



PLANNING COMMISSION SPECIAL SESSION MINUTES ~ APPROVED
TUESDAY, OCTOBER 31, 2017 AT 5:45 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

Chairman Bonnie Allen called the October 31 Planning Commission Special Session to order at 5:47 pm.

2. ROLL CALL

Roll Call was taken by Administrative Assistant Rapunzel Oberholtzer.

Present: Chairman Bonnie Allen, Vice Chairman Barry Sommer, and Commissioners Brett McKnight and Ken Pesnell.

Absent and Excused: Commissioner Ric Ziegler.

Others Present: City Administrator/Recorder Jamie Mills and numerous residents.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Commissioner Pesnell made a motion to approve the Agenda. The motion was seconded by Commissioner McKnight. The motion passed by unanimous vote.

5. APPROVAL OF THE CONSENT AGENDA

A. Planning Commission Meeting Minutes of September 21, 2017

Vice Chairman Sommer made a motion to approve the Consent Agenda. The motion was seconded by Commissioner Pesnell. The motion passed by unanimous vote.

6. ANNOUNCEMENTS /CORRESPONDENCE

Administrative Assistant Rapunzel reminded Chairman Allen that her term on the Planning Commission will expire in January, 2018, as would Commissioner Ziegler's. Both will need

to submit Applications for Appointive Office and be reappointed by the City Council if they are interested in continuing on the Planning Commission.

7. CITIZEN INPUT

Chairman Allen recognized Mr. John Stead who provided copies of his prepared statement. Mr. Stead noted that his statement included excerpts from Chapter 155 regarding the limitations on fencing. Mr. Stead went on to point out apparent discrepancies in the Chairman appointment requirements of Chapter 32 which at §32.01 states, “The appointed Councilor of each Committee will be the Chairperson...” and at §32.52(B) states, “In January of each year the Commission will elect from its membership a Chairperson and Vice-Chairperson.” Mr. Stead also noted that §32.53(A) states that one of the duties of the Planning Commission is, “Approve or deny preliminary and final land use applications as defined in Title XV of this Code.” He went on to point out that a Land Use Compatibility Statement (LUCS) signed on February 2, 2017, had not been approved by the Planning Commission. In closing, Mr. Stead pointed out that wells are for domestic use only.

A COPY OF MR. STEAD’S STATEMENT IS ON FILE AT CITY HALL.

Chairman Allen recognized Mr. Charles Bang. Mr. Bang distributed copies of his prepared statement and read it aloud.

“My last visit, we presented three LUCS forms you hadn’t seen before. We said the OLCC wanted you, our Land Use people, to ask for the submitted LUCS forms to be returned so the applications could undergo the standard process of review and scrutiny. They had been filled out by the City Manager instead of our Planning Commission.

“The citizens were delighted when the City Council voted unanimously to get the LUCS back only to be disappointed when they did a 180.

“The City Manager asked the Mayor to call an emergency meeting to discuss why the Councilors would want them brought back and ‘do we really want to be a city?’ After being pressured, the Councilors agreed to have an executive meeting with the City attorney, behind closed doors. After the executive session that followed, the group returned somberly to announce they didn’t want the LUCS back.

“All other cities have their Land Use people/Planning Committees review their LUCS forms to assure compliance with their Charters, Codes, State Laws, and Comprehensive Plans. Why are we different? Why can’t the Dunes City Citizens expect the same procedure? The City Council should make their decisions after you, our Planning Committee does your job. It is provided for in our City Code, 155.1.2.7 Official Action. That’s the way it is supposed to work.

“We wondered; Why would the City Councilors stop their action which had a unanimous vote?”

“And, our research found the answer: Another LUCS, making the number of LUCS four aka Terepene Farms 1 signed and dated February 2, 2017, the other three were signed much later in the year. This one wasn’t given to any of us, nor you, nor the City Council.

