

# CITY OF THE DALLES PLANNING COMMISSION MINUTES

**Thursday, October 3, 2013**

City Hall Council Chambers

313 Court Street

The Dalles, OR 97058

*Conducted in a handicap accessible room*

6:00 p.m.

## **CALL TO ORDER:**

Chair Lavier called the meeting to order at 6:00 pm.

## **ROLL CALL:**

### **BOARD MEMBERS PRESENT:**

Bruce Lavier, Rob Raschio, Dennis Whitehouse, Jeff Stiles

### **BOARD MEMBERS ABSENT:**

Chris Zukin, Mark Poppoff, Mike Zingg

### **STAFF MEMBERS PRESENT:**

City Attorney Gene Parker, Planning Director Richard Gassman, Administrative Secretary Carole Trautman

## **APPROVAL OF AGENDA:**

It was moved by Raschio and seconded by Whitehouse to approve the agenda as submitted. The motion carried unanimously; Zukin, Poppoff and Zingg were absent.

## **APPROVAL OF MINUTES:**

It was moved by Whitehouse and seconded by Raschio to approve the August 22, 2013 minutes as submitted. Whitehouse, Raschio, and Stiles approved, Lavier abstained. The motion carried; Zukin, Poppoff and Zingg were absent.

## **PUBLIC COMMENT:**

Steve Kelsey, 3850 Nob Hill Road, The Dalles, Oregon, suggested opening up available City commission/committee positions to residents outside City limits. City Attorney Parker stated there were some ordinances that required commission/committee members to reside within City limits, and City Council would need to make ordinance changes. Jim Wilcox, 416 West 7<sup>th</sup> Street, The Dalles, Oregon, said that when he was Mayor of The Dalles, there were some adhoc committees (such as the Burn Committee) that could be opened up to residents outside City limits, and he would use those opportunities to bring others in to help.

## **LEGISLATIVE HEARING:**

**Application Number:** ZOA 85-13; **City of The Dalles;** **Request:** Amendments to the Land Use and Development Ordinance (LUDO) as they pertain to the provisions of House Bill 3479.

Director Gassman commented that City Council planned on having a full scale discussion on residential infill policy after these proposed LUDO amendments were completed. Gassman explained that these amendments were designed to free up the minor partition process as it pertained to House Bill 3479 (HB 3479), because currently the LUDO was in conflict with the House Bill. He emphasized that this legislative hearing was not a full review of the City's residential infill policies. Gassman said the proposed amendments would go before City Council in a public hearing, then, if adopted, to the County Commissioners for review so amendments could potentially be applied to the Urban Growth Boundary (UGB) areas. He pointed out that City Council could only approve the amendments for areas inside City limits, and the County would need to approve the Planning Commission Minutes

amendments for the UGB areas. Gassman handed out a copy of HB 3479 (Attachment 1). He explained that the proposed amendment language was intended to distinguish between residential and non-residential property, and some language was added in Section 2 to differentiate. References to pre-payment of funds in lieu of Waivers of Remonstrance and language regarding waivers of remonstrance as it pertained to minor partitions of residential property were omitted.

Whitehouse asked what impact the proposed amendments would have for property owners in the minor partition process, if adopted. Director Gassman said the minor partition process would remain the same, but as part of the process there would be no requirements to pay into a development fund, sign a Waiver of Remonstrance, or provide any improvements at the time of the minor partition application. Gassman explained that property owners could sell partitioned lots with no improvement encumbrances.

**Testimony:**

Jim Wilcox, 416 West 7<sup>th</sup> Street, The Dalles, Oregon, said that it was confusing to follow the references in the proposed language, because some of the references were general ordinances rather than Land Use and Development Ordinances. Mr. Wilcox stated that one of the ordinances he reviewed allowed property owners to Bancroft improvement expenses at 10% interest. He said City Council changed the interest rate to 1% over cost, and the current LUDO did not reflect that change. Mr. Wilcox said he felt residential, commercial and industrial parcels should not be charged to “draw a line on a map.”

Steve Kelsey, 3850 Nob Hill Road, The Dalles, Oregon, said that in the County, the people would go to the County and ask for a Local Improvements District (LID). The County would not require an LID. He said the City should not go to the people and require an LID. Mr. Kelsey also stated that people were not going to pay for developments, and the Planning Commission should tell the staff what to do.

Randy Hager, 2804 East 10<sup>th</sup> Street, The Dalles, Oregon, read portions of past correspondence between he and Director Gassman (Attachments 2-5) regarding minor partitioning.

