



**PLANNING COMMISSION REGULAR SESSION MINUTES ~ APPROVED**  
**THURSDAY, JUNE 27, 2019 AT 5:00 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](http://www.dunescity.com).

**1. CALL TO ORDER**

Chairman Bonnie Allen called the June 27, 2019, Planning Commission meeting to order at 6:00 pm.

**2. ROLL CALL**

Roll Call was taken by Administrative Assistant Rapunzel Oberholtzer.

**Present:** Chairman Bonnie Allen, Vice Chairman Ken Pesnell, Commissioners Barry Sommer and Jamie Gorder. There is one vacancy on the Commission.

Also present was City Administrator/Recorder Jamie Mills.

**3. PLEDGE OF ALLEGIANCE**

All who were present stood for the Pledge of Allegiance.

**4. APPROVAL OF THE AGENDA**

Vice Chairman Pesnell pointed out an error in the announcements portion of the Agenda and suggested changing "finishing first" to "finishing second." There were no objections.

**Vice Chairman Pesnell made a motion approve the amended Agenda. The motion was seconded by Commissioner Gorder and passed by unanimous vote.**

**5. APPROVAL OF THE CONSENT AGENDA**

A. Planning Commission Meeting Minutes of May 23, 2019

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

**6. ANNOUNCEMENTS /CORRESPONDENCE**

Chairman Allen read from the list of announcements on the Agenda:

- A. The 7<sup>th</sup> annual Oregon Dunes Triathlon was held on Saturday, June 8. It was a beautiful day for a tri! 37 area residents came out to volunteer, along with 15 Boy Scouts and their leaders and 23 members of the Central Oregon Coast Amateur Radio Club. Thank you all! Congratulations to Commissioner Pesnell for finishing second in his division in the Olympic Paddle Tri!
- B. The July 25 meeting of the Planning Commission may include a review of the final plat map for the Little Woahink Lake subdivision. The date will be confirmed in the near future. Any oral or written comments about the proposed subdivision will not be part of the record until notices are published.

## **7. CITIZEN INPUT**

There was none.

## **8. PUBLIC HEARING(S) / DELIBERATION AND DECISION(S)**

### **A. Conditional Use Permit Application Submitted by Doris Pearson**

Chairman Allen announced, "This evening we have a public hearing on an application for a Conditional Use Permit to make a property line adjustment, as applied for by Ms. Doris Pearson."

"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 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 apply 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 to the Oregon Land Use Board of Appeals 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 challenging party has concluded that the Commissioner will not make a decision in an impartial manner."

Chairman Allen asked if any member of the public wished to challenge a Commissioner's impartiality. No one did. Chairman Allen asked if any Commissioner wished to declare a conflict of interest, bias or ex-parte contact. None did.

Chairman Allen opened the public hearing at 6:08 pm and asked for the staff report. Planning Secretary Rapunzel read highlights from a prepared summary of the staff report. She noted that the Applicant wished to consolidate two small lots into one larger lot and that doing so required a Conditional Use Permit because the two donating lots are both less than one acre in size. Rapunzel explained that DEQ and Lane County Sanitation will verify that the site is suitable for a wastewater treatment system and issue the relevant permits. Rapunzel went on to explain that each of the applicable criteria are listed in the staff report, Staff has reviewed them and found that they all are met, or are not applicable to this particular application. Rapunzel also explained that all of the notices and postings have been done as required for a Type III decision. She explained that Staff suggested the Commission attach one Condition of Approval to its recommendation to City Council: Within fifteen (15) days of final recording with the County, the Applicant shall submit to the City a paper copy of the recorded final property line adjustment, which must occur prior to issuance of any building permits on the reconfigured lot.

Chairman Allen asked if any Commissioners had questions for Staff. Vice Chairman Pesnell expressed some concern that the City would not approve a building permit because the consolidated lot would be only .8 acre in size, less than the City's required one acre minimum. City Administrator/Recorder Mills explained that as long as the lot could support a wastewater treatment system and a well, and the proposed building could meet setback requirements, a dwelling could be built on the site and the City would issue a building permit.

Chairman Allen asked for testimony from anyone in favor of or opposed to the application. There was none and the Applicant was not present to offer comments or request that the record be kept open. Chairman Allen closed the public hearing at 6:18 pm.

