

**DUNES CITY PLANNING COMMISSION
REGULAR MEETING
April 20, 2006, 7:00 p.m.**

I. CALL TO ORDER

Acting Chair Susie Navetta called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Acting Chair Susie Navetta; Commissioners, George Burke, Ron Shearer; Planning Secretary, Teri Tinker was absent, and several citizens in the audience.

Resigned: Chair Lee Riechel and Commissioner Les Zemlicka.

II. APPROVAL OF MINUTES – None

III. PUBLIC HEARINGS

A. Marvin & Darlene Beckman – Comp Plan Amendment and Zone Change. 20-12-00-00-200,201 AMD 01-06/ RZ01-06

Susie Navetta announced the public hearing and read the criteria for public hearings. Navetta asked any of the Commissioners if there were any ex parte contact. There were none. Burke asked if any Commissioner was aware of any facts that were not provided in the staff report. There were none.

Navetta opened the Public hearing at 7:11 p.m.

Navetta asked for Staff Report.

Gary Darnielle gave staff report. Darnielle said the Staff Report had been prepared by Hilary Dearborn, and she recommended that both the comp plan amendment and the zone change be denied because there was inadequate justification on the basis of what the applicant presented. Darnielle said the comp plan talks about Booth Island being a significant natural area, and as it turn out, that is not true. The comp plan talks about its characteristics and natural environment and wildlife, and it was Hilary's feeling that there wasn't enough attention to those characteristics that would protect the area. Darnielle said the proposal for the zone change, the variance criteria, and staff is consistence with feeling that it is bizarre that the variance criteria is not appropriate and should have other criteria, and suggested to Beckman's that, instead of proposing to removing the variance criteria, they suggest other standards that would protect the

habitat, etc. Darnielle said he did not feel the Beckman's are there yet, but feels they are on the right track if this is the way the City would like to go.

Navetta asked what the time limit was on this. Darnielle said that the 120-day rule does not apply to the comprehensive plan amendment, but does apply for zone change requests. Darnielle said there should be an attempt to have a decision on the zone change by the end of the City Council deliberations. Darnielle suggested that (can't understand)"... in front of you is ok, as long as those changes are adequately noticed before they go to the City Council." Darnielle said the application has changed since it has come to the Planning Commission.

Burke asked if the Planning Commission makes a decision that night, would the City Council make a decision based upon additional information. Darnielle said, "That is a possibility, in other words, you will have a list of proposed criteria changes to the text, and you may say that is inadequate and recommend denial and the applicant may amend those criteria before getting to the City Council and they would review the new changes. The new changes need to be noticed to the public before they go to City Council. People have to be aware that the application has changed." Darnielle said the Planning Commission may choose not to let go of the application until they have seen the applicants "best shot."

Burke asked where we are in the 120 days. Darnielle said the application was deemed complete on February 16th so the 120-days start at that time. The applicant can voluntarily waive the time frame, but the applicant is under some time restraint so that they can start construction.

Navetta asked for the applicant to summarize the application.

Marvin and Darlene Beckman, 82150 Booth Island, Westlake, OR

D. Beckman said they would like to go through some of the reasons for the application, and why they feel the application is necessary for what they are trying to achieve, and why they have talked to Darnielle and offered to City Hall modification of the application to make it a little more agreeable to everyone. D. Beckman went over both applications and what they have changed. D. Beckman noted there are at least two other property owners that would like to be included in the zoning changes. D. Beckman went over Booth Island and the open space overlay, and said the open space should be for walking trails and hiking. With a conditional use, structures can be built with the underlying criteria being residential, which they have done twice before. D. Beckman said it took over three months each to go through the process for conditional use and then the same process as normal building permits. D. Beckman said this is the initial purpose of the application and they feel they should be treated the same as anyone else applying for a building permit. D. Beckman said the three or four reasons that the staff report says the application is complete, they feel is there is no mention of the

buildable lands requirement needed for building lots, conditional use process, and no list of the open space lands that already exist. D. Beckman said the properties that are listed as open space lands are publicly owned and there are two other pieces that are privately owned, which are both marshes and wetlands, therefore, are un-buildable. Booth Island is buildable. D. Beckman read the Comprehensive Plan, page 57, regarding open space. D. Beckman said the open space is not appropriate as their property is not publicly owned. D. Beckman said the zone change was approved through the Planning Commission last fall and approved through the City Council last fall with a voted of 4-1 to be removed, and they are still trying to get it removed. D. Beckman went through the application and their responses.

