| **Planning Commission Meeting Date:** | 05/29/2018 |
| **Property Owner/Applicant:** | Sophia (Beth) Kerner |
| **Request(s):** | Request for Conditional Use Permit to raise honey bees in Residential (R-1) zone |
| **Property Location:** | 83414 Osprey Way |
| **Assessor's Map / Tax Lot(s):** | 19-12-26-21 Tax Lot 01800 |
| **Zoning:** | Residential (R-1) District |
| **Land Use Plan Designation:** | Residential |
| **FEMA Flood Hazard Zone:** | X - Area determined to be outside of 500-year flood zone |
| **Staff:** | Jamie Mills, City Administrator/Recorder |
I. INTRODUCTION

On March 19, 2018, applicant/property owner Sophia (Beth) Kerner submitted an application for a Conditional Use Permit to raise honey bees on her property located at 83414 Osprey Way in Dunes City’s R-1 Zone (Map/Tax Lot 19-12-26-21-01800). SEE EXHIBIT A (RLID MAP). On April 16, 2018, Ms. Kerner met with City Staff (City Administrator/Recorder Jamie Mills and Planning Secretary Rapunzel Oberholtzer) in a pre-application conference to review her application, site plan and applicable Dunes City Code. On April 17, Ms. Kerner’s application was deemed complete. The required fees have been paid in full.

Ms. Kerner’s 1.16-acre lot is bordered on the north, south and east sides by privately owned residential lots and fronts Osprey Way on the west side. The lot is mostly surrounded by typical Dunes City vegetation and features a hedge about six feet tall on the north side, large native trees and a creek on the south, and a downward sloping bramble/berry field on the east. The lot also features landscaping, various ornamental shrubs, a raised garden bed area, a fenced yard area behind the dwelling unit, and some cleared space behind the fence. SEE EXHIBIT A (AERIAL PHOTO).

Ms. Kerner wishes to install three (3) bee boxes approximately 18” wide by 18” deep by 26” tall in her back yard. To protect the bees from predators and inclement weather, the applicant plans to enclose the boxes with solid material on three sides, an electrified fence on the front, and a sloped roof. The enclosure will be constructed to fold out for easy access to the bee boxes. SEE EXHIBIT A (SITE PLANS/DRAWINGS).

In a letter that accompanied her application for a Conditional Use Permit, Ms. Kerner wrote that the location of the bee hives, “...was chosen because it allows the hives the advantage of morning sun and seclusion. There is more than twenty (20) feet and buffering vegetation separating the hives’ intended location and the closest neighboring structure. As bees tend to fly vertically from the hive then horizontally for collecting, this would be the best area as to not disturb any person in their flight path.” Ms. Kerner also wrote that she has long been interested in beekeeping as a hobby. SEE EXHIBIT A (KERNER 3/19 LETTER). During the pre-application conference, Ms. Kerner explained that she has attended a beekeeping class offered by Lane Community College and has been consulting regularly with local bee experts such as Lane County Beekeeping Association and Glorbyee about raising bees.

Ms. Kerner’s statements regarding the siting of her apiaries and the bees’ flight path are supported by guidelines published in Residential Beekeeping – Best-Practice Guidelines for Nuisance-Free Beekeeping in Oregon by bee experts at Oregon State University Extension Service:

- Place colonies where they will get first light and sun for most of the day. If possible, the colonies should face southeast. Windbreaks are highly desirable.

Kerner Conditional Use Permit Staff Report/Findings – Planning Commission 05/29/2018
• Do not locate bees directly adjacent to high traffic public areas or an area frequently used by neighbors unless the flight path has been blocked by a barrier.

• The foraging flights of honey bees begin at the colony exit/entrance. If the colony is at ground level, the foraging honey bees typically fly to a height above that of the average person within a few feet of the exit/entrance. As bees travel about 10 feet from the exit/entrance, their numbers quickly thin out as they disperse in a wide area and to higher heights.

