



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

CITY HALL COUNCIL CHAMBERS
313 COURT SREET

THE DALLES, OREGON 97058
CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM

THURSDAY, APRIL 4, 2013

6:00 PM

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
 - A. February 7, 2013
- V. PUBLIC COMMENT (Items not on the Agenda)
- VI. **LEGISLATIVE HEARING**

Application Number: ZOA 83-13; City of The Dalles; Request: Amendments to the Land Use and Development Ordinance.

- VII. STAFF COMMENTS
- VIII. COMMISSIONER COMMENTS/QUESTIONS
- IX. NEXT SCHEDULED MEETING DATE
April 18, 2013
- X. ADJOURNMENT

CITY OF THE DALLES PLANNING COMMISSION MINUTES

Thursday, February 7, 2013

City Hall Council Chambers

313 Court Street

The Dalles, OR 97058

Conducted in a handicap accessible room

CALL TO ORDER:

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

BOARD MEMBERS PRESENT:

Bruce Lavier, Mark Poppoff, Jeff Stiles, Chris Zukin, Mike Zingg

BOARD MEMBERS ABSENT:

Robert Raschio, Dennis Whitehouse

STAFF MEMBERS PRESENT:

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES:

It was moved by Zukin and seconded by Zingg to approve the November 15, 2012 minutes as submitted. The motion carried unanimously; Raschio and Whitehouse were absent.

PUBLIC COMMENT:

None.

QUASI-JUDICIAL HEARING:

Application Number: VAR 121-13; Columbia River Sign; Request: To obtain approval for additional signage. Property is located at 1935 E. 19th Street, The Dalles, Oregon, and is further described as Township 1 North, Range 13 East, Map 11 BA, tax lots 4800, 4900, and 5000.

Chair Lavier read the rules for conducting a public hearing and asked the Commissioners if anyone had any ex parte contact, bias or conflict of interest that would hinder them from making an unbiased decision in the matter. Zingg stated he did not, however for the record he stated that he had conducted business with some of the second floor tenants. After asking Zingg some qualifying questions, City Attorney Parker determined that Zingg had no ex-parte contact, conflict of interest or bias regarding the current application.

Chair Lavier called the public hearing to order at 6:05 PM.

Director Gassman gave an overview of the structure's history as it related to signage and various variance requests. Gassman, in his summary, pointed out that the contractor's comment at the public hearing for the original Variance #115-11 stating that he would request only one monument sign, and

one sign only, became a Condition of Approval for that Variance request. That one sign since then, Gassman reported, proved to be inadequate. Variance #118-12 requested additional signage, and the Planning Commission gave approval for a directory sign and a directional sign, Gassman stated.

Director Gassman stated that after preparing and distributing the Staff Report, he thought of another possible solution to the signage issue. Gassman proposed to restructure the original approval of Variance #115-11 by deleting Condition of Approval number II.3 requiring "only one sign." The variance could be treated as a stand-alone variance due to the fact that the Condition of Approval for only one monument sign had, over time, proven to be inadequate for the building size, Gassman suggested. If that edit was made, Gassman commented, the current sign request and future sign requests could be reviewed by the Planning Department as long as the sign specifications met code requirements. If future signage permit applications did not meet code standards, then applicants would submit a variance request, Gassman explained.

Zukin suggested that, in light of Director Gassman's proposal, Condition of Approval number II.3 prohibiting illumination of signs in Variance # 518-12 be rescinded as well. Director Gassman clarified that code standards allowed directory signs to be illuminated, but directional signs could not be illuminated.

Stiles asked if there were restrictions on moving signs. Director Gassman stated that moving signs were allowed, but at a relatively slow rate of 7 rpms.

Zukin outlined the proposed Conditions of Approval for the Variance request as follows: 1) Delete Condition of Approval II.3 of VAR 115-11; 2) delete Condition of Approval II.3 of VAR 118-12; and 3) all signs on this structure must comply with the Land Use and Development Ordinance, Section 13.040.020.

