



AGENDA
CITY OF THE DALLES PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
313 COURT SREET
THE DALLES, OREGON 97058
CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM

THURSDAY, OCTOBER 18th, 2001
6:30 P.M.

- I. Call to order
- II. Roll call
- III. Approval of agenda
- IV. Approval of minutes: October 4, 2001
- V. Public Comment
- VI. Public Hearing
 - A. Continued from August 30th and October 4th: *Quasi-Judicial Discussion and Deliberations for:*
 - 1. **Minor Partitions 188-01 and Property Line Adjustments 79-01 of Mark and RaeAnn Clark.** This hearing includes a minor partition application to divide one parcel into two parcels as well as a property line adjustment. Property is located at 2112 W. Scenic Drive and is further described as 1N 13E 4CD TL 8200 and 7900. Property is zoned "RL"- Residential Low Density.
 - 2. **Minor Partitions 189-01 and Property Line Adjustments 80-01 of Mark and RaeAnn Clark.** This hearing includes a minor partition application to divide one parcel into two parcels as well as a property line adjustment. Property is located at 2112 W. Scenic Drive and is further described as 1N 13E 4CD TL 8000 and 7900. Property is zoned "RL"- Residential Low Density.
 - B. **New Hearing**
 - 1. **Conditional Use Permit 122-01 of Union/Baker Education Service District** to apply a Community Facility Overlay (CFO) District to the existing underlying zones in order to site Administrative Offices for both Wasco and Morrow county E.S.D. as well as a resource center for approximately 10 to 12 students needing alternative schooling. Property is located at 414 Federal Street and is further described as 1N 13E 3BD TL 9700 & 9800. Property is zoned "CBC"- Central Business Commercial.

VII. Resolutions

- A. Resolution #422-01 approving Minor Partition #188-01 and Property Line Adjustment 79-01, with conditions, of Mark and RaeAnn Clark to divide one parcel into two parcels as well as a property line adjustment. Property is located at 2112 W. Scenic Drive and is further described as 1N 13E 4CD TL 8200 and 7900. Property is zoned "RL"- Residential Low Density.**
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- C. Resolution #425-01 approving Conditional Use Permit 122-01 of Union/Baker Education Service District to apply a Community Facility Overlay (CFO) District to the existing underlying zones in order to site Administrative Offices for both Wasco and Morrow county E.S.D. as well as a resource center for approximately 10 to 12 students needing alternative schooling. Property is located at 414 Federal Street and is further described as 1N 13E 3BD TL 9700 & 9800. Property is zoned "CBC"- Central Business Commercial.**

VIII. Commissioner Comments/Concerns

IX. Next meeting date: November 1st, 2001.

X. Adjournment

AGENDA CORRECTION

The resolution number on resolution C was typed incorrectly. The correct resolution number is 425-01. This is a corrected page 2 of the Agenda. Thank you!

MEMORANDUM

TO: Planning Commission Members
Parties of Record

FROM: Gene Parker, City Attorney GP
Dan Durow, Community Development Director DD

DATE: October 11, 2001

RE: Staff Analysis of Additional Issues

The staff has had an opportunity to research and review certain issues raised by the opponents to the minor partition applications submitted by Mr. and Mrs. Clark. To assist the Planning Commission members in their deliberations, this memorandum will separate a discussion of the issues into two categories; those issues which the staff believe are not relevant to the review criteria for minor partitions, and those issues which the staff believes are relevant under the review criteria. The review criteria for a minor partition is set forth in Section 9.030.040(B) which provides as follows:

B. Review Criteria. Partition applications shall be reviewed to assure:

1. The tentative plat meets the Wasco County recording requirements.
2. The proposal is consistent with the purposes of this Chapter, relevant development standards of this Ordinance, policies and density requirements of the Comprehensive Plan, Public Works standards and policies, and any other applicable policies and standards adopted by the City Council.
3. Approval does not impede future development of property under the same ownership or on adjacent lands planned for urban densities, including provision of City services and access from a public street.

