

DUNES CITY PLANNING COMMISSION

REGULAR MEETING

November 17, 2005 --- 7:00 P.M.

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES - October 20, 2005
- III. ANNOUNCEMENTS AND CORRESPONDENCE - None
- IV. PUBLIC HEARINGS - None
- V. NEW BUSINESS
 1. Winthrop and Cinda Johnson - Concept Assistance
 2. Dick Booth - Concept Assistance
- VI. OLD BUSINESS - None.
- VII. UNSCHEDULED BUSINESS
- VIII. ADJOURNMENT

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I. CALL TO ORDER

Chair Lee Riechel called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Chair Lee Riechel; Commissioners, George Burke, Suzy Navetta, Les Zemlicka; Planning Secretary, Teri Tinker; and several citizens in the audience.

Absent/Excused: Commissioner Ron Shearer

II. APPROVAL OF MINUTES

October 20, 2005: Lee Riechel requested change of the minutes. Riechel would like a demarcation of the process guide to what he needs to read and what is action.

Navetta would like more interpretation of the Planning Commissions thoughts into the minutes.

ACTION: George Burke made a motion to accept the October 20, 2005 minutes as corrected. Les Zemlicka seconded the motion. There were 3 ayes, 0 nays, 1 absent. Motion carried.

III. PUBLIC COMMENTS

Lee Riechel opened the floor to public comments.

Bill Robinson, 5441 Little Woahink Drive, Florence, OR 97439:

"I've been to a number of the City Council Meetings in the last few months, and what is being sent to them by you people in terms of these so-called approved subdivisions are totally incomplete and they're now having to wrestle all these various conditions, which should not have to be brought in front of them. If you people stuck to the guns and the laws of this town that said that the applications have to be totally complete before they are sent to City Council. I have consulted with my lawyer and am going to read a brief excerpt of a letter, which I think will explain what I'm talking about."

"The burden is on the applicant to demonstrate compliance with all applicable criteria before the burden of proof is on the proponent, if any. The more drastic the change, the greater the impact of the proposal in the area, the greater the burden of proof upon the

proponent. The applicants are attempting to shunt this burden on to the City and the planning staff by submitting incomplete materials that fail to address applicable criteria. It is NOT the responsibility of the Planning Commission to correct these deficiencies by imposing, as conditions of approval, the criteria that the applicants are already required to address, but have failed to do so. Rather, the applicants have not submitted application materials that affirmably demonstrate compliance with, for instance, water rights, topography, buildings, landscaping, solar access, fire protection, traffic, parking, drainage, driveways, etc. (this, by the way is for a PUD). The application is basically incomplete and should be rejected. The Planning Commission need not and should not recommend approval in any fashion on the bare hope that the applicants will submit complete information later, and that information will demonstrate that the proposed Planned Unit Development is approved."

"What you people are sending to the City Council is totally incomplete. I don't know if you don't want to do your job, or whether you are not familiar enough with what needs to be done to make these things complete, but what you people are doing is messing with the values of our properties. I have invested a lot of money in this town when I built my home here. And you people by completely stamping (could not hear the next word as he was hitting on the table) these things, there is not one of them that you have rejected. Just send it on to the City Council and let them deal with it. I want to see these things complete. Before they leave here and go to City Council. Now I know you have been listening to Lane Council of Governments, Hilary Dearborn, etc., who say these things are complete. They are complete and come with 17 conditions, some of the stuff they have not done anything. This last PUD that just came up does not come close to being complete. I want you people to start being a little more serious about before you send this stuff to City Council. I want this stuff all in here, in this framework of the Planning Board to be complete. Now, the last thing I want to mention is in this document-- it says that the applicants are shifting the burden on to the planning staff. Hilary Dearborn has told me-- has told my wife-- that every one of the five applications that Rob Ward submitted were woefully incomplete. And that LCOG has spent literally tons (can't really understand) of hours trying to complete these applications for him and to provide laundry lists for him to complete. Who's paying for LCOG's job? I am and you are. Why in God's name am I paying for Rob Ward's subdivisions. It's his job to provide the materials, and I would like to know why Hilary Dearborn is doing his job. If he is incompetent and can't supply the information, why are we helping him. Now, this has got to stop, and I am serious about it. If our property values go down because of all these things that you are approving, and every one of them can be absolutely challenged and won at LUBA. If these property values go down, there is going to be a lawsuit and I'm telling you, this whole town will shut down, because the awards will be fantastic. Now what has happened up there on Little Woahink already is a bloody rape of the land, and if any of you have not seen it at this point, you owe it to us to go up and see what is going on. The DEQ has come in already, the EPA is looking at it, Fish and Wildlife, there's silt going into that lake already because of what is happened up there. I really want you to start looking at these things and I want you to get out your rejection stamp, if you've got one, and put away the approval stamp, because everyone of these things should have never gone to City Council.

