



PLANNING COMMISSION SPECIAL SESSION MINUTES ~ APPROVED
THURSDAY, OCTOBER 29, 2015 AT 6:00 PM
City Hall ~ 82877 Spruce St., Westlake, OR 97493

The proceedings of the Dunes City Planning Commission were recorded and are on file at Dunes City Hall. Upon approval by the Planning Commission, these minutes will be available online at www.dunescity.com.

1. CALL TO ORDER

The October 29th Planning Commission Special Session was called to order by Chairman Paul Gargis at 6:04 pm.

2. ROLL CALL

Roll Call was taken by City Administrator Jamie Mills.

Present: Chairman Paul Gargis, Vice Chairman Ken Henderson, Commissioner Norman Martin, and Commissioner Bonnie Allen. (As of October 3rd, 2014, there is one vacancy.)

Others Present: City Administrator Jamie Mills, Administrative Assistant Rapunzel Oberholtzer, LCOG staff attorney Gary Darnielle, and several Dunes City residents.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Vice Chairman Henderson made a motion to approve the Agenda. Commissioner Allen seconded the motion. The motion passed by unanimous vote.

5. APPROVAL OF THE CONSENT AGENDA

A. Planning Commission Regular Session Meeting Minutes of August 27, 2015

Vice Chairman Henderson made a motion to accept the Consent Agenda as presented. Commissioner Allen seconded the motion. The motion passed by unanimous vote.

6. ANNOUNCEMENTS /CORRESPONDENCE

City Administrator Mills announced that City Administrator/Recorder Fred Hilden resigned. She was appointed interim City Administrator by the City Council and resigned her Council President position. She also announced that Vice Chairman Henderson's and Commissioner

Allen's appointments to the Planning Commission expire on December 31 this year and both would need to reapply for appointment, if they're interested in continuing to serve on the Commission. In addition, she reminded Commissioners that the City Attorney completed her review of the draft Stormwater Management language of Chapter 155 and provided a list of concerns and comments; Staff hopes to have the text and her comments ready for the Commission to review during its January meeting.

7. CITIZEN INPUT

Chairman Gargis recognized Ms. Mary Jo Leach, who signed in to make comments. Ms. Leach explained that she wished to address the Commission because she was in a situation with the City for which she can not get a resolution, the situation involves matters that the Planning Commission deals with. The situation, she went on, concerns two permits which were issued 23 and 25 years ago, respectively, and the City claimed were valid. Ms. Leach mentioned that the permits just appeared in the property file for the lot she is concerned about and that she was told by City Staff that the permits were "pre 155." She explained that she had been told there was a finding, but no one could tell her about it. At one point she had been instructed to direct her questions to Dave Mortier of The Building Department LLC, which she did. She was told that he did not know anything about these permits even though City Staff told her that he inspected the work and signed off on it. Ms. Leach explained that her concerns are based on the fact that the building occurs in the septic area. She noted that the permit for a shed, which is actually located 50 inches from her front yard, was approved for DC20 setback, which is 10 feet from each line, so it is not cited where the inspector approved it to be and the construction is not a shed, it is an addition on the house.

Ms. Leach referred to the second building permit issued in 1992, noting that it was for a deck to be constructed on the east and north side of the house but the deck is on the west side of the house—three feet from her property line. She noted that the location of the deck would not be so horrible if the neighbors had not come on to her property and cut 30-year old shrubs down to the ground. Ms. Leach explained that this situation was very upsetting and she could not get answers to resolve it and went on to ask if there were rules that allow permits that are clearly limited to use within 120 days to be accepted for projects now all these years later. She noted that she has photographs and copies of the file for the property, which did not, at the time she made copies, contain the permits in question.

Ms. Leach went on to explain that she wrote a letter to the City Council about this matter, asking City Staff to submit it to the Council as public input. She then received a letter from the Acting City Administrator stating that her comments could not be submitted and that she would have to file an appeal and pay an appeal fee. Later, Ms. Leach went on, she learned that there is currently no ordinance that allows the City to collect an appeal fee.

Chairman Gargis thanked Ms. Leach for her comments, noting that the meeting was not the right venue for this discussion. Ms. Leach asked if the Commissioners had heard of this type of situation with old permits. Commissioner Allen summarized the crux of the issue as being the fact that the permits were issued prior to adoption of Chapter 155 and whether or not those permits are still valid. Chairman Gargis noted that the permits were probably not valid

and again thanked Ms. Leach for her comments, noting that he was sorry to hear about the issues. Ms. Leach gave Staff copies of her written remarks, the permits and the letter from the Acting City Administrator and asked that they be included in the record of the meeting. THE DOCUMENTS REFERENCED BY MS. LEACH ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES AS EXHIBIT A.