Issues Not Relevant to Review Criteria

One concern of the opponents was the lack of review of potential traffic safety concerns posed by the proposed partitions, by the Traffic Safety Commission. The Planning Commission does have the discretion to refer issues to the Traffic Safety Commission for their review and approval. The staff does not believe that a referral of this matter to the Traffic Safety Commission is warranted.

As discussed in the original and supplementary staff reports, Section 10.060(A) of the LUDO does not require a traffic study for the proposed applications, because they do not fit within the

category of a “significant traffic generator”, which is defined as a development proposal for 16 or more single or multi-family dwellings. Although there appears to be some conflicting testimony and evidence in the record as to the number and types of accidents that have occurred within the area immediately adjacent to the horseshoe curve, upon which the lots are located, the information supplied by the staff from the police department records does not establish a significant and consistent pattern of traffic accidents in this area.

Testimony was provided by the opponents indicating that some of the accidents which occurred in the area were caused by drivers who were speeding, or driving in a careless or reckless manner. Such evidence could indicate there is a need to increase the enforcement of traffic laws in the area, but there was no substantial evidence establishing that traffic generated by the proposed partitions would cause or contribute to unsafe traffic conditions. It may be appropriate for the Traffic Safety Commission to review whether there are traffic enforcement issues which could be addressed on Scenic Drive. In staff’s opinion, the proposed applications do not present any potential traffic safety concerns which would require the Traffic Safety Commission to examine the proposed partitions.

In his letter of opposition, Mr. Carter raised a concern that the applicants were in effect proposing to build a six-lot subdivision, and that the method of access proposed for the minor partitions would not be consistent with the access requirements for a six-lot subdivision. The Clarks previously submitted an application for a single lot line adjustment and a minor partition that created four lots. Under section 9.010 of the LUDO, this application complies with the definition of a “partition”. During the following year, the Clarks submitted the applications which are the subject of the current hearings, for lot line adjustments and minor partitions to create two more lots. The new applications also fit within the definition of a “partition” under Section 9.010. There does not appear to be any provision in the LUDO which prevents the Clarks from submitting the applications for consecutive minor partitions. If there is a concern that allowing consecutive minor partitions reflects a bad policy, those concerns need to be addressed through a process of amending the City’s land use ordinance.

A concern was also raised as to whether Mid-Columbia Fire and Rescue had a sufficient opportunity to comment upon the proposed application, and address any potential concerns over access through the proposed single driveway. In a telephone conversation with the City Attorney, Stu Nagel, the Fire Marshal for Mid-Columbia Fire and Rescue, confirmed that he had reviewed the proposed applications, as part of the site team review process, and determined the fire department had no objections to the proposed applications. Mr. Nagel indicated the proposed access complied with the requirement that the fire department be able to get equipment within 150 feet of the ground level of a structure, and he also indicated the placement of fire hydrants complied with fire code requirements.

In Mr. Carter’s letter of opposition (which was labeled Exhibit #4 at the October 4th hearing), he expressed a concern about “potential market resistance” to the development of the property, a concern over long term maintenance of the private driveway, and a concern that the application

did not comply with the provisions of Section 1.020 which sets forth provisions concerning the purpose of the LUDO. None of these concerns address any of the specific review criteria under Section 9.030.030(B), and they are not relevant for purposes of the Planning Commission's deliberations.

In Mr. Nadler's letter of opposition (which was labeled Exhibit #7 at the October 4th hearing), he asserted the applications were incomplete. In support of his assertions, Mr. Nadler claimed the applications did not comply with Section 9.030.030(A)(14) by failing to identify several "significant natural features" which allegedly exist on the property. Mr. Nadler claimed the plat contained a footnote which refers to "approximately 20 mature pine trees" on the site. He also claimed there was a large outcropping on Tax Lot 8100 which was not shown on the tentative plat. Finally, he argued there were several paths or trails which have been created by animals which were not shown on the tentative plat.

