



**CITY of THE DALLES**

313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125  
FAX: (541) 298-5490  
Planning Department

**AGENDA**  
**CITY OF THE DALLES PLANNING COMMISSION**  
**AND CITY COUNCIL JOINT WORK SESSION**

CITY HALL COUNCIL CHAMBERS  
313 COURT SREET  
THE DALLES, OREGON 97058  
*CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM*

**THURSDAY, JULY 18, 2013**

**6:00 PM**

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
  - A. June 6, 2013
- V. WORK SESSION
  - A. HB 3479, minor partitions policy, and future LUDO amendments
- VI. STAFF COMMENTS
- VII. COMMISSIONER COMMENTS/QUESTIONS
- VIII. NEXT SCHEDULED MEETING DATE
  - August 1, 2013
- IX. ADJOURNMENT

**CITY OF THE DALLES PLANNING COMMISSION MINUTES**

**Thursday, June 6, 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 p.m.

**ROLL CALL:**

**BOARD MEMBERS PRESENT:**

Bruce Lavier, Rob Raschio, Chris Zukin, Dennis Whitehouse, Mike Zingg, Jeff Stiles

**BOARD MEMBERS ABSENT:**

Mark Poppoff

**STAFF MEMBERS PRESENT:**

City Attorney Gene Parker, Planning Director Richard Gassman, Senior Planner Dawn Marie Hert, Administrative Secretary Carole Trautman

Note: Commissioner Poppoff joined the meeting at 6:01 p.m.

**APPROVAL OF AGENDA:**

It was moved by Raschio and seconded by Whitehouse to approve the agenda as submitted. The motion carried unanimously.

**APPROVAL OF MINUTES:**

It was moved by Raschio and seconded by Whitehouse to approve the April 4, 2013 minutes as submitted. Lavier, Zukin, Raschio, Whitehouse, Poppoff and Stiles voted in favor; Zingg abstained. The motion carried.

**PUBLIC COMMENT:**

None.

**QUASI-JUDICIAL HEARINGS:**

**Application Number: VAR 122-13 and CUP 169-13; Thomas West/Design, LLC; Request:** Application to gain approval for the construction of a building that exceeds the zone district height limitation of 55 feet. The property is located at 161 Steelhead Way, The Dalles, Oregon, and is further described as 2N 13E 28 & 28B tax lot 101. Property is zoned "I" – Industrial District.

Chair Lavier read the rules for a public hearing and asked if any of the Commissioners had ex-parte contact, bias, or any conflict of interest that would prohibit them from making an impartial decision. Stiles noted he had provided housing to the applicant's employees in the past and could potentially provide housing for future project contractors. After asking some qualifying questions, City Attorney Parker determined Stiles had no hindrances in making an impartial decision on the application.

Zingg commented that his company had previously performed design work for the applicant. After asking some qualifying questions, City Attorney Parker determined Zingg had no hindrances in making an impartial decision on the application.

Chair Lavier opened the public hearing at 6:08 p.m.

Director Gassman presented an overview of the staff report. Gassman stated that the applicant provided a variance application for the construction of a new structure up to 75 feet in height and later asked for a building height of up to 80 feet. Gassman explained that structures up to 75 feet required a variance approval, construction over 75 feet required a conditional use permit. Therefore, Gassman stated, he prepared the staff report as a combined variance and conditional use permit request.

Director Gassman reported that no comments were received. Staff recommended approval because the structures were located in an area where there was not a large number of buildings. The new construction would be between two of the applicant's existing buildings. Another reason for approval, Gassman commented, was that there was a limited amount of available buildable land remaining in The Dalles. Gassman emphasized that it was important to maximize the remaining buildable land, and a two-story building would be in line with that goal. Gassman stated that determining the scale was a subjective process, but because of the existing location of the applicant's structures, he did not believe the proposed two-story structure would be offensive to the public.

### **Testimony:**

#### **Proponents**

Dave Karlson, 161 Steelhead Way, The Dalles, Oregon, stated that Google's technology had changed since the construction of the existing buildings. Therefore, the design of the new structure differed from the other two structures and required two stories.

Whitehouse asked if there would be cooling towers on top the new structure. Mr. Karlson clarified that the project was in the preliminary conceptual design stage, but the total height, including cooling towers, would not exceed 80 feet.

Raschio asked if there were plans for office space. Mr. Karlson stated the building was designed more specifically for technical usage, but the design phase was in the preliminary stage.

Scott Hege, 6580 Martin Road, The Dalles, Oregon, stated that Google had been an asset to the community for many years, and he supported Director Gassman's statement regarding maximizing the limited buildable land that remained in The Dalles.