“In fact, if OLCC hadn’t honored our request to disclose we still would not have known about this LUCS. The city administration disclosed McGuire, Patricia Cain, and Dennis Smith, but hid this one until OLCC turned it over. Ms. Allen, when you attended the joint work session with the City Councilors you mentioned, “We need to get in front of this,” and Ms. Mills never stated during that meeting that the city administration had completed one LUCS for approval in the month of February 2017. Ms. Mills informed the joint work session Councilors at the very end of the meeting that she had received two LUCSs that same day. There were at least a couple of Councilors that wanted to look into a moratorium, but was quickly told by Ms. Mills, “This is a work session to discuss code about marijuana, not a moratorium.”

Ms. Sally Bang yielded her three minutes to Mr. Bang so he could continue reading his statement.

“This whole time we have heard Ms. Mills state, ‘I had to do it and there was a time limit.’ So why did Ms. Greene do it and never mention it or disclose? Why has this been done to our city?

“On the Terepene Farms 1 LUCS, it states a variance ‘applied for building up to property line to the neighbor.’ No notice given to the adjoining neighbor who is allergic to marijuana and it was approved by the staffer instead of passing it over to our Planning Committee. Also, an 8 foot fence variance was granted, by this staffer, once again was without notice or having Planning Committee involvement.

“We also found other information such as the real owner of the property on Doonbrae and the interactions...

“Everyone has seen the funny little building on Doonbrae and Clear Lake Road. And they thought this was simply a small little grow operation of little significance.

“However, with the Terepene Farms 1 and Terepene Farms 2 Tier II applications, they have the ability to expand to 80,000 square feet of indoor grow capacity (44 times the existing building). They can expand throughout the entire Doonbrae PUD to have indoor production in space the size of two Safeway stores. And yes, a substantial amount of the fabulous forest would need to be clear cut because this type of business is extremely flammability. It’s frightening! Are they even able to get fire insurance? State Farm says no! They won’t insure and don’t know anyone that will.

“A huge commercial marijuana operation in the very heart of Dunes City between two of the most pristine and unique lakes in the world makes no sense. There are so many things wrong here.

“You too are a citizen of Dunes City and you have a right to ensure that our city is run using its city code and comprehensive plan. The actions you take should be proper and should be of sound judgment. The City Council entrusts that you will abide by city code and that when that city code isn’t followed you will take action to cure it.

“If you don’t want to perform the duties of your position, I urge you to step aside. Let someone else give it a shot.

“If the LUCS are unable to be returned and reviewed to correct how they were processed, then the city should order them ‘void.’ 155.1.2.7 Official Action. City code hasn’t been followed during processing of these LUCS and even Mr. Day argued in September before the city council about the numerous errors committed during his clients’ LUCS being processed. No one has argued they were properly completed or to code in fact both the Planning Commission and the city council voted to return them for proper processing. Given the fact that returning them would have been fair for Mr. Day’s clients and the citizens, but out of fear that our city would be sued if we did, then our city has no choice but to ask that our Planning Commission take action to ‘void’ these LUCS using our city’s code found here: 155.1.2.7.”

Mr. Bang continued to read an excerpt from 155.1.2.7 and concluded with:

“Taking actions afforded by our city code to cure these errors is the right thing to do. We ask that you take this action.”

A COPY OF MR. BANG’S COMPLETE STATEMENT IS ON FILE AT CITY HALL.

Chairman Allen recognized Mr. Del Riesenhuber, a Dunes City resident, who read from a prepared statement:

“When my family and their friends formed Dunes City they had several objectives. First was to be excluded from the National Seashore Recreation Area. Other objectives were to maintain the rural atmosphere of the area and to protect the water of our lakes. They wrote the comprehensive plan to encompass their objectives.

“I believe the approval of marijuana growing and construction of grow houses is in violation of the Comprehensive Plan.

“Commercial operations are not allowed in residential neighborhoods as clearly stated in the comprehensive plan. Large-scale operations of any kind are not family businesses. Large scale growing of marijuana does not constitute a family garden.

