

**AUGUST 16, 2000**

**PLANNING COMMISSION REGULAR MEETING WAS CANCELLED**

**DUNES CITY PLANNING COMMISSION  
REGULAR MEETING  
August 16, 2000 --- 7:00 P.M.**

**I. ROLL CALL**

**Present:** Chair Don Puderbaugh; Bryce Spankroy; Steve Hardeman; Lee Riechel; Dan Karnes; and Planning Secretary, Jeannie Cerda. There were two people in the audience.

**II. APPROVAL OF MINUTES**

**Action:** A motion was made by Lee Riechel and seconded by Bryce Spankroy to approve the minutes of the June 21, 2000, regular meeting of the Planning Commission. The voting was unanimous and the motion carried. 3-Aye, 0-Nay, 2-Abstained.

**III. ANNOUNCEMENTS AND CORRESPONDENCE**

**Janet Hayes Thank-You Letter**

A letter from former Planning Secretary Janet Hayes, thanking the Planning Commission for their gift.

**Letter from Robert Anderson**

A letter introduced at the City Council Meeting of June 10, 2000, by Bob Anderson, outlining his concerns about the problems Dunes City is having with their ordinances.

D. Puderbaugh stated that after reviewing the ordinances that will be addressed in this meeting regarding another matter, he concurs with Mr. Anderson's observations. D. Puderbaugh also stated that after conferring with legal council, legal council also concurs that some of Dunes City Ordinances may need to be reworded. He also stated there appears to be inconsistencies within Dunes City Code of Ordinances 155.

D. Puderbaugh announced a joint meeting with the City Council at the Planning Commission Meeting of September 20, 2000, to address Robert Anderson's letter and the Dunes City Ordinance.

#### **IV. NEW BUSINESS**

None

#### **V. PUBLIC HEARINGS**

None

#### **VI. OLD BUSINESS**

##### **A. David R. Davis, Minor Partition Tax Lot 301 on Map 19-12-23-3 Dave Davis, Applicant**

Chair, Don Puderbaugh announced that at the City Council Meeting on August 10, 2000, the City Council voted to send the Minor Partition application back to the Planning Commission for further review, since many of the councilors had some concerns regarding this application and did not feel that they had enough information to make an informed decision. They asked that the Planning Commission review the minor partition application and return a recommendation at the next City Council Meeting of September 14, 2000.

Chair, Don Puderbaugh, stated that he was contacted by City Council President, David Jackson, following the August 10, 2000 City Council meeting. President Jackson instructed Chair Puderbaugh to obtain legal council through the City's law firm Harrang, Long, Gary, and Rudnick, to ensure that the City is complying with all local, state and federal laws associated with this particular application.

Chair, Don Puderbaugh, and Planning Commissioner Lee Riechel informed the commission that they had a meeting with Emily Jerome, Esq., Land Use Attorney for Harrang, Long, Gary and Rudnick on August 16, 2000. D. Puderbaugh presented a list of concerns and questions regarding this particular application and the City's procedures to Ms. Jerome. Ms. Jerome gave a verbal response to each question and concern, and assured them that she would prepare a written legal response. Ms. Jerome suggested that the City review and revise their Ordinances to comply with State and Federal law as well as clarify city requirements.

D. Puderbaugh presented a copy of the questions presented to Ms. Jerome. In addition to the written questions, L. Riechel asked Ms. Jerome about the zoning ordinance that states when it appears to the Planning Commission that the area is to ultimately divided into four or more lots or parcels, compliance with the provisions of the chapter pertaining to subdivisions can be applied. L. Riechel stated that Ms. Jerome informed them that this

applies to Subdivisions Ordinance 155.204, which is a definition and as such, has no standing in law.

D. Puderbaugh read the list of questions/concerns presented to Ms. Jerome as well as her verbal response:

1. Q. If the Planning Commission recommends approval of the application for a minor partition, is that decision defensible?

A. Yes.

2. Q. If the City Council denies the application for a minor partition, is that decision defensible?

A. It depends on the basis of denial. LUBA, would most likely be involved if appealed; and perhaps at the federal level, on some issues.

3. Q. If the city now concludes that the extension of Osprey Way to connect with Clear Lake Road is impractical and has an excessive impact on the wetlands, riparian area, and local topography, is that conclusion defensible?

\* In 1987 the requirement to connect Osprey to Clear Lake Road was added to a proposal for a minor partition.

\* In 1991, this requirement was reconfirmed.

\* In 1996, an application to develop the subject property was denied because it did not provide for this connection.

A. Yes. However, right now the city can say that the connection is not required and that is defensible if the city finds that it is impractical. Ms. Jerome did not feel that the City would be liable to previous applicants for this decision because there were different issues at that time, as well as the city has new rules and new conditions may have risen.