The term "identification" is not defined in Section 9.030.030(A)(14). Section 2.010 of the LUDO provides that "All words and terms used in this Ordinance have their commonly accepted, dictionary meaning unless they are specifically defined in this Ordinance, or the context in which they are used clearly indicates to the contrary." Webster's dictionary defines "identification" as the process of recognizing as being shown, or showing a person or thing to be the very person or thing known, described or claimed, or to fix the identity of the person or thing; for example, to identify a biological specimen. There is no specific language in Section 9.030.030(A)(14) that requires the precise location of the alleged natural feature be shown on the tentative plat. Staff believes the plat sufficiently identifies the existence of the trees by noting their presence in the note on the tentative plat.

Concerning the presence of the large rock outcropping on Tax Lot 8100, this particular tax lot is not one of the lots which is proposed for partitioning, and therefore, there is no need to show this feature on the tentative plat. Regarding the alleged failure to show existing animal trails on the tentative plat, under the language in Section 2.010, the Planning Commission should consider the context of the examples of natural features listed in Section 9.030.030(A)(14). The examples listed include rock outcroppings, creeks, streams, ponds, riparian areas, and existing trees. These are all features created by nature or by man, not by animals. The examples refer to permanent natural features, not to temporary or transient features created by animals. Staff believes the Planning Commission should interpret Section 9.030.030(A)(14) not to include animal paths as "significant natural features".

Mr. Nadler also asserted the application was incomplete under Section 9.030.030(A)(11) by containing a note that "there are no significant physical or environmental constraints such as land slope, flood ways, flood plains, or natural drainage ways associated with the site." Mr. Nadler asserts this claim is inaccurate. The tentative plat does contain a note (Note #2) that the site is located within the A-2 geological hazard zone. Staff believes that the plat complies with the provisions of Section 9.030.030(A)(11).



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IX VIII. Commissioner Comments/Concerns

X IX. Next meeting date: November 1st, 2001.

XI X. Adjournment

Issues Which Are Relevant to the Review Criteria

The second primary argument presented by Mr. Nadler in his letter of opposition was that the applications failed to comply with the review criteria set forth in Section 9.030.030(B)(2), which requires the proposals be consistent with the purposes of Chapter 9. One of the stated purposes in Section 9.010 is to “ensure that building sites are sufficient for their intended use and that lots are to be created within the density ranges permitted by the Comprehensive Plan”. Staff believes that the discussion and the findings of fact set forth on pages 6 and 7 of the original staff report, which discuss the applicable provisions of the Comprehensive Plan, are sufficient to establish the proposed lots are designed for single family dwellings, and of a sufficient size to comply with the density ranges established by the Comprehensive Plan.

Another purpose stated in Section 9.010 is to “ensure economical, safe and efficient routes for pedestrians, bicycles and motor vehicles”. East Scenic Drive is classified as a collector street. It is the staff’s opinion that the capacity of East Scenic Drive is sufficient to handle the additional traffic to be generated by the proposed minor partitions, in a safe and efficient manner. As discussed previously, the number of proposed single family dwellings proposed by the development is not sufficient to qualify as a “significant traffic generator” requiring a traffic study. Information provided by staff based upon records provided by the police department did not appear to establish a significant consistent pattern of traffic accidents in the vicinity of the lots proposed to be partitioned. Evidence of accidents caused by speeding or careless drivers may indicate a need to increase traffic enforcement in the area, but there was no substantial evidence that the proposed applications would be generating significant traffic, or creating a situation that would pose a threat to traffic safety in the area. The proposed vision clearance area shown on the tentative plat, and the two additional conditions recommended in the supplemental staff report, are designed to address any potential concerns about traffic safety in the area.

Another of the stated purposes in Section 9.010 is to “minimize negative effects of development upon the natural environment and incorporate natural features into the proposed development where possible.” As discussed previously, the only significant natural feature which would appear to qualify under Section 9.030.030(A)(14) are the pine trees, and the applicants complied with the requirement to identify those trees on the tentative plat. The opponents expressed strong concerns over the loss of the existing trees on the property. Such testimony appears to be speculative in nature, as there was no direct testimony that the trees were going to be removed. The ability to incorporate the existing trees into the development will depend in large part upon the geological impact statement which will have to be performed for each individual lot, before a building permit will be approved for that particular lot. The Planning Commission has the discretion to include a condition of approval that encourages the applicant to preserve as many trees as possible when the property is finally developed.