#### **Opponents**

None.

Chair Lavier closed the public hearing at 6:26 p.m.

#### **Deliberation**

Raschio felt the applicant's request was a good use of the land, and he would support staff's recommendation. Zukin agreed.

It was moved by Zukin and seconded by Poppoff to approve VAR 122-13 and CUP 169-13, based upon testimony and the findings of fact outlined in staff's report, including all conditions of approval. The motion carried unanimously.

**Application Number:** CUP 168-13; **Grizzly Firefighters, Inc.;** **Request:** Application to gain approval for the construction of a steel-framed structure for the storage of firefighting equipment. The property is located at 615 E. Fourth Street, The Dalles, Oregon, and is further described as 1N 13E 3CA tax lot 100. Property is zoned "CBC" – Central Business Commercial.

Chair Lavier asked if anyone had any ex-parte contact, bias, or conflict of interest regarding the application. None were noted.

Senior Planner Hert presented the staff report. Hert received one email with comments (Attachment 1). Staff recommended approval with 15 conditions.

Chair Lavier asked if the firefighting equipment would sometimes deploy at night. Senior Planner Hert said that was correct. Stiles asked if bicycle parking was required. Hert said the code required it. Poppoff suggested planting some trees and placing the trash can outside in the alley. Poppoff also thought the bicycle parking regulation should be waived.

### **Testimony:**

#### **Proponents**

Teresa Ortiz, 2623 Brooks Avenue NE, Salem, Oregon, presented a history of Grizzly Firefighters' land use history in the area. The company was currently renting an area until the proposed application address could be approved for usage, Ms. Ortiz stated. Chemicals would not be stored at the proposed site, and garbage would be non-existent, because people would most likely not be inside the building. Employees would be dispatched from the Salem office, and evening dispatches were prohibited. Ms. Ortiz advised that any employee coming to the proposed site with a bicycle would lock the bicycle inside the building. Regarding the required handicap parking, Ms. Ortiz stated that the company would not hire handicapped employees due to the nature of the job description. Ms. Ortiz also stated the employees would be picked up when dispatched, and their vehicles would not be parked in front of the structure.

Raschio asked what the building exterior would consist of. Ms. Ortiz stated the structure was a kit; however, the company would comply with exterior design requirements to be compatible with the historic district. The metal roof would be non-reflective, Ms. Ortiz said.

#### **Opponents**

None.

#### **General Comments:**

Amanda Hoey, 604 East Fourth Street, The Dalles, Oregon, highlighted the three main points of the written comment (Attachment 1) submitted by Ben Hoey in his email dated June 2, 2013. Ms. Hoey also stated that she appreciated the fact that the lot would be developed and would be compatible to the surrounding properties.

Zukin asked if staff's conditions of approval required non-reflective exterior materials and a landscape plan. Senior Planner Hert advised there were no code requirements for non-reflective exterior materials or a landscape plan. Ms. Ortiz stated her company would work with staff on providing some landscaping as a buffer and use non-reflective exterior materials.

Chair Lavier closed the public hearing at 7:00 p.m.

#### **Deliberation**

Stiles and Zingg commented they were in favor of the use of the property. Raschio stated he was in favor of the property usage and hoped the areas on 3<sup>rd</sup> Street would be more in line with the business design of the area.

Discussion followed regarding modifying the bicycle requirement. Zingg stated he would like to see the money used for a tree rather than bicycle parking. City Attorney Parker referred to the Land Use and Development Ordinance, Section 7.040.060(e) of listed exemptions that stated, "Other exemptions as approved by approving authority," which indicated the Commission could modify the bicycle requirement. Parker stated the applicant's usage could be similar to subsection (a) Temporary Use.

It was moved by Zukin and seconded by Zingg to approve CUP 168-13, based upon testimony and the findings of fact and staff report criteria, including staff's conditions of approval with the following modifications: 1) delete the proposed condition of approval #7 regarding the bicycle rack requirement, and replace it with a condition of approval requiring the exterior of the structure should consist of non-reflective materials, and 2) amend proposed condition of approval #10 to read, "landscaping and a detailed landscaping plan will be required." The motion carried unanimously.

**RESOLUTIONS:**

It was moved by Raschio and seconded by Stiles to approve P.C. Resolution numbers 530-13 (VAR 122-13) and 531-13 (CUP 169-13) as submitted. The motion carried unanimously.

It was moved by Raschio and seconded by Zingg to approve P.C. Resolution 532-13 (CUP 168-13) to include the conditions of approval as amended by the Commission. The motion carried unanimously.