4. Q. Can the city require the applicant to extend a public street through the subject property, require the applicant to pay all costs and dedicate the street and right-of-way to the city, if the street extensions is not required to serve the applicant's property?

A. No. However, if they enforce it, the city may have to pay for all the improvements and compensate the owner for the cost of the road.

5. Q. Has Mr. Davis provided sufficient proof of ownership to meet the intent of the Dunes City Ordinance?

A. Mr. Davis has a full power of attorney from Cascade Exchange, and that meets the intent of the code as "owner". Also, in the application process, an application is to not be accepted until all the application conditions have been met. Proof of ownership being one. Once the application is accepted and a hearing is scheduled, the first phase in the application process and all information submitted is considered sufficient and/or complete. However, if the application is not complete and it has been scheduled for hearing, it is too late to raise those issues and the Planning Commission and City Council must accept the information submitted.

6. Q. Does the fact that the city has approved subsequent partition beyond one year on properties previously divided by minor partitions, become precedent setting?

A. A major interpretation by members of the City Council is that any further division of a minor partition beyond three lots, even after the one-year period, constitutes a subdivision and is sufficient reason for rejection.

A. No. It is not precedent setting. It is the law that governs this, not precedence.

Serial partitioning is legal as long as the applicant does not minor partition more than one time in a 365-day period, and so long as they meet the requirements for a minor partition at the time of partitioning.

7. Q. Can Dunes City deny the Davis Minor Partition request even though Mr. Davis has complied with all of Dunes City's requests?

A. No. Not if applicant meets all the requirements of 155.031 (A) &(B).

8. Q. When asked, Mr. Davis indicated that he might, at a future time, further divide one of the lots. He also indicated that he plans developing one lot for his personal use and selling the other lots undeveloped. Can the city treat this minor partition application as a subdivision?

A. No.

9. Q. Can Mr. Davis be considered legal owner or does he have authority to act as

legal owner?

A. Yes. He has full power of attorney.

Also, since proof of ownership is part of the application process, Dunes City cannot go back and require the applicant to supply additional information, which was required at the application process, after the first hearing. Once the application is accepted, and a hearing is scheduled, that part of the application process is considered complete.

10. Q. Can Dunes City require Mr. Davis to extend a public street through his property, at his cost, simply because the draft master road plan indicates?

A. No.

11. Q. There are four access easements granted on Mr. Davis' property. One owner, who has since combined his lots, owns two of the properties. Is Mr. Davis allowed to have three easements on this property and still be allowed to access the property as owner of the property.

A. Common law states that the city has to provide access and cannot deny access to the owner of the property. However, the past easements on that parcel of property are of no concern to the City.

They are private legal issues, not Dunes City's.

12. Q. Can the city restrict any future partitioning of property?

A. No, not as long as the application complies with the requirements for a minor partition.

It was noted that Ms. Jerome stated that when the Planning Commission makes their conclusions of law, they must do so based solely upon the city ordinance and not the comprehensive plan. All the criteria that must be met for a minor partition is in Dunes City Ordinance 155.031 (A) & (B). If all the criteria stated in the aforementioned ordinance has been met, the application must be approved.

A lengthy discussion regarding current and past findings of fact, conclusion of law and conditions of approval were had.

D. Karnes had concerns regarding suitable areas of the property. D. Puderbaugh stated that the application appears to comply with Dunes City Ordinances 155.031 (A)(B).

D. Puderbaugh addressed previously suggested conditions of approval and the legality of enforcing such conditions:

1. Site review required:

Yes, the city can require a site review.

2. Geological engineering report before any building or construction being placed on slopes greater than 16%:

That is not part of the Minor Partition Application requirements. However, the Planning Commission can recommend that the final plat map states that a geological report must be completed prior to construction.

3. Limit future density to no more than five lots:

No. The city cannot limit density.

4. Require approved percolation tests:

N/A. Percolation tests were submitted on a previous application of this property, and percolation tests are required at the building application process, not the partitioning application.

5. Turnarounds provided at the termination of easement access provide easement requirements for emergency vehicles:

It is not something that the city can require as it is a private access.

5. Water supply:

D. Puderbaugh stated that if a person were to dig a well, the well depleted the neighboring properties well supply, that is a legal issue between the parties, not a city issue. Also, land use ordinance states that all landowners have an open right to the water of Siltcoos Lake. The city can require an easement allowing property owners to access the lake, however, the city cannot approve easements across wetlands, and only the Corp of Engineers can do so. This is an issue for the

landowner with the Corp of Engineers, not the city.

**Recess: 8:34**

**Reconvene: 8:45**

D Puderbaugh suggested that prior to addressing the City Councilors concerns, both written and verbal, the Planning Commission vote regarding their recommendation to the City Council on the Davis minor Partition Application.

