



PLANNING COMMISSION REGULAR SESSION MINUTES~APPROVED
THURSDAY, OCTOBER 24, 2013 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 Planning Commission meeting was called to order by Chairman George Burke at 6:01 pm.

2. ROLL CALL

Roll Call was taken by City Administrator Fred Hilden.

Present: Chairman George Burke, Commissioner Darlene Beckman, Commissioner Ken Henderson, Commissioner Paul Gargis, and Commissioner Norman Martin.

Others Present: City Administrator Fred Hilden, Administrative Assistant Rapunzel Oberholtzer, LCOG Contract Planner Jacob Callister, and citizen Richard Stronegger.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Commissioner Henderson made a motion to approve the Agenda. Commissioner Gargis seconded the motion. The motion passed by unanimous vote.

5. ANNOUNCEMENTS / CORRESPONDENCE

City Administrator Hilden reminded the Commissioners that there was a Planning Commission Special Session meeting scheduled for November 7th at 2:00 pm to continue review of Soil Erosion and Storm Water Management guidelines from the City Engineer.

Mr. Hilden noted that he met with Mayor Ruede and City Councilor Maurice Sanders and scheduled a Budget Committee meeting for November 7th at 4:00 pm, which meant that the Planning Commission Special Session also scheduled for that date would be shortened to accommodate both meetings.

6. CITIZEN INPUT – None

7. PUBLIC HEARING

A. Conditional Use Permit Application – Richard Strongegger, parking pad and covering at 82868 Lake Blvd (Map/Tax Lot 19-12-34-21-05200)

Chairman Burke stated that there is a public hearing this evening 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 Strongegger. 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 the parties involved an opportunity to respond to the issue would preclude an appeal based on that issue.

Any party interested in this 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.

Such challenges shall be made prior to the commencement of the public hearing. The Chairperson shall give the challenged member an opportunity to respond. A motion to accept or deny the challenge will be accepted and voted. Such challenges shall be incorporated into the record of the hearing.

Does any member of the public wish to challenge a Commissioner's impartiality? There were no challenges from the public.

Does any Commissioner wish to declare a conflict of interest, bias or ex parte contact? Chairman Burke declared that he had talks with all of the Commissioners regarding whether they had received their information and if there was enough information to make a vote tonight. Commissioner Beckman declared that her family owned property adjacent to Mr. Strongegger's and that they met approximately six months ago to discuss tree removal on their properties, at which time Mr. Strongegger mentioned that he had a stop work order on the building of his pole barn but there was no other discussion.

Chairman Burke opened the public hearing for the Conditional Use Permit at 6:08 pm and requested the staff report from Mr. Callister.

The October 24, 2013 Staff Report and Findings of Fact is attached as Exhibit A.

Mr. Callister began his discussion by noting that the Conditional Use Permit (CUP) application came as a result of land being used for a parking pad with a covering that is situated within the 50-foot setback of two Overlay Zoning Districts, the Open

Space Overlay Zone (Shorelands) and the Riparian Overlay Zone. He also noted that the conditional use is contingent upon the structure being identified as water-related.

Chairman Burke interrupted Mr. Callister to say that he wished to add comments to his original declaration and went on to say that it was he who noticed that work on the building did not have a permit and notified the City. Chairman Burke asked whether or not, given his additional declaration, any member of the public wished to challenge his impartiality. There were no challenges from the public.

Mr. Callister continued by noting that the staff report contains variance criteria required for this conditional use but that a variance application was not necessary in this case. He explained that the Dunes City ordinance applicable here requires that water-related structures located within the Shoreland Open Space Overlay Zone must be water-related structures *and* meet variance criteria. He also noted that variance criteria are subjective and should be determined by considering context, local history and insights.

Mr. Callister began his review of the staff report by noting that there are two key terms to consider: water-related and water-dependent, neither of them defined in Dunes City code. In this instance, staff determined that this structure, which is presented as RV and boat storage, could be defined as a water-related conditional use under Open Space Overlay Zone (Shorelands) Section 155.2.3.300 (B)(2) “Other water-related structures, which can meet variance criteria and underlying, zone limitations” due to a) the access that exists between the boat house, parking pad and the water, and b) the proximity of the parking pad to the water.