City Administrator Mills noted that if the Commission wished to consider the matter at a future meeting, it could become an Agenda item. She explained that Ms. Leach, the inspectors and others involved could all be invited to attend the meeting. Chairman Gargis suggested that the Planning Commission might not be the appropriate body to hear an appeal of findings. City Administrator Mills noted that there is currently no provision for appealing a finding that a complaint is not valid, which is why an ordinance was drafted and will be presented to the City Council.

8. PUBLIC HEARING

A. Ordinance No. 228 – Septic Maintenance

Chairman Gargis read from the script prepared to begin the public hearing portion of the meeting:

“This evening we have a public hearing on Ordinance No. 228, an ordinance amending Dunes City’s septic maintenance provisions in Title 15 of Dunes City’s land use code and amending Title 14 of Dunes City’s water quality code.

“These proceedings will be recorded.

“This hearing will be held in accordance with the land use procedures required by the City and the State of Oregon. This is a Type 4 Legislative Procedure.

“Staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the Planning Commission must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria which you believe applies to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City and parties involved an opportunity to respond to the issue would preclude an appeal to the Oregon Land Use Appeals Board based on that issue.

“Any person interested in a land use matter may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Commissioner’s bias, prejudgment, conflict of interest, or other facts from which the party has concluded that the Commissioner will not make a decision in an impartial manner.”

Chairman Gargis asked if any Commissioner wished to declare a conflict of interest, bias or ex-parte contact. None did.

Chairman Gargis asked if any member of the public wished to challenge a Commissioner's impartiality. None did.

Chairman Gargis opened the public hearing at 6:23 pm and requested the Staff Report.

Mr. Darnielle described key differences between existing Ordinance No. 203 and proposed Ordinance No. 228, noting that Ordinance No. 228 replaces Ordinance No. 203. He explained that instead of having mandatory septic system inspections every five years the timeframe would be based on the inspector's recommendation. In addition, he noted, inspections are currently required prior to the sale of a house and that is not the case under Ordinance No. 228.

Mr. Darnielle pointed out that this is a legislative action and a land use regulation, which require certain criteria to be applicable. He listed the criteria the Ordinance must meet:

1. It must be consistent with the City's land use regulations,
2. It must be consistent with the City's Comprehensive Plan,
3. It must be consistent with any applicable ORS statutes,
4. It must be consistent with any relevant Oregon Administrative Rules, and
5. It must be consistent with the Statewide Planning Goals.

Mr. Darnielle noted that the Findings of Fact address these criteria and conclude that the Ordinance is consistent with all of the applicable criteria. In terms of the Statewide Planning Goals, Goal 6 (Water Quality), is the most relevant and as a septic maintenance regulation the intent of the Ordinance is to preserve water quality. He went on to note that the Ordinance is also consistent with any OAR that DEQ has adopted in terms of preserving water quality and septic tank regulations and the Ordinance itself refers to DEQ regulations. Mr. Darnielle concluded by saying that Staff finds the Ordinance to be consistent with all of the applicable standards.

Referring to a pump-out frequency table that was provided by Mr. George Ehlers, Lane County's Environmental Health Specialist, as part of his public comment on the proposed Ordinance, Chairman Gargis noted that the table was far different from the one included in the proposed Ordinance and asked what the Commission should do with it. Vice Chairman Henderson remarked that his septic system passed a recent inspection with no problems noted, but the inspector recommended another inspection in four years. City Administrator Mills explained that the table provided by Mr. Ehlers was included in his comments submitted for the record, part of which states the table, "...suggests there is not agreement on pump out frequency even when factoring [in] occupancy load and tank size."

Commissioner Allen remarked that even though Ordinance No. 228 does not require a septic inspection when a home is sold, it is customary for lending institutions to ask that the home's septic system passes inspection before finalizing a mortgage. Mr. Darnielle agreed that was likely the case and pointed out that the seller also has some responsibility

to make sure that the septic system would pass inspection but it would be outside of the City's authority to require an inspection before a home is sold.

Chairman Gargis asked if any Commissioners had questions for Staff. None did.

