



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
COMMUNITY DEVELOPMENT DEPARTMENT

MINUTES

CITY OF THE DALLES PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS
313 COURT SREET
THE DALLES, OREGON 97058
CONDUCTED IN A MEETING ROOM IN COMPLIANCE WITH ADA STANDARDS

THURSDAY, AUGUST 15, 2019
6:00 P.M.

CALL TO ORDER

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

ROLL CALL

Commissioners Present: Cody Cornett, Sherry DuFault, Bruce Lavier, Mark Poppoff, Steve Ross and Jeff Stiles

Commissioners Absent: Brent Bybee

Staff Present: Director Steve Harris, City Attorney Gene Parker, Senior Planner Dawn Hert

APPROVAL OF AGENDA

It was moved by Ross and seconded by Stiles to approve the Agenda of August 15, 2019 as written. The motion passed 6/0, Cornett, DuFault, Lavier, Poppoff, Ross and Stiles in favor, none opposed, Bybee absent.

APPROVAL OF MINUTES

It was moved by Stiles and seconded by Cornett to approve the Minutes of July 18, 2019 as written. The motion passed 6/0, Cornett, DuFault, Lavier, Poppoff, Ross and Stiles in favor, none opposed, Bybee absent.

It was moved by DuFault and seconded by Cornett to hold public testimony to five minutes or less. The motion passed 6/0, Cornett, DuFault, Lavier, Poppoff, Ross and Stiles in favor, none opposed, Bybee absent.

PUBLIC COMMENT

There were no public comments.

PRESENTATION

Scott Baker, Executive Director, Northern Wasco County Parks and Recreation District

Baker presented an overview of the Northern Wasco County Parks and Recreation District (NWPRD) Master Plan.

Baker stated public input emphasized the need to take better care of existing parks versus acquiring more land and developing new parks.

Goals of the plan include:

- Create an identity for NWPRD
- Connectivity between parks
- Find new revenue streams to create a first class park system
- Maintenance and Operations
- Sustainability – build quality for long term durability
- Build community resiliency – bring diverse people together to build community

The focus of the plan will begin with five parks in need of immediate help or that offer the most opportunity for improvement:

- City Park
 - The parks are not ranked in a specific order; funding resources will determine which parks receive attention first.
- Thompson Park (identified as a Brownfield site)
 - Thompson Park was not identified as a Brownfield site due to contamination; it is unsightly and considered blight. Transients use the park frequently and light fires, enforcement is difficult.
- Riverfront Park
 - A potential use could include short term overnight camping and space for fire camps; access from the highway makes this location desirable. Hert stated the current Code does not allow for that use in Parks and Open Spaces; an ordinance amendment and potentially a Comprehensive Plan amendment would be required.
- Fourteenth Street Reservoir
 - This is currently undeveloped land that could be turned to good park use. By exchanging land, steep areas without recreational value could, in partnership with the City, be used to provide affordable housing. Plans include a dog park and dedicated pickle ball courts.
- Kramer Field
 - Development of this park and adjoining land would allow for four full size soccer fields, a smattering of Little League and softball fields and playground areas. This would allow regional tournaments.
 - This plan includes the use of artificial turf to provide more play value. Although the turf gets hot, sprinklers would be used to cool the turf prior to use. The grassy areas become muddy with continued use.

Baker stated the City's Comprehensive Plan now refers to the Parks District Master Plan as a part of its plan. NWPRDs Master Plan will make their grant applications more competitive and increase potential funding. The District has System Development Charge funds earmarked for development; those funds cannot be used for maintenance and operations but can be used as matching funds.

Joy Smith, 1407 E. 16th Street, The Dalles

Ms. Smith asked if the artificial turf would be slippery. Baker replied the fields would not be sprinkled at game time, drainage would prevent slipping.

Baker stated the District's goal was to create a document adoptable by the City in order to get Land Use Compatibility Statements and be competitive for funding.

