



## **CITY OF THE DALLES PLANNING COMMISSION MINUTES**

**Thursday, September 5, 2002**

City Hall Council Chambers  
313 Court Street  
The Dalles, OR 97058

*Conducted in a handicap accessible room*

### **CALL TO ORDER:**

Chair Bruce Lavier called the meeting of the City of The Dalles Planning Commission to order at 6:30 P.M.

### **ROLL CALL:**

**Present:** Bruce Lavier, Jean Thomas, Jo Ann Wixon, Ted Bryant, Ron Ahlberg, and Mark Poppoff  
**Absent:** Dr. Wilcox  
**Staff:** Dan Durow, Community Development Director; Dale McCabe, City Engineer; Denise Ball, Admin. Secretary.

**AGENDA:** Bryant moved to approve the Agenda as submitted and Thomas seconded. The motion passed unanimously, with Wilcox absent.

**MINUTES:** Lavier asked if any corrections were needed for the minutes of August 15, 2002. There were no corrections. Thomas moved to approve the minutes as submitted and Wixon seconded. The motion carried unanimously, with Wilcox absent.

**PUBLIC COMMENT:** None

### **PUBLIC HEARINGS– Continuation**

**A. Hearing for Minor Partition 196-02 and Property Line Adjustment 92-02 of Scott Gayer** to divide one lot into three lots for single-family dwellings. Property is located at 2525 E. 16<sup>th</sup> Street and is further described as 1N 13E 11AA Tax Lots 900 and 1400. Property is zoned “RL” – Residential Low Density.

Chair Lavier re-opened the public hearing. Director Durow informed the Commission that the applicant has submitted a letter stating he is withdrawing his application. Durow went on to say

that the application would now be processed administratively.

**B. Hearing for Conditional Use Permit 123-01 of Wayne and Laurel Lease** to obtain Staff and Planning Commission approval for a detailed site plan of their proposed Residential Care Facility, meeting the requirements of the Land Use and Development Ordinance, prior to the issuance of a building permit. The detailed site plan shall indicate the type of paving or other hard surface materials on the driveway and parking lot, and shall adequately provide for storm drainage. Property is located at 1812/1816 Liberty Way and is further described as 1N 13E 4DC Tax Lot 4200. Property is zoned "RL" –Residential Low Density.

Chair Lavier read the rules for conducting a public hearing. He asked the Commission if anyone needed to declare bias, conflict of interest, or ex-parte contact.

Commissioner Bryant said he spoke to Mr. Kortge on the stairs on the way up to the meeting and wished him good evening. He did not feel it would bias his decision. Commissioners Wixon, Poppoff and Thomas stated they had visited the property. Commissioner Ahlberg said he had visited the property prior to the previous hearing. Chair Lavier said it did not appear that the Commissioners decision would be altered by that contact.

Chair Lavier asked if anyone in the audience wished to challenge the qualifications of anyone on the Commission.

Wayne Lease asked for a definition of ex-parte contact.

Director Durow explained that ex-parte contact means a decision maker has had some sort of contact, outside of the hearing, with individuals involved in the hearing or viewing the property. Ex-parte contact does not necessarily mean the decision maker is biased or has a conflict of interest. It is simply contact that needs to be disclosed at the beginning of the hearing.

Chair Lavier and Wayne Lease both stated they were satisfied with the definition.

Chair Lavier declared the public hearing open.

Director Durow presented the Staff Report. He asked if there were any questions of Staff.

Commissioner Thomas asked if the Planning Department would be dealing with all the details of the conditions of approval.

Durow said yes, Staff would assure that all the conditions of approval are met prior to issuing a building permit.

Wixon asked if the City would require a bond or retain reserves from the developer for the future improvements referred to in Condition 8.

Durow explained the required Waiver of Remonstrance and how the property owner is financially responsible for their portion of the improvements.

Chair Lavier opened the hearing for public testimony and asked if anyone wished to speak in favor of the application.

Director Durow asked permission to interrupt and present additional information. Durow notified the Commission that there is a private easement for a sanitary sewer line running through the property in question on lot 6. Mr. Lease's final drawing does not show the private easement. However, because it is a private easement, it does not have to be shown. The City will not get involved in a civil issue such as this and is not criteria under review at this hearing.

Wayne Lease, 41 Private Lake Road, White Salmon, Washington 98673 said he chooses not to speak at this time but would like to speak after opponents have spoken.

Director Durow asked if he was in agreement with the Staff comments and findings.

Mr. Lease said he didn't say that.

Chair Lavier brought up the legal question as to what Mr. Lease could talk about if he limits himself to rebuttal testimony.

Director Durow said Mr. Lease would only be able to rebut what the opponents have talked about.

Chair Lavier asked if Mr. Lease understood he would be limited in his rebuttal testimony.

Mr. Lease said he did not understand that. Mr. Lease decided to testify after all and handed out proponent Exhibit A (attached) titled "Definitions". Mr. Lease went on to say that the LUDO has no definition of ex-parte contact, compatibility, or conditional use. He is perplexed how the Planning Commission could make a decision without a clear definition of what they are deciding upon. Mr. Lease continued his testimony by reading the definition handout.

Mr. Lease continued by discussing the information he has presented to the Planning Commission.

Chair Lavier interrupted Mr. Lease and advised him he was getting off the subject.

Mr. Lease continued his testimony and stated that his project is an outright permitted use.

Commissioner Ahlberg said the Conditional Use had already been decided. Ahlberg said he thought the hearing was to listen to the criteria regarding the site plan and conditions of approval that have been presented. Ahlberg went on to say that he has heard nothing from Mr. Lease that pertains to those issues.

Mr. Lease replied he had not gotten there yet.

Mr. Ahlberg said he would like it if Mr. Lease could get there. Ahlberg continued that Mr. Lease is going over the criteria for approving a conditional use and Mr. Lease already has his conditional use granted.

Mr. Lease said his point is that it is not a conditional use.

Director Durow asked to speak. Durow stated that the conditional use has been decided, approved, and has conditions. There was no appeal on the City Council decision so it stands. What the Commission is looking at now are the details of the construction through the criteria necessary for detailed design plans and the criteria for neighborhood compatibility. Those are the only things that are being looked at. The conditional use is set.

