



**City of Dallas
Planning Commission
Council Chambers - City Hall
January 10, 2012 - 7:00 p.m.**

MINUTES

CALL TO ORDER

Vice President Dave Pederson called the meeting to order at 7:00 p.m.

NEW COMMISSIONER OATH OF OFFICE

Denise Jones took the City of Dallas Planning Commission Oath of Office.

ROLL CALL

Commissioners Present: Carol Kowash, Dave Pederson, David Shein, Denise Jones, and Robert Wilson.

Absent: Chuck Lerwick

Staff present: City Attorney Lane Shetterly, Community Development Director Jason Locke, Planner John Swanson, and Recording Secretary Patti Senger.

APPROVAL OF MINUTES

Vice President Dave Pederson presented the minutes of the regular meeting of December 13, 2011. Commissioner Carol Kowash made a motion to approve the minutes as presented and Commissioner Dave Shein seconded the motion. The motion passed unanimously.

PUBLIC COMMENT

Vice President Pederson explained the rules for making public comment and pointed out that the Walmart expansion was on the agenda for deliberation only and that the public comment portion had been closed.

There were no public comments.

PUBLIC HEARING

Walmart Site Plan Review (SPR 11-01)

Vice President Pederson announced this was the deliberation portion of the public hearing for the site plan review for the expansion of the existing Walmart store #2315-04, located at 321 NE Kings Valley Highway in Dallas, Oregon. He opened the Public Hearing at 7:08 p.m. and asked if any commissioner needed to declare ex parte contact or had a conflict of interest. There was no declaration. Denise Jones recused herself from deliberation and voting.

Commissioner Shein made a motion to accept all the written testimony that was submitted into the record. Commissioner Wilson seconded that motion and it passed unanimously.

SUPPLEMENTAL STAFF REPORT:

Mr. Locke reviewed the supplementary staff report and indicated it included the comments received as well as the applicant's additional testimony. Based on the position taken by the applicant relating to the transportation impact requirements 3.4.010(A)(1), he stated that City staff and the City attorney had determined their arguments reasonable. If the Commission was to approve the application, the staff report included six proposed conditions. Mr. Locke acknowledged the seventh condition was removed based on research into the applicant's argument that a local improvement district on a state facility is not consistent with Oregon Revised Statutes. Mr. Shetterly clarified there were two sections that contain 3.4.010, and this refers to the second 3.4.010 which was indicated 3.4.010(B) in the staff report. In answer to Commissioner Shein's question, Mr. Shetterly stated that the correction to the code would be made at a later date.

DISCUSSION BY COMMISSION

Commissioner Shein asked if the argument advanced by Walmart was reasonable and Mr. Shetterly indicated in his opinion it was and clarified that the code was not precisely tailored to each circumstance but would need to be interpreted. Commissioner Shein asked what FDC and OFC stood for and Mr. Locke responded Fire Department Connection and Oregon Fire Code.

Vice President Pederson asked if the state had done improvement on roads in Dallas, and if businesses were required to help fund those improvements. Mr. Shetterly indicated they may have paid for underground lines but not the street improvements. Commissioner Shein stated that he was present at the City Council meetings when improvements were discussed and he didn't recall that ever happening.

Vice President Pederson stated that, in his opinion, the State of Oregon was wrong about not requiring the traffic study. He explained that now and even more so after the expansion, when exiting the parking lot and making a left turn onto E. Ellendale Avenue, a hazard was created. He suggested not allowing left turns at that exit.

Commissioner Wilson made a motion to approve the site plan for the expansion of the existing Walmart store #2315-04, located at 321 NE Kings Valley Highway in Dallas, with the six conditions listed in the staff report. Commissioner Shein seconded the motion and it passed unanimously.

RECESS

A five minute recess was granted to prepare for the next public hearing.

PUBLIC HEARING

Appeal of Partition Approval (PTN 11-04)

Vice President Pederson announced the public hearing on the Appeal of Partition Approval (PTN 11-04), 1463 SE Miller, Dallas, Oregon, by Prism Manor, LLC. He opened the Public Hearing at 7:22 p.m. and asked if any commissioner needed to declare ex parte contact or had a conflict of interest. There was no declaration.