• The flight path behavior of bees can be directed away from private and public activities so that setbacks are unnecessary or need only be minimal. This can be accomplished by either: A) raising a colony onto a roof top, balcony, or other elevated position, or B) placing obstacles (such as a hedge or lattice) in a colony’s flight path.

It should be noted that, according to Residential Beekeeping, “All beekeepers who manage five or more colonies (not including nucs*) within the state during the last year are required to register with the Oregon Department of Agriculture (ODA).” Ms. Kerner is proposing to install just three bee boxes with one colony in each. As a small, hobbyist beekeeper Ms. Kerner is exempt from the requirement to register with ODA.

This Conditional Use Permit application is on the Agenda for the June 13, 2018, City Council for more discussion and possible action.

* Nucleus colonies, small honey bee colonies created from larger colonies that are used primarily to produce new queens or workers for the purpose of starting a new colony or adding to an existing colony

II. APPLICABLE CRITERIA

Dunes City Code of Ordinances, Section 155.4.1.6 (Type III Procedure-Quasi Judicial), Section 155.2.1.111 (Conditional Uses), and Section 155.4.4 (Conditional Use Permits).

III. REVIEW OF APPLICABLE CRITERIA

SECTION 155.4.1.6 TYPE III PROCEDURE (QUASI-JUDICIAL)

155.4.1.6 Type III Procedure (Quasi-Judicial)

A. Pre-application conference. Required for discretionary land use permits including preliminary P.U.D. plans and conditional use permits.

B. Application requirements.

1. Type III applications shall be made on forms provided by the Planning Secretary;
2. Type III applications shall:
   
a. Include the information requested on the application form and by the Planning Secretary;
   
b. Be filed with copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;
   
c. Be accompanied by the required fee; and
   
d. Include an impact study for all Type III applications. The impact study shall quantify/assess the effect of the development on the transportation system, wetlands, riparian areas and Shorelands. The study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, and affected private property users. In situations where this Code requires the dedication of real property to the City, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

FINDING. Staff met with Applicant in a pre-application conference on April 16, 2018, to confirm that all necessary information requested on the application and requested by the Planning Secretary was provided. The Applicant provided a sufficient written narrative statement describing the proposed use of subject property and also provided further verbal description of the proposed use. Application materials were accompanied by the required application fee. Staff has determined that an impact study is not required for this application as it is related to a single lot and meets criteria for Best Practice Guidelines with regard to reduction of effects on nearby private property owners. These criteria are satisfied.

SECTION 155.2.1.111  CONDITIONAL USES

The following conditional uses are permitted, subject to a conditional use permit granted pursuant to the general provisions of this chapter providing for the granting of conditional use permits:

A. Churches
B. Fraternal Lodges, grange halls, clubs
C. Schools, public and private
D. Stables, riding academies
E. Animal husbandry, including the raising, tending, or breeding of cattle, horses, sheep, goats, bees, poultry, fur-bearing animals, and swine for purposes of domestic use. Such animal husbandry shall not be part of or be conducted in conjunction with any livestock sales yard, slaughterhouse, or animal by-product business. Such use shall include, but not be limited to, the raising of small fowl, animals for show, competitions, or projects or directed by a school, club, or other social or educational activity.
F. Bed & Breakfast  
G. Multi-Family Dwellings  
H. Guest houses  
I. Residential Care Facility

FINDING. Of the above listed requirements A through I, only E specifically applies to the Applicant’s proposed use. Staff has determined, based on Applicant’s narrative statement and pre-application conference, that the Applicant’s proposed use is for domestic use only. Criterion E is satisfied.

SECTION 155.4.4 CONDITIONAL USE PERMITS

155.4.4.2 Approvals Process

A. Initial Application. An application for a new conditional use shall be processed as a Type III Procedure (Section 155.4.1.6). The application shall meet submission requirements in Section 155.4.4.3, and the approval criteria contained in Section 155.4.4.4.

