

# CITY OF THE DALLES PLANNING COMMISSION MINUTES

**Thursday, December 17, 2009**

City Hall Council Chambers

313 Court Streets

The Dalles, OR 97058

*Conducted in a handicap accessible room*

## **CALL TO ORDER:**

Chair Lavier called the meeting to order at 6:35 p.m.

## **BOARD**

### **MEMBERS PRESENT:**

Bruce Lavier  
Mark Poppoff  
Benjamin Hoey  
Ted Bryant

## **BOARD**

### **MEMBERS ABSENT:**

Ron Ahlberg  
Dean Wilcox  
Chris Zukin

## **STAFF PRESENT:**

City Attorney Gene Parker  
Community Development Department Director Dan Durow  
Senior Planner Richard Gassman  
Administrative Secretary Brenda Green

## **APPROVAL OF AGENDA:**

Senior Planner Gassman shared that the resolution had not been prepared so item number seven would need to be tabled until the next meeting.

It was moved by Bryant and seconded by Hoey to approve the agenda as modified. The motion carried unanimously; Ahlberg, Wilcox and Zukin absent.

## **APPROVAL OF MINUTES:**

Commissioner Bryant pointed out that there was one spelling error on page six of the September 17, 2009 minutes.

It was moved by Bryant and seconded by Poppoff to approve the minutes of September 17, 2009 as modified. The motion carried with Lavier, Poppoff and Bryant voting in favor, Hoey abstained; Ahlberg, Wilcox and Zukin absent.

It was moved by Poppoff and seconded by Lavier to approve the minutes of October 1, 2009 as submitted. The motion did not carry due to both Bryant and Hoey abstaining. Approval of the minutes was tabled until the next meeting.

It was moved by Hoey and seconded by Poppoff to approve the minutes of October 15, 2009 as submitted. The motion carried with Lavier, Poppoff and Hoey voting in favor, Bryant abstained; Ahlberg, Wilcox and Zukin absent.

**PUBLIC COMMENT:**

Randy Cole, 816 E 20<sup>th</sup> Street, introduced himself as Chairman of the Traffic Safety Committee. He stated that he was there to beg the help of the Planning Commission in regards to off street parking. Mr. Cole gave several examples of developments that do not have enough off street parking and requested that the Commission look carefully at applications rather than just accepting what staff recommends.

Commissioner Bryant explained that the City does require a certain number of parking spaces per dwelling unit. There was a general discussion about the examples Mr. Cole gave. Senior Planner Gassman stated that he would look into the specific locations mentioned; pointing out that sometimes development happens without going through the proper channels.

John Nelson, 524 W 3<sup>rd</sup> Place, stated that the Comprehensive Plan was not very directive and rather aspirational. He then pointed out the amendment that was done in 2007 but not adopted. Senior Planner Gassman clarified that he was referring to the portion regarding the Urban Growth Boundary expansion completed by Winterbrook Planning. Nelson affirmed that he was looking at that portion, and asked if it was possible to get it accepted. Gassman explained the work that needs to be completed before it can be approved by the State and the Gorge Commission. He pointed out the expense of the project and shared that grants are being applied for. Mr. Nelson shared that his question came from a concern to protect Chenowith Creek and suggested that amendments such as the one being discussed would help the creek. He felt that getting the amendment approved would help with future applications.

**LEGISLATIVE PUBLIC HEARING on proposed LUDO changes:**

Senior Planner Gassman explained that a legislative public hearing could be conducted in a more open format, and suggested that the Commission allow members of the public to comment as the proposed changes are discussed rather than waiting until the end. Chair Lavier felt that allowing comment throughout the discussion would be the most efficient; the Commission expressed their agreement by mutual consent.

Senior Planner Gassman went over the steps of the process that had been completed so far and explained that the goal for the hearing was to conclude with a recommendation to City Council who will give the final approval for the changes. Gassman then went over the forty-six proposed LUDO amendments.

**Amendment #1** – Commissioner Bryant asked for examples. Director Durow gave an example of a parking lot being used for a two day community festival would not need to be specially paved.