STAFF REPORT

John Swanson reported that this agenda item was an appeal of an administrative decision. He reviewed the staff report, stating that the City of Dallas granted administrative approval on August 24, 2011, of a Type II Land Use application for a two-lot partition of the 1.81 acres of property. The partition created a lot of .18 acres with an existing house (lot 2101, owned by Mr. Nunes) and a vacant flag lot of 1.63 acres (lot 2100, owned by Prism Manor, LLC), which sought to legally divide what was already recognized as separate tax lots with the Polk County Assessor's office.

Mr. Swanson stated that after review of the legal documents, staff determined that in May of 2006 tax lot 2101 and tax lot 2100 were established as separate lots, qualifying it under ORS 92.177 to create a partition without all legal owners participating because it had happened prior to January 1, 2007. He explained that the original parent parcel was divided into two tax lots in 1997 but no land use action was formalized.

Mr. Swanson noted that this brought us to the appeal by Prism Manor, LLC. They were entitled to receive notice and they did not. This error was corrected by this hearing. He stated that this partition was lawfully executed under ORS 92.177 and staff recommendation was to reject the appeal and approve the partition with the standard conditions. Commissioner Shein asked if they lost any appeal time and Mr. Shetterly responded they had not.

APPLICANT PRESENTATION

Eric Yandell, 117 Commercial Street, NE, 4th Floor, Salem, Oregon stated that he represented Tony Nunes, the current owner of the small parcel (2101). He explained that they were in litigation with Prism Manor, LLC, owner of the larger parcel (2100). He indicated that it was not because there was anything wrong with the partition, but because land owners have rights in situations like this. He stated that the staff report was accurate and that he could answer questions if needed.

APPELLANT PRESENTATION

Mark Hoyt, 639 Chemeketa Street NE, Salem, Oregon stated that he represented Prism Manor, LLC. He suggested that this application was an effort by Mr. Nunes to avoid liability for selling land that was not legally partitioned. He stated that his client was exercising his rights under statute, adding that the intention was not relevant. He stated that they did not have a problem with the application, but explained that ORS 92.177 allowed for only one parcel, not a partition. He presented a letter to be received into the record dated January 10, 2012, and read from page 3 of the letter. Mr. Hoyt indicated that a partition plat would have to be signed by all the owners, and his clients would not sign. If the Planning Commission approved the partition, it would be wasting time, and this would be a wasted process. If this was one parcel then there would be no issue. He read more from the letter on page 4. He summarized by saying that the only reason they were here was because of the lawsuit.

PERSONS SPEAKING FOR OR AGAINST

There were none.

REBUTTAL

Eric Yandell, 117 Commercial Street, NE, 4th Floor, Salem, Oregon, Stated that Mr. Nunes discovered in early 2007 that the property had not been lawfully partitioned and that he had bought it and sold it that way. He notified Prism Manor, LLC right away that this was a problem and then he set out to fix it. Oregon Revised Statute allowed you to look-back when a single property was sold as two separate properties, noting that if a partition would have been granted back then it could be approved now. The partition was applied for to give the buyer what they should have received when they originally purchased it back in 2006. He acknowledged it was a little late and stated they agreed to pay any

additional costs caused by this. He suggested to the commission that there should be no objections on the merits of this partition and noted that it was recommended by staff to approve. He discussed Mr. Hoyt's arguments and stated that information was given that was not relevant to the Planning Commission's decision, but for a court to decide. He asked them to validate the parcels and make it valid going forward.

COMMISSIONER QUESTIONS

Commissioner Carol Kowash asked for clarification about the benefits obtained by Prism Manor, LLC to not have this partition. Mr. Shetterly indicated that if it was a legal partition it may make it more difficult to rescind a validated property noting that this would be handled in court.

Commissioner Shein asked what the consequences would be on the decision made here. Mr. Shetterly indicated that was not for this commission to use to base a decision on, and suggested the question not be answered. Commissioner Shein then asked why this information was presented to the Planning Commission.