Chairman Allen explained that the Commission could recommend that the Council approve the application without Conditions of Approval, recommend that the Council approve the application with the Condition suggested by Staff, recommend that the Council approve the application with other Conditions, or recommend denial of the application.

**Commissioner Gorder made a motion to accept the Staff Report and Findings of Fact as presented with the Condition of Approval suggested by Staff. Vice Chairman Pesnell seconded the motion and the motion passed by unanimous vote.**

**Commissioner Gorder made a motion to recommend that the City Council approve the Conditional Use Permit with the Condition of Approval provided in the Staff Report. Commissioner Sommer seconded the motion and the motion passed by unanimous vote.**

*THE STAFF REPORT, APPLICATION AND RELATED DOCUMENTS ARE ON FILE AT CITY HALL.*

## B. Variance Application Submitted by Dan Lofy Construction LLC

Chairman Allen announced, "This evening we have a public hearing on an application for a Variance to build a deck extension within the Riparian Zone, as applied for by Dan Lofy Construction LLC."

"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 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 apply 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 to the Oregon Land Use Board of Appeals 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 challenging party has concluded that the Commissioner will not make a decision in an impartial manner."

Chairman Allen asked if any member of the public wished to challenge a Commissioner's impartiality. No one did. Chairman Allen asked if any Commissioner wished to declare a conflict of interest, bias or ex-parte contact. None did.

Chairman Allen opened the public hearing on the Variance application at 6:27 pm and asked for the staff report.

Referring to a summary of the full staff report, Rapunzel explained that approval of a Variance application is required because the proposed project, a deck extension on an existing dwelling, encroaches into the Riparian Zone by about nine feet, a violation of City Code Section 155.2.6.600(A)(1) which prohibits, "Placement of structures or impervious surfaces, including fences, decks, etc." She went on to explain that the Variance procedure is intended to provide some relief from code requirements for older developments and code requirements that may have the unintended effect of preventing reasonable development.

Rapunzel continued to explain that the Applicant is proposing to build the deck extension in order to provide fire egress over a steep slope to the rear of the house. She also noted that the subject lot is a non-conforming lot of record (0.25 acre) in an approved subdivision platted in 1965 and that the existing dwelling, built in 1973, may have encroached into the Riparian Zone at the time it was built.

Rapunzel went on to explain that all of the requirements for notices and postings have been met and one resident in the neighboring area had come to City Hall to express some concern about the effect construction might have on water lines he and two other neighbors have running through an easement on the project property. She went on to note that Staff reviewed the applicable criteria and found that the elements have been met. She also noted that Staff had concerns about the effects of construction in the Riparian Zone, and consulted with a DSL representative who suggested that the City could require the Applicant to submit a No State Permit Required application to DSL, which would give DSL an opportunity to examine the scope of the project and weigh in. Rapunzel explained that Staff is recommending the Planning Commission make the DSL application a Condition of Approval with the requirement that the City must have a copy of DSL's approved application prior to issuing a building permit.

Chairman Allen asked if any Commissioners had questions for Staff.

Commissioners asked for an explanation of the No State Permit Required. Rapunzel referred them to copies of the form included in their meeting packets and explained that it provided a way for the City to make sure that DSL has no issues with the project in the Riparian Zone; there is no fee for the application and it takes DSL about thirty days to review it.

There was some discussion about the purpose of the new deck. City Administrator/Recorder Mills explained that it provided a safer exit from the dwelling in the event of a fire.

Chairman Allen asked for testimony from anyone in favor of or opposed to the application and recognized Mr. John Colwell. Mr. Colwell expressed concern about his and his neighbors' water lines that run through the subject property, only about 10 feet from where the proposed deck would be located. He explained that the water lines are PVC pipe and are fragile and he would like to see some sort of protection for them during construction.

City Administrator/Recorder Mills asked Mr. Colwell if the water lines had tracer wires. He replied that they did and City Administrator/Recorder Mills suggested the Planning Commission consider attaching as a Condition of Approval a requirement that the water lines must be marked prior to start of construction.

There was no one else present to offer testimony and the Applicant was not present to make comments or request that the record be kept open. Chairman Allen closed the public hearing at 6:50 pm and reconvened the regular session.