QUASI-JUDICIAL HEARING

Adjustment 19-046, Gary Everest, 1413 E. 16th Street, 1N 13E 10 AA tax lot 3200

Chair Lavier read the rules of a public hearing.

Joy Smith, 1407 E. 16th Street, The Dalles

Ms. Smith asked for clarification of the public hearing rules. Senior Planner Hert replied that individuals can give any testimony they choose, however, the criteria used by the Commission to make a decision is the criteria listed in the staff report. The Commission is bound by the Municipal Code which is addressed in the staff report.

Chair Lavier then asked if any Commission member had ex parte contact, conflict of interest, or bias which would prevent an impartial decision.

Commissioner Stiles replied he had extensive conversations with the neighbor of the proposed lot, and may or may not have a future financial interest. City Attorney Parker asked if the discussion involved the merits of this particular application and if it could bias Stiles' decision. Stiles replied it involved the merits and could bias his decision. Stiles then recused himself from the public hearing. Parker clarified Commissioner Stiles could not participate in the discussion or deliberation, ask questions or vote.

Chair Lavier asked if anyone in the audience wished to challenge the qualifications of the Commission. There was no challenge.

Chair Lavier opened the public hearing at 6:43 p.m.

Before presentation of the staff report, Senior Planner Hert directed attention to a letter submitted by Jonathan Hunt, Exhibit 1. Hunt called out Finding 6 with regard to a specific calculation of lot density.

Hert responded to Mr. Hunt's question with the following explanation. In calculating lot density, the measurement includes half of the right-of-way that would have or could have been part of the original parcel. This calculation includes the entire parcel as well as half of the rights-of-way for a total of 14,527 sq. ft., or 0.335 acres. That number multiplied by six units per gross acre results in 2.001 units per gross acre. This density meets Code.

Hert then presented the staff report.

Chair Lavier invited comment from proponents.

Gary Everest, 1413 E. Fifth Street, Hood River, Oregon 97031

Mr. Everest stated the purpose was to build homes on the lots. The home was situated on the lot in order to require the smallest adjustment possible. Everest said it was impossible to calculate a 65 foot depth on the five-sided lot.

Chair Lavier invited comment from opponents.

Jonathan Hunt, PO Box 81, The Dalles

Mr. Hunt referred to his letter (previously identified as Exhibit 1). Hunt said there was a lack of detail in Finding 6. Hunt acknowledged the explanation provided by Senior Planner Hert, but requested the record be extended and a diagram be provided detailing the calculation.

Hunt referred to the difficulty with lot depth due to a five-sided lot. He questioned why the lot was five-sided. He said the angle was the major issue, and stated if the lot had been divided with a straight line the lot would not be five-sided. Lavier replied there is nothing in the Code to prohibit a five-sided lot.

Mr. Hunt read aloud from the letter he submitted. He stated there was also some question about the date the application was submitted and whether the hearing was scheduled in the required timeframe.

In response to Commissioner Ross' question, Mr. Hunt said he had been to the subject property.

Due to Mr. Hunt's request the record be extended, Chair Lavier asked for a legal decision from City Attorney Parker. Parker replied once the testimony was completed tonight, there were two options: to continue the hearing to a date certain, or to close public testimony but continue the record so additional evidence or comment could be presented. The purpose of the continuance is not necessarily for the City to present additional evidence, but for Mr. Hunt to produce additional evidence or argument.

Lorene Hunt, PO Box 81, The Dalles

Mrs. Hunt requested the record be kept open. She visited the property and spoke with the neighbors, one of whom gave her a copy of the Shull's Addition Covenants, Exhibit 2. Mrs. Hunt stated she was very concerned. It reminded her of what happened with the E. 19th property; people provided covenants and the Planning Commission and the Planning [Community Development] Department said the covenants no longer apply. Mrs. Hunt said, "Citizens don't feel heard."