Navetta asked how many lots on Hideaway Island Subdivision have been built on. D. Beckman said about 6-8. D. Beckman said in exchange for completely changing the zoning and comp plan, it may be more acceptable to them and to the City to leave the zoning, the open space and the residential alone, but change some of the verbiage when it comes to construction in the open space overlay.

Darnielle said staff would like to point out that if the Planning Commission decided to enlarge the scope of the application to include the other property owners, signatures would also be needed on the application.

Beckman went over the changes that are proposed with the red-line version as included in the packet. Navetta asked if this is information that was given to the Planning Commission last week. Beckman said no, this was the result of a meeting with Gary and Hilary a couple of days ago. Navetta thought it was difficult to bring the new information in this late, and expect the Planning Commission to absorb it. Beckman said what they would like to do is go through it and see if they are going the right direction, and identify changes either before the City Council or bring it back to the Planning Commission. Navetta said she would like to see the application completed before the Planning Commission hears it, as on the first part of the application, page 3, there are eight items, and only two are completed. D. Beckman said they were not applicable to this application. Burke said they were not doing a land use issue.

Navetta said she has not seen the back side of the island (there has not been a site review) and she would like to see what the soil and habitat are like to determine if the application should move forward. D. Beckman said you have had the application a couple months and you knew it was coming and you should have had it taken care of. Navetta said it seems to her that this is not the best place to build and would like to take a little more time and investigate it. Burke said they were not deciding whether they can build there or not, since people have been building on the island for over 40 years. Burke said what they are trying to do is shorten the building permit process as it takes three months to go through that process.

Navetta said she is concerned about 31 acres and 31 homes. D. Beckman said the underlying zoning is for RR1 and that would be allowed the way it is right now. Burke said he feels the Commission should make a decision after the Beckman's show what the new information means. D. Beckman continued reading the red lined document.

Darnielle said what you have is a potential criteria to be added to the code in lieu of a variance criteria. Darnielle said he and Hilary suggested that if this occurred, the standards be objective and can be measured and be appropriate to protect and address the natural features resources that are recognized on the island. Darnielle said what you see is a list built from covenants and conditions that the Beckman's are proposing for their property, and they are indeed more rigorous than what you would see in a code situation. Darnielle said you would look for conditions that could be extracted and used as standards. Darnielle said you look for distance from any wetland; you look for erosion control measures. Darnielle said one of the issues that were left out were prohibition against livestock and this is a very important prohibition as you don't want cats, sheep, etc. running through the habitat, so that could very well be a standard that you would want, so the question is if you want to listen to all of these. Darnielle said they have told the Beckman's there really needs to be a lot more work in regards to these issues and some weeding out of those issues that are not really appropriate for covenants and adding those that are appropriate. D. Beckman said that is why they want to review with the Planning Commission to pick out the handful of things that would be a positive approach for the island. D. Beckman continued reading the document. D. Beckman said they feel they have done a good job and have put more restrictions on the island than what the conditional use permit would have.

Navetta asked if anyone wanted to speak in support of the proposal.

Mark Christensen, 88181 1st Ave, Florence, OR

Christensen said they live here because they love it here and purchased the property directly adjacent to the development that was there that was stated as residential, but because it was not in the original development and was just across the fence, it was considered in the open space overlay. Christensen said whatever decision that the Planning Commission makes, he wanted them to know that he respects them and their job and respects the decisions they make. Christensen said he did not really understand what the open space overlay was, and just wanted them to know they support the Beckman's.

Navetta asked if anyone wanted to speak in opposition of the proposal.