155.4.4.3 Application Submission Requirements

In addition to the submission requirements in Section 155.4.1, an application for conditional use approval must include the following information (A through H), as applicable.

A. Existing site conditions;
B. Site plan;

FINDING. Applicant provided an aerial photograph of the subject property and provided a drawing illustrating approximate locations, heights and widths of hedges and other ornamental landscaping, as well as approximate location of proposed bee boxes in what Staff determined to be an adequate overview of existing site conditions and a site plan. Criteria A and B are met.

C. Preliminary grading plan;

FINDING. Staff has determined that this criterion is not applicable to the Applicant’s permit application as no grading is planned.

D. A landscape plan including a tree coverage map. For properties containing less than 16 conifers per acre the map shall include the location of every conifer with a diameter greater than 8 inches at 4 ½ feet above average grade. For properties containing 16 or more conifers 8 inches or greater in diameter at 4 ½ [sic] above average grade per acre the map shall include the outline of those areas with stands of conifers or an aerial photograph with enough detail to show conifer stands;
FINDING. Applicant provided an aerial photograph of the subject property and provided a drawing illustrating approximate locations, heights and widths of hedges and other ornamental landscaping, as well as approximate location of proposed bee boxes in what Staff determined to be an adequate overview of existing landscaping and enough detail to show conifer stands. Criterion D is met.

E. Architectural drawings of all structures;
F. Drawings of all proposed signs;

FINDING. Criteria E and F are not applicable to this application.

G. A copy of all existing and proposed restrictions or covenants; and

FINDING. There are no existing or proposed restrictions or covenants imposed by Dunes City on this property. There are CC&Rs for Osprey Estates. Criterion G is not applicable to this application.

H. Narrative report or letter documenting compliance with all applicable approval criteria in Section 155.4.4.4.

155.4.4.4 Criteria, Standards and Conditions of Approval

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the following standards and criteria:

A. Use Criteria.

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, slopes, odor, dust, visibility, safety, and aesthetic considerations;

2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and

3. All required public facilities have adequate capacity to serve the proposal.

4. The proposal is consistent with applicable policies of the Comprehensive Plan for Dunes City.
5. The location, size, design, and operating characteristics of the proposed use:
   1. Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and
   2. Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in bulk coverage and density, to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.

6. Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

7. Will not create a hazardous natural condition such as erosion, landslide, flooding.

FINDING. The Applicant states in the written narrative submitted with her application, “I would like to establish three honey bee hives on the back side of my property, which consists of 1.1 acres. This spot was chosen because it allows the hives the advantage of morning sun and seclusion. There is more than 20 feet and buffering vegetation separating the hives’ intended location and the closest neighboring structure. As bees tend to fly vertically from the hive then horizontally for collecting, this would be the best area as to not disturb any person in their flight path.” In the narrative submitted with her application, Applicant also states, “The apiary footprint would not take more than a 10 X 4 foot area.”

In addition, to above written narrative, Applicant stated during pre-application conference that she plans to erect a structure surrounding the bee boxes that is enclosed with solid material on three sides and enclosed with electrified fence material on the front side to deter bears that might be attracted to the hives and become a nuisance in the neighborhood.

While Applicant’s written narrative does not specifically address each of the Use Criteria of 155.4.4.4 (A)(1-7), it appears that Applicant has attempted to locate the bee hives so as to mitigate negative impact upon immediate neighbors. The actual beekeeping operation should not be detrimental to natural resources such as waterways and lakes, nor would it be affected by known natural hazards or create hazardous natural conditions. Criterion H is satisfied.