Mrs. Hunt called attention to the "Community Development Dept." sheet, Exhibit 3 [identified by City Attorney Parker as Exhibit 1]. She stated the same person heads both the Community Development Department and the Economic Development Division [Department]. Mrs. Hunt stated, "It is obvious the same person has not fairly served both citizens and the developers." Mrs. Hunt submitted "For the Planning Commission Hearing August 15, 2019", Exhibit 4 [identified by City Attorney Parker as Exhibit 3].

Chair Lavier requested a brief overview of the LUDO [Title 10 Land Use and Development Code] and covenants. City Attorney Parker replied the covenants are not specific criteria for a land use ordinance. Covenants are enforced by a homeowner's association or people in the neighborhood; it is not the City's responsibility to enforce these.

Commissioner Cornett asked if the LUDO would override CC&Rs for specific lots. Parker replied for purposes of land use and the Commission's jurisdiction, whether a private party could enforce this would be a civil matter.

Joy Smith, 1407 E. 16th Street, The Dalles

In response to questions by Ms. Smith, Senior Planner Hert replied a Minor Partition and Administrative Adjustment were approved for Mr. Everest last year. After the survey it was found in order to complete the Minor Partition requirements, an additional Adjustment was required. Setback is not a criteria used for an Adjustment. Covenant requirements are a civil matter.

Ms. Smith stated parking would be “a monster.”

Senior Planner Hert stated minimum lot size in the RL zone is 5,000 sq. ft. Minimum depth is 65 feet, minimum width is 50 feet. Previously, a Minor Partition was approved with a lot reduction of up to 10% as an Administrative Action. The City has a limited land supply; we now have infill strategies encouraging people to infill on those lots.

Chair Lavier stated proponents would have additional opportunity to submit comments or questions if the hearing was continued or the record remained open. City Attorney Parker stated that decision was at the Commission’s discretion. He clarified if the record remained open, additional written comments would be accepted. If the hearing was continued, additional testimony would be accepted.

Chair Lavier invited rebuttal from Mr. Everest. He declined.

It was moved by DuFault and seconded by Ross to leave the record open until August 28, 2019 for Adjustment 19-046. The motion passed 5/0, Cornett, DuFault, Lavier, Poppoff, and Ross in favor, none opposed, Stiles recused, Bybee absent.

RESOLUTION

Resolution PC 583-19: Recommendation for approval of ADJ 19-046, Gary Everest

The Resolution will be addressed at the September 5, 2019 meeting.

STAFF COMMENTS

Director Harris stated one public hearing was scheduled for the next meeting, September 5, 2019.

Harris stated a meeting on regional housing was hosted by Regional Solutions of the Governor’s office on July 31, 2019. Nate Stice, our local representative, invited representatives from our area. Two state representatives, elected representatives from cities and counties, City staff, and Department of Land Conservation and Development (DLCD) representatives attended.

A topic of discussion at the regional housing meeting was House Bill 2001 which requires cities with a population greater than 10,000 to allow duplexes permitted in all zones that allow single family dwellings. Cities with a population greater than 25,000, considered middle housing, would require duplexes, triplexes and four-plexes to be allowed in zones that allow single family dwellings. The Dalles is in the first category which would allow duplexes.

Staff has been working on a series of Housing Code Amendments. At this time, that provision will be included in the Phase II amendments scheduled for the September 19, 2019 meeting.

On September 23-24, 2019, the City and Wasco County are co-hosting an event by the Oregon Chapter of the APA and the Oregon DLCD. The evening of September 23 is specifically for Planning Commissioners.

Work continues on Planning Commission by-laws.

Director Harris stated Notice of Intent to file another LUBA appeal was received. City Attorney Parker said this was for West 13th and Perkins, the decision remanded by LUBA to the City Council on the issue about the method used to calculate density and whether there was an increase in density. City Council chose to reaffirm their decision.

Director Harris said some of the issues raised about densities and density calculations have been rejected by LUBA not once but twice; they have also been rejected by the State Board of Appeals. He further stated, “Contrary to comments received earlier this evening, as the

Community Development Director I believe I am fully capable of fairly representing while serving both the citizens and developers that come before this body.”