Lori Robertson, 83623 Jensen Lane, Florence, OR

Robertson said her background was that she worked for the Forest Service for nineteen years, mostly as a forester. Robertson said one of her projects was to

write the vegetation and human history section of the coastal lakes watershed analysis, and was, for the last five years, a watershed technician, and owns a lot in the Hideaway addition. Robertson said her understanding is that the island has been zoned open space for many years and the open space is good for wildlife and habitat for plants, etc. Robertson said if she were to buy a house by a park, she would assume the park would stay a park. If she buys forest land, she assumes she will be managing that land as forest, and if she buys farm land, she would use that farm land under those zoning characteristics. Robertson said she assumes that the open space would be the same. Robertson said she respects the Beckman's and what they feel when they make sound business decisions and how they use the property, and how they impact with the developments. Robertson said she does have one comment to add to the list that includes clearing vegetation in order to get conifers and other native vegetation established; if they could just have a culture of salal for instance, that is why to do some clearing to get trees and native shrubs out there. Robertson said this is zoned open space and to her is natural habitat and does not include a building zone, and feels this property should be left open space.

Burke asked Robertson if she understood that they can build in the open space overlay area already. Robertson said she did not know that would be allowed.

Gordon Robertson, 83623 Jensen Lane, Florence, OR

Robertson said he is not opposed nor in favor, and was impressed with the Beckman's proposal and how it will leave the natural feel. Robertson said he thought that the Hideaway estates were a trade-off for leaving the rest of the island open space. Robertson said that if it is only for 5-6 home sites, then he would be in favor, but without CC&R's, and it sounds like it would be a win-win situation.

William Gates, Canary Road, Florence, OR

Gates said he has spoke with 3-4 other property owners and is not speaking for them, but they have said they agreed with him. Gates said it is unfair to the other property owners who have bought property beside a piece of land with open space overlay and expect that to remain in place. Gates said the configuration of the property is such that the Beckman land touches just about everybody's property, and everyone will have less than what they had now if they are allowed to have full build out as they have proposed. Gates said the Beckman's bought the property with the knowledge of the overlay, and they have to live with it. Gates said that as far as he is concerned they have one house more than they ought to have out there in Lane County. Gates said Dunes City does not currently have development guidelines to adequately protect the lake, and that is why so much is going on right now to get some regulations in this City to protect the water quality and we need to protect the open spaces. Gates said Booth Island is a crowned jewel and is unique. Gates said if you look on the East side of the island you will

see nothing but rock and when they put in a septic system every drop of the septic will go directly to the lake.

Applicant's final argument:

D. Beckman thanked all those in support and against as it gives them things to think about. D. Beckman went over each person's comments, and said they feel they are being good stewards of the land and there are other properties on the mainland shorelands that fall under the same rules as Booth Island.

William Gates asked for the record to be left open for a letter from McIrvin. Navetta said the record will stay open for seven days.

Navetta closed the public hearing at 8:31 p.m.

Deliberations:

Darnielle said the Planning Commission could not make a decision that night since the record is to remain open, and staff will need time to review any additional testimony. Darnielle said that the Beckman's need to have the information to Staff at least 14-days before the next Planning Commission so they will have time to review the information, and then will continue the hearing and allow the community to respond to that new information.

ACTION: George Burke made a motion to hold the record open 14-days before the next Planning Commission meeting. Ron Shearer seconded the motion. There were 2 ayes and 0 nays. Motion passed.

Burke said May 4th would be the cut off for new information.

III. NEW BUSINESS:

A. Cornwall Rip Rap

Darnielle said he had a letter that was addressed to Penny Cornwall and made a decision of what strategy we wanted to pursue and he was not sure what that was. Burke said the strategy was conditional use for excavation of property. Navetta said they all went out and viewed the property. Darnielle asked if this was a public hearing. Burk and Navetta said no. Darnielle said Lee recommended that they go through a conditional use permit process. Navetta said she was not sure.

George said a permit was needed from DSL to do the work. There was no application for anything, but a staff report. Burke said they were being asked to approve a request to do erosion control in Dunes City. Darnielle said erosion

control was not purely objective, and suggested it being a land use issue requiring notice to neighboring property owners.

Navetta said she asked how the materials were going to arrive and Girard said they would come through the neighbor's property, but does not see written permission to do that. Navetta said she was concerned about the heavy equipment in the riparian area, which is restricted due to Code. Navetta said there are about 50 tires, and wanted to know what will keep the rip rap from washing away and undermining the neighbor's property.