Public notice generated one letter in opposition of the Conditional Use Permit. The letter in opposition also included a formal complaint stating that Applicant had already sited the bee boxes and installed bees. Dunes City’s Code Enforcement Officer responded to the complaint, asking Applicant to remove the hives from her property. Applicant complied with the Code Enforcement Officer’s request. The letter in opposition is included herewith as EXHIBIT B.
IV. FINDINGS OF FACT AND CONCLUSION

Based on the findings stated in Section III Review of Applicable Criteria of this report, Staff findings support a Planning Commission recommendation of APPROVAL of the Conditional Use Permit, as proposed, to the Dunes City Council.

V. RECOMMENDED DECISION

Recommendation of approval of the application for a Conditional Use Permit is subject to the following conditions of approval:

1. A flyway barrier at least six (6) feet in height consisting of a solid wall, solid fencing material, dense vegetation or combination thereof that is parallel to the property line and extends ten (10) feet beyond the colony in each direction, unless the adjoining property is undeveloped for a minimum of twenty-five (25) feet past the property line.

2. Colonies shall be maintained in movable-frame hives with adequate space and management techniques to prevent overcrowding.

3. Beekeeper shall maintain an adequate supply of water for colonies located within twenty-five (25) feet of each hive on the property where the honeybees are located.

4. Beekeeper shall abide by any disease prevention directives issued by the State of Oregon Department of Agriculture.

5. Hives must be positioned such that the opening is pointed into the beekeeping property and not toward any adjoining property.

6. Bee feed or any other supplement used to support bee health must be stored in sealed containers that are not penetrable by rodents or other animals.

7. Beekeeping appliances shall be kept in a clean condition at all times by taking such action as deemed necessary to prevent any condition which may be dangerous or detrimental to the public health, the health of the colony or constitute a nuisance.

VI. EXHIBITS

A. Variance Application, Narrative, Miscellaneous Site Drawings and Maps
B. May 7, 2018 letter from Lynn L. Smelker, owner of property at 83440 Osprey Way
The procedures, regulations and standards governing conditional use permits within Dunes City can be found in the Dunes City Code of Ordinances. The purpose of a Conditional Use Permit is: "There are certain uses that, due to the nature of their impact on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as "Conditional Uses" in Section 155.2 - Land Use District Administration. The purpose of Section 155.4.4 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met." – Section 155.4.4, Dunes City Code of Ordinances.

Please note that the final cost of a Pre-application Conference or Conditional Use Permit is based on the actual costs incurred by the City, including contract planning and engineering services.

Application Information:

- Pre-application Conference $200 Deposit (§155.4.1.3(D))
- Conditional Use Permit $600 Deposit (§155.4.4)

Applicant Information:

Applicant Name: Kerner Sophia Elizabeth "Beth"

Phone Number: Home: 541-999-9628 Work: N/A Cell: @bkm#

email: beth.kerner@gmail.com

Corporation Name: N/A

Mailing Address: 83414 Osprey WY, Florence OR 97439

Property Address: Same

Legal Description of Property: (T) 19 (R) 12 (S) 26 (Q) 71 (Tax Lot) 01800

Name and Address of Legal Owner: Stephen & Sophia Kerner

Statement of Applicant’s Legal Interest in Property: Owner

(Owner of Record; Authorized Agent; Lessee; Holder of an exclusive option to purchase)

I hereby certify that forgoing statements and other information attached hereto are true and accurate to the best of my knowledge. I have received all six pages of this application and understand that my application must meet the requirements as stated therein and any additional information requested by Dunes City.

Applicant's Signature: "Beth" Date 3/19/18
Sophia “Beth” Kerner
83414 Osprey Way
Florence, OR 97439
541-999-9623
bethkerner@gmail.com

3/19/18

Dunes City
82877 Spruce St.
Westlake, OR 97493

RE: Conditional Use Request

To Whom it may concern,

I am requesting a conditional use permit for the keeping of honey bees. Due to the increased loss of pollinators and my long time interest in beekeeping, I would like to establish three honey bee hives on the back side of my property, (which consists of 1.1 acres.) This spot was chosen because it allows the hives the advantage of morning sun and seclusion. There is more than 20 feet and buffering vegetation separating the hives' intended location and the closest neighboring structure. As bees tend to fly vertically from the hive then horizontally for collecting, this would be the best area as to not disturb any person in their flight path. The Apiary footprint would not take more than a 10 x 4 foot area. With there being many fruit trees, blackberry, blueberry bushes etc... in our area, not to mention home gardens, everyone should enjoy an increased crop.