COMMISSIONER COMMENTS OR QUESTIONS

Commissioner DuFault requested clarification on testimony. She asked if proximity or a tie was necessary for testimony at the hearing. Parker replied that was not part of the criteria; there is no residency requirement.

Commissioner Cornett asked if HB 2001 was state mandated. Harris replied it was. Commissioner Stiles asked if it was a requirement or a “may.” Harris replied it was a “shall” and there is a deadline imposed by the State. The DLCD will draft model ordinances; it will be some time before they are available.

Commissioner Poppoff inquired if this could make the appeal for the Perkins property null and void. City Attorney Parker replied he was not sure if he should address that now.

ADJOURNMENT

Chair Lavier adjourned the meeting at 7:37 p.m.

Respectfully Submitted
Paula Webb, Planning Secretary



Bruce Lavier, Chair

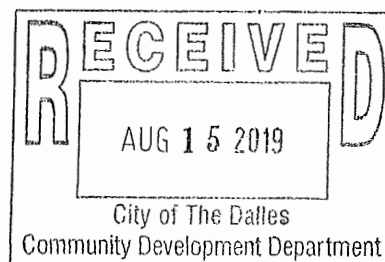
In finding #6 of the staff report for adjustment 19-046, reference is made to the 'lot density calculation for the Residential Low Density zone', but no calculation is given. What is meant by 'lot density calculation'? The lot density calculation used must be specified.

Finding #6 continues, 'this partition with the proposed adjustments meets the minimum lot density requirements of 6 units per gross acre'. Where is this minimum lot density requirement found? We find in 10.5.010.010 that RL 'allows for a range of zero to 6 single-family dwelling units per gross acre', however it can be seen that if this passage represents a lot density requirement, 6 dwelling units per gross acre would be a maximum, not a minimum, that is the density could not rise above 6 dwelling units per gross acre. Density ranges from the comprehensive plan would similarly indicate 6 units per gross acre as a maximum.

Similarly, we consider the last sentence of finding #6. 'Without the adjustments, the property would be developed at only 50% of the lot density requirements as stated in the Comprehensive Plan'. What are the comprehensive plan lot density requirements to which this statement refers? The only reference we find is goal 10 policy 22(a), prescribing a density range of '3-6 units/gross acre' for low density residential. However, the proposed development for this minor partition is two dwelling units on 9,740 square feet, a density of approximately 8.9 dwelling units per acre, well outside the range indicated in either the city code or the comprehensive plan.

Further, as this adjustment would allow such an increase in density, the adjustment should be prohibited by city code provision 10.3.080.020(B)(6). The calculation to be made is clear and objective, the adjustment's purpose is to place two dwelling units on a lot that is not large enough to be subdivided, according to 10.9.020.020(D)(1) and 10.5.010.060. This will not only increase but double the density on the lot in question, and cause a resulting increase in density in the RL zone.

Jonathan Hunt
PO Box 81
The Dalles, OR, 97058



331746

PROTECTIVE COVENANTS
OF
SCHULL'S ADDITION
TO
DALLAS CITY, WASCO COUNTY, OREGON

SIMS D.L.C. #39, Sec. 10, T. 1N, R. 13E, WM

July 10 1941
1960

PART A. PREAMBLE

KNOW ALL MEN BY THESE PRESENTS that, we the undersigned, Harold M. Schull and Adeline M. Schull, husband and wife, owners of Schull's Addition, an addition within the Corporate Limits of Dallas City, Wasco County, Oregon, does hereby declare the following restrictions to be covenants to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 1986, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the lots it is agreed to change said covenants in whole or in part. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any other person or persons owning any real property situated in said development or sub-division to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant, and either to prevent him or them from so doing or to recover damages or other dues for such violation. Invalidity or any one of these Covenants by judgement or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

PART B. AREA OF APPLICATION

B-1 All lots in the Tract shall be known and described as Single Family Residential Lots.