Darnielle said a conditional use permit should be used, send proper notice to neighbors and get Robert Girard to the Planning Commission to explain what is going to happen.

Burke said there is no application, but they are requesting approval. Darnielle said he thinks we need to do this as an administrative approval, not requiring conditional use permit (which wouldn't require notice), but would have appeal rights from neighbors. Burke said it would not be our permit, but a DSL and Army Corps of Engineer permit for the work that would need City approval as a part of the application process. Burke said that was what Lee Riechel had suggested. Darnielle said to get to that point, we have to apply Dunes City standards and decide what standards the City is going to apply, decide if they are subjective, if you have to use that interpretation to apply them on a case by case basis, and if so, use the land use process requiring notice. Burke said if they go that far, the City would need more information. Darnielle said the County reviews plans that would be processed by DSL, making it a rubber stamp administrative process.

Someone from audience said he has insight on this project and had been called in as consultant. The Army Corps of Engineers has an exclusion that 50-yards of rip rap per year can be done with only Dunes City approval. Burke said they are doing 150 – 200 yards.

Darnielle said the City can make it an administrative decision and notice surrounding properties (150 feet) offering an appeal of the decision. Burke said it would have to go before the City Council. Darnielle said go ahead and view it then send it to Council and notice as a public hearing. Burke said the City could suggest more information from the contractor as to how they are going to protect the riparian area before it goes before the Council.

Navetta said she did not see where there is authorization from the neighbor to go through the property. Darnielle said you can make a recommendation to the Council that you support the concept, and feel it is necessary, but have concerns about additional information such as neighbor's authorization.

ACTION: Ron Shearer made a motion to approve the request as proposed with the additional information of the neighbor's authorization be included and forwarded to the Council. George Burke seconded the motion. There were 2 ayes, and one nay (Susie Navetta). Motion carried.

A. Reedal versus Helmuth Dock

Richard Reedal, son of George & Rosemary Reedal

Reedal said he was there on George and Rosemary Reedal's behalf. Reedal said the complaint is that the Helmuth dock is extended over the extended property line and is a violation of Ordinance 196.02(d)(1)(d). There is a failure of Dunes City to inspect the dock to see it was a violation. In addition, the dock represents a public nuisance per building code 151.080(d) and the dock extends into the neighbors extended property line depriving those neighbors unhindered use of their property. Reedal said there have been a lot of issues saying the fence is over on the neighbor's property line. Reedal said there have been at least three surveys with at least two stakes that show the property lines. Reedal provided a photo. Reedal said that in the past, they have had trouble with the motor on their boat and have drifted against the dock, so it is a hindrance to boating, especially if they decide to run the boat lane on that side. Reedal said Helmuth had Chris Castelli come over and Chris assumed that the fence is the property line, but that is not the property line. Reedal said he asked Chris to send him the entire file on the dock permits and showed documentation of the drawing of the docks. Reedal said the fence is at least five feet into the Helmuth Property, and when the Planning Commission was there, he advised us of such. Reedal said the surveyor put stakes down the property line (did not know when the survey was done).

Navetta said they have been asked several times in the last few months about a surveyors report, etc. Reedal said he would find out. Reedal said the State owns the land and that is not contested. What is contested is how do you define where the extended property line is and the City has defined it as an extension of the property line and it is defined in the Boundary Controls and Legal Principals on page 315. The City has chosen the set back standard as a prolongation of the property lines, or a continuation of the line. Reedal said 12-14 feet of the Helmuth dock is over the property line and needs to be removed. Since Helmuth is in violation a survey should be required by the Helmuth's.

Darnielle said the Planning Commission needs to declare impartialities or conflicts of interest, etc.

Navetta said the Planning Commission did go on a site review along with the Planning Secretary, and the first visit was Reedal's property and then about a month later the Planning Commission visited the Helmuth side. Shearer said Mr. and Mrs. Reedal were patients of his, but does not feel that would hinder his

ability to make a decision. Burke said he was present at the site review. All Commissioners said they had no ex parte contacts, conflicts of interest or any financial interest.

**Alice Helmuth, and Holly Martin representing Alice Helmuth, 83570
Woodland Lane, Florence, OR**

Helmuth said on February 16, 2006, she mailed Darnielle and the Planning Secretary copies of documents of every step of developing their dock that was approved by Dunes City. Helmuth went over the documents and described each.