**STAFF COMMENTS:**

Director Gassman reported that he was working on the Urban Growth Boundary project. The issue was one of importance to the tribes and to the Gorge Commission. Gassman stated there would be future joint meetings with the Planning Commission and other various agencies. The two major issues included 1) whether or not the Gorge Commission had authority depending upon whether the request would be considered a major or minor amendment, and 2) the complexity of the task. No one had attempted to significantly change the scenic area boundaries since the 1980's, Gassman stated.

City Attorney Parker updated the Commission on HB 3479. Parker also advised that WalMart planned on proceeding with development in spite of the fact that another appeal was filed.

**NEXT MEETING:**

June 20, 2013

**ADJOURNMENT:**

Chair Lavier adjourned the meeting at 7:32 p.m.

Respectfully submitted by Carole J. Trautman, Administrative Secretary

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Bruce Lavier, Chairman



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Planning Department

# Memorandum

**To:** City Council and Planning Commission  
**From:** Richard Gassman, Director  
**Date:** July 18, 2013  
**Re:** Residential Infill – Facilitate Development yet Satisfy City Standards

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## Background

Facilitating development is a key City policy. At the same time, development is required to meet City standards, either at the time of development or through one of the identified deferred options. These two City policies at times conflict with each other. This is especially true for residential minor partitions where the partitions occur on large lots located on public streets that are not fully improved to City standards. Full improvement usually includes a sidewalk, curb, and a half street of pavement. Two issues can make these improvements difficult to install. One is the lack of utility infrastructure, usually a stormwater system, and the other is lack of engineering. In many cases both of these are lacking. Over the years the City has tried a variety of options to help the developer in situations where improvement is not feasible at the time of development. These options have included one or more of the following: waiver of remonstrance, prepay the estimated costs into a City fund, a local improvement district, a delayed development agreement, multi-frontage lot relief, and a reduction in City standards for some local residential streets. The City's efforts have only partially alleviated the problems.

## HB 3479

In June 2013 the State Legislature passed HB 3479, a copy of which is attached as well as a copy of a Memorandum from Gene Parker, City Attorney, analyzing the effects of HB 3479. In essence the bill eliminates two of the City's options – waiver of remonstrance and prepaying the estimated costs, but only as part of the minor partition process. The bill does not eliminate the requirement that developers need to improve their lot frontage as part of development.

## **Current LUDO Requirements**

At the present time no changes have yet been made to the City's LUDO. Developers are still required to bring nonstandard streets up to City standards at the time of development. Development includes both land division and construction. Last fall the City Council discussed changing the current requirements so that a property owner could complete a minor partition (creation of one or two new lots) without being required to bring a nonstandard street up to City standards. Those improvements would be required when a new dwelling unit was permitted. As yet those changes have not been made. In addition to the existing Council guidance, HB 3479 would seem to require changes to the LUDO in those areas that are now prohibited.

## **Goals of this Work Session**

The combination of Council discussion, the confusion surrounding the effects of HB 3479, and the overall difficulties in trying to facilitate development at the same time while ensuring improvements are made have left staff with many questions. We are looking for two main goals out of this work session. First, we welcome the opportunity of discussing the effects of HB 3479, both the literal effect and the perceived effect, and to discuss how the City should change its code as a result. Second, staff is requesting general guidance from the group on a variety of issues related to minor partitions and building permits. We are seeking guidance at the general level at this time. If the group indicates an idea is worth pursuing, staff will prepare more detailed language for future consideration.

## **Ideas for discussion**

Staff would like to get feedback from the group on the following issues, as well as others that the group may put forward. Again, we are seeking general advice – basically to either drop the idea or pursue it with more detailed information.

1. Unfinished LUDO changes. Staff is still planning on making LUDO changes in light of the Council's guidance changing the triggering event for full improvement from partition approval to dwelling unit permit approval. Unless otherwise advised, those changes will be included in a package resulting from this discussion. HB 3479 does not affect this concept.
2. Engineering Reimbursement District. One of the obstacles for improvement is the lack of engineering on most unimproved streets. Under the reimbursement concept, if a person paid to have the engineering so that a portion of the street work could be installed, that person would be entitled to partial reimbursement if another property owner used that engineering. The City currently has reimbursement districts for sanitary sewer and water. The general idea is that if someone extends the sewer line or water line so that it allows another property owner to connect, the installer can recover a portion of the costs at the time that other property owners connect to the system. An engineering reimbursement district would be similar. Again, this is outside the scope of HB 3479.
3. Limit Development. Given the difficulties that we are facing on getting street improvements, one idea is to limit approval of partitions, or new dwelling units, to those lots that are either on fully improved streets, streets that are currently capable of being fully improved, or are on streets that have approved engineering in place.