**MOTION:** L. Riechel made a motion to recommend to the City Council that it approve the request of Mr. Davis for a Minor Partition with the following conditions:

1. A site review will be required for all parcels.
2. The final plat map shall state that a geological engineering report will be required for any building or structure placed upon slopes greater than 16%.

Because having considered the evidence presented by those for the proposal as well as the evidence against the proposal, I find by the weight of the evidence and with the additional findings of fact for that the proposal. Steve Hardeman seconded the motion. The voting was unanimous and the motion carried.

D. Puderbaugh suggested addressing the Planning Commission's recommendation and conclusions in a memo to the city council.

D. Puderbaugh suggested that the Planning Commission meet on August 29, 2000 to review the final draft of the documents to be submitted to the City Council.

D. Puderbaugh addressed Councilor Becker's letter of concerns based upon the meeting with Ms. Jerome on August 16, 2000:

1. **Concern:** "A. . . Dunes City Land Use Ordinances 155.030 (B) state an overall conceptual plan for entire property may be required . . ."

**Response:** The applicant presented a conceptual plan at the August 10, 2000, City Council meeting even though it is not required.

2. **C:** ". . . Land Use Ordinance 155.004 provides When it appears to the Planning Commission that the area is to ultimately divided into four or more lots or parcels,



compliance with the provision of this chapter pertaining to subdivisions may be required. . . .”

**R:** The law states that so long as the property is not partitioned more than three lots in a calendar year, it must be treated as a minor partition. Also, the aforementioned statement comes from definitions and not City Ordinance and therefore has no standing in law.

3. **C:** “. . . There are locally significant delineated wetlands (LSW’s) present in the proposed project area, which are protected under Ordinance 156.120. . .”

**R:** Wetland boundaries are now noted on the Preliminary Partition Map dated Revised 6/22/00.

4. **C:** “. . . General provisions under Ordinance 155.080 states All partitions and subdivision conform to design and development standards. . .”

**R:** The requirements are stated in 155.031(A)(B), and any higher standards of development are extremely difficult to defend in Court. The Planning Commission does not agree that higher standards should be required.

**C:** “. . .a) The proposed project area has natural conditions which require special consideration. . .”

**R:** Slopes: A note be placed on the final plat map requiring individual site reviews and geological surveys where slopes exceed 16%

Development Suitability: The Comprehensive Plan is not part of law.

Locally Significant Wetlands: Preliminary partition map recognizes the wetland setbacks.

Potential Water Supply Shortness: Water supply is a private issue and not governed by the City.

Sewage Disposal: Sewage Disposal is a private issued and is regulated by Lane County.

Road Connection with Osprey Way: Planning Commission does not feel

that a connecting road meets the requirements.

**C.** “. . . b) As proposed, I do not feel this application can be considered a minor partition. . . .”

**R.** This application meets the criteria for a minor partition according to the laws of the State of Oregon.

Councilor Petersdorf’s concerns were addressed next:

1. **C.** “Osprey Way must be continued through to a connection with Clear Lake Road.”

**R.** Not recommended due to special conditions.

2. **C.** “If approval of the Davis Minor Partition Application did not provide for the connection to Clear Lake Road, the City could be sued by a previous applicant . . .”

**R.** No, the city cannot be sued.

3. **C.** Too many easements on one piece of property.

**R.** The city must provide access to the property, and cannot deny the owner of the property access.

D. Puderbaugh asked if there were any other concerns that needed to be addressed. There were none. He then confirmed the August 29, 2000 meeting to finalize the documents for the September 14, 2000 City Council Meeting. All commissioners were in agreement. D. Puderbaugh announced that it would be open to the public but not open to public input.

**B. Tree Conservation Booklet - Discussion**

D. Karnes stated that he had been investigating the option of a bulletin. He looked into a booklet that would have 4-6 pages of information. After further investigation, he found that the Internet would probably be more effective. He stated that he has compiled a list of most commonly asked questions so that the city could prepare leaflets with references, including current internet addresses to search for the answers to their questions. Extensive questions and discussion followed regarding items to be placed on a website and in brochures. All commissioners agreed with D. Karnes proposal and commended him for his excellent

proposal.

**VI. UNSCHEDULED BUSINESS**

**Draft Master Road Plan Books:**

Planning Secretary handed out draft master road plan books and announced that there will be a joint meeting between the Road Committee, City Council and Planning Commission, to review and revise and final the master road plan at a later date.

**VII. ADJOURNMENT**

Chair Puderbaugh adjourned the meeting at 9:45 p.m.

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**CHAIR, DON PUDERBAUGH**

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**PLANNING SECRETARY, J. CERDA**

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**BRYCE SPANKROY**

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**STEVE HARDEMAN**

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**LEE RIECHEL**

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**DAN KARNES**