Testimony

Proponents:

Mark McCavic, 5277 Cherry Heights Road, The Dalles, Oregon stated that more signage was necessary for the multi-occupancy structure. As it turned out, McCavic stated, the tenant businesses are somewhat competitive to one another and some tenants are concerned that if they do not have proper signage, they may lose business to other building tenants. McCavic explained that illumination would not be a problem because typically medical facility signs are backlit, and the signs he has been asked to consider are backlit. The flush mounted signs would be produced and installed in a professional manner with very little illumination, McCavic said.

Chair Lavier asked McCavic if he understood the proposed changes and Conditions of Approval for the variance, and McCavic stated that he understood and he was satisfied with the proposed changes.

Jarrett Rose, 15755 S.W. Beef Bend Road, Tigard, OR, 97224 stated that Director Gassman's suggestion was the best solution for future signage at the facility. Rose pointed out that sign code requirements would keep signage to a maximum of 25% of the square footage of the building front, and he believed the beauty of the building would be maintained using that code requirement. Rose suggested each tenant business be assigned a maximum sign square footage for its rental area only so no tenant could overtake the allowed signage area for the entire building front.

Chair Lavier asked Rose if he understood the proposed changes and Conditions of Approval for the variance request, and Rose said he understood.

Opponents:

None.

Chair Lavier closed the public hearing at 6:29 PM.

Deliberation:

It was moved by Zukin and seconded by Zingg to approve VAR 121-13 as recommended by the staff report, based on the findings of fact, with three conditions of approval as follows: 1) Rescind Condition of Approval number II.3 of Resolution 505-11; 2) Rescind Condition of Approval number II.3 of Resolution 118-12; and 3) All signs on this structure must comply with the Land Use and Development Ordinance, Section 13.040.020. The motion carried unanimously, Raschio and Whitehouse were absent.

STAFF COMMENTS:

Staff distributed sample Oregon Government Ethics Commission statements for the Commissioners to review. Director Gassman advised that each Commissioner would receive a questionnaire in the mail.

City Attorney Parker advised that the appeal time had expired on case APL 24-12, Jennifer Blevins. Parker also advised that the judge for the Walmart hearing gave a strong ruling on the last appeal in favor of Walmart, and Walmart may be in a position to get started on development plans.

COMMISSIONER COMMENTS/QUESTIONS:

Stiles reported that he saw no movement on the Planning Commission's decision regarding the fence on 10th and Trevitt. Director Gassman said he would contact the property owners.

City Attorney Parker advised the Commissioners that they could authorize staff to draft and distribute a resolution on this meeting's variance decision. It was moved by Zukin and seconded by Zingg to authorize staff to prepare the Resolution to Variance #121-13 consistent with the approval of the Variance and Conditions of Approval based on the findings of fact and staff report. The motion carried unanimously; Raschio and Whitehouse were absent.

NEXT MEETING:

March 7, 2013

ADJOURNMENT:

The meeting was adjourned at 6:40 PM.

Respectfully submitted by Carole J. Trautman, Administrative Secretary.

Bruce Lavier, Chairman

City of The Dalles
Planning Commission Staff Report
Amendments to the
Land Use and Development Ordinance

Prepared by: Dick Gassman, Planning Director 

For: City of The Dalles Planning Commission

Procedure Type: Legislative Hearing

Meeting Date: April 4, 2013

Request: Amendments to the Land Use and Development Ordinance

Properties: All properties within the City of The Dalles land use jurisdiction

Applicant: City of The Dalles
Community Development Department
313 Court Street
The Dalles, OR 97058

BACKGROUND INFORMATION

The Land Use and Development Ordinance (LUDO) contains over 450 pages of language on procedural and substantive requirements for land division, property development, and zoning. The last major rewrite of the LUDO was in 1998. The basic ordinance has been amended several times, most recently in 2012.

Staff is proposing two amendments at this time. The first amendment is a rewriting of the LUDO as it pertains to the public improvement requirements on minor partition applications. This amendment arises out of the residential infill development discussion. The other amendment relates to setback requirements for open sided structures.