Raschio asked Director Gassman if HB 3479 only applied within City limits and not to properties within the Urban Growth Boundary. Gassman said he and City Attorney Parker both agreed that was the literal reading of HB 3479.

Randy Hager, 2804 East 10<sup>th</sup> Street, The Dalles, Oregon, read HB 3479 and said that the City’s testimony at the State House of Representatives hearing was that the UGB was not to be excluded from the HB 3479.

Raschio asked if the proposed LUDO amendments would apply to the UGB areas as well as properties within City limits. City Attorney Parker said the LUDO amendments would only apply to the UGB properties if the County chose to adopt them. City’s recommendation would be to adopt the amendments. Director Gassman clarified that the City had jurisdiction for planning purposes in the UGB but no authority to adopt UGB rules. Typically, Gassman advised, when the County adopts its rules, the City administers those rules.

John Dennee, 2651 East Tenth Street, The Dalles, Oregon, read Mr. Hunicutt’s interpretation (Attachment 6) of the proposed LUDO amendments. In summary, Mr. Hunicutt’s opinion was that, due to the cross referencing in the proposed changes, the amendments would require a property owner to enter into an agreement with the City to install improvements prior to the City approving the final partition plat; and, therefore, the partition would not occur due to costs that would exceed property values.

Jerry Johnson, 3102 East 13<sup>th</sup> Street, The Dalles, Oregon, stated he understood that HB 3479 included the UGB areas because UGB residents were governed by the City. Director Gassman said the UGB areas were not governed by the City; they were governed by the County, and up to this point the County had adopted what the City had adopted. Johnson said there needed to be discussion on the definition of development at some point. He believed some current development definitions, such as drilling, could be used to require UGB property owners to install improvements.

Steve Kelsey, 3850 Nob Hill Road, The Dalles, Oregon, urged the Planning Commission to do the research and make a strong recommendation to the County that HB 3479 intended to include the UGB areas.

Chair Lavier asked staff what the process would be for making changes on residential infill policy. Director Gassman stated after these LUDO amendments were completed, the Planning Commission would have a series of work sessions to address the larger issues. Language would be drafted, and the Planning Commission would hold a public hearing to make a recommendation to City Council. City Council would then hold a public hearing.

Mayor Lawrence stated he understood Director Gassman's explanation of the process to be what City Council had directed. Gassman listed other issues that needed to be addressed as follows: 1) who would be responsible for the installation of public improvements; 2) who would pay for public improvements; 3) what to do with past Waivers of Remonstrance; 4) what to do with LIDs; and 5) what to do with street standards.

Chair Lavier called for a recess at 7:25 pm and reconvened the meeting at 7:35 pm.

After reviewing Mr. Hunicutt's written comments, Director Gassman stated there was some confusion on Mr. Hunicutt's part regarding his reference to Section 9.040.060(H) regarding street improvement requirements. Section 9.040 applied to subdivisions, not minor partitions; and Section 9.040.060 did not apply to minor partitions except for a provision in Section 9.030.050. Gassman explained that Section 9.030 pertained to minor partitions, and Section 9.040 pertained to subdivisions. Currently, LUDO had a cross reference from Section 9.030 to Section 9.040 that requires minor partitions to meet the same requirements as subdivisions. Gassman said that is why, in the proposed amendments, page 2, the cross reference was deleted so that minor partition applicants would not be required to comply with Section 9.040.060(H). In summary, Gassman advised that the proposed amendments omitted street improvements for minor partitions, while street improvement requirements would remain for non-residential properties and the construction of new dwellings.

Raschio clarified that these proposed amendments would shift the costs away from the minor partition applicant. Director Gassman said that was correct.

Chair Lavier closed the public hearing at 7:44 p.m.

### **Deliberation**

Whitehouse clarified that these LUDO amendments were the first step in the process. Director Gassman said the amendments, if approved, would bring the City's code into compliance with HB 3479. In doing so, they would remove the street improvement requirements from the minor partition application on residentially-zoned property. Whitehouse said he was concerned about setting up two different standards for an unrepresented group. Gassman said the City did not want two different standards.

It was moved by Raschio and seconded by Stiles to recommend to City Council approval of the proposed LUDO amendments of ZOA 85-13 as submitted in staff's report. The motion carried unanimously; Zukin, Poppoff and Zingg were absent.

It was moved by Stiles and seconded by Whitehouse to recommend to City Council and the County Commission Board to adopt the proposed LUDO amendments and to include the Urban Growth Boundary areas. The motion carried unanimously; Zukin, Poppoff and Zingg were absent.