PART C. RESIDENTIAL AREA COVENANTS

C-3 DWELLING SIZE. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1000 square feet.

C-4 BUILDING LOCATION. No building shall be located on any lot nearer than 20 feet to the front lot line, or nearer than 15 feet to any side street line. No building shall be located nearer than 5 feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located 50 feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line. For the purposes of this covenant, Eaves, steps, and open porches shall be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

C-4 LOT AREA AND WIDTH. No dwelling shall be erected or placed on any lot having a width of less than 50 feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than 5,000 square feet.

C-5 EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

BOOK 151 PAGE 129

C-7. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

C-8. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently.

PART H. GENERAL PROVISIONS.

PART J. ATTEST.

In witness Whereof I have hereto set my hand and seal in Dalles City, Oregon, this 10th day OF July 10, 1961

Harold M. Schull
HAROLD M. SCHULL

Adeline M. Schull
ADELINE M. SCHULL

STATE OF OREGON,)

ss.

County of Wasco) On this 10th day of July 1961, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Harold M. Schull and Adeline M. Schull, husband and wife, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

E. J. Meyer
NOTARY PUBLIC FOR OREGON

My Commission expires 4-15-62

BOOK 151 PAGE 180

STATE OF OREGON,)
County of Wasco,) ss.

I, J. Brown, County Clerk and ex officio Recorder of Wasco County, do hereby certify that the within instrument of writing was received for record and recorded in the records of said county at

MAY 6 9 35 AM '63

In Book

On Page

Witness my hand and seal of office affixed at
H.A. Howard, The Dalles

J. BROWN, County Clerk

By Adeline M. Schull Deputy

Return to H.A. Howard
Street P.O. Box 376
City The Dalles, Ore.

Community Development Dept.
(Formerly Planning Department)

Mission:

"PREPARING FOR THE FUTURE" a long-standing mission carried out for the benefit of this community's *citizens* and future generations through:

- Responsive, accurate, consistent, helpful and honest service to our *citizens* and customers.
- Aggressively pursuing *meaningful citizen involvement* in all planning endeavors.
- Active staff support for our citizen volunteers serving on the Planning Commission, Historic Landmarks Commission, Urban Renewal, and Ad Hoc Committees.
- Determined implementation of adopted plans, programs and policies.
- Helping to foster a climate of cooperation among City personnel, *local citizens*, special interest groups, and State and Federal agencies.
- These found on http://www.ci.the-dalles.or.us/community_dev.htm

Description:

The Community Development Department is responsible for:

LUDO 6 areas bulleted, all subject to (Land Use Development Ordinance)

(The Dalles Economic Development Division helps private developers...through various programs....)

The same person heads both the Community Development Dept. (serving citizens the prime purpose of this department per the 1st & 2nd bullet points) and the Economic Development Division (helping developers the first statement). It is obvious the same person has not fairly served both citizens and developers. Decisions at the city level have favored developers exclusively, not even covenants in 2 neighborhoods honored (E. 19th on May 3, 2018 and E. 16th

For the Planning Commission Hearing August 15, 2019

Handed to you is the Mission of the Community Development Dept., the department which provided the staff report for today's hearing. Note that the Community Development Dept. has a "long-standing Mission carried out for the **benefit of this community's citizens... through: responsive, accurate, consistent, helpful and honest service to our citizens** and customers (who are the "customers"?)"

