

CITY OF THE DALLES PLANNING COMMISSION MINUTES

October 15, 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 6:33 pm.

BOARD

MEMBERS PRESENT: Bruce Lavier
Mark Poppoff (arrived at 6:36)
Dean Wilcox
Chris Zukin
Benjamin Hoey

BOARD

MEMBERS ABSENT: Ron Ahlberg
Ted Bryant

STAFF PRESENT:

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES:

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

PUBLIC COMMENT: none

WORK SESSION --- LUDO AMENDMENTS:

Senior Planner Gassman explained the goal of annually rewriting portions of the LUDO as needed. He then went over each of the 41 proposed amendments, explaining the background behind each one as well as staff's recommendation.

Amendment #1 & 2 – no discussion

Amendment #3 – Regarding deadlines for submitting written comments prior to a hearing,

Commissioner Lavier felt that receiving a packet of information at the meeting was not enough time to evaluate the information, especially if it was a large packet. He stated that he would prefer to require an earlier deadline.

Commissioner Poppoff agreed, stating that the deadline should be far enough out so that the Commissioners can receive the comments in enough time to adequately review them.

Director Durow pointed out that if a large amount of documents are submitted at the last moment, the Commission has the option of continuing the hearing to another date in order to evaluate the evidence submitted. He then talked about due process and timelines.

City Attorney Parker talked about the importance of accepting all evidence, or facing the possibility of LUBA sending the application back for another hearing, or even reversing a decision.

Commissioner Zukin felt it was very important to bend over backwards to accept all comments and felt that stopping emails on a certain date would cut off an important line of communication. Zukin suggested requiring all emails go to one central email address; and that submitters be notified that the comments would not be printed, but rather forwarded electronically.

Commissioner Hoey pointed out the importance of having a procedure to accept emails considering that in five years most communication will have moved to electronic formats.

After a discussion, the general consensus by the Commission was to have staff prepare a list of suggested rules surrounding the acceptance of emails including size limits, and how to handle attachments. The agreement was to not ban emails, but to put a limit on faxes.

Amendment #4 – Senior Planner Gassman explained that Amendment #4 encompassed two different issues. The first issue was which body makes the final decision at the City level; Planning Commission, City Council, or perhaps a hearings officer. The second issue was whether an appeal should be a de novo appeal or an appeal on the record. Gassman went over the details of both issues.

Chair Lavier was of the opinion to switch appeals to on the record, but to keep the City Council as the final decision making body.

Commissioner Zukin felt that appeals need to continue to go to City Council so that they understand how the laws and policies they set affect people in a real life situation. Regarding the appeal hearing style, Zukin preferred the de novo process due to the way a hearing naturally progresses.

City Attorney Parker discussed the legal meaning of de novo is that new issues can not be brought up; only new information regarding the issues that were already raised can be brought up.

Commissioner Zukin added his opinion that the current process can be tedious for the rare large application, but he did not feel the system should be structured around those rarities.

Commissioner Hoey stated his preference for appeals to remain de novo and for the final decision to remain at the city council level.

Commissioner Poppoff expressed his opinion that hiring a hearings officer would cost more but not necessarily produce a better decision. He also did not feel it was a good practice to leave the decision up to one person.

Director Durow offered the illustration that the advantage of a hearings officer is that it takes the politics out of the decision; and that the disadvantage of a hearings officer is that it takes the politics out of the decision.

Commissioner Wilcox shared an experience in which the decision made by a hearings officer did end up being political but since that person's decision was final there was nothing that could be done about it.

Commissioner Zukin provided that as a citizen, he would rather plead his case to a council rather than one person.

The general consensus of the Commission was to leave the appeal process as is, but to more clearly spell out the definition of de novo.

Amendment #5 – After Senior Planner Gassman explained the reasoning behind deferring some approvals to other public entities and the reason for the amendment, Commissioner Zukin pointed out the possibility of confusion with using the word “may” rather than “shall”. City Attorney Parker stated that he would look into the ramifications of “may” vs. “shall”.