Mr. Lease asked if the conditions of approval that are being recommended tonight are in excess of what the City Council and the Planning Commission handed down.

Director Durow said many of the conditions are carried over from the previous decisions because they have not been satisfied. The additional conditions relate specifically to the detailed drawings that were presented or the neighborhood compatibility review criteria.

Mr. Lease asked if this was a new hearing.

Director Durow said it is a new hearing for those items only; the detailed construction plans and the neighborhood compatibility review. The conditional use is not an issue; it has been approved.

Mr. Lease ended his testimony.

Commissioner Bryant asked about Mr. Lease's landscape plan and if Mr. Sperry is familiar with our agricultural products in The Dalles.

Mr. Lease said he assumes he is because he worked for the Parks and Recreation District and has lived here for twenty years.

Bryant said he is concerned about the flowering cherry shown on the plan. There is a virus that flowering cherry plants can get and it can spread to the cherry orchards. He recommended that a flowering prune might be better.

Mr. Lease said he would be happy to have Commissioner Bryant make that suggestion to staff to change the landscaping plan.

There were no further questions of Mr. Lease.

There was no additional proponent testimony.

### **Opponent Testimony**

Chair Lavier asked for opponent testimony.

John Kelly, 1815 Liberty Way, The Dalles, OR 97058, spoke first. Mr. Kelly started by saying that this hearing is premature. The site plan is incomplete. The Planning Commission has limited choices because of this. Mr. Kelly went on to say the Commission can: 1) decline to approve the

site plan; 2) ask Mr. Lease to extend his 120-day decision requirement to give him the opportunity to revise and complete his site plan. Mr. Kelly said that the City Council has charged the Commission with doing something that cannot be completed based upon the Staff Report and incomplete site plan.

Mr. Kelly went on to explain that he disagrees with Mr. Durow about what is being reviewed and approved at this hearing. Mr. Kelly said he had a conversation with Attorney Parker today. Kelly said that what he believes Parker told him is that the Planning Commission is to review and approve all the conditions set down by the City Council, not just the review and approval of the detailed design plan.

Mr. Kelly said he also disagrees with Agenda Item 7.B. Kelly says the City Council charged Staff with nothing. The Planning Commission is to review the proposal, not Staff.

Next, Kelly moved on to the conditions of approval. Finding A-4c states the City Council condition required paving or hard surface materials on the driveway. Mr. Lease's driveway is gravel. This condition has not been met.

Continuing, Kelly spoke to finding A-5c, which states the applicant must have a geologic hazard study. Kelly asked the Commission if they have seen a geologic hazard survey. Finding A-6c, says the applicant's plans do not show the no-parking areas on Liberty way required in the City Council conditions of approval.

Mr. Kelly said the Planning Commission should ask themselves if they are ready to approve detailed design plans that, even according to the Staff Report, do not meet the conditions imposed by the Council.

Mr. Kelly went on to page six of the Staff Report and the section on building orientation. Kelly asked Durow if the italicized language is a LUDO requirement.

Durow said yes.

Kelly quoted "New buildings shall have their primary orientation to the street utilizing features such as front porches, windows, doorways, walkways, and traditional storefront elements". Kelly went on to say that the Planning Commission is being asked to approve something that does not meet the LUDO. Kelly said there might be good reason for a variance to this criterion, but the applicant has not requested a variance.

Kelly said that there is a large number of conditions that have not been met and Staff are recommending that they be retained as conditions of approval at this hearing. Kelly believes that the City Council has charged the Planning Commission to be sure today, now, at this hearing, that the conditions have been met.

There were no questions.

Ann Vogt Bialous, 275 Lone Pine Lane, The Dalles, OR 97058. Her parents, the Vogts, live at 115 W. Scenic Drive. Her parents have an easement for their sewer line running through Mr.

Lease's property. The new plan shows the proposed building being placed on top of that sewer line and do not reference the easement. Ms. Bialous said Mr. Lease has not contacted her parents about their sewer line.

Commissioner Bryant asked Bialous if this is a private easement and she replied that it is.

Chair Lavier reminded Commissioner Bryant that Director Durow had informed them of this earlier in the hearing. It is a private matter.

Director Durow advised the Commission again that this private easement does not fall under any criteria being reviewed at this hearing. He went on to say, however, that the sewer line is provided for in one of the detailed drawings that show two six-inch sewer lines shown alongside the four-inch water line. One of the sewer lines goes clear to the back of the property. Durow continued that the easement, what the easement means, and enforcement of the easement is all a civil matter and is not part of the hearing criteria.

Chair Lavier asked Ms. Bialous if that answered her questions.

Ms. Bialous said she wants it addressed by the applicant.

There were no further questions.

Myrna Kinner, 105 W. Scenic Drive, The Dalles, OR 97058 spoke next. Kinner inquired how the patients would be secure if there is no fencing on the property.

K.C. Kortge, 1820 Liberty Way, The Dalles, OR 97058. Mr. Kortge asked if the record could be kept open for two weeks to give him time to review all the material.

Chair Lavier asked Director Durow if this would be considered an official request to continue the hearing.

Director Durow said it is not a continuance, but rather a request to keep the record open for a set period of time.

Mr. Kortge said he does not wish to testify but would like to submit evidence in writing.

Director Durow informed the Commission that there is still about 100 days left in the 120-day decision deadline.

Director Durow read a letter into the record, in opposition, from Nola and Guy Wharton, 1709 Liberty Way, The Dalles, OR 97058 (attached as Opponent Exhibit B). Durow said the comments in the letter are not related to the review criteria.

### **Proponent Rebuttal**

Wayne Lease, 41 Private Lake Road, White Salmon, WA 98673. Mr. Lease said he totally concurred with Mr. Kelly that there are decisions needed here that the Commission probably

can't make and shouldn't make. Lease said this is a federal and state outright permitted use and is not the jurisdiction of the Planning Commission.

Mr. Lease spoke to the private easement and the roadway on the property. Lease said he has the right to move the sewer line and use his property. Lease also believes that he has a vested right to the roadway as it exists.