John Stead, 83505 South Cove Way, Florence, OR 97439:

"You can anticipate what I am going to visit with you about this evening. It's about the availability of water. As Robinson suggested, you people have the responsibility to uphold City Ordinances. You have a responsibility to review applications that are before you in light of their compliance with City Ordinances. The City Council depends on you, and the citizens of this community depend on you to do your job. I recognize you depend on staff support. Staff support must certify to you that the application is in compliance with City Ordinances, the Comprehensive Plan, and State Laws that are applicable. You also must receive certification that the application is complete-- not complete for processing purposes, but complete. The statute says the application is certified as complete before you get it. The 120-day clock begins when the application is deemed complete. All of you have observed applications being augmented after they have been deemed complete. In order for that to occur, the record must be re-opened. When the applicant re-opens the record without giving you people an opportunity to respond, to the new information, that circumvents the citizen involvement program in that you have been cut out of the loop, and we, as citizens, have been cut out of the loop in being able to respond before you to the application. Now, let me be specific. Let me give you a specific example. City Ordinance 155.046 states "Information required. The application itself or the tentative plan must contain the following information, must contain", not might contain, it must contain. It does not say may contain, or might be added later, it says under information required, "the application itself or the tentative plan must contain the following information with respect to the subject area. Number 13, the domestic water system proposed to be installed, including the source, quality, and quantity of water if from other than a public water supply." Now, we can get into semantics and we could say, "well, the water system is going to be installed later by the homeowner", and so we don't know when that is going to be. That is not satisfactory. That is not meeting this requirement. The Ordinance says the application itself must contain that information. If it's not there you must reject the application. When you pass the application on to the City Council for review, 155.049 instructs the Council as follows: "The City Council shall consider the tentative plan application, recommendation of the Planning Commission, and all reports at a regular meeting no more than 45-days after action by the Planning Commission. The City Council shall approve, deny, or, when further information is required, postpone a decision on the application. Approval of the tentative plan must include the affirmative finding listed in 155.048." So, when you pass this on to the City Council, and Council is depending on you, because they have got to certify that the tentative plan complies in all respects to the applicable provision of State Law requirements and City plans, and policies and ordinances. They are depending on you to pass on to them an application that they can certify, and if you people would do this we would not be having the brouhaha's we are having at the present time. You play a vital role in the screening of applications-- in the making or the denying of applications that appear before the Council. Now, let's look into the future-- the final plat review and processing. The Council should anticipate the consequences of action taken because, City Ordinance 155.063 requires review of the final plat by the City Council-- and it

states "The City Council shall approve, deny, or, when further information is required, postpone a decision on the application. Approval must include...", not might include, must include "...affirmative findings that: (G) There will exist an adequate quantity and quality of water and an adequate approved sewage disposal system to support the proposed use of the land described in the plat." The Council is depending on you to send them documents that they can approve. They're depending on you to send them applications that we as citizens, have got to say, "Yeah, it's okay. Everything looks good to us." We would much rather agree with your actions than speak in opposition to your actions. Then let's go a little bit further with it, to the person who is going to purchase the lot. Following final plat approval in development of the project, the City will issue building permits. Dunes City Ordinance 156.139, Water Requirements insists "No building permit shall be approved unless the structure has a water system meeting state codes." Doesn't say a water system that's installed by a plumber who's certified. It says a water system meeting state codes. What are those state codes? We have been wrestling with that for four years. And we should know what they are by now. In addition, if a well system is proposed, and you have had one of those before you, and it is probable that a significant draw-down of the water table will occur or is occurring-- the City will disallow development. Now, is it fair to the developer, for you to approve his application without having certainty that water is going to be available from the well that he proposes to use? No one raised that question, staff didn't, the Planning Commission did not. The developer thinks he is home-free. When he sells his lots to an unsuspecting property owner, maybe one of them is going to say, "Hey, I thought there was plenty of water." Its been through this and this and this and this and this, it's been endorsed by the City, the developer promised me. If they go after the developer, you know they are coming after the City. You have a profound responsibility in this regard. If the City lacks evidence-- because here's what's going to happen-- if the City lacks evidence that the individual owner will be unable to meet this requirement, the building permit must be denied. Now, do you propose to pass forward to the Council for approval, plans that are going to result in the property owner being denied a building permit? I would hope not. Now, let's talk specifically about water permitting processing a little bit."

