

DUNES CITY PLANNING COMMISSION

REGULAR MEETING

March 16, 2006 --- 7:00 P.M.

- I. **CALL TO ORDER**
- II. **APPROVAL OF MINUTES - None**
- III. **ANNOUNCEMENTS AND CORRESPONDENCE -**
- IV. **PUBLIC HEARINGS -**
 1. **MP 01-06 Laurel Crossing Minor Partition**
Tax lot 19-12-23-10-900, 8.7 acres.
 2. **MP 02-06 CDS Properties Minor Partition**
Tax lot 19-12-23-10-806, 11.8 acres.
 3. **MP 03-06 CDS Properties Minor Partition**
Tax lot 19-12-23-10-903, 5.14 acres
- V. **NEW BUSINESS**
 1. **Reorganization of Planning Commission**
- VI. **OLD BUSINESS - None.**
- VII. **UNSCHEDULED BUSINESS**
- VIII. **ADJOURNMENT**

**DUNES CITY PLANNING COMMISSION
REGULAR MEETING
March 16, 2006, 7:00 p.m.**

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, Susie Navetta, Les Zemlicka, Ron Shearer; Planning Secretary, Teri Tinker and several citizens in the audience.

II. APPROVAL OF MINUTES - None

III. ANNOUNCEMENTS AND CORRESPONDENCE -

Set up time for work session on the Point at Summerbell. In order to put notice in paper, work session set for April 4, 2006 at 7:00 pm.

IV. PUBLIC HEARINGS -

1. MP 01-06 Laurel Crossing Minor Partition

Tax lot 19-12-23-10-900, 8.7 acres.

Riechel read information, and opened Public Hearing at 7:20 pm.

Tinker pointed out partitions on map and gave Staff Report. Tinker pointed out that the dedication of the road was complete, but not paved, and the only thing on the old partition that had not been completed was a non-remonstrance agreement on the three lots. Tinker noted the City Council meeting of March 10, 2005, when Petersdorf presented a recommendation of a road going through all three minor partitions if in the future any parcels were to be further divided. Also, at the Road Commission meeting of January 16, 2006, Condition 1 was to provide a public roadway through the partitions, and Condition 2 called for the installation of a street light.

Recommendation was to deny as a minor partition and the application needs to be re-submitted as a major partition or subdivision as a street has been required.

Jack Butler and Andy Johnson, Mercer Rd., Florence, OR 97439

Johnson noted that this is now tax lot 907. Johnson noted that the City Council meeting of March 10, 2005, was not for them as they did not go up before the City Council until July 2005, so this was for the original partition of the three lots before they bought the middle piece of property.

Riechel explained how the road was recommended to go through all three lots, and how Petersdorf gave the City Council a Road Commission report recommending the road. Riechel said the City Council decided to let the partitions go through without the road, but noted that if the lots were divided at a later date, the road would be required.

Johnson said they chose a minor partition as it is allowed in the Code and is relatively simple in comparison to a subdivision. Johnson said they want to live there and wanted to develop something nice and make a good neighborhood. Johnson said they have taken the 12 acres and their overall master plan is to create six-lots over a three-year timeframe. Johnson said last year at the first partition, they were forthcoming with their overall plan. They were required to install 400-feet of dedicated Dunes City Street that is now Meadow Lake Way although it has not been paved at this time, but will be completed to City standards. Johnson said there will be a driveway easement off Meadow Lake Way that will also be paved accessing the other four lots. Johnson said a road does not make sense as the full 43 acres will have only 18 lots and he feels they are all self-contained.

Butler said they have been open and honest and are trying to be responsible and want to live there with their families. Butler said they are trying to do this right.

Johnson said they have met all the requirements of a minor partition and feel that it does not make sense to put in an additional road. Johnson said according to legal council, the master road plan may not be applied as it has not been adopted correctly by the statutes, and they are asking to approve the minor partition and not require a road be put in.

Johnson said the lots will have deed restrictions so that the lots cannot be divided further.