Mr. Lease said he would go two more weeks to allow Mr. Kortge to review and respond to the proposal. However, what the Commission is forcing Mr. Lease to spend is making the project cost-prohibitive. Mr. Lease said he is not the one losing; it is the Community that is losing. Lease went on to say that what he has proposed blends perfectly with the neighborhood. This is not an institution but a home for people with an illness who have the right to live as normally as possible. Mr. Lease said it is not legal for the Commission to impose "special" conditions on him or the dementia patients who will occupy the building.

Commissioner Bryant responded by saying that he has the right to drive on the highway but he does not have the right to violate the speed limit. Bryant went on to say that the Commission is not saying he can't build the facility but they are concerned about runoff & geologic hazards.

Mr. Lease reminded the Commission he has a waiver from the City for that geologic study that the City will not honor. The burden of proof has been his and he feels he has burdened the Commission to death with that proof. Mr. Lease feels all of his proof has fallen on deaf ears. Lease went on to say that his facility legally cannot be burdened with conditions that would not be applied to any other residential application.

Commissioner Thomas asked if the sewer line is under the proposed building.

Mr. Lease said he would be crazy to place a house over a sewer line. He will be moving that sewer line. The private easement gives him the right to do that.

There were no more questions.

Chair Lavier closed the public testimony portion of the hearing. The record will be kept open for seven days. Lavier requested the Commission getting the information as soon as possible to review before the hearing on 9/19/2002.

Commissioner Thomas she doesn't agree with John Kelly that the City Council established the conditions of approval. The City Council upheld the decision and conditions of approval of the Planning Commission and only modified some of them. Thomas went on to say that of the eleven conditions of approval, eight conditions were established by the Planning Commission during the original Conditional Use Permit hearing. Three conditions are new in the current Staff Report: 1) the erosion control plan; 2) coordination with public works; and 3) required modifications of the driveway drainage system.

Chair Lavier said deliberations would continue in two weeks.

**C. Hearing for Conditional Use Permit 128-02 of Mid-Columbia Children's Council to expand the existing building and add a new vestibule entry to a childcare and Head Start Facility. Applicant proposes an addition to add two classrooms, offices and toilet rooms. Applicant also proposes to remodel two toilet rooms.**

There were no new audience members so it was not necessary to read the rules for a public hearing again.

Chair Lavier asked if any Commissioner needed to declare ex-parte contact.

Commissioner Bryant said he visited the sight but spoke to no one.

Commissioner Thomas said she also visited the site and has been involved with Head Start previously. She does not believe it would bias her vote.

Commissioner Wixon said she lives in the area of the facility but it would not affect her vote.

Commissioner Ahlberg said he had visited the site.

No one in the audience challenged any of the Planning Commissioners.

Chair Lavier declared the public hearing open.

Director Durow presented the Staff Report. He asked if the Commission had any questions.

Commissioner Ahlberg asked how many people would be working at the facility.

Director Durow said the first number is 14 and second number is 18. The parking requirement is already met.

Commissioner Ahlberg said the plans were very difficult to read. The detail was too small. He requested that full size plans be provided to the Planning Commissioners.

Commissioner Bryant asked if the Conditional Use Permit could be revoked if the employees continue to park on the street.

Director Durow said it would be a violation of a condition that would go through our normal enforcement process. A citation could be issued if they would not comply with the parking condition.

Commissioner Thomas asked if it was legal to tell someone they could not park on the street.

Commissioner Bryant said he feels it is draconian to propose a condition like that.

Director Durow said the downtown area has a similar parking prohibition for downtown employees.

Commissioner Bryant said the individual employee who violates the downtown-parking ordinance is punished in that instance. In this case, a Conditional Use Permit could possibly be withdrawn.

Durow said it would go through an enforcement process before that would happen.

Commissioner Ahlberg said that the Commission could impose a no-parking area if they felt it was necessary.

Durow said there is a clear intent, by our ordinance requirement of off-street parking spaces for businesses, that employee parking not take place on the street.

Bryant asked who actually owns the parking lot.

Durow replied that the parking lot belongs to the childcare facility.

Lavier noticed the Staff Report said a written comment had been received from a neighbor across the street from the childcare facility. Lavier understood the neighbors' complaint was that the employees were parking across the street from the childcare facility, in front of the neighbors home, not in front of the childcare facility.

Ahlberg said he is not sure the driveway is adequate to meet all of the needs. Ahlberg asked if Staff had reviewed all the driveway information to make the determination on the turn ratios for buses and that type of information.

Director Durow assured Commissioner Ahlberg that Wasco County Public Works, City Public Works and the Planning Department have all reviewed the plan.

Engineer McCabe explained that this application has gone through the normal review process. It has been through site team. There are two existing curb cuts, one way in and one way out.

Lavier said this discussion about the driveways is really not criteria for this hearing.

Bryant asked Durow if he knew what kind of tree they were removing.

Durow said he did not.

Thomas wondered what averagely medium canopied trees means.

Wixon asked if this is a new facility and has it just taken a period of time to require additional rooms.

Durow said yes.

### **Proponent Testimony**

Chair Lavier asked for those people who are in favor of the application to give testimony.

Suzanne VanOrman, 1100 E. Marina Way # 215, Hood River, OR 97031, Executive Director for the Mid-Columbia Children's Council spoke in favor of the application. VanOrman said they are asking for this addition because they have been currently running four classes in two classrooms. They have no staff room and are too crowded.

Ms. VanOrman said she would be very surprised if it is her staff that has been parking on the street. It may have happened when the parking lot was under construction.

The buses that come to the facility are the small buses so there is no large turning radius to be concerned about.

VanOrman went on to say that there is no parking on the north side of W. 10<sup>th</sup> due to the bike lane.

She asked for questions about the program.

Commissioner Ahlberg if she had ever seen full size buses use the driveway.

VanOrman said she has not seen big buses during her hours at the facility.

Commissioner Bryant asked who the clients are.

VanOrman replied the clients are low-income families and children with disabilities.

Bryant asked if this facility is in competition for clients with the new facility on Vey Way.

VanOrman said yes. She went on to say that this facility is full this year and has a waiting list.

Commissioner Poppoff asked what type of tree they are taking down and are they planning on replacing it.

VanOrman said she doesn't know.

Chair Lavier asked if VanOrman had a problem with the second condition of approval.