Discussing the Riparian Overlay Zone criteria, Mr. Callister referenced Section 155.2.6.500 (C)(3) regarding water-dependent and water-related uses, and noted that staff finding is that the use of the parking pad and access to the boat house is presented as water-related, but if the structure was not determined to be water-related then the variance criteria could not be met.

Going back to discuss the variance requirements under Open Space Overlay Zone (Shorelands), Mr. Callister reviewed the following applicable criteria in Section 155.5.1.1 Requirements for Variances and staff findings for each:

- (B)(1)(a) “A strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of this Section.” Mr Callister noted that staff finds, given the information that has been presented, strict enforcement could result in a hardship for Mr. Strongegger who could be required to remove his existing structure and retaining wall and, further, that full restoration of the site could be difficult.

- (B)(1)(b) “There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, which do not apply generally to other properties in the same zoning district.” Mr. Callister noted that staff found that given the terrain there is no other practical location for a boat storage facility.
- (B)(1)(c) “A strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by owners of other properties classified in the same zoning district.” Mr. Callister stated that staff’s finding was similar to its finding for (b) in that there is no other practical location for a storage facility, which many other property owners in the area have.
- (B)(1)(d) “The granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.” Mr. Callister noted that staff relies heavily on public comment about issues that have been noticed, and that there was no public comment in opposition to this matter; therefore, staff finding is that continued use of the structure would not be detrimental to public health, safety or welfare.

A copy of the statement from citizen Sue Dietz is attached as Exhibit B.

Mr. Callister went on to note that the last key criterion for consideration is (B)(2) which states, “Variances in accordance with this Section should not ordinarily be granted if the special circumstances upon which the applicant relies are a result of the actions of the applicant or owner or previous owner.” Based upon information provided to staff, Mr. Callister stated that staff’s finding is that Mr. Stronegger relied upon misleading information from a person he viewed as an authority and that circumstance could possibly absolve him of responsibility for building on the site.

In finalizing his review of the staff report, Mr. Callister referred Commissioners to Section V, Recommended Decision, in which staff recommends approval of the application for Conditional use subject to Conditions of Approval that specify 1) how storm water runoff is to be managed, 2) a building permit is to be obtained and plans submitted to the City, and 3) any substantive changes to the use or structure will require an application to modify the CUP. He noted also that the Planning Commission could modify, or add to these conditions recommended by staff.

City Recorder Hilden noted, for the record, that the CUP applicant has submitted engineered drawings, although they have not yet been reviewed by any City official.

Mr. Callister commented that this application was unique and complicated, and that staff made certain assumptions in defining “water-related” and arriving at its findings. He distributed and read a supplemental document prepared by staff which outlined possible action alternatives for the Planning Commission and summarized the key decision criteria the Commission must consider—staff’s broad definition and application of the term “wa-

ter-related” and a summary of the variance criteria. Possible actions by the Planning Commission include:

- a. Recommend approval of the Conditional Use Permit with specified Conditions of Approval based on the findings in the Proposed Final Order.
- b. Recommend approval of the Conditional Use Permit with modified findings and/or Conditions of Approval.
- c. Recommend denial of the Conditional Use Permit based on findings identified by the Commission through additional facts or insights. (Staff findings will need to be revised.)
- d. Continue the public hearing on the Conditional Use Permit if more information is needed.

City Administrator Hilden requested and was granted permission by Chairman Burke to recount a short history of the City’s administrative involvement in this matter. Mr. Hilden began by stating that approximately three years ago, Mr. Stronegger was in City Hall to ask Mr. Hilden, who was City Recorder at the time, what he needed to do to be able to put a pole barn at the location where the current structure is sited. Mr. Hilden explained that the City would need a building permit but, due to the location of the site in the riparian zone, he would also need a Conditional Use Permit. He also described the process for approval of permits—staff reports with findings of fact, public hearing by the Planning Commission, recommendation from Planning Commission to City Council, public hearing by the City Council, applicant’s engineered plans, etc. They also discussed various City code requirements. In October 2012, Mr. Burke notified Mr. Hilden about an unpermitted structure being built in the riparian zone and, after an inspection by Mr. Hilden and the City Building Official, a stop work order was issued. At that point Mr. Stronegger and the City began the CUP process.