Stiles stated, for the record, that timing was an issue, and this process needed to move as quickly as possible.

Whitehouse said he hoped that, in the future, all Planning Commissioners would be in attendance for future meetings as much as possible.

**STAFF/COMMISSIONER COMMENTS:**

Director Gassman reported that the next regularly scheduled meeting of October 17, 2013 was cancelled. Raschio asked if the Planning Commission should meet then to continue work on the residential infill policies. Gassman said staff would not be ready by then and the Commission would meet the first Thursday in November as scheduled.

Director Gassman introduced Nick Kraemer, Planning Department's new Associate Planner.

Raschio asked if code enforcement could inspect a large growth of puncture vine on some city-owned property at Case and Kelly Streets.

Director Gassman reported that the Google project was moving forward and would have a very positive impact on the City. There was also some new development at West 6<sup>th</sup> Street and Cherry Heights in front of the new Goodwill structure, tenants to be determined.

Randy Hager, 2804 East Tenth Street, The Dalles, Oregon, summarized the challenges some UGB property owners had faced with property values and sales.

**ADJOURNMENT:**

Chair Lavier adjourned the meeting at 8:00 pm.

Respectfully submitted by Carole J. Trautman, Administrative Secretary

  
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Bruce Lavier, Chairman

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77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

**Enrolled  
House Bill 3479**

Sponsored by Representative HUFFMAN

CHAPTER .....

AN ACT

Relating to city fees; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** When the owner of property that is located in a city in Wasco County with a population greater than 5,000 and that is zoned for residential use files an application for a partition, as defined in ORS 92.010, or a subsequent application for a permit in furtherance of the partition, for the property, the city may not, as a condition of approval of the application:

(1) Assess:

(a) A charge in lieu of forming a local improvement district; or

(b) A prepayment against an assessment for a future local improvement district; or

(2) Require the owner of the property to enter into a nonremonstrance agreement with respect to the future formation of a local improvement district.

**SECTION 2.** Section 1 of this 2013 Act is repealed on July 1, 2023.

**SECTION 3.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

6/26/13

Attachment 2

26 June 2013  
2804B  
E. 10<sup>th</sup> Street  
The Dalles, OR 97058

Dick Gassman  
Director of Planning & other public obtacles  
City of The Dalles  
313 Court Street, The Dalles, OR 97058

Regarding: Partition

Dear Dick,

Please consider this partition idea that I've worked on over the last few years. A reminder Dick, that when I bought 2804 E. 10<sup>th</sup> in 2002, I was given paperwork signed by Daniel Roberts (then director or acting director of public works) stating that I could divide this .91 acre lot into 3 lots, that I confirmed with planning at which time planning was in the basement of City Hall. You'll remember that all of the sewer and water service and connection fees were identified in that paperwork. Then a lot of water under the bridge, and then the challenges of wording the ordinance with City Council and staff, leading to the planning commission hearing and subsequently the Governor signing House Bill 3479 into law this June.

Now I'm living with rumors and newspaper articles and fears and angst from people all over town; from the Mayor and past Mayors and neighbors, to comments from Nolan and Gene Parker at City Council and their advertized comments in print.

Which leads me to locate **ONE** solution. And so once again I turn to you. The question being; what is the law today specifying the complete answer to the quest for a lot partition in the urban growth boundary of The Dalles Oregon; particularly for my own home and property? I'm not after any postures or predictions. Just what can I do today that is governed by law. Please recall that my primary home has its own well and septic as is the case with the 2011/2012 constructed accessory dwelling. I clearly have been held in limbo since 2007 awaiting a legal determination over this partition issue and the development of clearly defined ordinance.

Thank you.  
Sincerely,

Randolph Hager

6/28/13

**CITY of THE DALLES**313 COURT STREET  
THE DALLES, OREGON 97058(541) 296-5481 ext. 1125  
FAX: (541) 298-5490  
Planning Department

June 28, 2013

Randy Hager  
2804 B East 10<sup>th</sup> Street  
The Dalles, OR 97058

Re: Partition

Dear Randy,

You have inquired about the current status of the rules relating to minor partitions in The Dalles after the passage of HB 3479. I have attached a copy of your letter and a copy of HB 3479 for reference.

First, a careful reading of HB 3479 reveals that it relates only to property in a city in Wasco County. Your property on East 10<sup>th</sup> is not inside the city limits of The Dalles, therefore the provisions of that bill do not apply to your property. As a result, the rules for minor partitions have not changed.