VanOrman said she does have a problem with it. There could possibly be times it is necessary for staff to park on the street. She went on to say a City Ordinance governing parking would be a better way to handle this. She will ask her Staff not to park on the street, but can't guarantee it won't happen occasionally.

Thomas asked about the sleeping room.

VanOrman said that is provided in case they do child-care. Currently they perform group socialization programs.

Ahlberg asked how much of the parking is utilized by the buses.

VanOrman said the bus parking is right as you pull in the parking lot. The buses do not utilize the staff parking spaces.

Ahlberg asked why the toilet rooms are being re-modeled.

VanOrman was unable to answer that question.

The next proponent was Dave Martin, 1100 E. Marina Way #215, Hood River, OR 97031, the Facilities Manager.

Martin explained that the parking lot was redone to provide more staff parking. The two driveways provide safer ingress and egress.

Ahlberg said he probably can't talk to this proponent about the bathrooms either and will have to wait for the architect.

Director Durow said he is concerned about Commissioner Ahlberg's question regarding the toilet room remodel.

Ahlberg said the bathrooms should be ADA compliant already.

Martin said that they inherited the building and must meet not only ADA requirements but also head start requirements. One of the problems that exist is that the size of the children was underestimated and the toilets are too small for them.

Ahlberg asked how many bathrooms the facility will have and how many will be ADA accessible.

Martin said the new, adult restrooms and the children's' restrooms will be ADA accessible.

Director Durow asked Commissioner Ahlberg what criteria these questions pertain to.

Ahlberg said it might be one that Staff has omitted. He went on to say that generally the criteria that all ADA requirements are met is in the Staff Report the Commissioners get.

Director said City criteria on ADA requirements refer to exterior elements such as sidewalk plans. Interior ADA requirements are governed by State Building Codes.

Ahlberg said he has seen the condition of approval, that all ADA requirements are met, on previous Conditional Use Permit staff reports. He is just trying to determine if that condition has been met.

There were no further questions.

The next proponent was Ronald Lee, 200 N. State Street, Lake Oswego, OR. and he is the architect for this project. He said he doesn't have any specific items to add to what has been

presented. He asked if anyone has any questions.

Poppoff asked if he is involved in the landscaping.

Lee replied that the property came to Mid-Columbia Children's Council fully landscaped. Staff has informed him that all landscaping requirements have been met. He went on to say that he would encourage the owner to replace the removed tree.

Commissioner Ahlberg asked if there was a second floor.

Lee said no.

There were no more questions.

### **Opposition Testimony**

None.

### **Rebuttal Testimony**

None.

Chair Lavier closed the public testimony portion of the hearing.

### **Deliberations**

Commissioner Bryant said he feels condition of approval number 2 is draconian.

Commissioner Thomas said she would prefer it not to be a condition of approval.

Commissioner Ahlberg said the north side of W. 10<sup>th</sup> has no parking already so it really isn't an issue to him and doesn't create a vision clearance problem.

Commissioner Thomas moved to approve Mid-Columbia Children's Council application for Conditional Use Permit 128-02 based upon findings of fact with condition of approval number 1 and removing condition of approval number 2. Bryant seconded the motion. The motion passed unanimously with Wilcox absent.

Commissioner Ahlberg asked if there is an oil water separator in that parking lot.

Engineer McCabe said no because that facility drains to a drainage ditch that goes out toward the ball field. The drainage does not go into the river and there is no connection to the storm sewer.

Commissioner Ahlberg said he wanted to make sure Staff was not giving favoritism to the County.

## **RESOLUTIONS**

Planning Commission Minutes  
September 5, 2002

Thomas moved to adopt Resolution 435-02 approving Conditional Use Permit 128-02 with condition number 1 and deleting condition number 2. Poppoff seconded the motion and it passed unanimously with Wilcox absent.

## **DISCUSSION ITEMS**

Director Durow announced to the Planning Commission that Associate Planner "Kik" Sangkapreecha no longer works for the City. The position will be advertised and he hopes to be able to hire a Senior Planner this time.

Durow said the major LUDO amendments and Sign Ordinance amendments would be on hold until the position is filled.

There will be a legislative hearing on September 19, 2002 for one director initiated LUDO amendment dealing with the survey requirement on certain parallel property line adjustments. Durow will prepare a staff report for the Commission regarding this LUDO amendment.

Ahlberg asked why Staff would do only one LUDO amendment.

Durow explained that the big cost in LUDO amendments comes if there is a Measure 56 amendment that requires all affected property owners must be notified by mail. This amendment is not Measure 56.

## **COMMISSIONER COMMENTS**

Commissioner Thomas asked when Mr. Kortge received his packet of information that he hadn't had time to look at.

Secretary Ball said affected property owner packets were mailed the same day the Planning Commission packets were mailed, August 28, 2002.

Commissioner Ahlberg asked if he was to late to add his name to the October training workshop in Springfield.

Secretary Ball said he could add his name.

Director Durow notified the Commission that Dr. Wilcox had suffered a slight heart attack.

Commissioner Bryant spoke to the memo that City Attorney Parker wrote to the Planning Commission regarding the public hearing process. Bryant said that he believes "should not abstain" does not mean "cannot abstain".

Durow explained that if a Commissioner participates in the hearing he/she affects the outcome of the hearing and would need to vote either for or against. The applicant is entitled to a decision. If a Commissioner has a bias or conflict of interest, he/she needs to remove himself/herself from

the hearing at the beginning, before any evidence has been presented. They physically need to remove themselves to the back of the meeting room.

Ahlberg said if everyone abstained the applicant would win by default.

Bryant said he understands the principle, he just doesn't agree with it.

Ahlberg said he is satisfied with Attorney Parker's explanation of what is a majority and what is a quorum.

There was a brief discussion regarding the Senior Planner position and what the job requirements are. Kik was an Associate Planner. Director Durow, said for the Planning Department to really function properly, he needs a Senior Planner who can deal with the long range planning issues with little direction or supervision.

Director Durow reminded Commissioners that for a legislative hearing they are allowed to talk to anyone they want. People can lobby for or against the amendment.

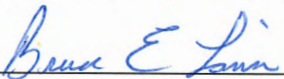
**NEXT MEETING:**

The next scheduled meeting is September 19, 2002 at 6:30 PM.