~~Riechel~~ Riechel: "I would just as soon not talk about that at this time as Planning Commission is not involved in that."

Stead: "I beg to differ"

Riechel: "Okay"

Stead: "I beg to differ, I'm a citizen trying to inform the Planning Commission about some of our concerns. If you want to muscle me, that is not appropriate."

Riechel: "Okay I will reserve the right to stop it."

Stead: "Okay, fine. No water permits have been issued. Over three years ago, Dunes City and (can't hear the next two words) sponsored a public forum over at the events center to inform the public that water was not available. It was announced that Dunes

City would sub-allocate its 1968 water rights permit to City residents. Which they are attempting to do. In October 2004, when the draft MOU was developed pertaining to the sub-allocation of water, that was developed, because an organization outside of the City asked Senator Verger to become involved. And because of her involvement, the MOU got developed; however, completion of this MOU does not guarantee that Woahink Lake water will be available for domestic use. The MOU does not alter the fact that the City is attempting to apply its unused 1968 water right permit, which was issued to the City to provide for a municipal water system, for unintended use, to circumvent the demands of the Woahink Creek in-stream water right certificate. In-stream water rights have the same legal standing as any other water rights, and the City, I believe, is fully aware of the permitting process may fail, as evidenced by statement or disclaimer, some people call it, in the City's water right application. And for vacant properties, it says, also for properties not vacant, and the applicant has to sign this thing, and some people have signed it in front of a notary. "I/we agree that the permit to use Dunes City's water right is not a guarantee of the amount or quality of the water available for me/us." That is, the applicant must agree that the City guarantees neither the amount nor quality of the water. In fact, the statement is designed to protect the City in the event the permitting process fails. The position taken by the City in this regard is contrary to what has been promoted by the City and is unfair to the developer and others. Also, I am uncertain as to how the City water right permitting process will get around the Federal Clean Water Act. No one has asked that question. Dunes City does not have the legal basis for providing water for development or individuals within the development. Thank you very much."

Riechel made comments.

Bill Robinson - "The subdivision that was presented to the City Council two nights ago, had slope of more than 16%, in a lot of places, and grade issues, etc. In your code that says any development on a piece of property with more that 16% would need a Geo-technical report. Why was it sent to the City Council without a Geo-technical report, when your code says it should have had one? You should have stalled it right here, and said until you receive a Geo-technical report, it is not going anywhere.

Riechel - " We are getting there, we are still missing things."

Robinson - "No, but it is already at the City Council. You should have never have let it go from here."

Riechel - "It got through us because it was accepted. Once it's accepted, we have no choice but to run it through. We can't stop it."

Robinson - "Who accepted it?"

Riechel - "Our help from LCOG."

Robinson - "No, see, that's where you are going wrong. That's where you are going wrong. As far as I'm concerned, the legal council you got from them is totally flawed.

She should have never accepted it. And you should never have accepted it and you know the Code. We know the Code."

Riechel- "The fact is we hired LCOG to do the job for us in the interim, and they have done it to the best of their ability. They have made mistakes. We have made mistakes."

Robinson - "Now, if it does not have a Geo-tech report, and does not have a whole lot of other things in it, and City Council is wrestling with it, because you did not stall it here. I don't care what Hilary Dearborn said, or she didn't say. She is wrong. She is absolutely wrong. She was wrong to take Rob Ward's applications and spending 20-30 hours on them, and my taxes are paying for them. Its not going to happen. Its just not going to happen. And if you guys don't want to do your job up there, there's people out here that will. And I'm serious about that."

Riechel - "Then I would suggest that come time when our terms are up, you come in and apply for that position, because we have been without a full membership here for probably over 50% of the time in the last 5-10 years, because there was not the community interest. People are not willing to stand up and come up here and do this job. Your looking at the volunteers, again they are volunteers, that decided that they need to give back to the City what they can in this position."

Robinson - "I understand that perfectly well and I appreciate everybody's work. But I guess what I am saying is that if you're going to volunteer, I mean, you people are there to, to, to, make sure that the Codes and the Laws of this town are met. We have all invested money into this town by buying homes, probably the biggest investment of any person's life. And because of the fact that you are not upholding the codes, you're putting our property values in jeopardy. And I'm serious about it. I want every one of you to go up there and take a look at what is happened across from Little Woahink Lake."

Riechel - " We have already got a report that the silt in Little Woahink is due to Roseburg Lumber activities."

Robinson - "Oh, that is a bunch of garbage! Bob Petersdorf is covering his own behind because he let that thing happen. I got the EPA up there, and they say different. They say there's a big problem up there, and I would like to know who's going to fix it now, because Rob Ward was fired from the job by the owner, because he did such a lousy job on it."