Please let me know if you need any additional information or documentation.

Thank you for your consideration.

Beth Kerner

[Signature]
Planning Secretary

From: Robert C. Smelker <rcsa@hawaii.rr.com>
Sent: Monday, May 07, 2018 7:19 PM
To: Dunes City Planning
Subject: complaint against Sophia Kerner regarding application for a Conditional Use Permit for a hobby beekeeping operation located at 83414 Osprey Way in Dunes City, Assessor's Map 19-12-26-21, Tax Lot 01800 as applied for by Sophia (Beth) Kerner.

Attachments: img133.pdf; img134.pdf; img135.pdf; img136.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please acknowledge receipt...thanks, Lynn.
LYNN L. SMELKER  
P.O. Box 25638  
Honolulu, Hawaii 96825

7 May 2018

CITY OF DUNES CITY  
82877 Spruce Street  
P.O. Box 97  
Westlake, Oregon 97493

Subject: APPLICATION FOR A CONDITIONAL USE PERMIT FOR A HOBBY BEEKEEPING OPERATION LOCATED AT 83414 OSPREY WAY IN DUNES CITY, ASSESSOR’S MAP 19-12-26-21, TAX LOT 01800, AS APPLIED BY SOPHIA (BETH) KERNER, SUBJECT PROPERTY OWNER.

Attention: JAMIE MILLS, CITY ADMINISTRATOR

Dear Ms. Mills:

I appreciate the opportunity to respond to the subject application. I own the property next to Sophia Kerner’s property at 83440 Osprey Way.

Please allow this letter to act as a formal complaint against the applicant Sophia Kerner’s subject application for a beekeeping operation which she has already installed as of the week of 22 April 2018 approximately 25 feet from our property line. My husband and I witnessed two people in beekeeping outfits working on multiple bee hives loaded with swarming bees which flew over to my property.

These existing bee hives constitute a violation Article IV of the Declaration Of Covenants, Conditions And Restrictions Of Osprey Estates, Deed Restrictions On Use Of Property attached to this letter, and a violation of Dunes City Code of Ordinances Section 155.2.1.111 and Section 155.4.4 as the bee hives were installed without a Conditional Use Permit. These illegal bee hives are also a violation of the principle of quiet enjoyment of residential property and constitute a public health and safety concern.

The bees swarm on my property endangering our health and quiet use of the property. The bee hives constitute a Nuisance and a Derogation Of Laws according to the Deed Restrictions On Use Of Property governing the entire immediate neighborhood.

We hereby lodge this formal complaint against the subject applicant and hope that the Planning Commission and City Council will vote in our favor and demand the immediate removal of the illegal bee hives.
CITY OF DUNE CITY
7 May 2018
Page 2.

We appreciate the Planning Commission and the City Council’s time reviewing my concerns since we are unable to attend the hearings.

Sincerely,

[Signature]

LYNN L. SMELKER
Property Owner
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF OSPREY ESTATES

THIS DECLARATION is made on the date hereinafter set forth by Osprey
Developments, Inc., an Oregon corporation, herein referred to as "Declarant."

RECITALS AND DECLARATION

Declarant is the owner of certain real property in Dunes City, County of Lane, State of
Oregon, which is more particularly described on Exhibit "A" attached hereto and is sometimes
referred to and known as the Third Addition to Siltcoos Heights. The Third Addition to
Siltcoos Heights shall henceforth be referred to in this document and elsewhere by the
Declarant as "Osprey Estates."