**ADJOURNMENT:**

The regular Planning Commission meeting was adjourned at 9:01 p.m.

Respectfully submitted by Denise Ball, Administrative Secretary.

  
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Bruce Lavier, Planning Commission Chair

# DEFINITIONS

**DEFINITION OF CONDITIONAL USE:** A use that may locate in certain zoning districts provided it will not be detrimental to the public health, morals, and welfare and will not impair the integrity and character of the zoned district. The duty of the commission approving such applications is to condition the use so that it will not be unsuitable to the surrounding area or community at large.

**PURPOSE OF A CONDITIONAL USE PERMIT:** To conditionally allow certain uses which may be consistent with the Comprehensive Plan, but not entirely compatible with the permitted uses in a particular zone district. Conditional of approval may be imposed to ensure that a conditional use is reasonably compatible with the types of uses permitted outright in surrounding areas.

## ORS 197.660 DEFINITIONS

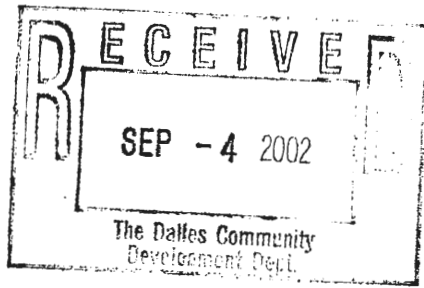
A Residential Facility means a residential care, residential training, or a residential treatment facility licensed or registered by or under the authority of the department as defined in ORS 443.400, and under ORS 443.400 to 443.460 or licensed by the State Office for the Services to Children and Families under ORS 418.205 to 428.327 which provides residential care alone or in conjunction with treatment or training or combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

**LEGISLATIVE FINDINGS AS PER ORS 197.663:** It is the policy of this state that disabled persons and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups.

**FEDERAL FAIR HOUSING ADMENDMENT ACT:** The act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special uses that have the effect to limiting the ability of such individuals to live in the residence of their choice in the community.

**VESTED RIGHT:** A right is vested when it has become absolute and fixed and cannot be defeated or denied by subsequent conditions or change in regulations, unless it is taken and paid for.

Proponent  
Exhibit A



The Dallas Co  
Sept 3, 2002

City of The Dallas Planning Commission  
City Hall  
315 Court St.  
The Dallas Co.

Re. Applicant Wayne Lease  
Use permit 123-01

In regard to your letter of Aug 20, 2002 we the owners of 1709 Liberty Way are of the same opinion as we were in the letter of Nov 14, 2001. We do not feel 1812/18 is a proper location for an Alzheimer home.

The street Liberty Way will not be safe with the traffic the home will create, and the condition of the street in the winter time and the speed that is some times used on the street.

We also feel that building of a Alzheimer home on the property would lower the value of our property as an residential property.

Nala Wharton & Guy J Wharton  
1709 Liberty Way, The Dallas Co

OPPONENT  
EXHIBIT B

# SUPPLEMENTAL STAFF REPORT

to the

## Planning Commission City of The Dalles

Conditional Use Permit No. 123-01

**Detailed Construction/Design Plans approval and Neighborhood Compatibility Review**

### **Wayne and Laurel Lease Alzheimer's Care Facility**

Prepared by: Dan Durow and Gene Parker



**The following information is provided to assist the Planning Commission in making a decision on the Detailed Construction/Design Plans and Neighborhood Compatibility Review.**

#### 1. General Comments

The Planning Commission's key focus in this matter revolves around the first condition of approval that was imposed by the City Council; i.e., the Planning Commission is to review and approve detailed construction/Design plans that comply with the LUDO, before a building permit can be issued. There is nothing in this condition of approval, or in any of the other conditions of approval, or in the LUDO itself, that says an applicant has to provide proof that all conditions have been met at the time of a review hearing. We have never taken the position with any other application that all the conditions must be met at the time of the hearing before the Planning Commission.

As a practical matter, staff must review and advise the Planning Commission whether the other conditions of approval have been addressed in the site plan. Many of these conditions are technical in nature, and it is completely appropriate for the staff to review these issues and advise the Commission whether these conditions are met, or can be met at a future time. Site plans are valid for a period of one year from the date of approval, and applicants are required to initiate construction on the project within the one-year period. This provision implies that not all conditions of approval would have to be done at the time of the Planning Commission hearing, and that it is very common that some conditions would not be accomplished immediately, but would be addressed within the one year period.

Section 3.030.040 which sets for the review criteria for site plans, provides in subsection (E) that the City Engineer shall review and approve detailed construction and design plans, as a

condition of Site Plan approval. The Planning Commission does not have the technical expertise to review the plans and determine whether they comply with the City's standards. It has been the City's standard practice that the City Engineer and other City staff review the detailed construction/design plans, and make a recommendation as to whether they comply with the LUDO requirements. This recommendation is always forwarded onto the Planning Commission for their consideration, as it is in this case.

Staff is satisfied that this application meets, or can meet with conditions, all standards and criteria of the LUDO and other City requirements. The two-step process that is provided for in the LUDO, and selected by the applicant, should not be turned into a tail-chasing exercise on issues that can be easily addressed by conditions.

## 2. Specific Comments

Concerning the absence of the deck on the site plan, this deficiency can be addressed on the revised plan, which will need to be submitted to the City.

Regarding the need for an erosion control plan, Section 8.020.010(B) allows for a physical constraints permit to be simultaneously processed with an application for site plan review and a conditional use permit. Erosion control issues are addressed under Section 8.050.030 as part of the physical constraints permit process.

Concerning the hard surface materials on the driveway, the applicant has addressed this issue in his response to Mr. Kortge's comments.

Regarding the geological hazard survey, the survey can be made a requirement of the physical constraints permit application process under Section 8.040.030, so it is appropriate to allow it to be done at a later time before the building permit is actually issued.

Regarding the clear vision and no parking zones, these conditions of approval were not appealed by the applicant, and they need to be shown on the final site plan.

Concerning the issue of exterior lighting, proposed Finding C-7g has addressed this issue.