Riechel - Thanked them for comments and said the meeting needed to get back on track.

Del Riesenhuber, 5394 Canary Rd., Florence, OR 97439:

Riesenhuber said his concern is not to say that the Planning Commission is not doing their job. Concern is that we are dealing with questions of interpretation of what it is that the Commission "must do." Riesenhuber said City Ordinances and State Laws give a

different spoken authority than the Commission think they have, and he is not sure how to deal with that and how the Commission is going to deal with it. Reisenhuber believes, the Commission believes, they are doing what they have to do. Reisenhuber says he believes it is wrong, because the Commission has the right to say no to incomplete documentation.

~~Reichel~~ Reichel's response: "When the Commission goes through an application, and ends up with 15-20 conditions, that is too much to pass on to the City Council. The Commission needs to get this down to the point where a condition is something that an application gives you a preliminary requirement and the conditions need to be completed before the final plat is approved."

John Stead, 83505 S. Cove Way, Florence, OR 97439:

Stead said that he would encourage the Planning Commission to demand excellence from its staff.

Bill Robinson, 5441 Little Woahink Dr., Florence, OR 97439

Robinson said in our demand for excellence, there is new staff, and at a time when there was no staff, and saw all the PUD's and subdivisions come through, we went to the best source we had to get planners. Robinson said that there was a planner and an attorney sitting here telling us that we have done everything that we were supposed to do. Robinson said that he is not a lawyer, but he can read ordinances, and has dealt with building all of his life. Robinson said he not a lawyer, so he listens to the lawyer say this is what you need to do, and this application is complete. Robinson said we are doing the best job we can do and have hired people to help us, but they have not done the best job for us and we are trying to get that resolved.

George Burke responded: "There are a lot of people upset about how this is going, but we as a planning group can only go as far, and we can't turn down a subdivision or PUD. The City Council has all that authority, we are to recommend to the City Council, and they have the authority to do all these things and add all that stuff. We really don't have that authority. We as the Planning Commission basically review the Code and see that it meets the Code and that is what we are trying to do. Every one of the PUDs and subdivisions came through with conditions and we are told that is the way it is done. The Planning Commission is doing the best they can do."

Robinson asked why are they helping the applicants on our dollar?

Burke said that we have changed the fee scheduled, and the developer is now paying 100% of the cost.

IV. CONCEPT ASSISTANCES

A. Concept Assistance for Winthrop and Cinda Johnson, 5075 Ford Way, Florence, OR 97439.

Rick Cox, 0525 Canary Rd., Florence, OR 97439

Cox said that the Johnson's could not be there, so he is speaking on their behalf. Cox said the Johnson's bought this house from Dan Scarberry who built the house about 18 years ago. Cox said there is a deck on the side that has been there for 18 years and the Johnson's want to enclose it. Cox said their designer, "Bill", drew up a design to just put a roof on the deck and noted that the deck would require beefing up the deck. Cox said the questions came up about the extent of the building, and the set back. Cox said the house does meet the setback, but when the Johnson's had the place surveyed, and the way the house is situated, one corner of the deck is five-feet away from the property line. Cox said they were told that they need a variance. Cox also said the two property owners on each side have no problem with the Johnson's adding to the deck.

Suzy Navetta asked if there were any comments?

Riechel said there are two diagrams, (old & new) and the house is on a completely different place on each. Riechel said his experience with a variance was where a large deck was in the shoreline setback, and the owners wanted to add a room that deck. The variance was passed; however, they had another variance where the owners wanted to fill-in over a deck that would have increased the floor space in the setback area, and that one was denied.

Navetta said the two plans do not match with each other, and she did not understand the pictures. Navetta said one showed an upper level, and the other was at ground level. Navetta said she went over and looked at the property. Navetta said the deck is at ground level at the front of the house, but in the back of the house it is not. Susie said one part of the deck, where the table is, is several feet wide, but then narrows to a walkway, so she does not understand the plan.

Riechel said the area of the deck is within the setback, and the Johnson's are trying to build into the setback with a living area that would require a variance.

Burke said they would need a permit to do either the addition, or the glass addition with a variance. Burke said his concern was changing from a deck to covered deck, and then to an addition to a home.

Cox said they started with a covered deck, and they were told they had to make it more permanent. Cox said the Johnson's only want to be able to use the deck and wanted the aluminum addition. Cox said they were told that to put a roof on the deck, they would have to put a new foundation under it.

Riechel said if they could do this on the same footprint it may be okay. Riechel said if you start going to the point of putting in a foundation, then you would need a variance. Riechel said the problem is that the criteria for a variance is very strict and is usually for a lot that is too small in size, or for other special circumstances. In this case, the lot and house looks like an addition in the side setback and would require the City Council's approval.