Chairman Burke interrupted Mr. Hilden to ask if the stop work order had been obeyed. Mr. Hilden replied that it was but that the following day he received a telephone call from a City Councilor advising him to, essentially, ignore the issue. Mr. Hilden went on to note that, over time, he had several discussions with that Councilor about the issue, some of which were intimidating. Eventually, the Councilor resigned and moved out of Dunes City. In the meantime, work continued at the barn on other occasions. Ultimately, Mr. Stronegger stopped work on the structure and proceeded through the permit process to date.

Mr. Hilden went on to say that even though he was not a decision maker in the CUP process and did not need to disclose ex parte contact, he wanted to note for the record that in his capacity as owner of an RV park, he has spoken many times with Mr. Stronegger who is in the RV business. He further noted that while he has empathy for Mr. Stronegger’s situation he did not direct Mr. Callister’s work on the staff report and staff’s findings.

Chairman Burke requested testimony from the applicant, Mr. Stronegger.

Richard Stronegger, 82868 Lake Boulevard, Dunes City

Mr. Stronegger opened his testimony by stating that his original intent was to put up a tent building that did not require a permit but decided against it. He noted, as mentioned in the staff report, that there was no other location on his property where he could have built the structure—if there had been another location, he would have used it. He went on to note that his plan was to build a boat storage building with no electricity or other amenities. He added that the spot where the building is located had been used for miscellaneous storage for years but he cleared that out and further improved the area by eliminating erosion on the hillside behind the structure by planting trees and rebuilding an existing retaining wall.

Mr. Stronegger went on to say that when he put the doors on his building he did not know that he was not supposed to be adding to the structure. He added that he was definitely misled about a lot of issues—who had jurisdiction over the area, whether or not permits were needed—and would not have done the project if he had known what he knows now. He also noted that he certainly did not intend to cause conflict. He ended his testimony by saying that he has lived in the house on the property for many years and keeps it well maintained.

A copy of Mr. Stronegger's written statement is attached as Exhibit C.

Chairman Burke thanked Mr. Stronegger for his testimony and asked for testimony from those in favor, if any. There was none. Mr. Burke asked for testimony from anyone opposed, if any. There was none.

Chairman Burke asked the Commissioners if they had questions for staff and began the discussion by citing a number of his own questions and concerns about the staff report. His first concern was staff finding on page 3 that indicates the gravel pad is a water-related structure; the pad, Mr. Burke noted, is not a structure and not water-related. He went on to note that throughout the staff report the building in question is referred to as "water-related" but, in his opinion the building is not water-related just because it sits close to the river. Mr. Burke also noted that the staff report repeatedly indicates that the building is used as seasonal storage for Mr. Stronegger's boat but, in fact, Mr. Burke has only seen an RV in the building and, therefore, the building should not be referred to as "boat storage."

In particular, Mr. Burke pointed out the staff finding on page 3 which reads in part, "...seasonal parking for Mr. Stronegger's boat, for which close proximity to the water, and specifically the boat house, holds relevance." Mr. Burke stated that there is no boat launch access on the property and, again, the proximity of the location to the river does not make it water-related.

Chairman Burke went on to list his other concerns with findings in the staff report:

1. Page 4, referring to the “3’ tall retaining wall” Mr. Burke noted that with the addition of extra reinforcement the wall is actually 5’8” which is illegal and does not meet code. Code requires retaining walls over 4’ in height to be engineered and permitted.
2. Page 4, referring to staff’s comment “...used for parking cars, boat trailers, RV’s for as long as anyone can remember...” Mr. Burke noted that in his experience he has not seen parking in that spot.
3. Page 4, referring to the report’s “Strict enforcement of the specified requirement...results in practical difficulty...” Mr. Burke, in his comments, noted that it was the Planning Commission’s job and responsibility to strictly enforce Dunes City codes.
4. Page 4, referring to staff’s comments about there being limited land available on the lot for building, Mr. Burke noted that is irrelevant and, again, any building within the riparian zone is prohibited; to allow the building would be to deny other citizens similar privilege. He also noted there are adequate boat storage facilities elsewhere.
5. Page 5, referring to staff’s findings on variance criterion (d), Mr. Burke repeated that the structure is within the riparian zone and not allowed. He went on to comment that he was troubled by the fact that the applicant was misled by false assurances from a former City Councilor, but he noted that the applicant should have followed the instructions he originally received from City Hall.

Chairman Burke went on to note that he was opposed to issuing a Conditional Use Permit without a variance, but that staff’s finding that the CUP could be issued without one, was consistent with current City code.

Chairman Burke continued with his list of issues with the staff report:

6. Pages 8 and 9 referring to staff’s findings of water-related use and water-related structure, Mr. Burke pointed out that the parking pad and the structure were not water-related.
7. Regarding the findings of fact at the top of Page 10, Mr. Burke noted that regardless of the applicant’s intent, the result is a structure built within the riparian zone.
8. Referring to the Conditions of Approval in the staff report, Mr. Burke pointed out that Condition 4 (limiting the building height, size or lot coverage, and/or location on the site) could not be met because the building was erected without a permit before the Planning Commission had any opportunity to review site and building plans and applicable code requirements.
9. Referring to the finding at the bottom of page 11, Mr. Burke noted that it was incorrect based because the development standards cited in the report have not been met.

Summarizing his concerns with the staff report, Mr. Burke reiterated his opinion that the building in question is RV storage, not boat storage, and is not water-related. He went on to state that in light of the concerns he outlined he felt that he could not recommend approval of the Conditional Use Permit.

Chairman Burke asked Commissioner Gargis if he had questions for staff. Mr. Gargis asked Mr. Callister if there was any concern about water runoff. Mr. Callister replied that he was concerned about it, but that current code does not address it. Mr. Gargis pointed out that there is a 30-watt outlet by the building that could be used by an RV but would not be necessary for boat storage. He was also noted that the retaining wall was attached to trees on the property.

Chairman Burke asked Commissioners Henderson and Beckman if they had questions for staff. Mr. Henderson had none. Ms. Beckman asked Mr. Callister whether he was aware at the time he prepared his report that there were no new structures approved within the 50' riparian setback area. Mr. Callister replied that he was not.

Chairman Burke recalled Mr. Stonegger so that he could answer questions from the Commissioners.

Before answering questions, Mr. Stonegger commented on some issues the Commissioners raised. He said that the 30-watt outlet that Mr. Garis noticed was on the property when he purchased it, it was not new. He also noted that the retaining wall could be easily removed if necessary. He went on to note that he has had boat trailers and car trailers on the property for more than five years, and he explained that the building was mainly built to accommodate a large boat that he currently has stored elsewhere, but he has used it for other storage.

Chairman Burke asked Commissioner Gargis if he had questions for Mr. Stonegger. He had none.

Chairman Burke asked Commissioner Henderson if he had questions for Mr. Stonegger. Commissioner Henderson stated that he was sorry that Mr. Stonegger had been badly advised. Mr. Henderson went on to say that although a boat could be stored in the building, a boat could not be launched from there and that meant that the use of the building was not truly water-related.

Chairman Burke asked Commissioners Beckman and Martin if they had questions for Mr. Stonegger. They had none. Mr. Burke thanked Mr. Stonegger for attending the hearing and apologized for the events that led to Mr. Stonegger's current situation. He also informed Mr. Stonegger that the City Council would make the final decision about his permit.

Chairman Burke called for a short break in the public hearing at 7:50 pm. He reconvened the hearing at 8:02 pm and announced that Commissioner Martin had left during the break but there was still a quorum to allow for deliberations and a vote on a recommendation to City Council. He closed the public hearing at 8:02 pm.