4. Delayed Development Agreement. One of the options the City currently uses is called a delayed development agreement. This agreement can include any of the conditions of approval, but is usually associated with street improvements. It is essentially a contract between the property owner and the City where the City allows the development to proceed by deferring one or more requirements to a later date. This agreement is recorded to provide notice to future owners. It is not a waiver of remonstrance, nor is it tied to a local improvement district and is outside the scope of HB 3479.

5. Pay into the fund. This option has been prohibited by HB 3479 as a condition of approval for minor partitions. However, since the Council has already indicated an intent to facilitate the minor partition process by deleting any street improvements at that stage, the City could use the pay into the fund option at the time of issuing a building permit for a new dwelling.

6. Waivers of Remonstrance. Like the pay into the fund option, HB 3479 prohibits the use of waivers of remonstrance for minor partitions, but not for building permits. This option is currently not allowed in the LUDO, so if there is interest in using this option at the building permit stage, it would have to be added back to the LUDO.

7. Utility Extension. The City currently requires extension of utilities to the new lot as part of the minor partition process. This serves two purposes. First, it ensures that the utility can be extended while the property is under the same ownership. Second, it helps the property be ready for development by a new owner. Is the requirement for utility extension at the minor partition stage acceptable, or does the group want to put this requirement at the building permit stage?

8. Scenarios. To help staff understand how to process different factual situations, here are a couple of typical minor partition scenarios.

a. One large lot divided into two with a house located on one of the new lots. Under the latest guidance from Council, there would be no street improvement requirements at the time of the minor partition. Street improvements for the frontage of a lot would be required when a building permit was issued for that lot. Should utility extension be required at the time of the minor partition? If the street is not improved, and no stormwater or engineering is in place, should partitioning be allowed? Should a building permit be issued?

b. A long narrow lot is divided into two lots so that the lot with a house takes up the front with all the existing road frontage. The newly created vacant lot is at the rear with an easement for access. Under the guidance from Council, what public improvements, if any, does the lot in the rear have when a new dwelling permit is issued? Should the lot in front be required to make public improvements? Should utilities be extended to the rear lot at time of partition, or should other provisions such as an easement be required?

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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.



## CITY OF THE DALLES

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THE DALLES, OREGON 97058

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### MEMORANDUM

TO: Mayor and City Council

FROM: Gene Parker, City Attorney *GP*

DATE: June 25, 2013

RE: Analysis of House Bill 3479

During last night's Council meeting, Mayor Lawrence expressed an interest in receiving an analysis from me as to the impact and scope of House Bill 3479. The bill establishes restrictions on conditions of approval which the City may impose upon an application for a partition of residentially zoned property. In my opinion, the following are the most significant aspects of the legislation:

1. Section 1 of the legislation, which contains the language indicating which property owners may be affected by the legislation, refers to "the owner of property that is located in a city in Wasco County with a population greater than 5,000". A literal interpretation of this language would seem to indicate that the bill does not apply to a property owner seeking to partition residential property which is located outside of the City limits. It is unlikely that this was the intent of the persons who promoted the legislation, and who testified before the Legislature. One of the citizens who testified in support of the legislation owns property outside of the City limits, within the Urban Growth Boundary. The proposed amendments to address House Bill 3479 which staff have been working upon to present to the Planning Commission do not include different rules for property which is within the City limits, and property outside of the City limits.
2. Section 1 of the legislation also has language indicating that it applies in the case of "a subsequent application for a permit in furtherance of the partition". It is not precisely clear what this language means. Dave Hunnicut, the primary author of the legislation, advised members of the Senate Committee who considered the legislation, that the bill was intended to apply to residential partitions. The City's Land Use and Development Ordinance ("LUDO") does not provide for any further permit to be filed to obtain the final approval of a minor partition. Staff has taken the position that the provisions of the legislation do not apply to an application for a building permit.

3. Section 1(1) and 1(2) of the legislation clearly define what conditions the City cannot impose for approval of residential partition. Those prohibited conditions include a charge in lieu of forming a local improvement district; a prepayment against an assessment for a future LID; and a requirement for execution of a nonremonstrance agreement. The legislation does not specifically address what other types of conditions of approval which the City can impose upon a residential partition. It is my opinion there are several other conditions of approval for a residential partition in the City's LUDO which have not been invalidated as a result of the passage of House Bill 3479.

Enclosed with this memorandum is a copy of a memorandum which I prepared for the City Manager and Planning Director, which outlines the conditions of approval in the LUDO which I believe are still in effect. The memorandum outlines my opinion as to how the City should apply those remaining conditions to a current application for a minor partition which has been approved.