Teri Tinker read the variance requirements from the Code.

Cox said that he understood this, but the house was built 18 years ago and the Johnson's are trying to be able to use the deck. Cox said they don't want to build an addition, just add a roof to enjoy the deck.

Burke said they need to get an engineer to see if the aluminum structure can be put on the existing deck, but would need a variance to do this as the deck was non-conforming when it was built.

Navetta said she tried to put an aluminum structure on her deck, but needed to rebuild the underside of the deck, since it needed a solid surface to build on.

George Burke said the Johnson's would need a variance to build on a non-conforming deck. George suggested the Johnson's to go to the people who sell the sunroom and find out if the structure could be built on the deck.

Tinker gave Cox a copy of the variance Ordinance.

B. Concept Assistance for Richard Booth, 83595 Jensen Lane, Florence, OR 97439.

Richard Booth, 83595 Jensen Lane, Florence, OR 97439

Booth said he wants to subdivide his property. Booth said he wants to make two one-acre parcels now, then in a couple years, make two more one-acre parcels. Booth's questions were: Can they make two now and two more in another year, (one acre where the house is and the other ten acres into two lots). Booth wants to do a lot line adjustment and then subdivide.

Riechel said to do the lot line adjustment, and then come to the City with a plan for the division.

Booth asked about the 30-foot access.

Riechel said when you subdivide, each lot has to have 60-foot of road frontage. Riechel said they show his access is off Jensen Lane. Riechel said this is not a legal driveway,

because there are about five residences off a single driveway, and we only allow permits for four.

Booth said that they own that property and it is not really a legal access to those people, but he wants to make this all legal. Booth said they are each encroaching on each others property. Booth wanted to know if they can all make an agreement to what the driveway is, have it engineered, then have it changed that way?

Riechel said the existing driveway shows 30-feet.

Burke said the rules say the driveway is 50-foot and somewhere there needs to be a 60-foot width onto a public road.

Riechel said that every lot has got to have 60-foot frontage on a road. Riechel said the lots look like they are landlocked. Riechel suggested purchasing Lot 616 on the North side, and use that lot as an access.

Booth said the owner of Lot 616 is reluctant. Booth said it seems like he is being punished, and it is not fair, since Jensen Lane was deeded as an access.

Riechel said one other avenue Booth may take, since he owns the property the driveway is on, is to go to the Road Commission and get their approval for a private street with only a 37-foot right-of-way.

Navetta asked about future development and wouldn't they need full-size road?

Burke said Booth could put a full size road on the 37-foot easement, with a 22-foot paved road. George also wanted to make clear what Booth's intentions were; to make a minor partition with two lots on Lot 900 and then one great big area left over, with two one-acre lots to sell. Then one year later, cut the eight acres in half or into three parcels.

Booth said he wants the first two lots to be on the farthest northern part of the lot.

Burke said to get access to those lots, each lot would need 60-foot frontage to a road. Burke said Booth could also get an irrevocable easement on Lot 616, where Booth does not own the property (the owner of Lot 616 owns the property), but Booth would have an easement and then create the street going into the property.


Booth said he would be able to secure access through Lot 616, and this would be the most beneficial.

General Discussion:

Riechel wanted to correlate the Code of Ordinances to the Comprehensive Plan, but noted that due to the fact that they are working on a new code, this would not be beneficial.

Riechel said he received a call from Rand Dawson, with concerns to the land use code update, and a lot of confusion of what is going on with the new codes. Riechel said Dawson wanted Riechel to meet with him. Riechel said he told Dawson he would meet with him with the Mayor's approval.

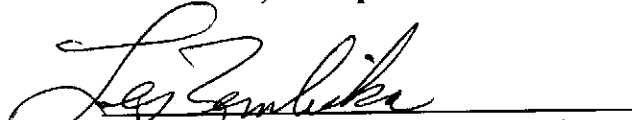
Meeting adjourned at 8:53 p.m.



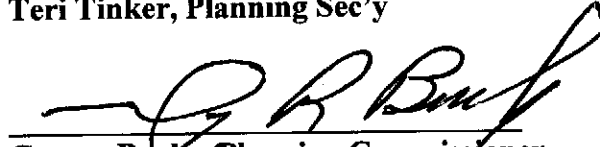
Lee Riechel, Chairperson



Teri Tinker, Planning Sec'y



Les Zemlicka, Planning Commissioner



George Burke, Planning Commissioner



Susie Navetta, Planning Commissioner



Ron Scheerer, Planning Commissioner