8. UNFINISHED / OLD BUSINESS – None

9. NEW BUSINESS

A. Deliberation and Decision: Stronegger Conditional Use Permit

Chairman Burke summarized the general discussion thus far and read through staff's memo outlining possible action by the Planning Commission and the decision criteria, further noting that the decision and recommendation to City Council had to be based on code that is in effect now.

Mr. Burke went on to say that, in his opinion, the application for a Conditional Use Permit did not meet the criteria for water-related use. He also noted that the applicant had expanded the existing gravel area by removing debris to accommodate the structure that was built. Mr. Burke also suggested that Mr. Callister prepare a Planning Commission staff report for presentation to the City Council.

Chairman Burke asked Commissioner Gargis for his comments. Mr. Gargis stated that the issue is that the applicant did not obtain a permit, even though he had been advised to do so by the City Recorder, and that he continued to work on the building after he was issued stop work orders.

Chairman Burke asked Commissioner Henderson for his comments. Mr. Henderson wondered how the building was water-related. He noted that code allows for one boat-house per property and the applicant already has one. He felt that the building could not be designated as a boathouse, it is a parking facility. Mr. Henderson went on to point out that the property did not have access to a boat launch area, which also meant the structure could not be boat storage. He also pointed out that there is other covered parking area on the property and went on to say that the fact that the applicant has more than one covered parking facility does not seem to mean that the applicant would face "unnecessary hardship" without the new structure. In his opinion, the key factor recommending a denial of the Conditional Use Permit is that no building is permitted within the riparian area.

Chairman Burke asked Commissioner Beckman for her comments. Commissioner Beckman listed several concerns, among which were: the applicant asked the City Recorder whether or not he'd need a permit and was told that he would; the applicant ignored repeated stop work orders; the applicant added to the retaining wall without a permit; the building is within the riparian zone; and, the fact that 75% of the property is too steep for building is irrelevant. She went on to note that the application was for a boat storage facility, which no one else has within the riparian area, and allowing it would give the applicant special privilege not enjoyed by others. She reiterated that Shoreland Overlay zoning does not permit structures that are not water-related and, in her opinion, the applicant's building has not been proven to be water-related.

Ms. Beckman stated that before the application goes to City Council, she would like to see new pictures of the area that show exactly where the building is situated so that City

Council has more detail. She suggested a photo of the front of the building and one of the building from the water, if possible. She also requested that a plat map showing the building in relation to the 50' setback be provided to City Council.

Chairman Burke interrupted to note that in addition to the Commission's many other concerns, there was a potential health and welfare issue due to the fact that RV's leak oil, gasoline and waste which can seep into ground and affect water quality. He suggested that Mr. Callister determine whether that can factor into his staff report. He noted that a revised staff report would support the Commission's overall intent to recommend that City Council deny the Conditional Use Permit.

City Administrator Hilden suggested that the revised staff report be reviewed by the Planning Commission at its next meeting on November 7 prior to presenting it to City Council. Mr. Hilden noted that Mr. Callister would present the Planning Commission's staff report and recommendation to the City Council.

Chairman Burke requested a motion. Commissioner Henderson made a motion to recommend denial of the application to City Council based on findings identified by the Commission through additional facts and insights, and direct staff to prepare an amended Findings of Fact based on the discussions during this meeting. Commissioner Gargis seconded the motion.

Chairman Burke called for a voice vote. Commissioners Gargis, Henderson and Beckman all voted in favor. The motion passed by unanimous vote with one absence (Commissioner Martin) and one vacancy.

10. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA

Chairman Burke noted that the resignation of Vice Chairman Riechel created a vacancy that needed to be filled and requested that staff create an action item for the November 7th meeting agenda to appoint a new Vice Chairman.

11. ADJOURNMENT

Commissioner Henderson made a motion to adjourn the meeting. Commissioner Beckman seconded the motion. The motion passed by unanimous vote.

Chairman Burke adjourned the meeting of the Planning Commission at 8:43 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 7th OF NOVEMBER 2013.

[Signed copy available at City Hall]
George Burke, Planning Commission Chairman

ATTEST:

[Signed copy available at City Hall]
Rapunzel Oberholtzer, Administrative Assistant