**Amendment #2-4** – No discussion

**Amendment #5** – After Senior Planner Gassman went over the proposed rules around submitting written comments, Commissioner Bryant asked if one page meant one sided or two sided. There was a general discussion about one versus two sided, as well as minimum font sizes. The consensus of the

Commission was that one page meant one sided.

Chair Lavier brought up the concern of having enough time to review large amounts of written comments especially when they're submitted right before or during the hearing. City Attorney Parker stated that in that situation the Commission has the ability to continue the hearing to a later date in order to properly review the material. Director Durow suggested accepting all of the verbal public testimony, then closing the hearing and taking time to read the written material. Parker agreed, adding the need to be cognizant of allowing the public the chance to completely present their case/comments.

**Amendment #6** – City Attorney Parker pointed out that the De Novo definition was based on current case law and that if the definition ever changes, the LUDO will need to be modified as well.

**Amendment #7-28** – no discussion

**Amendment #29**- Commissioner Bryant asked for clarification of a “wind device”. There was a general discussion about what could be considered a wind device. Commissioner Hoey pointed out that the Wasco County ordinances use the term “Wind Energy Conversion System”. The Commission and staff agreed to change all LUDO references of “wind device” to the more descriptive term of “Wind Energy Conversion System”.

**Amendment #30** – no discussion

**Amendment #31** – Senior Planner Gassman pointed out that he would change the wording “wind device” to “Wind Energy Conversion System” in this amendment as well.

**Amendment #32-41** – no discussion

**Amendment #42** – After Senior Planner Gassman explained the amendment; City Attorney Parker shared his concern about the issue in regards to due process. He stated that he will be doing more research about the legal side of notifying the sign owner before a sign can be removed. Gassman suggested approving the amendment as is, with the knowledge that Parker may be recommending a change in the language at a future time.

Chair Lavier suggested that signs should be required to have a phone number so that the owner or person responsible could be contacted.

**Amendment #43-46** – no discussion

Senior Planner Gassman summed up the LUDO amendment discussion by verifying that changes are going to be made to Amendment numbers 5, 29, and 31 and that City Attorney Parker will be looking into possible wording changes for number 42. Senior Planner Gassman brought up the discussion on font sizes and asked if the Commission would like to make any specific requirements. After a few general comments the Commission decided not to specify a minimum font size.

Senior Planner Gassman stated that he would bring back the modified amendments as well as a resolution to the next Planning Commission meeting.

John Nelson, 524 W 3<sup>rd</sup> Place stated that he was appearing before the Commission on behalf of the Citizens for Responsible Development of The Dalles, and that they were requesting that an Economic Impact Analysis ordinance be added to the LUDO. Mr. Nelson submitted a letter from Luise Langheinrich on behalf of the group, and information regarding a similar ordinance from the state of Maine.

Mr. Nelson also expressed the group's frustration during controversial hearings such as Walmart and the adult book store, of needing to fit into the framework of the quasi-judicial or legislative hearing process. He asked if a review process step could be added that would be more informal, so that when a controversial or large scale application is received, it could be introduced to the community in a way that they were allowed to voice their questions or concerns.

Director Durow responded that some communities in Oregon require an applicant to meet with a neighborhood group before an application is even accepted by the city. Durow explained that the decision makers would not be able to participate in those meetings because it would be in direct conflict with the judicial process. He also shared that the idea had been brought up before.

Chair Lavier explained to Mr. Nelson that adding something to, or changing the LUDO is a complete process and that for this round of LUDO amendments the Commission was currently in the final stage so the request would need to be considered in the next round of amendments. Lavier also expressed his feeling that the Commission does allow citizens the chance to speak and to ask questions.

Director Durow added more information about the neighborhood meetings, sharing some of the results those communities had experienced.

Mr. Nelson asked if the current meeting was the appropriate time to ask for a similar process to be implemented in The Dalles. Director Durow replied yes. The Commission and staff had a general discussion about how a process like that might be implemented, what results could potentially be expected, and if it would be a mandatory process. Durow summarized that generally what happens is that a company hears what the communities' concerns are and then has the opportunity to address any changes before submitting the application. Durow added that in general communities have found that there are less objections and appeals when the public is fully informed before an application is submitted.