Regarding the issue of a detailed landscaping plan, Section 3.030.030(A)(23) provides that the concept site plan must show the location and dimension of all areas devoted to landscaping and a general description of proposed planting and materials (trees, rocks, shrubs, flowers, bark, etc.). There is no provision in Section 3.030.030(C) which applies to the detail construction/design plans, which requires a detailed landscaping plan to be submitted with the detailed construction/design plans.

Concerning the issue of the building's orientation toward the street, the following language is taken from Section 3.040.010, which sets forth the purpose of the Neighborhood Compatibility Review:

*"The purpose of Neighborhood Compatibility Review is to minimize the impacts of new development, and the impacts of additions or modifications to existing development, on the surrounding established neighborhood(s) by insuring, to the greatest extent possible, that the design and placement of new development, additions or modifications are compatible with the surrounding established neighborhood(s).*

The key issue in this section is the phrase "to the greatest extent possible". This language would support an interpretation that due to the condition of approval imposed upon the applicant by the City concerning the grade of the driveway, and the topography of the site, that the relocation of the building is the only real practical alternative to comply with the City's condition of approval, and still be in a position to proceed with development of the site.



**CITY of THE DALLES**

313 COURT STREET  
THE DALLES, OREGON 97058

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(541) 296-5481

# Memorandum

**To: Planning Commissioners and Parties of Record**  
**From: Dan Durow**  
**Date: 09/12/2002**  
**Re: Hearing for CUP 123-01**

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A supplemental Staff Report will be provided to you at a later date. Thank you.

**City of The Dalles**  
COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT  
For the  
PLANNING COMMISSION

**Amendment**  
to the  
**Land Use and Development Ordinance**

Prepared by:

Daniel C. Durow, Director



Procedure Type:

Legislative

Decision Date:

September 19, 2002

**SYNOPSIS:** The proposed change concerns the LUDO Subsection 9.030.070 Lot Line Adjustment Procedure, (A) Applications: *In addition to the applicable requirements of Section 3.010: Application Procedures, applications for lot line adjustments shall include a survey map prepared by a licensed surveyor indicating the existing and proposed lot lines.*

The proposed amendment would eliminate the requirement that a survey be done to move a property line between two properties that is parallel and of equal distance. This would allow for an exception to the survey requirements in the LUDO that is currently allowed in the ORS. The LUDO is currently more restrictive than the ORS. All other provisions for a lot line adjustment required by the LUDO would remain in effect.

This proposed legislative amendment is being processed per the provisions of the Land Use and Development Ordinance (LUDO), Section 3.110 Ordinance Amendments, Section 3.010 Application Procedures, and Subsection 3.020.060 Legislative Actions.

**NOTIFICATION:** The 45 day 'Notice of Proposed Amendment' has been sent to the Department of Land Conservation and Development (DLCD) per ORS 197.610. OAR Chapter 660 – Division 18 and Senate Bill 543. Although this DLCD notice is supposed to be provided 45 days prior to the first evidentiary hearing (the Planning Commission's hearing will only be about 14 days), it is not fatal to the process nor is it grounds for an appeal on procedural issues. Staff discussed this with DLCD staff and they were satisfied

that the proposed amendment is not one that would concern them. If the proper 'Notice of Adoption' is provided to DLCD within 5 days after adoption by the City Council, all State requirements would be satisfied and the amended language would be in effect. All other appeal rights are unaffected.

Notice was published in the The Dalles Chronicle on September 9, 2002, which meets the notice requirements of the LUDO.

## **RECOMMENDATION:**

To approve the proposed ordinance amendment and make a recommendation to the City Council that it be adopted.

### **A. LAND USE AND DEVELOPMENT ORDINANCE 98-1222:**

Only one section of the LUDO is affected by the proposed amendment. The section is shown as follows:

#### 9.030.070 Lot Line Adjustment Procedure

- A. *Applications. In addition to the applicable requirements of Section 3.010: Application Procedures, applications for lot line adjustments shall include a survey map prepared by a licensed surveyor indicating the existing and proposed lot lines.*

### **B. COMPREHENSIVE PLAN**

There are no Comprehensive Plan policies that would need to be considered for this minor LUDO revision except for the policies related to planning procedures for citizen involvement and the planning process. These policies are implemented through existing LUDO requirements for notice and for making information and materials available to the public. These requirements are or will be met as the amendment process continues with proper notice and information being made available to the public.

### **C. Oregon Revised Statutes**

The ORS that provides some guidance on the proposed amendment follows:

*ORS 92.060 Marking certain points of subdivisions, partitions or condominium plats with monuments; specifications of monuments; monuments placed before recording; adjusted property line survey and monument.*

*(7) Except as provided in subsections (8) to (10) of this section, an adjusted property line created by the relocation of a common boundary as described in ORS 92.010 (7)(b) shall be surveyed and monumented in accordance with subsection (3) of this section and a survey, complying with ORS 209.250, shall be filed with the county surveyor.*

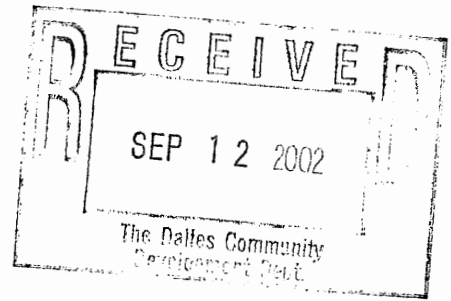
*(9) Unless the governing body of a city or county has otherwise provided by ordinance, the requirements of subsection (7) of this section shall not apply to the relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.*

ORS allow for the common lot line to be adjusted without a survey if the “adjusted property line is a distance of even width along the common boundary”.

### **Proposed Amendment Language (noted in bold italic)**

#### 9.030.070 Lot Line Adjustment Procedure

- B.** *Applications. In addition to the applicable requirements of Section 3.010: Application Procedures, applications for lot line adjustments shall include a survey map prepared by a licensed surveyor indicating the existing and proposed lot lines. The survey requirement shall not apply to the relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.*



Planning Commission  
City of The Dalles  
313 Court Street  
The Dalles, Oregon 97058

September 12, 2002

Re: Application for Conditional Use Permit 123-01  
Wayne Lease and Laurel Lease, Applicants

Members of the Commission,

I write to clarify my remarks to the Planning Commission at the public hearing on September 5.