Section 9.010 also provides a stated purpose is “to create residential living environments that foster a sense of neighborhood identity and are protected from the adverse effects of heavy traffic and more intensive land uses”. Mr. Nadler argued the proposed lot sizes will be typically smaller

than the average lot sizes in the area, and with the single access driveway, the area will appear to be an "intensive housing compound", out of character with the neighborhood. Mr. Nadler is in effect arguing the proposed partitions will not be aesthetically acceptable.

Staff is concerned that the criteria in the stated purpose could be subject to challenge under the provisions of ORS 197.307 which requires that standards or conditions regulating appearance or aesthetics, in whole or in part, when applied to an application involving "needed housing" or to a permit for residential development, must be clear and objective, and the standards or conditions cannot be applied in such a manner as to deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zoning district.

Under Goal #10 of the City's Comprehensive Plan concerning housing, 167.0 acres has been identified as needed for the low density residential zoning classification. The Comprehensive Plan indicates that certain infill strategies should be implemented commensurate with adequate design standards to ensure compatibility with existing and new neighborhood development patterns. On page 34 of the Plan, several different options are listed for single family dwellings. Sub-Goal #1 of Goal 10 states the Plan should "Promote and provide an adequate supply of safe, healthy and affordable housing for all members of the community in a variety of housing types recognizing the need and desires of the community's residents". Implementing Policy #1 of Goal #10 states the Plan should "Provide for development of a wide range of housing types which may include single-family detached and attached housing, townhouses, apartments and condominiums, and manufactured housing and mobile homes. Housing types shall allow for a variety of price ranges to meet the needs of low, medium and high income groups."

The language in the Plan would appear to indicate that a variety of housing types has been identified as "needed housing" within the City. Although an application for a minor partition is not technically defined as an application for a "permit" for purposes of ORS 197.307, staff is concerned that if the criteria of "creating residential living environments that foster a sense of neighborhood identity", is somehow construed to provide a basis for denying the application for the partitions, this will have same effect as denying an application for a building permit to construct a dwelling upon the lots. The criteria in this portion of the purpose language appears to be directly focused towards issues involving aesthetics and appearance of the proposed development. The legislative history of ORS 197.307 indicates that the legislature's intent in adopting the legislation was to prevent cities from discriminating against certain styles of housing, such as manufactured housing. If the opponents' concerns are that the proposed development could produce "an intensive housing compound", which could include manufactured housing or some other form of single family dwelling other than a traditional stick built home with a single driveway access, such concerns appear to directly contradict the stated purpose of the state legislation, and a denial of the partitions on this basis would appear to be inconsistent with the policy of the State of Oregon.

The language expressing a concern for the need to "create residential living environments that foster a sense of neighborhood identity" appears to be subjective in nature, and it is very similar in

scope and style to the type of standards which the Land Use Board of Appeals determined did not comply with the “clear and objective” requirements of ORS 197.307 in the case of Rogue Valley Association of Realtors v. City of Ashland, LUBA No. 97-260. For this reason, and the reasons stated above, staff recommends that the Planning Commission not construe this criteria in a manner that would allow for denial of the applications.

Regarding the concern raised by Mr. Nadler that the applications do not comply with the stated purpose to “protect an existing neighborhood from the adverse effects of heavy traffic and more intensive land uses”, the provisions and conditions which the staff have recommended to establish the clear vision area and the no parking zones indicate the proposals are designed to mitigate any negative traffic impact. As mentioned previously, the number of proposed single family dwellings in the development are not sufficient to warrant a traffic study. Concerning the possible effects of more intensive land uses, the property to be developed is zoned “R-L” Low Density Residential, so the allowed uses on each of the proposed lots is not more intensive than the uses existing on the surrounding property.



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