structure.

Mr. Callister referred to the “Action Memo” he prepared for the Commissioners, noting that there are four possible actions, or variations thereof, that the Commission should take after discussion of the permit application. He pointed out the key decision criteria outlined in the Memo, noting that these criteria were also included in the Staff Report. Referring to the “water-related use” criterion, he explained that the only way to go forward with a Conditional Use Permit on this site is based on the provisions in the Riparian Overlay Zone Code which state that uses or structures that are water-related are conditionally allowed. He went on to read from the Memo:

“Water-related uses are not defined in the Dunes City Code. Without context for precedence, staff has applied a broad definition of the term. This (staff’s) definition assumes that there is a notable relationship between the parking pad/structure and the water (Siltcoos River). This broad interpretation identifies the staircase between the parking area and the water, as well as the very proximity of the boat house to the parking area as potential compliance with the criteria. Staff noted that ‘water-related’ and ‘water-dependent’ uses are distinguished (in the Code) though only in name. In the Final Order for CUP 01-13 in 2013, the Dunes City City Council found that:

“Despite the Planning Commission’s finding, the City Council finds that the term ‘water-related’ lacks adequate definition in the Dunes City code to make a definitive finding.”

Mr. Callister pointed out that although both the Planning Commission and the City Council denied the application in 2013, the City Council noted that the City needed to clarify in its Code “water-related” and “water-dependent” definitions.

There was a brief discussion about Mr. Stronegger’s intended use of the structure in question. It was noted that storing a motor home is not water-related but the existing boat dock and path to the river are clearly water-related and a boat house and boat dock are allowed in the Shoreland area. Mr. Callister proceeded to read aloud the Statewide Planning Goals definition for water-related: *Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.* He went on to remind the Commissioners that the Planning Commission’s conclusion from the previous CUP application was that the building was not water-related, but the City Council did not rely on the water-related issue because the term is

not defined in Dunes City Code. Instead, the Council relied on the fact that the use did not meet the requirements for a variance.

Mr. Callister read aloud the Variance Criteria from the Memo:

“Though the applicant has not applied for a variance, compliance with variance criteria is specifically required for approval of this CUP. Key variance criteria are located in Section 155.5.1.1 (of Dunes City Code) and are evaluated primarily on pages 4 through 6 of the staff report. In essence, the criteria call for: substantiation of the uniqueness of the proposal with regard to unnecessary hardship, evidence that the requirements are extraordinary within the context of the site (and would deny the applicant of privileges legally enjoyed by comparable property owners) and are evidence that the use is not detrimental to public health, safety, or welfare. Additionally, variance criteria requires evidence that the unique circumstances are not the result of the actions of the applicant. Staff have developed findings which support compliance with these criteria. The Planning Commission can determine otherwise citing additional facts or insights.”

Mr. Callister went on to read aloud the Other Key Considerations contained in the Memo, noting that they were important considerations for this particular application:

“In November of 2013, the Dunes City Council met and passed a motion to deny the applicant’s request for a Conditional Use Permit for the (same) structure. Enforcement following the decision was complicated by a number of factors, including the complexity and impacts surrounding the removal of the structure. This included consideration for the relative benefit of removal (given the necessary impacts to areas within the Riparian and Shoreland Overlay Zones which could lead to a scenario potential [sic] worse than pre-construction conditions). Mitigation and restoration is also complicated given the uncertainty of the condition history of the site.

*“Upon receiving a second application for Conditional Use Permit from Mr. Stronegger, and by way of problem solving, staff contemplated the possibility of a conditional use permit approval to remedy the non-compliance situation. To ensure an adequate consequence for Mr. Stronegger’s process violation, and to enforce the code violation, which has been effect since the structure was built, City staff have proposed an enforcement fine. The current \$7,500 figure (included in the staff report) is not (currently) tied to any specific calculation but is a figure less than what the City has determined it can justifiably levy through its enforcement code. If the application is recommended for approval, **the Planning Commission should consider and provide a fine recommendation to the City Council based on testimony and deliberation. The recommended fine amount may be more or less than \$7,500.**”*

Discussing the amount of the fine, Mr. Callister noted that the \$7,500 amount was an arbitrary figure intended in part to convey the message that proper City and permit processes must be followed by all residents. The fine could potentially be much larger, but that would be unrealistic. He went on to note that the fine could be considered a way for the

City to recoup most, if not all, of its expenses related to this ongoing situation as well as a penalty on Mr. Stronegger.