Chairman Gargis announced, "We will be taking testimony from all of those who wish to comment. If you have not already done so, please sign in and include your name and address. This evening we will allow a maximum of five minutes for each person to comment. This is a change in our normal Rules of Procedure at Dunes City. The Planning Commission believes the issue under consideration is of such importance that the Commission is going to allow each speaker five minutes with a total of 45 minutes reserved for public comment. Please make your comments concise and try not to duplicate comments made by a prior speaker so everyone has a chance to be heard."

Chairman Gargis asked for testimony from those opposed, if any.

Chairman Gargis recognized Ms. Mary Jo Leach who presented copies of her written remarks and reference material to the Commissioners and asked that they be included in the written record of these proceedings and that the record be kept open for fourteen (14) days to allow for submission of more testimony. Ms. Leach proceeded to read aloud her written remarks:

"I am unsure why we have this document, Ordinance 228, in front of us for consideration, there was no need to re-invent the wheel. I am assuming it was at the request of the Council. We are a city strapped for cash, a fostered culture that has made in impossibly uncomfortable for citizens to volunteer, an over-burdened Planning Commission that reviews our laws and recommends to Council the path to follow in applying those laws, and a Council who then ignores the rules and recommendations, and proceeds to ratify issues that should be dismissed. We have a City Staff made up of four temporary agency workers, and former Councilor Mills, acting as the City Recorder, who in order to communicate with our former Recorder must do so through their respective attorneys. This is insanity, this Ordinance is so convoluted that the most capable of staffs would find it impossible to administer.

"203 is a good ordinance accomplishing and fulfilling the stated goals in our Comprehensive Plan and consistent with statewide goals. What is needed are amendments to change language dealing with time intervals, we know it is a solid ordinance."

Ms. Leach proceeded to read from a copy of page six of a LUBA remand of Ordinance No. 211A, "Although there may not be evidence in the record that compels a conclusion that Ordinance No. 203 has played a role in the water quality in Woahink and Siltcoos Lakes, there is certainly substantial evidence to support that conclusion."

Ms. Leach continued to read from her prepared statement until Chairman Gargis announced that her time was up. THE DOCUMENTS REFERENCED BY MS. LEACH AND A

COMPLETE COPY OF HER WRITTEN STATEMENT ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT B.

Chairman Gargis recognized Ms. Judy Martin. Ms. Martin asked Vice Chairman Henderson for a clarification of the details of his septic inspection report. Vice Chairman Henderson noted that although the inspector recommending the next inspection and pumping in four years, but the OSU table in Ordinance No. 228 suggests 9.1 years. Ms. Martin remarked that the table provided by Mr. Ehlers was presented some time ago during early Commission meetings about a new septic ordinance and is drastically different from the OSU table.

Ms. Martin commented that she thought Ordinance No. 228 was an improvement over Ordinance No. 203, which was unpopular, but she had problems with it. She explained that each septic system is unique—tanks vary in size and type, different systems require certain kinds of maintenance—which makes it nearly impossible for an inspector to project accurately how often a system should be pumped.

There was some discussion about pumping frequencies vs inspection frequencies. Ms. Martin remarked that there are examples of where tanks have failed right after inspections and concluded that inspections are a waste of time because inspectors can not always tell when a tank is on the verge of failing or whether the system is working properly. Commissioner Allen asked Ms. Martin if she would recommend keeping Ordinance No. 203 in place. Ms. Martin noted that various groups have been working on this issue for years and have not come up with a satisfactory solution, but relying on inspectors could be a problem.

Chairman Gargis thanked Ms. Martin for her comments and recognized Mr. Del Reisenhuber. Mr. Reisenhuber announced that he intended to speak in opposition to proposed Ordinance No. 228 and noted that, although he did not wish to discredit the people who working on drafting it, in his opinion the document is totally flawed.

To explain his opinion, he read aloud from a prepared statement which was presented to the Commissioners;

“I am familiar with the Dunes City Comprehensive Plan and the terms and conditions of Ordinance 203, which proposed Ordinance 228 intends to repeal. I am also familiar with Ordinance 211A which was remanded back to the City as it failed to uphold the conditions of the Comprehensive Plan and to adequately protect the water of Woahink and Siltcoos Lakes.