“The comprehensive plan stipulates the protection of the Lakes is one of the conditions of the formation of Dunes City. It is well known that marijuana growing results in pollutants to the water. Dunes City has no means of monitoring or controlling pollution, so must simply not allow factors that will potentially result in pollution.

“Policy G4. Minor economic activities, such as home occupations, will be permitted if they are not harmful to air, water, or land quality, and if they are not potential nuisances to neighboring uses. Dunes City does not seek industries to locate in the city.

“Policy I-9. Commercial activity in residential districts shall be limited to the home occupation.

“Policy J1. Dunes City shall preserve the rural and scenic character of Dunes City by excluding any major industry by allowing only small-scale industry which is compatible with residential uses and which would not produce excessive noise or pollution.

“Ordinance 155.4.1.1 Purpose. The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. The city did not adhere to this requirement.

A COPY OF MR. RIESENHUBER’S COMPLETE STATEMENT IS ON FILE AT CITY HALL.

Chairman Allen recognized Ms. Mary Jo Leach, Dunes City resident. Ms. Leach explained that she had recently requested copies of all of the Dunes City files on the grows. She went on to note that she had not reviewed all of the documents but in reviewing the OLCC LUCS from Mr. Dennis Smith, she noticed that there are no permits for auxiliary buildings which appear to exist. She asked how they got to be existing structures and when, and how did the existing huge medical marijuana grow come into existence. She went on to explain that Google appears to show a large bladder for water drawn from the lake and containers of fertilizer lying about. Ms. Leach asked that someone look into those issues related to the outdoor grow of medical marijuana.

8. NEW BUSINESS

A. CAC Appointments

Chairman Allen referred Commissioners to copies of three applications for appointment to the CAC, noting that Ms. Susie Navetta had withdrawn her application due to transportation issues. She invited applicant Mr. Edward Kopilec to introduce himself. Mr. Kopilec explained that he had been a Westlake resident for about two and one half years, having retired from Southern California where he was somewhat involved in local politics. He went on to explain that he was interested in helping Dunes City government.

Chairman Allen invited Mr. James aka Keith Garvey to introduce himself. Mr. Garvey explained that he had been a Dunes City resident for about ten years. He noted that he had never been involved in local politics but had a range of experience that could be useful. He went on to explain that he also applied for appointment to the City Council, but if he was not appointed he would be willing to work with the CAC.

Chairman Allen explained that serving on Dunes City Commissions and Committees was an example of democracy in action at the local level. Commissioner McKnight noted that some of Dunes City Code is outdated and part of the CAC's role is to help identify changes that need to be made. He suggested that the Commission consider also appointing Ms. Navetta, providing that she can resolve her transportation issues. There were no objections.

Commissioner McKnight made a motion to appoint all three applicants to the CAC, pending resolution of Ms. Navetta's transportation issue. The motion was seconded by Commissioner Pesnell. The motion passed by unanimous vote.

B. Overview of Public Meeting Law

Chairman Allen explained that all Dunes City Committees and Commissions conduct their meetings in accordance with Oregon Public Meeting Law. She noted that the intent of the meeting laws is to insure that meetings are open to the public, are properly noticed in advanced, and decisions are made in an open, transparent process. Chairman Allen referred Commissioners to copies of the Quick Reference Guide to Oregon's Public Meeting Law that was included in their meeting packets, and offered to give it to any of the residents who were present at the meeting.

Chairman Allen noted that during the last meeting there had been some concern about public participation in meetings. From a handout that was distributed to Commissioners prior to the start of the meeting, Chairman Allen read, "The Public Meetings Law is a public attendance law, not a public participation law." She explained that this meant that governing bodies are not *required* to conduct question and answer sessions with the public but the public has the right to make comments on agenda items, within a timeframe set by the governing body. She offered her copy of the handout to residents in attendance.