Mr. Darnielle urged the Commission to divorce itself from the penalty issue as it relates to the CUP application decision, noting that the CUP process does not allow for payment of a penalty to be a condition for approval of the application—the fine is separate from the permit application and is part of the infractions process. The application decision must be based solely on whether or not the use complies with the zoning and variance criteria set out in City Code. He went on to urge the Commission to make sure that the penalty, if the Commission agrees to recommend one to the City Council, is not an arbitrary dollar amount but is, instead, specifically part punitive penalty and part cost recovery. He noted that the Planning Commission does not have the authority to levy the penalty because the penalty is not a land use decision; the City Council would make the decision about any penalty for infraction of City Code.

There was some discussion about the effect on the property if the CUP issue is not resolved and Mr. Stronegger decided to sell it. Mr. Darnielle explained that if the infraction is not resolved, the new property owner would inherit it and be required to cure it.

There was some discussion about the amount of money Mr. Stronegger has spent over the course of both CUP applications. Administrative Assistant Renee Green explained that the cost for applying for a CUP is \$600, which applies to the cost for the City Planner's time and City Staff time and expense to review and process the application. If the time and expense runs over \$600, the applicant is billed for any additional costs. Mr. Darnielle pointed out that Mr. Stronegger could not be charged for those expenses again as part of a potential fine—he could only be charged for City Staff time spent to address or remedy the infraction.

Vice Chairman Henderson raised a question about what would happen if Mr. Stronegger decided to sell his property without resolving the infraction issue—would there be a lien on the property before it changed hands. Mr. Darnielle explained that City Code did not allow that much authority. He went on to note that the City would first have to complete the infraction process before placing a lien on the property and the lien would have to be satisfied prior to the completion of the property sale. He also explained that if the City filed a lien on the property, the lien would appear on the County's property file and would be apparent to any prospective buyer but if the City did not file a lien, there would be no record of an infraction in the County's property file and a buyer could complete the purchase without knowing about an infraction.

Mr. Callister pointed out that the discussions illustrated the complexity of the issue at hand. He noted that Staff believes the best case scenario to be one with a fine for building without a permit but the CUP is approved to legitimize the unpermitted structure. He went on to note that this situation is an example of development that should never have taken place in the Riparian Zone, but it did and the Planning Commission is faced with finding a path forward that sets an example for future City development. He also noted

that Staff strongly believes that removal of the structure and restoration of the site will create far more damage in the Riparian Zone than leaving the structure in place.

Referring to the Staff Report and Findings of Fact, Mr. Callister pointed out that, in light of previous discussion, he would recommend deleting Condition of Approval No. 4: *“Approval of the Conditional Use Permit (CUP-01-15) shall be contingent upon receipt by the City of Dunes City of \$7,500 from the applicant for code violations (as outlined in a letter from Dunes City to the applicant dated July 23, 2014 – Exhibit D). Failure to pay the fine will invalidate the Conditional Use Permit and subject the owner to potential additional ongoing fines.”*

Mr. Callister reviewed the first three Conditions of Approval in the Staff Report and Findings of Fact. He pointed out that Condition No. 1 is a standard Lane County requirement that stormwater runoff from private property shall not be directed to the Lane County road right-of-way or any County drainage ditches.

Mr. Callister read Condition No. 2. *“A building permit must be applied for and obtained for the existing boat/RV storage structure. The applicant has not provided detailed plans for site and structure. The approved building permit (and accompanying plans) will serve as the Site Plan. The applicant shall propose an acceptable pollution reduction facility that will treat all stormwater runoff from any new or replaced impervious surface area, or an equivalent on-site area, that will result from a 5-year design storm of 4.11 inches. If the stormwater runoff (pollution reduction) requirements are met, this conditional use approval will serve as a land use compatibility statement for the building permit. The City’s Engineer must approve the pollution reduction facility. Failure to obtain a building permit will invalidate this Conditional Use Permit.”* He went on to explain that the City’s Engineer, Tom Hart, was consulted on this issue and noted that, currently, the City only has a draft stormwater runoff plan but a runoff mitigation plan from the applicant would be required in order to protect the Riparian Zone and meet land use compatibility requirements.