In front of you for review, for a second time, is the application for a conditional use permit to build an Alzheimer's care facility on Liberty Way. The application is before you now, however, for review in a different sense than it was at the hearings the Commission held last fall. A brief summary of those hearings explains the difference.

At the earlier hearings, the Commission considered the merits of the proposed conditional use based on a concept site plan. The proponents of the conditional use, the opponents, and the public were given the opportunity to address the merits of the proposal, including

whether it met the requirements, or should be excused from the requirements, of the City's Land Use and Development Ordinance. After the hearings, the Commission approved the conditional use and imposed conditions on it. The applicants were dissatisfied with the conditions, and appealed to the City Council.

The Council held a *de novo* public hearing, that is, the Council considered again the merits of the entire application for a conditional use permit, the procedure provided by the City's Land Use and Development Ordinance. The Council modified some of the conditions imposed by the Commission on the conditional use, and approved the conditional use subject to eleven conditions. At that point, any party to the proceeding had the right to appeal the Council's decision to the Land Use Board of Appeals, the procedure provided by the ordinance and by the law of the State of Oregon. No one filed an appeal.

Therefore, the conditional use was finally approved, subject to the conditions imposed by the Council. Although many of the conditions are identical to those imposed by the Commission, they are now conditions of use approved by the Council, not the Commission. That would end the matter, except for one unusual condition.

The first of the eleven conditions imposed by the Council is this:

*A detailed site plan meeting the requirements of the Land Use and Development Ordinance shall be prepared and submitted to the City for review and approval by the Planning Commission at a quasi-judicial hearing, prior to the issuance of a building permit. The detailed site plan shall indicate the type of paving or other hard surface materials on the driveway and parking lot, and shall adequately provide for storm drainage.*

The scope of review with which the Council has now charged the Commission by this condition is ambiguous. The condition may be read to require only a review of the detailed site plan to determine whether the plan meets the requirements of the ordinance.

The condition may also be read to require a review of the entire proposal in its present form to determine whether the proposal complies with all eleven conditions imposed by the Council. I asked the City Attorney, Mr. Parker, which interpretation the Council intended. Mr. Parker told me that the first condition imposed on the conditional use by the Council contemplated review by the Commission for compliance with all eleven conditions.

I believe that the Commission's first decision must be to define the exact scope of its review of the proposed conditional use in its present form. It is not now the Commission's place to impose additional conditions, or to remove conditions, or to decide whether given conditions are reasonable, all of which go to the merits of the conditional use, and were finally decided by the Council. Rather, the Commission's review should be either for compliance with all of the conditions imposed by the Council when it approved the conditional use, or a more limited review of the detailed site plan for compliance with the Land Use and Development Ordinance. However, regardless of which scope of review the Commission decides is appropriate, the proposal in its present form does not meet the conditions imposed by the Council. If the Commission's scope of review is for compliance with all of the conditions imposed by the Council, the staff report to the Commission says that the applicants have complied with only one. (See staff report, pp. 8-9.)

If the Commission's scope of review is limited to a review of the detailed site plan for compliance with the Land Use and Development Ordinance, the staff report to the Commission says, "This condition has not been met", because the proposal in its present form includes a gravel driveway instead of the hard surface driveway required in the first

condition imposed by the Council. (See staff report p. 8.) The staff report, nevertheless, recommends that the Commission approve the proposal.

To approve the proposal in its present form, the Commission must ignore an explicit provision of the Land Use and Development Ordinance. According to the staff report, the ordinance provides that, "New buildings shall have their primary orientation to the street . . ." The detailed site plan shows that the proposed Alzheimer's care facility does not have its primary orientation to the street, but at a right angle to the street. The staff report excuses this failure to comply with the ordinance for three reasons: First, it would be difficult to orient the facility to the street, given the slope of the driveway required by the Fire Marshall; second, other homes in the neighborhood are similarly oriented; and, finally, it does not look too bad. With all due respect to staff, the reasoning misses the mark.

There is no question before the Commission whether the applicants should be excused compliance with the Land Use and Development Ordinance regarding the proposed facility's orientation to the street or in any other regard. That is a question that goes to the merits of the proposal. If the applicants should be excused compliance with the ordinance, this is not the time to address the issue. The opportunity to address the merits of the proposed conditional use was before the Commission and the Council at the earlier public hearings. The question now before the Commission can be no more complicated than that posed by the Council: does the detailed site plan comply with the requirements of the ordinance. The answer is no more complicated than the question. The detailed site plan shows a building that does not comply with the ordinance.

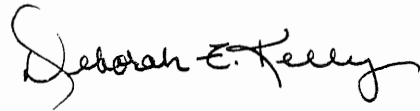
Either because the proposal before the Planning Commission does not meet the eleven

conditions of use imposed by the City Council, or because the detailed site plan does not comply with the City's Land Use and Development Ordinance, the Commission should not now grant the approval required by the resolution of the Council.

Respectfully submitted,



John V. Kelly



Deborah Z. Kelly

cc:  
City Attorney  
City Planning Department  
Wayne and Laurel Lease  
Jada Gay  
Alex Hattenhauer  
Leon and Myrna Kinner  
K. C. and Carolyn Kortge  
Lucetta Vogt  
Guy and Nola Wharton

**RESOLUTION NO. P.C. 434-02**  
**APPROVING DETAILED CONSTRUCTION/DESIGN PLANS AND NEIGHBORHOOD**  
**COMPATIBILITY REVIEW FOR CONDITIONAL USE PERMIT NO. 123-01.**

**I. RECITALS:**

- A. The Planning Commission of the City of The Dalles has on September 5, 2002 and September 19, 2002 conducted public hearings to consider the above request for property located at 1812/1816 Liberty Way, described as Township 1 North, Range 13 East, Map 4DC, Tax Lot 4200.
- B. A Staff Report was presented, stating the findings of fact, conclusions of law, and a staff recommendation.
- C. The Staff Reports of Conditional Use Permit 123-01 and the minutes of the September 5, and September 19, 2002 Planning Commission meetings, upon approval, provide the basis for this resolution and are incorporated herein by reference.