C. Staff Report: Follow Up from August/September Meetings

Rapunzel reminded Commissioners that in the August meeting they asked Staff to draft language to describe the specifics of a maintenance plan that would be required for an application for a conditional use permit if the conditional use is multifamily. Following discussion it was agreed to change paragraph G of 155.4.4.3 (Application Submission Requirements) to read:

"In addition to the application submission requirements of Subsections A through F above, if a conditional use permit application is for multifamily housing, the application must include a detailed, written maintenance plan that clearly describes how any common or open space areas (e.g., landscaping, private, tracts, common driveways, private alleys, building exteriors and/or similar common areas) shall be maintained. The maintenance plan must describe routine landscaping maintenance tasks such as mowing, tree trimming and brush removal, inspecting fixtures, equipment, fire systems, safety controls, and services that serve residents and making repairs as required. The purpose of this requirement

is to provide for additional review to encourage the development of multifamily housing that is compatible with the surrounding neighborhood.”

Staff was asked to craft additional language requiring the maintenance plan to detail how implementation of the plan will be funded.

D. Schedule November Meeting/Regular Meeting Date Change

It was agreed that the next Planning Commission meeting would follow the November 30 CAC meeting, starting at 5:45 pm.

Vice Chairman Sommer excused himself from the meeting at approximately 6:30 pm. A quorum was still present.

9. UNFINISHED/OLD BUSINESS

A. Continue Review of Chapter 155.4

Reviewing the Staff Report dated October 31, 2017, for Section 155.4.5.107 (Preliminary PUD Plan – Approval Criteria), Staff referred Commissioners to page 66 of 90 and paragraph F (Maintenance of Common Land and Facilities) and asked if Commissioners had any objections to the language as it related to homeowner or tenant associations. Following discussion, it was generally agreed to leave the language as presented.

Staff pointed out, page by page, the changes made by the City Attorney and by a former Planning Commission in pages 71 through 74 of 90 (155.4.6 – Modifications), noting that the City Attorney removed the “minor” and “major” designations.

(Page 71): Staff suggested minor changes to the language under “Purpose,” changing it as follows: The purpose of this Section 155.4.6 is to provide an ~~efficient~~ appropriate process that allows for modifying approved applications, land use decisions and ~~approved~~ development plans, ~~in recognition of the cost and complexity of land development and the need to conserve City resources~~ after their effective date of approval without initiating repetition of the original application. There were no objections.

Pages 72 – 74) 155.4.6.3 – Modifications Process and Criteria. Staff noted that all of the changes were made by Staff using Model Development Code tailored to Dunes City, as suggested by the City Attorney. There were no objections.

Chairman McKnight asked Staff to revisit the conditional use permit process to see if there are any triggers that prompt a re-review of the permit after it has been approved. Staff agreed to do so and, if no such language exists, Staff will draft language for CAC consideration.

10. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA

City Administrator/Recorder Mills explained, in response to some of the citizen comments made earlier, that she had not been aware that Ms. Cain-Mathis had filed a LUCS with OLCC. The LUCS was signed by the then Permit Technician, Renee Green, although the LUCS clearly stated that the applicant's intent was to construct three marijuana grow buildings, which is not permitted by City Code. City Administrator/Recorder Mills consulted with the City Attorney and prepared a letter that was sent to OLCC explaining that that proposed operation violates City Code and the LUCS was erroneously signed. She also explained that she implemented a new policy in which no new permits are signed by Staff until she has reviewed them.

City Administrator/Recorder Mills noted that Ordinance No. 245 bans any new grow operations and the City will not accept OLCC LUCS for them.

11. ADJOURNMENT

Commissioner McKnight made a motion to adjourn. Commissioner Pesnell seconded the motion. The motion passed by unanimous vote.

Chairman Allen adjourned the meeting at 6:55 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 30th DAY OF NOVEMBER 2017.

[Signed copy available at City Hall]
Bonnie Allen, Chairman

ATTEST:

[Signed copy available at City Hall]
Jamie Mills, City Administrator/Recorder