This application is a legislative action under the provisions of Section 3.110.020 and 3.020.060(A)(2). The role of the Planning Commission is to review the proposed

amendments, amend as needed, and forward a recommendation to the City Council. The final decision on the proposed amendments will be made by the City Council.

NOTIFICATION

Notice of these proposed amendments was sent to the State of Oregon Department of Land Conservation and Development on February 25, 2013. Notice of this public hearing was published in The Dalles Chronicle on March 24, 2013.

COMMENTS

As of the date of the preparation of this staff report, no comments have been received.

REVIEW

A. LAND USE AND DEVELOPMENT ORDINANCE 98-1222

1. PROCEDURE

a. Section 3.010.040 Applications:

FINDING 1: This application is initiated by the Director pursuant to the provisions of Section 3.010.040 F.

b. Section 3.020.060 Legislative Actions:

Subsection A. Decision types. 2. Ordinance Amendments:

FINDING 2: This application is for Ordinance Amendments per Section 3.110.

Subsection B. Public Hearings. The Commission shall hold at least one legislative public hearing to review applications for legislative actions and, by duly adopted resolution, make a recommendation to the Council to approve, approve with conditions, or deny the request.

FINDING 3: The public hearing has been set for April 4, 2013.

d. Section 3.020.060 Legislative Actions:

Subsection C. Notice of Hearing. At least 10 days before the legislative hearings, notice of the hearing shall be published in a newspaper of general circulation.

FINDING 4: A notice of hearing containing the information required was published in The Dalles Chronicle on March 24, 2013.

e. Notice of Hearing as required by ORS 227.186.

ORS 227.186 requires that all property owners whose property is rezoned must be provided notice at least 20 days but no more than 40 days prior to the date of the first hearing. For purposes of this provision, rezone includes any change that limits or prohibits uses previously allowed in a zone.

FINDING 5: Staff has determined that these proposed amendments do not come within the definition of rezone as contained in the statute. Notices to individual property owners were not required.

f. Section 3.020.070(A)(3) Staff Report.

A staff report shall be presented which identifies the criteria and standards applying to the application and summarizes the basic findings of fact. The staff report may also include a recommendation for approval, approval with conditions, or denial.

FINDING 6: The staff report has identified the criteria and standards as they relate to this application and has summarized the basic findings of fact. The staff report does include a recommendation for approval.

2. REVIEW

a. Section 3.110.030 Review Criteria

Proposed text amendments shall be consistent with the Comprehensive Plan, and State Laws and Administrative Rules.

FINDING 7: The City of The Dalles has broad discretion to adopt zoning textual changes. Each of the proposed amendments is consistent with the Comprehensive Plan, State Laws, and Administrative Rules.

DISCUSSION

The proposed residential infill amendment has been discussed at the City Council on several occasions. The proposed language has been developed after taking into consideration the comments from those sessions.

Here are some of the more significant proposed changes in the residential infill amendment.

1. No public improvement requirements would be triggered by a minor partition.
2. Public improvement obligations would be tied to each lot that adjoins a substandard street as part of the minor partition process.
3. The triggering event for the public improvement would be the addition of a new dwelling unit, or the formation of a local improvement district.

The other amendment is for a reduced setback for open sided structures such as carports that are open on three or four sides.

Draft language for each of the proposed amendments is attached.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission recommend to the Council the approval of the amendments as shown in the attached draft language, with any additional changes from the Commission.

GENERAL ORDINANCE NO. 13-XXXX

Section 1. Amend Section 6.080 A. 2. by adding the following language: **Structures that are open on three sides, with a minimal number of support beams, are subject only to the setback requirements of Section 6.080. A. 2., and are exempt from the provisions of Section 6.080.A.3.**

Section 2. Amend Section 6.110 to read as shown on the attached sheets

PROPOSED ORDINANCE REVISIONS
FOR RESIDENTIAL INFILL POLICY

Section 6.110

WAIVER OF RIGHT TO REMONSTRATE

(A) Application for Residential Dwelling Unit(s) and Certain Planning Actions Not Including a Partition Involving Residential Development

Effective February 12, 2007, an applicant who submits a request for a single family dwelling building permit or a single family accessory structure will not be required to execute a waiver of remonstrance agreement for the formation of a local improvement district. Waivers of remonstrance shall be required for planning actions and for other building permit applications if the proposed development would increase any traffic flow on any street not fully improved to City standards. Waiver of remonstrance agreements executed prior to February 12, 2007, shall be processed under the provisions of Resolution No. 07-007, establishing an implementation policy for the City Council for local improvement districts under General Ordinance No. 91-1127.