**II. RESOLUTION:**

Now, therefore, be it FOUND, DETERMINED, and RESOLVED by the Planning Commission of the City of The Dalles as follows:

- A. In all respects as set forth in Recitals, Part "I" of this resolution.
- B. Conditional Use Permit 123-01 detailed site plans and neighborhood compatibility review are approved with the following conditions:
  - 1. All required modifications and other additions shall be included on the final detailed construction/design plans, including but not limited to, trash container location, clear vision area, parking areas, deck, easements, and driveway surfacing.
  - 2. An erosion control plan shall be submitted with the physical constraints permit application and both shall be approved prior to issuing the building permit.
  - 3. The applicant shall coordinate the installation of City water and sewer utilities with the Public Works Department.
  - 4. The driveway shall consist of paving or other hard surface materials and an adequate storm drainage system shall be designed to accommodate any additional runoff.

5. A geologic hazards study shall be required pursuant to Section 8.040.030 of the Land Use & Development Ordinance prior to issuing the building permit. The study shall include, among other things, the on-site runoff from the driveway and the parking areas.
6. A detailed landscaping plan shall be provided for review and approval by planning staff prior to issuing the building permit.
7. All requirements of Mid-Columbia Fire & Rescue, detailed in the letter of March 8, 2002, to Wayne Lease from Stu Nagel, Fire Marshal for Mid-Columbia Fire and Rescue, shall be satisfied, including provisions for the grade and surfacing of the driveway. The grade of the driveway shall not exceed 15 percent.
8. A waiver of remonstrance agreement for future improvements, including street, curb, sidewalk, storm sewer, and water and sanitary sewer shall be executed by the applicant prior to the issuance of a building permit.
9. Any signage shall be subject to the sign permitting process set forth in the City's sign ordinance, which involves a separate process.
10. A clear vision zone using a distance of 115 feet on both sides of the final location of the proposed driveway shall be established. A no parking zone shall be established extending a distance of 100 feet to the east, and to the western property line to the west, of the driveway location and included on the final plans prior to issuing the building permit.
11. This Conditional Use approval is conditioned upon the facility obtaining a license of licenses from the State of Oregon for the operation of a residential care facility prior to occupancy. If the license(s) is (are) revoked, this Conditional Use Permit shall be null and void under the terms of Section 3.050.080, Revocation.

### **III. APPEALS, COMPLIANCE, AND PENALTIES**

- A. Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals must be made according to Section 3.020.080 of the Land Use and Development Ordinance, and must be filed with the City Clerk within ten (10) days of the date of resolution.
- B. Failure to exercise this approval within the time limits set either by resolution or by ordinance will invalidate this permit.
- C. All conditions of approval must be met within the time limits set by this resolution or by ordinance. Failure to meet any condition will prompt enforcement proceedings that can result in: 1) permit revocation; 2) fines of

up to \$500.00 per day for the violation period; 3) a civil proceeding seeking injunctive relief.

The Secretary of the Commission shall (a) certify to the adoption of the Resolution; (b) transmit a copy of the Resolution along with a stamped approved/denied site plan or plat to the applicant.

APPROVED AND ADOPTED THIS 19<sup>th</sup> DAY OF SEPTEMBER 2002.

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Bruce Lavier, Chairman  
Planning Commission

I, Daniel C. Durow, Director, Community Development Department of the City of The Dalles, hereby certify that the foregoing Resolution was adopted at the regular meeting of the City Planning Commission, held on the 19<sup>th</sup> day of September 2002.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Daniel C. Durow, Director, Community Development Dept.

RESOLUTION NO. P.C. 436-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF THE DALLES RECOMMENDING ADOPTION OF AN AMENDMENT TO THE LAND USE AND DEVELOPMENT ORDINANCE WAIVING THE SURVEY REQUIREMENT FOR CERTAIN LOT LINE ADJUSTMENTS

WHEREAS, Section 9.030.070(A) of the City's Land Use & Development Ordinance provides that applications for lot line adjustments shall include a survey map prepared by a license surveyor indicating the existing and proposed lot lines; and

WHEREAS, ORS 92.060(9) grants local governments the authority to provide that the requirement of a survey can be waived in the case of a relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary; and

WHEREAS, City staff has been advised by certain persons considering submitting an application for a lot line adjustment, that the cost of a survey can be expensive, and the citizens have questioned the necessity of a survey in the case of a proposed lot line adjustment where the adjusted property line is a distance of even width along the common boundary; and

WHEREAS, City staff has initiated the process to consider a proposed amendment to the Land Use & Development Ordinance that would create an exception for the survey requirement for certain types of lot line adjustments; and

WHEREAS, the Planning Commission conducted a public hearing on September 19, 2002, on the proposed legislative amendment, and based upon information in the staff report and testimony presented during the hearing, the Planning Commission voted to recommend the proposed amendment be forwarded to the City Council for their review and adoption;

NOW, THEREFORE, THE PLANNING COMMISSION RESOLVES AS FOLLOWS:

Section 1. The Planning Commission recommends that the following amendment to Section 9.030.070(B) be approved and forwarded to the City Council for its review and adoption:

9.030.070 Lot Line Adjustment Procedure

- B. Applications.** In addition to the applicable requirements of Section 3.010: Application Procedures, applications for lot line adjustments shall include a survey map prepared by a licensed surveyor indicating the existing and proposed lot lines. **The survey requirement shall not apply to the**

**relocation of a common boundary of a lot in a subdivision or a parcel  
in a partition when the adjusted property line is a distance of even  
width along the common boundary.**

Section 2. This resolution shall be considered effective as of September 19, 2002.

Section 3. The Secretary of the Planning Commission shall certify to the adoption of the resolution, and transmit a copy of the resolution to the City Council of the City of The Dalles.

APPROVED AND ADOPTED THIS 19<sup>th</sup> DAY OF SEPTEMBER, 2002.

\_\_\_\_\_  
Bruce Lavier, Chairman  
Planning Commission

I, Daniel C. Durow, Director, Community Development Director of the City of The Dalles, hereby certify that the foregoing Resolution was adopted at the regular meeting of the City Planning Commission, held on the 19<sup>th</sup> day of September, 2002.

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Daniel C. Durow, City of The Dalles