The final conditions for approval of a minor partition can only be determined by submitting an application. However, in the past, for those properties that are situated on unimproved streets and seek to partition, we have required full improvement. Full improvement usually means the installation of sewer and water utilities and a street with sidewalks, curbs and half street pavement. Again, the exact details depend on a variety of factors and can only be determined through a formal process.

If you are required to put in improvements as a condition of approval, that condition can be met in one of the methods provided for in the LUDO. In general you have the option of installing the improvements, paying the estimated costs of the improvements, agreeing to put in the improvements and providing financial guarantees for the estimated costs, or forming a local improvement district to install the improvements.

The City Council has indicated an intent to change the minor partition rules but put that on hold until the legislature finished with HB 3479. The Council's interest in a change will be reviewed again, beginning with a joint work session of the Council and Planning Commission on July 18. Whether the public will be allowed to participate in that discussion is up to the Council and Planning Commission. If that work session determines that changes in the LUDO are needed, there will be public hearings held at a later date.

I hope this answers the issues you raise in your letter.

Sincerely,

Richard Gassman  
Director

**Attachment 4**

September 26, 2013

Dick Gassman  
Director of Planning  
City of The Dalles, OR 97058

Re: Long delayed partition

Dear Dick,

In my last correspondence, June of 2013 I requested present law definition of my right to partition.

Your response letter to me of June 28<sup>th</sup> identified that it was the city's position that as a result of the wording of HB 3479 "within a city in Wasco county", the old ordinance still demanded that I "pay into a fund" due to the location of my lot in the urban growth boundary across the street from city limits.

This bearing on my ownership of .91 acres which when purchased in 2002 addressed the then requested opportunity to partition into 3 lots with infrastructure and connection to city services projected to cost me approximately \$8900.00.

I have now proceeded to survey and describe a lot division of 1 lot into 2 lots as was allowed for the neighboring Denee property, with no requirements for fees or infrastructure improvements. This is based on our discussion following your June 28<sup>th</sup> letter, in which you identified to me that the city would not likely enforce any costs or implementation of improvements should I partition into a front lot with street frontage and a rear lot with a described ingress/egress easement.

I have now agreed to rent the house on the front lot and was asked if I would consider selling that lot once the partition was approved and recorded, which I would do probably spring of 2014. My present question being; is it still valid as you have described, that because I am not altering the frontage or requesting additional access points at the frontage, that this lot division can proceed without ordinance encumbrance? I want to address this potential scenario with my renter early in the next week beginning September 29<sup>th</sup>, 2013.

Thank you for your regards.  
Sincerely,

Randolph Hager

## Attachment 5

October 04, 2013

To: Planning Commission

Regards: HB 3479 vs. City of The Dalles, Wasco County Intergovernmental Agreement and Partition Jurisdiction

Planning Commission, City staff, City Council, Community and Honorable Mayor Lawrence

Records will disclose that the intergovernmental agreement recognizes the jurisdiction the City of The Dalles planning staff has over all planning actions and decisions governing my home and property at 2804 East 10<sup>th</sup> street within the urban growth boundary.

This city planning jurisdiction was in place at the time of my 2002 purchase at which time I received and verified signed paperwork on City of The Dalles public works letterhead identifying a requested 3-lot partition and the costs pertaining to that partition all under the jurisdiction of the city planning office with no mention of non-remonstrance, LIDs, or fees or funds for street improvements.

I was required to purchase a building permit under city jurisdiction for the construction of my art studio in approximately 2003 with no mention or demands for signing non-remonstrance or notice of any payment into a fund or a planning action for streets or infrastructure improvements.

In 2011 after multiple visits over three years with Dick Gassman requesting a move toward partitioning for further construction we had determined that I could, and did build a 600 square foot accessory dwelling over a garage at 2804 E. 10<sup>th</sup> street, all under the jurisdiction of city planning with no mention of fees or funds or infrastructure, or street improvements, as a consequence of the building permit.

Shortly following my move-in in September 2012, city council directed staff to provide for 3-lot partitions to occur under city ordinance with the elimination of a demand for non-remonstrance or pre payments or for demands for infrastructure improvements. There would be no need or request for city services on my property as each dwelling was served by its own domestic well and septic system. I understand that I was still postured to look to the future should a LID ever become formed. My conversations with Dick indicated that the present rate of development may indicate that east 10<sup>th</sup> street could get and LID in 50 to 100 years.

Staff failed to provide the requested ordinance change which met with disapproval by the planning commission spring of 2013 with a directive to "go back and do it right".

Presentations were then made to the Oregon Legislature and HB 3479 became LAW in June 2013 which directed the city planning authority to 'cease the demand' for non-remonstrance, and the demands for specific fee payments for infrastructure improvements, in the case of partitions up to 3 lots.