Just considering "accurate": (1) refer to finding #6 of the staff report. "Based upon the lot density calculation for the Residential Low Density Zone, this partition with the proposed adjustments meets the **minimum** lot density requirements of 6 units per gross acre. **Criterion met.** The word minimum should actually be **maximum, and no, the Criterion is not met.** (2) Refer to p. 2 of the Notice of Public Hearing. The Decision Process states in #4 that "The Provisions of The Dalles Municipal Code...must be met." Completely absent from the Staff Report is a provision of The Dalles City Code which directly relates to this adjustment application, which is 10.3 080.020 B (6) which states "Adjustments are prohibited for the following items: To allow an increase in density in the RL zone." Justification for the proposed adjustment must be made, the plans attached to the staff report showing the proposed development of Parcel #1, a clear increase in density impacted by the adjustment requested for Parcel #2. In addition, 10.9.020.020 in Subsection D states "Lot sizes **shall** not be less than required by this Ordinance for the applicable zone district" and the residential low density district requires a lot area of at least 5000 square feet and dimensions of at least 50 feet wide by 65 feet deep for one dwelling lot. (From Planning Commission Agenda Packet May 3, 2018 page 13 of 33). How is completely omitting a directly applicable provision of the City Code providing "honest service to our citizens?"

Regarding bullet point #2 "**aggressively pursuing meaningful citizen involvement in all planning endeavors**": What does "meaningful" even mean? When 2 groups of citizens from 2 neighborhoods unanimously speak in opposition to a developer's plans for a variety of reasons, including a neighborhood covenant (as happened in the E. 19th case on May 3, 2018 and has happened in relation to the present property being considered on 1413 E. 16th street), what about those citizen contributions are "meaningful" if the city does not honor the Covenants, determined by legal counsel to be legitimate?" The Covenant relating to 1413 E. 16th St (being considered at today's hearing) is included in the documents handed out). The Planning Commission should seriously consider: what happened at the Planning Department/City level to allow a partition when the Covenant clearly states it is "binding on all persons and all parties... unless by vote of a majority of the then owners of the lots it is agreed to change said covenants in whole or in part." "Responsive" service to citizens? "Helpful" in making sure Covenants are honored?

If the Planning Commission cares about the first 2 bullet points of the Community Development Department's duty to citizens, it must seriously consider:

(1) investigating how the Protective Covenant of Schull's Addition to Dalles City Wasco County, Oregon (copy distributed) was not honored by the Community Development Department and/or the City, granting partition in Sept. 2018 (?) Had this Covenant been honored as legal (which it has been affirmed by legal counsel that it is), there would be no need for this hearing and citizens would not be concerned about the plans for development on Parcel #1, even though neighborhood citizens have been told by City personnel that Parcel #1 cannot be built on.

(2) Keeping the record open for the purpose of talking with neighbors of 1413 E. 16th about their efforts to inform the City about the Covenant and other pertinent features of that property i.e.

Exhibit 4

about a spring running through it and about the fact that it was declared a not buildable property before the City allowed building on it (one citizen doing much work moved recently, but others are still available in the area, I having talked with the woman who submitted the Schull's Covenant to the City. She said (as so many other persons in 2 other neighborhoods have said) "The City will do what it wants" and, after a volume of work last year without seeing the "benefits to the Schull's Addition community's citizens", she said she is not planning to attend this hearing, repeating "The City will do what it wants." "aggressively pursuing meaningful citizen involvement in all planning endeavors?" When? Where? How?

- (3) Taking time to reflect on the last paragraph at the bottom of the page with the Mission Statement of the Community Development Department and coming to terms with the following facts:

"The Dalles Economic Development Division helps private developers" – that successfully done since May of last year in all known cases in City hearings. "Benefit to this community's citizens?" The developer of 1413 lives in Hood River...is not a citizen of this community. The same person providing "help to developers" is the person heading the Community Development Department, supposedly to provide services to citizens of this community. Citizens have had no success with the goals of the Community Development Department related to Land Use in 3 neighborhoods (could have been more neighborhoods before May 2018). The same person heads both entities, and has not in any known instance supported citizens rather than developers, bullet points #1 and #2 needing a person at the City level who is independent of "helping developers" - a Community Development Director who can carry out the Mission of the Community Development Department as it relates to citizen goals without being tied to "helping developers" - a very obvious conflict of interests that does not serve citizens of The Dalles.

Lorene Hunt
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