Amendments #6-11 – No discussion

Amendment #12 – Senior Planner Gassman discussed the reason behind requiring a maintenance access easement when a property owner proposes to locate buildings that abut or have a common wall less than the required setback amount from the property line.

Commissioner Poppoff asked if it would apply to two buildings on the same lot. Senior Planner Gassman clarified that it only applies to structures on separate lots, and stated that he would change the wording to make that more clear.

Commissioner Poppoff then asked how that would affect the selling off of one lot that already had a structure that crossed several lot lines; such as The Dalles Greenhouses. There was a discussion that clarified that the lots were already partitioned and currently owned by the same person. Senior Planner Gassman stated that the question would need to be looked into more. Director Durow also pointed out that Building Codes also has their codes and separation requirements that would have to be met. The general thought was that the structure could be grandfathered but that if it was ever torn down it would then need to meet code.

Amendments #13-24 – No discussion

Amendment #25 – In regards to allowing accessory dwellings (mother-in-law quarters) in duplexes, it was discussed that essentially the unit would then become a triplex. Senior Planner Gassman explained that right now it is a gray area, but that staff is recommending not allowing them.

Chair Lavier proposed the idea of allowing them only with a Conditional Use Permit (CUP). There was a general discussion about that possibility, as well as the requirement that the owner must be living in one of the units. The difficulties of monitoring who's living where, especially as the property is bought and sold were also discussed. The final decision was to allow them but to require a CUP.

Amendment #26 – Senior Planner Gassman went over the concerns when an applicant requests a building be placed close to a required set back or to a property line. He explained staff's proposal of requiring a survey if submitted evidence is not enough to be certain of the actual property lines.

Commissioner Zukin stated that he was in favor of the requirement and asked the consequence of a person building in the wrong place. Staff explained that property lines are not that black and white, and that more often than not an assumed property line is inaccurate. Zukin suggested an option of the applicant either obtaining a survey or agreeing to tear the structure down if it's built in the wrong place.

Commissioner Poppoff mentioned the information that in an older community the original surveys may not have been accurate. He also explained that the entire state is moving north approximately 1/3rd inch each year which further complicates surveys. Director Durow responded that the surveys measure from the nearest known benchmark.

Commissioner Wilcox asked what it costs for a survey. He then stated that it seemed pretty expensive and suggested a way to possibly add a small amount to each building permit so that when an application comes in that requires a survey it could be paid for by The City.

Commissioner Hoey shared that the issue comes up in Wasco County quite often and that they don't have any provisions in their code either. He explained the issue of property owners moving their property line stakes after the site has been inspected. Hoey noted that he liked the idea of being able to require a survey for properties that are close calls.

Amendments #27 & 28 – No discussion

Amendment #29 – Senior Planner Gassman went over the proposed language to add a new section to chapter 6 entitled "Renewable Energy Systems" focusing on the growing trend of wind turbines.

Chair Lavier suggested adding a statement that renewable energy systems would need to comply with the noise ordinance, but also pointed out that the actual noise level may not be known until it was built.

Commissioner Wilcox questioned the need to even allow wind turbines in residential zones and recommended that the language state that they are not allowed in City limits.

Commissioner Zukin felt that there were some places that wind turbines might be appropriate within City limits; giving as example a small one in the port area. Zukin suggested requiring a CUP to place one in a non-residential zone.

Director Durow shared that one is up at Crestline Construction which is in the Industrial zone.

Commissioner Poppoff brought up the issue of clearance that is required between wind turbines. He explained that each wind turbine that is put up has the potential to interfere with others nearby.

Commissioner Wilcox described a wind turbine system that he was familiar with, and explained that the turbines are an unreasonable alternative in relation to their efficiency.

The consensus of the Commissioners was to not allow wind turbines in residential zones and to only allow them in non-residential zones with a Conditional Use Permit.