The Commission agreed to add both of Mr. Nelson's requests to the discussion list for the next round of potential LUDO changes. Chair Lavier suggested gathering information from communities that have implemented the neighborhood meeting idea before the next round of LUDO changes.

Randy Cole, 816 E 20<sup>th</sup>, voiced his concern about four mobile homes whose main entrances were not facing the street. This ordinance was the subject of LUDO Amendment #11 that was mentioned earlier. Chair Lavier explained that several were installed before the ordinance was written. Director Durow added that some of them were the reason the ordinance was written. Senior Planner Gassman assured Mr. Cole that the City Council has made it clear that they want houses to be oriented to the street if at all possible.

Commissioner Bryant brought back the subject of community meetings and asked if the hill removal and retaining wall being constructed on Nineteenth Street would have been an issue that would have

been required to have such a meeting. Senior Planner Gassman shared that from his understanding, the meetings are more for a business, or larger developments in terms of something that would generate a lot of traffic or activity.

Mr. Cole asked if a community meeting would be held for a subdivision application. Director Durow and Senior Planner Gassman both felt that generally it would not be required for that, but also pointed out that the policy could be designed however the community wanted it to be designed.

Director Durow clarified that even though a community meeting is held and the community does not like what is happening does not mean that the application will not be approved. He stressed that the process is not a vote, but rather a time to express concerns and perhaps arrive at some sort of an understanding. If the application is an allowed use and meets criteria, the application will most likely be approved.

Commissioner Bryant moved to recommend the LUDO amendments to City Council with changes as discussed and for staff to bring back a resolution including said changes to the next meeting. The motion was seconded by Commissioner Poppoff and carried unanimously; Ahlberg, Wilcox and Zukin absent.

#### **COMMISSIONER/STAFF COMMENTS**

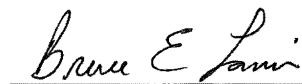
Commissioner Poppoff inquired about a requirement for garage faces to be set back behind house faces, explaining that he had seen several around town being built with the garage out further than the house. Senior Planner Gassman replied that the garage is not required to be set behind the house; it's only required to be set twenty feet back from the property line.

Commissioner Bryant brought up Mr. Cole's concern about not enough parking spaces for several specific projects and properties. There was a general discussion between the Commissioners, Mr. Cole and Senior Planner Gassman about where the properties were and what the specific concerns were. The discussion ended with Gassman promising to look into the specifics of the properties that were mentioned to determine if there were parking requirements set for each of them.

**NEXT MEETING:** The next scheduled meeting is January 7, 2010.

**ADJOURNMENT:** The Planning Commission meeting was adjourned at 8:34 p.m.

Submitted by  
Brenda Green, Administrative Secretary



Bruce Lavier, Planning Commission Chair

Date: December 17, 2009

To: The Dalles Planning Commission

From: Luise Langheinrich, Citizens for Responsible Development of The Dalles  
*P.O. Box 1343 The Dalles*



We respectfully submit a request to add an Economic Impact Analysis ordinance to the LUDO for The Dalles.

As you are looking over amendments to the existing LUDO we suggest adding language that provides you and the City Council the tools to assess incoming businesses, of a certain size, to clearly determine the impact to our community.

I'm sure you will agree that having clear language makes evaluating land use applications so much easier than what we have all gone through the last year.

Putting an economic impact analysis into the ordinance is not a new concept for governments. Attached is the actual law that the State of Maine enacted in 2007. It clearly defines the requirements and processes. More and more states and cities are looking at this idea as a positive step for their community.

We hope this serves as a starting point for more in-depth dialog.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Enact the Informed Growth Act**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 30-A MRSA c. 187, sub-c. 3-A** is enacted to read:

### **SUBCHAPTER 3-A**

#### **informed growth act**

##### **§ 4365. Short title**

This subchapter may be known and cited as "the Informed Growth Act."