Mr. Callister read Condition No. 3. *“Conditional Use is granted for the grading of the site and the boat/RV storage structure as a “water-related” use within the Shoreland portion of the Open Space Overlay Zone. Any substantive changes to the use or structure will require an application to modify this Conditional Use Permit.”* There was some discussion about the validity of the CUP if the applicant at some point in the future used the structure for storing something other than a boat or RV. Mr. Darnielle pointed out that by clearly defining the use for which the building is intended, the City has some ability to monitor and enforce the use. Vice Chairman Henderson noted that Dunes City Code plainly defines the kinds of structures that are permitted in the Shoreland Zone. He went on to note that people should not think that they can do this kind of thing and not be penalized. He pointed out that protecting the City’s drinking water sources is a paramount issue for the City. He did not agree that “the building should be a monument to what not to do” in the City, but he thought the building and preparation of the site seemed to have adequately stabilized that portion of the riverbank.

Mr. Callister closed discussion of the Staff Report, noting that there was no discussion of the variance criteria in detail.

Vice Chairman Henderson recognized Mr. Richard Stronegger. Mr. Stronegger explained that he cleared the area where his building is of old car parts and various debris left by the previous owner and, historically, the area had been used for parking. He also described how he reinforced an old retaining wall that appeared at the time to be failing, planted trees and shrubs, and since building his pole barn the hillside and the river bank seem to have been stabilized. He went on to acknowledge that when he began building on the site he received bad information and advice from a former City official, and he ignored a City stop work order but he wants to make things right. He explained that he has no intention of selling the property, that he would very much like to keep the structure on it and that he would not be opposed to paying a fine, as long as it was reasonable. He went on to say that as soon as he received the City Recorder's letter notifying him of a potential fine in the amount of \$1,000 per day he telephoned City Hall, spoke to the City Recorder and was told not to worry about it, the letter was a formality. He ended his remarks by admitting he was wrong to continue building when he was told to stop and he hopes no one else follows that example, but he would like to work out a mutually agreeable resolution to the issue. He also reiterated that his work on the area has stabilized the river bank. He noted that the road in front of his property is not 50 feet from the river bank, people park on the side of the road next to the river, and no one has complained about the building.

Commissioner Allen noted that this issue was complex but that she had two key complaints: 1) Mr. Stronegger continued to work on the building after he was told to stop, and 2) the Riparian Zone and water is sacred to City residents and to learn that the structure will house mobile homes is offensive. Mr. Stronegger asked Commissioner Allen what she considered to be a mobile home. Commissioner Allen said, "Anything that is not a boat." Mr. Stronegger pointed out that he stored his motor home in the building on one occasion to date, but boats add more pollution in lakes than a parked motor home does on shore.

Vice Chairman Henderson asked if there was anyone present to speak in favor of the project. There was no one present to do so.

Vice Chairman Henderson requested testimony from anyone opposed to the project. There was none.

Vice Chairman Henderson asked if any of the Commissioners had questions for Staff. Commissioner Allen asked if there was a time urgency for the Planning Commission to make a decision. Mr. Callister noted that there was a timing issue and explained that in the case of land use quasi-judicial decisions, a decision must be rendered by the City Council no later than 120 days after an application has been deemed complete. In this case, he went on, the deadline for the Council's decision is approaching and the timeframe must also allow for a period of days during which an appeal of the decision may be made.

Vice Chairman Henderson asked whether this new CUP application was effectively an appeal of the denial of the 2013 application. Mr. Darnielle explained that it was not, this is a new application. He also noted that the 120 day period ends with the Council's adoption of the written Findings unless there is an internal appeal process, which he did not think there was.

Mr. Stronegger asked if he could go back to using the lot on which the building is located for parking if he removed the building. He remarked that he was trying to understand the difference between parking inside the building and parking on the lot without the building on it. Mr. Darnielle explained that if the area has historically been used for parking in the past it is possible that use has been grandfathered. Mr. Callister pointed out that the parking issue is part of the complexity of the matter, noting that the idea of removing the building and having lush riparian there afterward is somewhat naïve and the City may not be able to enforce a no parking restriction, given historical use of the area for parking.

Mr. Callister turned discussion back to Condition No. 3 in the Staff Report and Findings of Fact, noting that if the Commission explicitly identified the current use now it would be easier going forward to quantify "any substantive changes" that might trigger the need for an application to modify the Conditional Use Permit. There was some discussion about revising the Condition, during which Mr. Stronegger noted that he has boat trailers, car hauling trailers and, on occasion, might park an RV in the building for a day or two and Vice Chairman Henderson and Commissioner Allen voiced concern about the actual "water-related" use and location of the building.