City planning staff then determined that due to the wording "within a city" that they, even though they have jurisdiction over city/county planning authority, would disallow the authority of the new law to govern their jurisdiction outside city limits within the urban growth boundary.

As a result of the new law I wrote Mr. Gassman of June 26, 2013 and requested clarity as to the present implications regarding my partition request at 2804 east 10<sup>th</sup>.

His response was to specify that HB 3479 did not provide me any protection from city ordinance that the city had jurisdiction over and that clarity could only be had by submitting an application for a minor partition.

At this point the incomprehensible becomes apparent. The city planning staff handles jurisdiction of authority. City council directs that authority to cease specific actions and provide an ordinance of recognition. Staff refuses to take the directive of city council and refuses to apply the law to the extent of their jurisdiction. The entirety of ordinance and jurisdiction becomes so thwarted that the planning commission and again the city council and the entire community have to face the insult and embarrassment of mis-guided actions and unfulfilled obligations.

My question right here is:

WILL YOU AS PLANNING COMMISSIONERS, WITNESS TO THIS DISARRAY, IN THE PRESENCE OF THIS COMMUNITY AND ON MY BEHALF, AND ON BEHALF OF SO MANY OTHERS WHO COULD PROCEED AND PROSPER WITH THE WILL OF THEIR OWN LIVES, STAND AND CORRECT THESE INJUSTICES AND BREACH OF DUTY WHILE IT IS APPARENT WHAT FAILS TO BE CORRECTED.

I have worked to have the development of the law on partitions; I seek the protection of the law on partitions; and do herein request your support in observation of the intent of the law.

*sent out E-mail  
Dave Horvath 10/4/13*

I have reviewed the proposed ordinance changes. Here's what they do:

### Attachment 6

Staff proposes to amend Section 9.030.050(B)(2) of the LUDO to provide that street improvements do not have to be installed prior to the approval of a final partition plat, but must occur consistent with the provision of Section 10.030(A) of the LUDO.

Section 10.030(A) of the LUDO requires street improvements to be installed per the provisions of Section 9.040.060(H) of the LUDO. Section 9.040.060(H) of the LUDO requires the property owner to either 1) install the improvements, 2) agree to install the improvements, or 3) form an improvement district, before approval of a final partition plat.

Staff then proposes to amend Section 9.030.050(C) of the LUDO to require the applicant for a partition to install street improvements in accordance with Section 10.030(A) of the LUDO. As discussed above, Section 10.030(A) sends you to Section 9.040.060(H) of the LUDO, which requires street improvements to be installed or agreed upon, or an LID to be formed, before the final partition plat can be approved.

So staff is suggesting two amendments to LUDO 9.030.050. The first amendment (to subsection (B)(2)) says that street improvements don't have to be installed before a final partition plat is recorded, but that the property owner must 1) agree to install the improvements or 2) form an improvement district before the final partition plat is approved. But there is no definition in the LUDO for what constitutes an "improvement district" or how one gets formed (it doesn't appear that an "improvement district" is the same thing as a "local improvement district" under Chapter 2 of the City's Ordinances, but that is unclear.

In order to enter into an agreement to 1) install the improvements, or 2) form an improvement district (whatever that is), the property owner seeking the partition has to post a bond or prove that they have the money to pay for the improvements, and give the City Engineer the right to hold the money to ensure that the improvements are made. Given the scope of the improvements demanded by the City, no one will do this.

So, if these changes were to be approved, what the City is essentially demanding is that the street improvements be made before the final partition plat is approved, even though they're saying that's not the case. That will be the effect of these amendments.

I believe the option of agreeing to form an improvement district under LUDO 9.040.060(H)(3) before a final plat can be approved is inconsistent with HB 3479, and therefore unenforceable. I believe that the option of installing the street improvements under LUDO 9.040.060(H)(1) as a condition of obtaining final approval of the partition plat is plainly inconsistent with the staff's recommended amendments to Section 9.030.050(B)(2), and is therefore unenforceable. However, I believe that it is possible to apply LUDO 9.040.060(H)(2) consistently with both the staff recommended amendment to Section 9.030.050(B)(2) and HB 3479, meaning that if these amendments are accepted by the City Council, staff could require that a property owner enter into an agreement with the City to install all of the street/sidewalk improvements ~~before~~ the City would agree to approve the final partition plat. That means, of course, that the partition will never occur, as the costs to install the street/sidewalk improvements will exceed the sales price for the parcels created by the partition.