Martin said she wanted to make two points. Martin said the first was that Mr. Reedal is not a Dunes City resident and has files on the behalf of his parents, and in fact, he does not have the power of attorney from his parents to do so. Martin said the document is not notarized or sworn to and feels that it is dangerous to act on a document that there is not a power of attorney. Martin said Mr. Reedal has not established what they call standing or right to bring this complaint on behalf of his parents. Martin said the second thing is this entire complaint rests on where the property line is, and it is not something the Planning Commission wants to get involved in, suggesting that the Planning Commission consider tabling the complaint until that issue is settled. Martin said it cannot be settled in front of this Commission, and that you have a situation here that you can simply deny this as the complainant has not carried the burden of proof of the property line. Martin said what you have offered to you here is that there is a survey stake in place and we don't know when or by whom, but by word that Reedal said it is in that place. Martin said what you do have in the file is a letter from the "State fellow" that looked into this and has the GPS reading upon what he based his decision that the dock appears to be entirely in front of the Helmuth property. Martin said there is total confusion here and by Reedal's own testimony that his parents tried to have the property surveyed at least three different times, and in a separate complaint about the fence line, the property line was so confusing that there was a mediation to settle the line between all the neighbors that fell through. Martin said there has been a fence between the Reedal and Helmuth property for a number of years and as a lawyer can tell the Planning Commission that property lines can be established by adverse possession or by (can't understand what she said next) having nothing to do with survey line. Martin said if the property line cannot be established, then the complaint cannot go forward. Martin suggested either denying the claim or tabling the complaint. Martin said the Planning Commission is not in a position to decide where the property line is, and Reedal has not proved where the property line is. Martin said the Planning Commission should reject the nuisance part of the complaint as a nuisance means a health and safety hazard, and is not a dock that has been there for fourteen years with no complaints. Martin said there is at least 50 feet between the docks.

Martin asked Helmuth how long she has owned the property. Helmuth said since 1965. Martin asked how long they have lived there. Helmuth said since January

1999 when they moved up, and before that they spent six months per year. Martin asked during this period of time, did they have any boats that they docked. Helmuth said they had a power boat and a sail boat and had a sail boat since 1965. Martin asked what type of dock you docked the boats at. Helmuth said it was literally impossible to dock the sail boat on the North side of the dock because of the wind, and that was why the extension was done to be able to come around and get into the dock. Martin asked where Reedal's dock lay in respect to your dock. Helmuth said to the South of their dock. Martin asked what she considers the recreation boating season is. Helmuth said they seldom put their boat in before June and took out about the end of September. Martin asked what the wind is like during that period of time. Helmuth said the wind is extreme from the North to the South, and is why you can't dock on the North side of the dock. Martin asked if you were to form a square, is it your South side of the dock and his North side of the dock that will be measured there. Helmuth said yes that there is 50 feet between her South side of the dock and Reedal's North side of his dock, and she defies him to try to bring a sail boat in the North side of the dock. Martin asked if the Reedal's ever have a boat at their dock during the time you owned your property. Helmuth said they did have a boat, but has not been a boat at that dock for at least 8-10 years. Martin asked if she ever saw a sail boat. Helmuth said she has never seen a sail boat in their dock. Martin asked if she has ever had any complaints from the Reedal family or any of their guests concerning the extension of your dock. Helmuth said no, in fact when they put it in, George Reedal was over there jumping up and down in delight because we would be protecting his dock from the wave action and the wind. Martin asked if she recalled any water skiers depart from the Reedal dock. Helmuth said not to her knowledge.

Martin said the Planning Commission must be wondering why we are here listening about the dock complaint 14 years after the extension was approved. Martin said this complaint was brought as part of the fence complaint. Martin said when the fence complaint was filed, the Reedal's filed a (can't understand) against Mrs. Helmuth, that went to court and was dismissed as there weren't grounds to support it once the Judge heard both sides. Martin said that before the Judge heard the hearing, an offer was made to Mrs. Helmuth that the (can't understand) would be dropped if the fence complaint was dropped, and if the fence complaint was not dropped then the complaint would be filed against the dock, and that is why the dock complaint is before you.