Tinker added that she overlooked that the applicants had complied with all the standards of a minor partition and have also applied for reservation of water rights, and also septic feasibility.

Riechel asked if anyone wanted to speak in favor of the partition.

Rick Cox, 05805 Canary Road, Florence, OR 97439

Cox said this property consists of three distinct parcels, not because of the way the lot lines lay, but of the distinct drainages. Cox said when they laid out and talked about it and camped out there, it was obvious that the development need to be large parcels.

David Davis, 83000 Jensen Lane, Florence, OR 97439

Davis said they plan to have deed restrictions on the lots and have sold one with a deed restriction. Davis read the deed. (See Exhibit A). Davis talked about their lots and the road situation and said that for 18 lots, a road is over-kill. Davis said they will have deed restrictions and the driveways will service these lots. Davis said with the wetlands, roads are the last things they want to get is permits to cross wetlands and that is why they broke the lots up the way they did. Davis said they want low density and want to take care of the land.

Cynthia Chandler, Lakeshore Drive, Florence, OR 97439

Chandler was concerned if in the future, the partitions could be broken down after sale of the property and had additional concerns regarding the drainage of the property.

Riechel asked if anyone wanted to speak in opposition of the partition. There were none.

Riechel closed the public hearing at 8:12 pm.

Deliberation:

Gary Darnielle addressed the following:

Regarding the road concept:

1. Not a practical matter. City Council and Road Commission need to determine if it makes sense to require a road.
2. Constitutional standpoint: The burden is on the City to show that the dedications or the improvements that are required are proportioned to the impacts of the developments proposed. Darnielle said, "Once you start looking at roads that will serve surrounding properties, then you have to show, and the burden is on you, not the applicant, that the impacts of what they are proposing, is proportional to that additional driveway that you are requiring. Otherwise you're under unconstitutional taking under

Dolan.” Darnielle said he would not want to write those findings. Darnielle said City Council may decide to require a road system which ultimately will be used to serve the public, not just for this lot.

Darnielle said not to put too much reliance on deed restrictions unless you are a party to that deed. Darnielle said you can't enforce a deed restriction if you are not a party of the deed. So if you truly require a deed restriction, the City must get something more in the record requiring that alliance. Riechel said the City would put that as a condition and a note on the final plat.

Darnielle said if you're going to recommend some roads are necessary, then the City would have to develop finding of facts that would show, in this case, these partitions requires that road.

Riechel said if we say Cloud Nine Road is a single access road to Clear Lake Road and the number of lots or parcels are capable of development in the future and the only apparent way of providing a dual access for the safety of all the residence on Cloud Nine Road is through this property, then how much in the way of Facts and Findings would be required.

Darnielle said Riechel just made his point. Darnielle said, “You're saying that that road is necessary for all the other residence of Cloud Nine Road and not because of this development.”

Burke asked if you could require a road for the 18 lots access, as is required in the subdivision standard and fire safety requires dual access. Burke said he is looking at the lawyers documents and it says they are doing minor partitions; therefore, subdivision stuff does not apply. Burke further said that when he looks in our Code, it says that if further lots are requested (more than four), then the Planning Commission or City may decide they need to have this area met as a major partition or subdivision.

Darnielle said what the Code says, under the application of partition, is that you can apply the provisions of the subdivision. It doesn't necessarily say that you have to require a road.

Darnielle asked if the Road Commission's primary reason for a road was based on the Master Road Plan, or their common sense to have a road.

Riechel said it was their common sense and their desire to have a dual access to Clear Lake Road that is a collector street.

Darnielle said as far as a planning standpoint, this is not a bad idea at all, but you are up against reality of the takings of case law as it stands today.

Riechel said, "With the issue of constitutionality, can you even go as far as these 18 lots, because were talking about a minor partition in one portion of this thing and you can't even include the other two we are talking about tonight can we?"

Darnielle said you have got to do an analysis of what the impacts of what is proposed (which is two more parcels) against dedication of a road to another property.

Riechel said, "What we are talking about all three of the minor partitions and the development requirements for a minor partition. Can we get into a constitutionality if we say, Laurel Crossing we have got to have a road across this thing to support not only your six lots, but the lots on either side of you?"