##### **§ 4366. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Comprehensive economic impact area.** "Comprehensive economic impact area"

means the geographic area affected by a proposed large-scale retail development. This area includes the municipality and abutting municipalities.

**2. Comprehensive economic impact study.** "Comprehensive economic impact study"

means a municipal study that estimates the effects of a large-scale retail development on the local economy, downtown and community pursuant to section 4367, subsection 4.

**3. Downtown.** "Downtown" means the central business district of a community that serves

as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure.

**4. Gross floor area.** "Gross floor area" means the aggregate of the areas of each floor of a

building or structure, including accessory structures, measured between the exterior faces of the exterior walls or limits of the building or structure at the level of each floor.

**5. Land use permit.** "Land use permit" means a municipal permit or approval required by

a municipal land ordinance, site plan ordinance, subdivision ordinance, zoning ordinance or building

permit ordinance or by the state subdivision law pursuant to subchapter 4.

**6. Large-scale retail development.** "Large-scale retail development" means any retail

business establishment having a gross floor area of 75,000 square feet or more in one or more buildings

at the same location, and any expansion or renovation of an existing building or buildings that results in

PUBLIC Law, Chapter 347, 123rd Maine State Legislature

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a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more

buildings except when the expansion of an existing retail business establishment is less than 20,000 square

feet. Other retail business establishments on the same site as the large-scale retail business establishment

are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas.

**7. Municipal reviewing authority.** "Municipal reviewing authority" means the municipal

planning board, agency or office or, if none, the municipal officers.

**8. Office.** "Office" means the Executive Department, State Planning Office.

**9. Retail business establishment.** "Retail business establishment" means a business engaged

in the sale of goods to the ultimate consumer for direct use or consumption.

**10. Undue adverse impact.** "Undue adverse impact" means that, within the comprehensive

economic impact area, the estimated overall negative effects on the factors listed for consideration in

section 4367, subsection 4 outweigh the estimated overall positive effects on those factors and that the

estimated negative effects of at least 2 of the factors listed in section 4367, subsection 4, paragraph A

outweigh the positive effects on those factors.

### **§ 4367. Preparation of comprehensive economic impact study**

As part of its review of a land use permit application for a large-scale retail development, a municipal

reviewing authority shall require the preparation of a comprehensive economic impact study.

**1. Qualified preparer.** A comprehensive economic impact study must be prepared by a

person, other than the applicant for a large-scale retail development, listed by the office as qualified by

education, training and experience to prepare such a study. The office shall provide the list of qualified

preparers to a municipal reviewing authority and land use permit applicant upon request. The office shall adopt routine technical rules under Title 5, chapter 375, subchapter 2-A to carry out the purposes of this subsection.

**2. Selection of preparer.** The selection of the preparer must be mutually agreed upon by the municipal reviewing authority and the applicant. If no mutual agreement is reached within 15 days, the municipal reviewing authority shall select the preparer. The preparer must be qualified in accordance with subsection 1.

**3. Payment.** The applicant for the permit shall pay a fee of \$40,000 to the office to be deposited into a dedicated revenue account. The development application is not complete for processing until the office confirms that the fee has been paid.

The office shall disburse to the municipality from the dedicated account an amount equal to the municipality's projected costs of the comprehensive economic impact study contract, notice of the public hearing and related municipal staff support. The municipality's contract for the study must be defined and priced to ensure that the \$40,000 fee will be sufficient to cover both the costs of the study and the costs

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listed in this subsection. The office may charge against the fee an amount sufficient to cover its costs to record, administer and disburse the fee, but which may not exceed \$1,000. Any unexpended funds from the \$40,000 fee must be returned to the applicant.

**4. Comprehensive economic impact study.** The comprehensive economic impact study must be completed within 4 months of the filing of the application and must be made available to the municipal reviewing authority, the applicant and the public. It must estimate the effects of the large-scale retail development as set out in this subsection.