Chairman Allen explained that the Commission could recommend that the Council approve the application without Conditions of Approval, recommend that the Council approve the application with the Condition suggested by Staff, recommend that the Council approve the application with other Conditions, or recommend denial of the application.

During discussion, it was generally agreed by all that the water lines should be identified, marked, and protected, and that the contractor should assume responsibility for any damage to them. There was also discussion about allowing construction of any kind within the Riparian Zone.

**Commissioner Gorder made a motion to amend the Staff Report and Findings of Fact to add a Condition of Approval requiring the contractor to locate, mark and protect the water lines during construction, to assume responsibility for any damage to the water lines, to notify the owners of the three water lines when work on the project begins and when it ends, and to require the contractor to submit a No State Permit Required application to DSL before work begins. Vice Chairman Pesnell seconded the motion.**

Chairman Allen called for a recess at 7:10 and reconvened at 7:13.

Commissioner Sommer objected to allowing construction in the Riparian Zone, and cited Dunes City Code Section 155.2.6.600 (A):

“The following activities are prohibited within a riparian corridor, except as may be allowed by Section 155.2.5.6.500(C) *[sic]*: 1. Placement of structures or impervious surfaces, including fences, decks, etc., 2. Excavation, grading, fill, stream alteration or diversion, or removal of native vegetation, except for perimeter mowing for fire protection purposes, 3. Expansion of pre-existing, non-native ornamental vegetation such as lawns, 4. Dumping, piling, or disposal of refuse, yard debris, or other material, 5. Application of chemicals such as herbicides, pesticides, and fertilizers unless applied in accordance with state and federal regulations.”

Commissioner Sommer went on to cite Dunes City Code Section 155.2.6.500 (C), which provides, “With the exception of the following instances listed below, and only when these instances are designed to minimize intrusion into the riparian corridor, grading involving cutting and filling, and placement of structures or impervious surfaces shall not be allowed. Exceptions: 1. Streets and paths, 2. Utilities and pumps, 3. Water-dependent and water-related uses, including one access path not to exceed eight feet in width; and 4. Replacement of existing structures in the same position with structures that do not disturb additional areas within the riparian corridor.”

**Commissioner Gorder made a motion to accept the amended Staff Report and Findings of Fact. Vice Chairman Pesnell seconded the motion. In a roll call vote, Commissioners Pesnell and Gorder voted in favor; Commissioner Sommer voted against the motion. The motion passed.**

**Vice Chairman Pesnell made a motion to recommend that the City Council approve the amended Staff Report and Findings of Fact with the Conditions of Approval recommended by the Planning Commission. Commissioner Gorder seconded the motion. In a roll call vote, Commissioners Pesnell and Gorder voted in favor; Commissioner Sommer voted against the motion. The motion passed.**

*THE STAFF REPORT, APPLICATION AND RELATED DOCUMENTS ARE ON FILE AT CITY HALL.*

## **9. NEW BUSINESS**

### **A. Schedule Outdoor Lighting Work Session**

Commissioners referred to copies of sample outdoor lighting codes from other cities. There was some discussion during which Commissioners agreed that they would like to see Dunes City adopt code to regulate outdoor lighting. After discussion, Commissioners agreed that the Planning Commission would submit a letter to the City Council asking the Council to support Planning Commission work on a lighting ordinance.

Vice Chairman Pesnell volunteered to draft a letter to the City Council.

**Commissioner Sommer made a motion to direct Vice Chairman Pesnell to draft a letter from the Planning Commission to the City Council asking the Council to allow the Planning Commission to consider a lighting ordinance. Commissioner Gorder seconded the motion. The motion passed by unanimous vote.**

## **10. UNFINISHED/OLD BUSINESS**

There was none scheduled.

## **11. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA/FOR THE GOOD OF THE ORDER**

There was none.

## **11. ADJOURNMENT**

**Vice Chairman Pesnell made a motion to adjourn. Commissioner Gorder seconded the motion. No vote was taken.**

Chairman Allen adjourned the meeting at 7:31 pm.

**APPROVED BY THE PLANNING COMMISSION ON THE 25<sup>th</sup> DAY OF JULY 2019**

[Signed copy on file at City Hall]

Bonnie Allen, Chairman

ATTEST:

[Signed copy on file at City Hall]

Jamie Mills, City Administrator/Recorder