Richard Reedal, rebuttal

Reedal said he talked to Christopher Castelli about the GPS unit and he still had on his machine, but did not give him the readings, so if he didn't have the readings he didn't know it was on the property line. Reedal said his father does not jump up and down. Reedal said he is a sailor also and have sailed and have water skied off the dock and have landed on this dock. Reedal said there was a power of attorney and the City has that document. Reedal said Castelli did not make any statements that the GPS unit confirmed the line either to him or in a

letter, as a matter of fact, he can give the City a transcript of the telephone conversation, and requested an extension to get the information to the Planning Commission. Reedal said as far as the property line goes, he can give the Commission the name of the surveyor and prove that the stakes were placed by him, but feels that Mrs. Helmuth should have to pay to prove the lines. Reedal said Mrs. Helmuth hired an appraiser and demanded 5' of the property from the Reedal's and from the property owners on the other side of the Helmuth's be given to them free of charge and if there were any fences or buildings on the line could leave them. Reedal said the other property owners said no and that the survey lines were the survey lines. Reedal said he would like Holly Martin to produce documentation showing the dock issue would be dropped if the fence issue was dropped. Reedal said they voiced concern at a point of time with Martin that the property had a dock issue. Reedal said the dock issue was pointed out to his father by a City Council member. Reedal said he would like to see the dock within the 10' setback.

Alice Helmuth, rebuttal

Helmuth said Mr. Reedal keeps making the statement that they virtually tried to steal 5' of each of the neighbors. Helmuth said she presented to the Council a packet with a surveyors map with all the technical and legal writing that was done where the Swanson's who were at that time on the South side of the Reedal's, where the Reedal's and the Helmuth's would take 5' total and each give up 19". Helmuth said she presented the Council with a packet that showed this and no one was asked to give up 5'. Helmuth said there was a discrepancy of 5' among these three lots. Helmuth said when Reedal started putting up the fence, she was advised to tell him if he put up the fence in exactly the same place, there would be no problem, and he chose to put up the new fence a different way. Helmuth said if anyone lost property, it was her. Helmuth said the real point is the City approved everything they did, and the Reedal's did not object for 26 years for the major part and 14 years in the minor part.

Martin said to summarize in a legal point of view, she has not seen a notarized power of attorney and it is not in the packet as she has seen the packet. Martin said if the City has it, it has not come forward yet. Martin said as far as the property line issue, it should be settled in court and is certainly not something the Planning Commission is in a position to deal with, plus there is no clear determination of the property line. Martin said in Castelli's letter he said that, in his opinion, the dock is entirely in front of the Helmuth property and Reedal's statement of his conversation with the Sate Official is hearsay, since we can't ask if this was said, so you should disregard that. Martin said as far as a nuisance, there is nothing before them that shows there is a nuisance. Martin said overall there is nothing to go over all the property line issues or the disputes, and is a technical violation which can't be established without establishing where the property line is, which can't be done.

Navetta said she called Christopher Castelli a couple of months ago and asked him how they establish property lines, and he said they establish that by the length of the lake. Navetta said that you could see that the dock lined up with the line. Navetta said when the dock was built, no one complained about it. Navetta said she did not think the Commission could move forward without knowing where the property line is.

Burke said he needs to know where the property line is and where the dock is. Burke said the Code says the dock has to be within 10' of the property line, so he could not make a decision without having a report from a surveyor of exactly where the property line is, and exactly where the dock is, and it has to be surveyed.

Darnielle said there was a conditional use permit that allowed the dock to be closer than the 10'.

Everyone looked for the document, but couldn't find it.

ACTION: Burke made a motion to require a survey of the property line with the surveyor's extension showing the dock and the relationship to the property line and to table the decision to that point, and Reedal will have to pay for such survey as he is making the complaint. Ron Shearer seconded the motion. There were 3 ayes and 0 nays. Motion passed.

IV. UNSCHEDULED BUSINESS - None

V. ADJOURNMENT

Navetta adjourned the meeting.

Susie Navetta, Acting Chairperson

Teri Tinker, Planning Sec'y

George Burke, Planning Commissioner

Ron Shearer, Planning Commissioner