Darnielle said yes. You get into the constitutional issue... what was the rational for requiring a road. Doesn't matter whether it was based on the Master Road Plan, or on common sense. Darnielle gave an example of a case where there was a lot adjacent to a road that was subject to development, and at the far end of the lot, there is a vacant lot that someday could be developed. The county or the city said "well you have to provide access through that lot your developing all the way to the end, so that vacant property down there would have access and could be developed". The court said, well it makes good sense to put that road in, but the development of that parcel has nothing to do with the development of the (can't understand one word), and you can't require this developer to provide access to that property because the development of this property does not create that impact or need. Darnielle said you need to focus on the relationship of the impacts of the developments before you, and the dedications that you are requiring of the developer, have to be proportionate to the impacts of that development, not the development of the entire area.

Riechel said the Master Road Plan adopts by reference the Dunes City Code of Ordinance, and what we are talking about is streets and layouts that we already include in the Staff Report and we can ignore the Master Road Plan.

Navetta asked about the larger parcel and what the future plan was for that parcel.

(answered from audience, and can't hear what was said)

Riechel said the intent on disqualifying the Master Road Plan because of the process it didn't go through, our current code limits the number of lots

accessing a drive way to three, so if you want to pursue the road rules, you could only put three accesses on a driveway. And the road plans changed that to four, so you can't have your cake and eat it too.

Davis asked who the "City" is in the Staff Report. Riechel answered that it came from the Road Commission and Planning Commission from a year ago.

Davis asked what they were doing wrong. They think they are doing a good proposal and are having large lots and are clean, and wants to know why the city wants streets in there.

Burke said that there was a recommendation to have a street and was not accepted on the first breakup of the minor of all three of the minor partitions and there was a discussion just like what we are having tonight. Burke said at City Council, the final word from the Mayor was when you come back for more partitions, the road will come back into play again. Burke said it was the intent of the Planning Commission, City Council and Road Commission that if this came back to be divided up into more pieces, a road through this whole property would come up again, and that is where we are at.

Tinker said what she has to look at what was included in the application and paperwork. Tinker said she just recently heard about the deed restrictions, and what she looks at is large pieces of properties that can be broken down into one-acre lots in the future. Tinker noted the closest thing she can see to not breaking down the lots further is on one application where it says "There is no intention to further divide of partition the subject property. With this partition there will be four parcels accessing on a single easement, which will act to limit further division."

There was a discussion about deed restrictions and how they would be used. The question came up as to how safe the deed restrictions are and how we could protect the City. One thought was to have the City be part of the deed restriction, but Darnielle said that would cloud the title. Darnielle said the city could add a condition saying the City knows there will be only so many lots ever, and if they do more than that number it would violate the conditions.

There was considerable discussion on septic feasibility and who could be qualified to do test holes and give reports to the city for approval of partitions. There was a lengthy discussion that we should just have Lane County (Katrinka) do all of the feasibility statements as this was who would eventually give the septic tank approvals. Darnielle said the City has some latitude on this and you don't have to have the sanitarian do the feasibility and can have Lane County do this prior to a building permit.

But for preliminary approval, it just says location of septic test holes and can be general enough to require someone with expertise that understands DEQ standards to apply them. Some felt that there are a lot of people who would be qualified to say that a septic could be feasible.

ACTION: George Burke made a motion that the feasibility study on lots 1, 2 and 3 be done by Lane County prior to preliminary plan approval. Lee Riechel seconded the motion. There were 2 ayes (Burke, Riechel) and 3 nays (Navetta, Shearer, Zemlicka). Motion failed.

Darnielle gave suggestion of verbiage for preliminary approval of feasibility statement for septic.

After long deliberations about feasibility and who would qualify to perform them, Darnielle said "I gave you expert advice, you have paid for it, if you choose not to follow it, whatever..." Darnielle said all you have to decide is whether it appears to be feasible.