A. The comprehensive economic impact study, using existing studies and data and through the collection and analysis of new data, must identify the economic effects of the large-scale retail development on existing retail operations; supply and demand for retail space; number and location

of existing retail establishments where there is overlap of goods and services offered; employment, including projected net job creation and loss; retail wages and benefits; captured share of existing retail sales; sales revenue retained and reinvested in the comprehensive economic impact area; municipal revenues generated; municipal capital, service and maintenance costs caused by the development's construction and operation, including costs of roads and police, fire, rescue and sewer services; the amount of public subsidies, including tax increment financing; and public water utility, sewage disposal and solid waste disposal capacity.

B. The comprehensive economic impact study must identify, to the extent that there are available for reference, existing studies and data, the general environmental effects on those factors enumerated in section 4404, regardless of whether the project is a subdivision, and in Title 38, sections 480-D and 484, regardless of the acreage of the project site.

### **§ 4368. Public hearing**

**1. Public participation required.** The municipal reviewing authority shall provide the public with an adequate opportunity to be heard prior to the approval of a permit for a large-scale retail development.

**2. Notice.** Notice of the public hearing on the land use permit application must state that the comprehensive economic impact study will be presented at the hearing and that the municipal reviewing authority will take testimony on the comprehensive impact of the proposed large-scale retail development, and the notice must include the name of any potential retailer, a map of the development location and a map of the comprehensive economic impact area. The municipality shall also provide notice by regular mail to municipal officers of abutting municipalities and to all property owners within 1,000 feet of the proposed development.

**3. Public disclosure of the applicant.** If the applicant for a large-scale retail development is not the potential retailer, the applicant shall disclose in its application and at the public hearing the name of the potential retailer, including its commonly used retail name.

### **§ 4369. Land use permit approval**

PUBLIC Law, Chapter 347, 123rd Maine State Legislature

The municipal reviewing authority shall evaluate the impacts of the proposed large-scale retail

development based on the comprehensive economic impact study; other materials submitted to

the municipal reviewing authority by any person, including the applicant, state agencies, nonprofit

organizations and members of the public; and testimony received during the public hearing under section

4368 to issue a finding of undue adverse impact or no undue adverse impact. The

municipal reviewing

authority may issue a land use permit for a large-scale retail development only if it determines that there

is likely to be no undue adverse impact.

Nothing in this Act may preclude a municipality from adopting an ordinance to authorize additional

studies and criteria regarding the effects of a proposed large-scale retail development.

The requirements

of this Act are in addition to all other required federal, state and local land use permit processes that

pertain to a proposed large-scale retail development.

### **§ 4370. Appeal**

The provisions of this subchapter granting persons, municipalities, the State and other entities the

opportunity to provide input on a municipal land use permit or approval do not, and may not be interpreted

to, authorize persons or entities who would not, absent the provisions of this subchapter, have an interest

in or otherwise have standing to appeal a municipal action on the permit or approval.

### **§ 4371. Exemption**

The provisions of this subchapter do not apply to a municipality that has adopted economic and

community impact review criteria that apply to large-scale retail development land use permit applications

and that require a study of the comprehensive economic and community impacts of the proposed

large-scale retail development for consideration, among other evidence, in applying the review criteria

to the application.

**Sec. 2. Construction.** Nothing in this Act may be construed to limit the ability of a municipality

that, after the effective date of this Act, adopts economic and community impact review criteria that apply

to large-scale retail development land use permit applications to be exempt from the provisions of the

Maine Revised Statutes, Title 30-A, chapter 187, subchapter 3-A in accordance with Title 30-A, section 4371.

**Sec. 3. Appropriations and allocations.** The following appropriations and allocations are made.

**EXECUTIVE DEPARTMENT**

**Planning Office 0082**

Initiative: Provides a base allocation of \$500 to establish an Other Special Revenue Funds account to reimburse municipalities for activities related to certain permitting requirements mandated by the State.

**OTHER SPECIAL REVENUE FUNDS 2007-08 2008-09**

All Other \$500 \$500

PUBLIC Law, Chapter 347, 123rd Maine State Legislature

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