Declarant declares that all of the property described on Exhibit A shall be held, sold and
conveyed subject to the following covenants, restrictions, covenants, and conditions, which are
for the purpose of protecting the value, desirability and attractiveness of, and to recognize and
protect certain physical characteristics of, Osprey Estates, and shall be binding on all parties
having any rights, title or interest in the described properties or any part thereof, their heirs,
successors and assigns, shall inure to the benefit of each owner thereof, and shall run with the
real property.

ARTICLE 1

DEFINITIONS

Section 1. "Common Area" shall mean that real property (including the improvements
thereeto) shown as Lot A on the recorded plat of Second Addition to Siltcoos Heights, as platted
and recorded in Book 53, Page 29, Lane County Oregon Plat Records, and intended to be
devoted to the common use and enjoyment of the Owners of Osprey Estates, together with the
owners of parcels within the Siltcoos Heights subdivision, First Addition to Siltcoos Heights,
and Second Addition to Siltcoos Heights. An undivided fee ownership interest in the Common
Area shall be deeded to each Lot Owner.

Section 2. "Declarant" shall mean and refer to Osprey Developments, Inc., and its
successors and assigns if such successors or assigns should acquire from the Declarant all of the
remaining undeveloped Lots (but a minimum of 2 Lots) in Osprey Estates for the purpose of
development.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded
subdivision map of Osprey Estates with the exception of the Common Area.

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AFTER RECORDATION, RETURN TO: LANE COUNTY SURVEYOR, PSB, EUGENE, OREGON 97401
Section 6. Damage to Common Area. In the event of the damage or destruction of all or any portion of the Common Area or the facilities located thereon, or in the event any repairs or maintenance is needed thereto, Owners on a pro-rata basis shall repair and replace said damaged or destroyed property, subject to the approval of a majority of the Owners (one vote per Lot).

ARTICLE IV

RESTRICTIONS ON USE OF PROPERTY

Section 1. Permitted Uses. No Lot within Osprey Estates shall be used for any purpose other than for the construction and occupancy of one single-family residential dwelling and uses related thereto. No building or structure shall be erected, altered, placed or permitted to remain on a Lot in Osprey Estates other than a detached single-family dwelling, sewage disposal facilities, a private garage or carport, storage or garden shed, non-commercial greenhouse, swimming pool, tennis court and other structures or uses directly related to the use and occupancy of a residential dwelling unit.

Section 2. Nuisance. No noxious or offensive activity shall be carried on or upon any Lot or other portion of Osprey Estates nor shall anything be done thereon which is or might become an annoyance or a nuisance to the use and enjoyment of other Lots in Osprey Estates. However, prior to the sale of all Lots, Declarant shall have the right to clear and plant vegetation and grade driveways and development areas from the unsold Lots to the extent such activities conform with local ordinances, and to perform other activities which, in Declarant’s sole judgment, may be necessary to market or maintain said Lots.

Section 3. Derogation of Laws. No Owner shall carry on any activity of any nature whatsoever on any Lot that is in derogation or violation of the laws or statutes of the State of Oregon, Lane County, Dunes City or any other applicable governmental body.

Section 4. Building and Construction Restrictions. All structures and improvements shall be of new construction with quality materials and workmanship, and construction thereon shall not be commenced until Lot Owners comply with applicable laws, ordinances, land use codes, and building permits and any other applicable permits or approvals from the appropriate public agency are obtained; provided that in the event any terms of this Declaration are more restrictive than applicable codes and regulations, the terms of this Declaration shall control.

4.1.1 Only detached single-family residences, appurtenant outbuildings and structures as described in Section 1 may be constructed or permitted to remain on the Lot. Only one residence is permitted on each Lot. Mobile homes, prefabricated homes, modular dwellings and other improvements that are assembled off-site are prohibited, unless authorized in writing by Declarant. Metal structures and improvements are prohibited, except as provided by Subsection 4.1.3.

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