Scarberry said you can't sell a lot without septic approval and be an un-buildable lot. Scarberry said they are not going to expose themselves to that kind of liability.

ACTION: Riechel made a motion to show septic tank feasibility from someone with knowledge of DEQ standards for subsurface disposal systems, the expertise to apply those standards, and a familiarity with the subject property who can demonstrate that it is likely that the standards can be met. Les Zemlicka seconded the motion. There were 3 ayes (Navetta, Shearer, Zemlicka) and 2 nays (Burke, Riechel). Motion passed.

Condition 1: Require deed restriction on parcels 1 & 2 to further division and such be noted on final plat map.

Condition 2: Proposed driveway prior to final plat approval show approval by Siuslaw Valley Fire and Rescue.

Condition 3: Non-remonstrance agreement on all lots for improving Cloud Nine Road.

Condition 4: Before preliminary approval, must be by someone with the knowledge of DEQ standards for subsurface disposal systems, the expertise to apply those standards, and a familiarity with the subject property who can demonstrate that it is likely that the standards can be met.

Condition 5: Prior to sale of lots 1, 2, or 3, Meadow Lake Way must be completed.

Condition 6: Prior to final plat, a street light must be installed at the intersection of Meadow Lake Way and Cloud Nine Road, or allow a bond to cover.

ACTION: Lee Riechel made a motion to approve the Staff Report without road requirements. Ron Shearer seconded the motion. There were 5 ayes, 0 nays. Motion passed.

ACTION: Lee Riechel made the motion to accept the minor partition with 6 conditions. George Burke seconded the motion. There were 5 ayes, 0 nays. Motion passed.

2. **MP 02-06 CDS Properties Minor Partition**
Tax lot 19-12-23-10-806, 11.8 acres.

Riechel opened the public hearing at 10:27.

Opponents: none

In favor or: Already spoke.

Riechel closed the public hearing at 10:30

Deliberation:

George Burke said he would like to see a tentative plat on lot 3 of the future division.

Condition 1: Prior to final plat approval, a non-remonstrance agreement for improvements to Cloud Nine Road shall be required for each parcel.

Condition 2: The applicant shall be required to demonstrate septic site feasibility from someone with a knowledge of DEQ standards for subsurface disposal systems, the expertise to apply those standards, and a familiarity with the subject property who can demonstrate that it is likely that the standards can be met. As an informational item, septic site certification for each lot will be required prior to issuance of building permits.

Condition 3: Prior to final plat, the applicant shall provide to the City, proof that (b)1. "A express grant of reservation of an easement in a document recorded with the County Recorder" or, (b)4. "An express easement set forth in an approved and recorded subdivision or partition", provided for the 50' wide roadway/driveway easement referred to under DCC§155.089(C)(3)(c) to provide each proposed parcel with at least 60 feet of frontage on that roadway/driveway easement.

Condition 4: Prior to final plat, the applicant shall provide to the City, proof that an easement has been recorded for each of the three proposed parcels that provides for the 50' wide roadway/driveway easement referred to under DCC§155.089(C)(3)(c) to provide each proposed parcel with at least 60feet of frontage on that roadway/driveway easement.

Condition 5: Prior to final plat, the applicant shall provide written certification from the Siuslaw Valley Fire and Rescue that the proposed addition of a satisfactory turnaround is sufficient for purposes of fire protection. DCC §155.132(2).

Condition 6: Prior to City Council, applicant will provide a tentative plan for parcel 2 that will be divided at a later date.

ACTION: George Burke made a motion to accept the Staff Report. Ron Shearer seconded the motion. There were 5 ayes, 0 nays. Motion passed.

ACTION: Susie Navetta made a motion to approve the minor partition with the six conditions. Les Zemlicka seconded the motion. There were 5 ayes, and 0 nays. Motion passed.

3. **MP 03-06 CDS Properties Minor Partition**
Tax lot 19-12-23-10-903, 5.14 acres

Riechel opened the public hearing at 10:45.

Opponents: none

In favor or: Already spoke.

