

**From:** [Chris Monack](#)  
**To:** [Michelle Wilson](#)  
**Subject:** Public Comment, Dec 14 Agenda Item 17, Dunne-Busk Extension  
**Date:** Sunday, December 11, 2016 4:07:08 PM

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Mayor and Council Members,

On November 22, the Planning Commission heard and discussed a request to add a six month extension to the Dunne-Busk project. I won't go into the details of the request other than to note that the staff report recommendation to the Commission at that time was to deny the request as it fell short of complying with the minimum criteria necessary within the guidelines of the RDCS for granting extensions.

Like the Commission, I can find merit in both approving the request and denying it. The fact is, however, that I have no interest in whether the developer gets an extension or not. My concern is how the Council responds to reaching a decision on this matter with additional knowledge of questionable comments made during the Planning Commission meeting that are not included in the staff report being presented for the City Council meeting.

I understand there will be expected transition issues between the expiration of the existing RDCS and the implementation of the recently approved RDCS. However, I don't believe this is a transitional "gray zone," as Commissioner Tanda referred to it, as there is no overlap between the two sets of RDCS guidelines. The applicable criteria in place when the Development Agreement for Dunne-Busk was signed do not extend into the new RDCS. The only gray zones I could see in this instance were those which members of the Commission were attempting to create to find a way to either step outside the applicable criteria to grant the extension, or to allow compensation to the developer prior to the 2019-2020 allotment competition for allotment losses should the request be denied.

I would agree with those involved that the Dunne-Busk situation brings with it circumstances that could be argued as being extenuating, but as Commissioner Tanda stated, the circumstances appear to be unfortunate rather than extraordinary. The hour that the Commissioners spent looking for that exception proved fruitless and their "no action" now puts the onus on the Council to make this decision. Along with the Commission's vote results came the statement by Commissioner Tanda that "the City has to get creative and find a different way to do it," referring to finding a way to approve this extension request.

It's the suggestion of a "creative" fix that has my concern. That suggests to me that the Council's justification for approving the request will be found outside the parameters of the applicable RDCS guidelines.

I accept that the City Council and Planning Commission need a certain degree of latitude in conducting the city's business. In instances when action has tested the limitations of guidelines, my experience has been that the Council and Commission have used their discretion where applicable, and done so legally, albeit arguably at times. In this case, I do not believe discretion for such allowances exist, nor does the Planning Commission. If such allowances did exist, the Commission would have certainly and without hesitation recommended granting the extension. That members of the Commission, in failing to find an exception, didn't default to applying the rules as written is somewhat disheartening. If the rules aren't the rules, then why have them?

As I said, I have no interest in whether or not the developer gets the project extension. My interest is in the Council's decision-making process. I ask each of you to be very cautious and deliberate in making your decision, and very clear in stating your reason(s) regardless of that

decision. I also ask each of you to be mindful that your decision carries weight beyond seven allotments and project continuity as the Council's demonstration of "creativity" with the existing growth controls could undermine trust within the community that the Council won't apply or allow similar creativity with Morgan Hill's newly approved RDCS.

Thank you for your time,

Chris Monack