Vice Chairman Henderson asked if any Commissioners had other questions for the applicant. None did. Vice Chairman Henderson closed the Public Hearing at 7:27 pm and called for a break in the meeting. He reconvened the Regular Session meeting at 7:35 pm.

9. NEW BUSINESS

A. Deliberation and Decision: Stronegger Conditional Use Permit

Vice Chairman Henderson asked the Commissioners if they had any further discussion of this matter. Mr. Callister pointed out that during the Public Hearing, the Commissioners agreed to remove Condition No. 4 regarding a penalty from the Staff Report and Findings of Fact.

Commissioner Allen made a motion to remove Item 4 "Approval of the Conditional Use Permit shall be contingent upon receipt" of a monetary amount for violation, remove Item 4 being considered by the Planning Commission and, instead, refer it to Staff and the City Planner to provide guidance on an appropriate methodology for constructing a fine if we found it to be appropriate. Mr. Callister clarified the intent of the motion, noting that Staff would develop a fine amount, using a methodology, for a recommendation to the City Council.

Commissioner Martin seconded the motion. The motion passed by unanimous vote.

Commissioners briefly discussed the possible actions by the Planning Commission as outlined in Staff's Action Memo. They went on to review the Conditions of Approval presented in the Staff Report. Commissioner Allen remarked on Condition No. 3, saying that she did not believe the intended use is water-related. After further discussion it was agreed to revise Condition No. 3 to read, "Conditional Use is granted for the grading of the site and boat and boat trailer storage structure within the Shoreland portion of the Open Space Overlay Zone. Any substantive changes to the use or structure will require an application to modify this Conditional Use Permit."

Vice Chairman Henderson asked for discussion about action Item C, "Recommend denial of the Conditional Use Permit based on findings identified by the Commission through additional facts or insights. (Findings will need to be revised.)" Mr. Callister explained that the Staff Report and Findings of Fact would be revised to reflect the Planning Commission's determination that the criteria are not met for either a conditional use or a variance. He noted that the City would still need to address the complex enforcement issues and added that another consideration is whether or not the building affects the neighborhood but the building has been in place for two years without any complaints from neighbors. Mr. Darnielle pointed out that if the Commission finds the building's use is not water-related, the application does not meet that criterion and the application cannot go forward.

Commissioner Allen remarked that she understood the complexity of the issues with the building having been in place for some time and the possible injurious action to the Riparian Area and river if the building is removed. She recommended denial of the Conditional Use Permit on the basis that the structure is not water-related. Vice Chairman Henderson noted that the Planning Commission is tasked with deliberating on an issue that was a mistake; the applicant is seeking to legitimize the building and pay a fine rather than remove the building. Mr. Darnielle explained that the Commission is charged with applying the criteria in City Code to determine whether or not a building should be placed on the property; the fact that the building is already there complicates the matter. He went on to note that the Planning Commission could stretch the interpretation of water-related to approve the permit, or not. Mr. Callister reminded the Commissioners that the City Council denied the 2013 CUP application based on the fact that the term "water-related" was not adequately defined in City Code to make a ruling on that use. Mr. Darnielle explained possible actions the City Council could take, including action on the Code violation and noted that for the Commission to deny an application it would need to find that one of the approval criteria has not been met, to approve it the Commission must find that all of the criteria have been met. He went on to note that even though City Code does not currently define "water-related" the Planning Commission could interpret the term based on language that has not been adopted yet, based on Statewide Planning Goals definitions, or the Commission's opinion of what it thinks water-related uses are.

Commissioner Allen made a motion to recommend denial of the Conditional Use Permit based on the fact that the structure is not water-related. Commissioner Martin seconded the motion.

Vice Chairman Henderson requested a roll call vote on the motion. Commissioner Allen and Commissioner Martin both voted in favor of the motion.

10. ADJOURNMENT

Commissioner Allen made a motion to adjourn. Commissioner Martin seconded the motion. No vote was taken.

Vice Chairman Henderson adjourned the Planning Commission meeting 8:02 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 24th DAY OF SEPTEMBER 2015.

[Signed copy available at City Hall]

Ken Henderson, Planning Commission Vice Chairman

ATTEST:

[Signed copy available at City Hall]

Rapunzel Oberholtzer, Administrative Assistant