Chair Lavier suggested adding language to also deal with solar energy systems.

Commissioner Poppoff agreed, citing a case in California where a neighbor's trees grew up to shade part of their solar panels.

There was a general discussion regarding solar issues such as; shading, height, reflectivity and safety due to the potential for high winds.

Senior Planner Gassman stated that he would come back to the Commission with updated language for wind energy, but that the issue regarding a solar access ordinance would need to wait until the next round of LUDO updates.

Amendments #30 – 36 – No discussion

Amendment #37 – Senior Planner Gassman explained the authority the amendment would give for confiscating signs that are placed in the public right of way.

Commissioner Poppoff asked how it would affect signs placed right next to the public right of way. Senior Planner Gassman replied that it would only apply to signs in the right of way.

Commissioner Zukin questioned the wording "by the jurisdiction" and wondered if the amendment could add the ability to take signs out of other jurisdictions, such as signs placed in the ODOT right of way. Senior Planner Gassman replied that it would be cleanest to only remove signs in the City's own jurisdiction. He suggested other jurisdictions could be called when signs are in their right of ways.

Amendment #38 – 41 – No discussion

Senior Planner Gassman shared one more item that City Council had requested in regards to re-designing the smaller non-collector, residential streets and the public improvements that are required on them. Gassman briefly explained the four categories of improvements that have been suggested and agreed upon by City Council. He noted that the suggested language will be formalized before the LUDO hearing and also that it will be taken out of the LUDO and adopted instead by a resolution through City Council so that it will be easier to make changes as needed.

To conclude the LUDO discussion, Senior Planner Gassman explained that the next step is to schedule a public hearing.

COMMISSIONER/STAFF COMMENTS

Commissioner Wilcox asked about the article in The Chronicle stating that LUBA had tossed out Walmart. City Attorney Parker explained that of the five issues that the opponent raised; four of them

were denied by LUBA, meaning that LUBA agreed with The City's decision. The fifth issue which was in regards to the traffic study, was sent back to the City. The Council will now need to decide how to respond to that issue. Parker predicted that a hearing on that issue will be heard by City Council in November or December.

Senior Planner Gassman shared that the City Council will consider the Interstate Area Management Plan recommend by the Planning Commission on October 26, 2009.

Commissioner Hoey inquired about the progress of the Brewery Grade project. Director Durow shared that the plan to re-open Brewery Grade before Thanksgiving was still on target. However, he added that there had been several things discovered once the project started that will extend the overall schedule such as; utilities not being where they were expected to be or not in the condition that was expected, an old brick manhole that was found, and the overall age and complexity of that part of town. He also stated that several new laterals were being added in anticipation of future needs so that the street will not need to be cut again later. He clarified that although Brewery Grade will be re-opened, some construction will continue outside of the traffic lanes.

Commissioner Hoey asked about the final grade level at the Brewery Grade Intersection. Director Durow described where the top of the wall will eventually be as well as the Jersey barrier and a pedestrian hand rail.

Chair Lavier inquired about the Mill site access. Director Durow explained their three access points, none of which will be directly from the round about.

Director Durow reported that there had been a paid archaeologist on site since the beginning; so far there had not been any monumental discoveries beyond glass, license plates, etc.

Director Durow announced that the Downtown Riverfront Connection project is moving ahead. He shared that the task force will be meeting on October 21, 2009 to look at four options put together by the architect.


Director Durow shared that the Urban Renewal Bonds were sold at the perfect time and that the credit for it goes to City Manger Young for his management of the bonds.

City Attorney Parker shared that in regards to the bids for the Terminal Reservoir Project bids, the estimated cost by the engineer was eight million, but the low bid, by Crestline Construction came in at four million.

NEXT MEETING: The next scheduled meeting is November 5, 2009.

ADJOURNMENT: The Planning Commission meeting was adjourned at 8:28 p.m.

Submitted by
Brenda Green, Administrative Secretary



Bruce Lavier, Planning Commission Chair