REBUTTAL

Vice President Pederson allowed both parties five minutes to respond.

Mr. Yandell stated that they were here because they wanted the property partitioned and that both pieces of property needed to be sellable. He added if there had not been an appeal they would not be here. The judge handling the case would decide the impact this action would have on litigation. He asked the Planning Commission to consider only the criteria and determine if they could get behind this partition. He indicated the partition would need to be two separate parcels regardless of the outcome in the court, and eventually it would need to be validated.

Mr. Hoyt reverted that record be held open for seven days. He stated that this application was pursued without proper notice and that Mr. Nunes wanted to partition his client's property. He suggested he could do so if he bought back the property from his client for the original price. He agreed with Mr. Nunes that this was an attempt to fix a situation that should never have occurred. He stated that he didn't wish to take up Planning Commission time with this partition and wanted to handle it through the court, but because the application was filed, his client was forced to appeal. He stated if they wanted to legalize their parcel they could because it was theirs to legalize, but they could not do a partition on property they did not own. He stated that ORS 92.176 and 92.177 does not use the word partition, but parcel.

Commissioner Shein moved to close the public portion of the hearing and keep the record open until Wednesday, January 18, 2012, at 5:00 p.m. to receive written comments. Commissioner Wilson seconded the motion and it passed unanimously.

Vice President Pederson explained to the audience that a letter could be written to the City of Dallas, 187 SE Court Street, Dallas, Oregon, 97338 if anyone wished to have comments included in the record, but the record would not be open for oral testimony.

PUBLIC HEARING

Conditional Use Permit (CUP 11-02)

Vice President Pederson announced the public hearing on the Conditional Use Permit (CUP 11-02), in the RH Zone, 1990 SE Shelton Street, Dallas, Oregon, by Danielle Mouser. He opened the Public Hearing

at 7:56 p.m. and asked if any commissioner needed to declare ex parte contact or had a conflict of interest. There was no declaration.

STAFF REPORT

Mr. Swanson reviewed the staff report. The applicant would be using 1,000 square feet of the house for the studio. He mentioned that parking requirements would be met with the public lot across the street. He stated that staff recommended approval with three conditions. Commissioner Kowash asked about the second condition and Mr. Swanson explained that only real estate signs and political advertising signs were allowed during campaign season and the applicant did not seek a variance for a sign.

APPLICANT PRESENTATION

Danielle Mouser, 1365 SW Solomon Court, Dallas, Oregon stated that she agreed with the staff report. She added that she had been running her business for three years and generally did business at other locations and indicated she didn't expect to see that change. Other than her car, she may have one or two clients parking there at one time.

PERSONS SPEAKING FOR OR AGAINST

There were none.

QUESTIONS BY THE PLANNING COMMISSION

There were none.

Vice President Pederson closed the public hearing at 8:07 p.m.

DISCUSSION BY COMMISSION

Commissioner Kowash moved to approve the Conditional Use Permit (CUP 11-02), in the RH Zone, 1990 SE Shelton Street, Dallas, Oregon, with the three conditions listed in the staff report, Commissioner Shein seconded the motion; it passed unanimously.

OTHER BUSINESS

There was none.

COMMISSIONER COMMENTS

There were none.

STAFF COMMENTS

There were none.

ELECTION OF OFFICERS

Vice President Pederson opened the floor for nominations for President. Commissioner Shein nominated Chuck Lerwick for President. Vice President Pederson closed the nominations. The Commission voted unanimously to elect Chuck Lerwick as President of the Planning Commission.

Vice President Pederson opened the floor for nominations for Vice President. Commissioner Shein nominated Dave Pederson for Vice President. Vice President Pederson closed the nominations. The Commission voted unanimously to elect Dave Pederson as President of the Planning Commission.

Vice President Pederson opened the floor for nominations for Recording Secretary. Commissioner Kowash nominated Patti Senger for Recording Secretary. Vice President Pederson closed the

nominations. The Commission voted unanimously to elect Patti Senger as Recording Secretary for the Planning Commission.

The meeting was adjourned at 8:25 p.m.

APPROVED:

President

Date