Riechel closed the public hearing at 10:47

Deliberation:

Condition 1: Deed restrictions will be required on all parcels that no further division will be made, and such deed be noted on the final plat map.

Condition 2: Prior to final approval, the applicant shall provide written certification from Siuslaw Valley Fire and Rescue that the proposed addition of a satisfactory turnaround is sufficient for purposes of fire protection. DCC §155.132(2).

Condition 3: The applicant will provide a report from Phil Fields, Lane County Transportation Planning.

ACTION: Lee Riechel made a motion to accept the Staff Report. Ron Shearer seconded the motion. There were 5 ayes, 0 nays. Motion passed.

ACTION: George Burke made a motion to approve the minor partition with the three conditions. Lee Riechel seconded the motion. There were 5 ayes, and 0 nays. Motion passed.

V. NEW BUSINESS

1. Reorganization of Planning Commission

Riechel said the suggestion was that City Council will appoint a City Councilor as a non-voting chairman of the planning commission, just like they have on the Road Commission. Riechel said with approval of this group, would like to move forward with this.

Navetta said she is not in favor of this at all, and neither is Judy Martin. Navetta said what concerns her is that some on the City Council don't give a darn about the Planning Commission meeting in the first place, doesn't read their packet let alone our packet, won't be impartial, will go back to City Council and not present the facts. This is why we have a planning secretary. Navetta said that it is the Planning Secretary's job, or why would she go to those meetings?

Riechel said the Planning Secretary sits there to answer questions, and give reports, she can't participate in deliberations.

Navetta said she sat at those meetings where Jeannie would report, and wanted to know what would be better than that?

Riechel said with someone up there that could contribute to the discussion.

Navetta said it's the councilor that she objects to having a stranger come to our meeting. Navetta said it would be better to have a Planning Commissioner sit on the Council.

Riechel said that is impossible. Riechel said Navetta and Martin may not like the idea, and can go before the City Council and express their dislike there, but would like to move forward.

Navetta said she went to a seminar to asked if Councilor can sit in on a Planning Commission. Navetta said the answer was no, and they asked again, and got the same answer.

Riechel said if you say that, then a Councilor can't sit in the Road Commission, can't sit in the Parks and Recreation Committee.

Gary Darnielle said the City Attorney disagrees with that. They can't participate in the vote. The meeting is a public meeting, so there is no exparte contact, if they don't vote there is not problem.

ACTION: Riechel made a motion to send the draft to the City Council for consideration for re-organization of the Planning Commission and Road Commission. George seconded the motion.

Navetta asked about 32.61(d). ...Planning Commission shall be elected to serve... elected by who?

Burke said could say elected by voting members of the Planning Commission is what it is supposed to say.

Riechel asked if anyone objected to writing in that a member of the Planning Commission shall be elected by the voting members of the Planning Commission to serve as the ex-officio non voting member of the Road Commission to serve....

ACTION: Riechel made a motion to send the draft to the City Council for consideration for re-organization of the Planning Commission and Road Commission. George seconded the motion. There were 4 ayes, and 1 nay (Susie Navetta). Motion passed.

2. Building Department:

Burke said this item was to hire Mortier engineering to send their inspector at the start of excavation. Burke said 151.053 says ...grading operations for which a permit is required shall be subject to inspections by the building official..., so this is already spelled out by code. Burke said all we need is to get the Mayor to tell somebody to hire this guy and go out and do these inspections.

ACTION: Burke made a motion to have a memo sent to the Mayor to point to the section of code, and ask for inspections once a week, and have Lee sign. Seconded by Zemlicka. There were 5 ayes, 0 nays. Motion passed.

Meeting adjourned at 11:28 pm.

VI. OLD BUSINESS - None.

VII. UNSCHEDULED BUSINESS - None

VIII. ADJOURNMENT

Meeting adjourned at 11:28 pm.

Lee Riechel, Chairperson



Teri Tinker, Planning Sec'y

Les Zemlicka, Planning Commissioner



George Burke, Planning Commissioner



Susie Navetta, Planning Commissioner



Ron Shearer, Planning Commissioner