In the event the Director has determined, pursuant to a review of the applicable criteria set forth in Section 3 of Resolution No. 07-007, that installation of full street improvements (including paving, curb, gutter, sidewalk, sanitary sewer, water, and where applicable, storm sewer), is not required at the time of development, the applicant submitting the request for the building permit for a new residential unit or units, or for a planning action, shall pay the amount established by the City annually on a front footage basis, into the City's local improvement fund, subject to any provision for multi-frontage lot relief.

(B) Application for Partition Involving Residential Development

If the applicant for a partition of either a residentially zoned property or a non-residentially zoned property on which an existing residential structure is located does not pre-pay for the cost of applicable street improvements (including paving, curb, gutter, sidewalk, sanitary sewer, water, and where applicable, storm sewer) pursuant to Section 9.030.050(B)(2)(b)(1)(a), the applicant shall execute a waiver of remonstrance for each lot resulting from the partition. Such waiver shall become effective upon the date the final partition plat is recorded. In the event the City adopts a resolution declaring an intent to form a local improvement district ("LID") to construct the required improvements, which LID includes the property subject to the partition application, the owner(s) of the subject property at the time of consideration of the resolution declaring the intent to form the LID shall not be entitled to remonstrate against the proposed LID pursuant to the waiver of remonstrance executed under Section 9.030.050(B)(2)(b) and the dollar amount of the proposed assessment for the subject property shall not be

counted for the purpose of determining whether there are sufficient remonstrances to suspend the formation of the proposed LID

9.030.050 Final Partition Plat Review

B. Review of Final Partition Application

2. (a) For a partition of non-residentially zoned property, on which no existing residential structure is located, any required street improvements (including paving, curb, gutter, sidewalk, sanitary sewer, water, and where applicable, storm sewer) shall be subject to the Agreement for Improvement provisions in *Section 9.040.060(H): Installation of Required Improvements*.
- (b) For a partition of a vacant parcel of property which is zoned for residential development, or a partition of a parcel upon which an existing residential structure is located, the applicant shall be responsible for the costs of installation of any required street improvements as described above in subsection (a), for the full frontage of the parcel which is being partitioned less any applicable multi-frontage relief. The obligation to pay for the costs of these required street improvements attaches as of the date when the final partition plat is recorded. Prior to approval of the final plat, the applicant shall have either pre-paid for the required street improvements or executed a waiver of remonstrance for the required street improvements for each lot resulting from the partition pursuant to subsection (1) below.
 - (1) The applicant for the forms of partitions described above in subsection (b) shall have three options for paying the costs of the required street improvements, which are listed below:
 - (a) Pay the costs of the improvements prior to the date the final partition plat is recorded. If the applicant selects this payment option, no waiver of remonstrance is necessary.
 - (b) Pay the costs of the improvements at any time between the occurrence of the events described in subsections (a) and (c). If the applicant selects this payment option, the City shall record a release satisfying the obligations in the waiver(s) of remonstrance on the lot(s) that are subject to the payment.
 - (c) Pay the costs of the required street improvements upon the first occurrence of either of the following events:
 - (1) In the case of the partition of a vacant parcel, issuance of a building permit for construction of a

residential dwelling unit; and in the case of the partition of a parcel with an existing residential structure, issuance of a building permit for an additional residential dwelling unit.

- 2) Adoption by the City Council of a resolution announcing the intention to proceed with the formation of a local improvement district ("LID") for the construction of the required street improvements, which LID includes the parcel that was the subject of the partition application.

C. Final Plat Approval. Prior to final approval, the City shall be assured that:

1. For a partition of non-residentially zoned property, on which no existing residential structure is located, the applicant has installed, agreed to install for nonresidential development, or has gained approval to form an improvement district for installation of required improvements in accordance with the provisions of *Chapter 10: Improvements Required with Development*. Improvements that may be required include street, street lights or other signals, sanitary sewer, storm drainage, water, pedestrian way and bikeway improvements, electrical power, natural gas, cable television, telephone service, and other improvements required with the partition application.
2. For a partition of a vacant parcel which is zoned for residential development, or a partition of a parcel of property upon which an existing residential structure is located, the applicant's responsibility for the costs of installing required street improvements shall occur in accordance with the provisions of Section 9.030.050(B)(2).

Note: The current subsections (C)(2) through (5) would be renumbered (3) through (6).



CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Richard Gassman, Planning Director & Garrett Chrostek, Administrative Fellow
THRU: Nolan K. Young, City Manager *NK*
DATE: March 15th, 2013
RE: Explanation of Proposed LUDO Residential Partition Approval Amendment

INTRO: Under the City's Land Use and Development Ordinance ("LUDO"), property owners hold the obligation to initially bring streets up to City standards. This policy is consistent with every other community Staff is familiar with. Once a street meets City standards, the City takes responsibility for street maintenance—whereas under-developed streets, those not meeting City standards, receive only minimal maintenance as such repairs are generally inefficient. There are several miles of sub-standard streets in The Dalles that will eventually need to come up to City standards.¹

Historically, property owners engaging in partitions (creation of up to three lots) and construction of a new residential dwelling on properties serviced by under-developed streets (collectively referred to as "residential infill development") satisfied their street obligations through non-remonstrance agreements. Non-remonstrance agreements function as an automatic "yes" vote for an LID.

Yet, two problems arose with the City's use of non-remonstrance agreements; (1) some agreements were not readily discoverable by subsequent buyers creating issues of surprise (the electronic lien docket has helped with this issue) and (2) resistance by some property owners subject to non-remonstrance agreements resulted in delays to LID formation even though there were sufficient "yes" votes. This was particularly true among property owners that assumed their non-remonstrance agreement from the previous owner.

In response to public opposition to the non-remonstrance agreement, Council appointed an LID Task Force in 2007. After studying the issue, the Task Force made three primary

¹It should be noted that residential infill development is largely a matter of addressing residual under developed streets as current City policy requires full street improvements for newly constructed streets within the City's jurisdiction.

recommendations; (1) eliminate use of the non-remonstrance agreement, (2) allow property owners to defer LID assessment obligations until sale of the property, and (3) set a uniform rate for street improvements and offer multi-frontage relief.

The recommendations of the Task Force gave rise to the City's current policies and procedures for residential infill development. Currently, non-remonstrance agreements are prohibited by City ordinance for all forms of residential planning actions.

Instead, property owners engaging in residential infill development, including minor partitions, must fulfill their street improvement obligations at the time of development application approval. To satisfy their obligation, the property owner can either (1) install the improvements themselves if there is an approved design in place or (2) make a pre-payment into an LID fund. The pre-payment is determined by multiplying the frontage of the lot by the uniform rate in place at the time of payment, with multi-frontage relief, for the entire frontage of the original lot ("the frontage formula").

Once a property owner pre-pays (or installs the improvements themselves), that property becomes "free and clear" of future street LID assessments even if the future LID assessment is more than the amount of pre-payment. This approach eliminated the surprise to future owners caused by the non-remonstrance agreement and was designed to facilitate formation of LIDs by providing an incentive for pre-payment. However, the policy required a large upfront expenditure to execute a simple partition, creating the present barrier to residential infill development.

LUDO AMENDMENT PROPOSAL: At the February 11th City Council Meeting, Council directed Staff to prepare a LUDO amendment to address the upfront financial challenge to landowners engaging in residential partitions on properties serviced by under improved streets to promote additional residential infill development.

Under the proposed LUDO amendment, the property owner still holds responsibility for bringing streets up to City standards. However, the amendment eliminated the obligatory upfront financial cost to the property owner by removing the requirement that the property owner either install the improvements themselves or make a pre-payment into an LID fund **prior** to receiving approval for a **residential partition** (a partition applicant may still elect to satisfy their obligation at the time of approval to make the lot "free and clear" of future assessments, it is just no longer the only option).

Instead, the **applicant for residential infill partition** may elect to defer his/her street improvement obligation to a later time. If the applicant elects to defer his/her obligation, he/she must sign a non-remonstrance agreement prior to receiving approval for the partition. This non-remonstrance agreement is then recorded against the property and is enforceable against subsequent property owners. Accordingly, the obligation for street improvements, in the form of waiving the ability to remonstrate against a future LID, "attaches" at the time of partition to the entire frontage of the original property. Any property owner may "buy back" their non-remonstrance agreement by making a payment into an LID fund based on the frontage formula in place at the time of payment. In which case, the property owner would become "free and clear"

of future obligations just as if he/she had pre-paid.

The need to attach the obligation at the partition stage stems from the notice issue. As the 2007 task force identified, there needs to be a mechanism to notify future owners of the future street improvement obligation resulting from the property's location on an under improved street. Recording a non-remonstrance agreement, which is discoverable during a title search, is the most effective means to achieve that objective. To facilitate discovery, the City has implemented new software (the "electronic lien docket") that allows title companies to identify City liens and obligations including a non-remonstrance agreement filed against a particular property.

If the property owner elects to defer the street improvement obligation by executing a non-remonstrance agreement, the proposed LUDO amendment effectively establishes two triggers that obligate the property owner to make payment on the street improvements. First, payment would be due for the affected parcel (not the entire original parcel) prior to receiving a residential dwelling building permit approval (additional dwelling unit approval if the lot contains an existing residence). Second, if the property owner does not pursue any residential dwelling building permits on the properties resulting from the partition, then payment would be due upon formation of an LID (just as it would for every other property owner within the LID boundary).

For an application to **construct a new or additional dwelling unit**, the obligation for street improvements would attach and payment would be due at the time of permit approval.

Under no circumstance would there be an attachment of street improvement obligations for devising, inheriting, or selling property and such activities would not trigger a payment due. However, any existing obligation would remain attached to the property. A summary of the proposal is included in the attached table.

PROCESS: To implement this proposed amendment, a 35 day notice must be provided to the Oregon Department of Land Conservation and Development. Such notice was distributed on February 25, 2013. The proposed amendment then needs to go to the Planning Commission for the first evidentiary hearing, which is scheduled for April 4th, 2013. The City Council is scheduled to hold a final evidentiary hearing on April 22nd, 2013 and may adopt the amendment following that hearing. Interested persons will have an opportunity to present evidence and rebut testimony on the proposal at both the first and final evidentiary hearings.

CONCLUSION: In summary, the proposed LUDO amendment for residential infill partitions achieves a very specific purpose; it eliminates the obligatory upfront expenditure for obtaining a residential partition approval, while providing a means to notify future landowners of future street improvement obligations and affording some assurance to the City that the improvements will eventually be installed. It should be noted that a property owner who partitions their land could completely avoid street improvement obligation provided they do not apply for residential dwelling building permits and sell all the attached properties before an LID is formed. In such a scenario, the subsequent owner would assume the obligation for street improvements.

Current Proposed Changes	Partition of vacant land	Partition of land with existing structure	New Construction or Addition of Dwelling Unit	Devising/ Inheriting/ Sale of Property
Attachment (frontage of whole original lot)	Upon approval for a partition	Upon approval for a partition	Upon approval for a building permit	No attachment
Payment Due (frontage of lot affected)	Property owner's option: (1) At time of development approval, (2) Anytime between options (1) and (3), <u>or</u> (3) At the <i>first occurrence</i> of either: (a) Building permit approval, <u>or</u> (b) LID formation (cannot remonstrate)	Property owner's option: (1) At time of development approval, (2) Anytime between options (1) and (3), <u>or</u> (3) At the <i>first occurrence</i> of either: (a) Additional dwelling unit permit approval, <u>or</u> (b) LID formation, (cannot remonstrate)	Time of development approval	No payment obligation, unless an obligation attached prior to transfer