*“Now I must state for the record that I oppose proposed Ordinance 228 in its entirety and urge the Planning Commission and Dunes City Council to abandon this ill conceived ordinance. My objections are based upon the following facts, among other things.
“#142.010 (Intent). The proposed ordinance fails to ensure that its stated intent (‘to ensure that all onsite septic systems located in the City, are operated in a safe, healthful and environmentally responsible manner’) is achieved...”*

“142.030 (Owners’ Responsibility) (A Initial Inspections). There is no requirement to have onsite wastewater disposal systems pumped upon initial inspection. It is generally known that a septic tank cannot be adequately inspected unless it is empty. If after pumping the tank a qualified inspector determines that it is sound, future inspections may not require pumping... (B Periodic Inspections) ‘The time period for the required inspection and evaluation shall be the interval identified by the qualified inspector in the prior inspection and evaluation report.’ This is in error for the following reasons: It contains no provision for changes in occupancy of the dwelling... But what if the occupancy changes... The requirements for additional inspections should be impacted by any change in occupancy... (E Commercial Facilities) Ordinance 203 requires that commercial facilities undergo annual inspections. Proposed Ordinance 228 has no such requirement for annual inspections... Clearly this lack of annual inspections degrades the intent of Ordinance 203 and is not in compliance with the Ordinance 211A Remand.

“142.040 (Dunes City’s Responsibility) There is no provision for enforcement... Ordinance 203 contains a specific section covering compliance...”

Mr. Reisenhuber went on to thank everyone who put effort into drafting the proposed ordinance, noting that he was not sure what they intended to accomplish relative to the stated objective of maintaining the quality of the water of our lakes. He expressed concern that the proposed Ordinance fails to consider Dunes City’s responsibility to assure that residents and the people who visit Honeyman Park receive safe drinking water from Woahink Lake. He requested that the record be held open for 14 days to allow for additional input. THE COMPLETE WRITTEN COMMENTS PROVIDED BY MR. REISENHUBER ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT B.

Chairman Gargis thanked Mr. Reisenhuber for his remarks and recognized Ms. Susie Navetta. Ms. Navetta introduced herself as representing Mr. Mark Chandler who could not be present to deliver his comments. Ms. Navetta read aloud written comments provided by Mr. Chandler.

“The Dunes City Water Testers have been testing the waters of Woahink and Siltcoos Lakes since 1989. We are trained by the Department of Environmental Quality and use the equipment they provide. We stay in contact with the Siuslaw Water Shed and they post our water testing findings. One of the things we test for is phosphorus, please check our results posted from 2004 to 2014. The numbers tell it all.

“Dunes City must protect the waters of our lakes with vigilance for the sake of the residents and visitors; the health, safety, and longevity of this special lake.”

Ms. Navetta referred to a copy of a phosphorus report provided by Mr. Chandler, noting that phosphorus levels in 2014 are much lower than they were in 2004. She went on to explain that the EPA suggests a phosphorus level of seven; when testing first started the level was twelve and has been as low as three.

Chairman Gargis thanked Ms. Navetta for delivering Mr. Chandler's remarks. THE COMPLETE WRITTEN COMMENTS AND CHART PROVIDED BY MR. CHANDLER ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT B.

Chairman Gargis recognized Ms. Navetta to give her comments, asking if she wished to speak in favor of the Ordinance. Ms. Navetta said she did and stated her name for the record. She referred to a packet of information she prepared for the Commission that included her email letter to the Commission dated October 22, 2015, a copy of a Septic Tank Maintenance article dated April 2000 from the OSU Extension Service, a copy of the LUBA Final Opinion and Order remanding Ordinance No. 211A, a copy of Ordinance No. 203, a copy of Resolution No. 06-08-06, a copy of the Dunes City Septic System Maintenance Status report as of July 8, 2015, and a copy of the Dunes City Comprehensive Plan.

Ms. Navetta read aloud from her email to the Commission:

"At the last Woahink Lake Association meeting City Recorder and Administrator Fred Hilden gave a written report dated 7/8/2015, on the last page of the report is a yearly Excel sheet that should confirm that Dunes City was extremely lax in enforcing Ordinance 203. Ordinance 203 [sic] clearly states that 15 residents should be contacted every month."

Referring to the Septic System Maintenance Report prepared by then City Administrator/Recorder Hilden, Ms. Navetta recited the number of septic inspection notices sent by the City for the years 2006 through July, 2015, noting that the total number was below what it should have been. She went on to note that the residents contacted in 2006 through 2010 should have been notified again for the inspections required every five years, according to Ordinance No. 203. In her email, she requested that the record on this issue be kept open for 14 days.

Referring to the OSU Extension Service table from April, 2000, Ms. Navetta noted that the table is fifteen years old and she questioned its relevance. She went on to note that Dunes City has sandy, wet soil so it doesn't matter what is done in other places. In addition, she pointed out that other areas do not depend on their lakes for drinking water and Dunes City should take into consideration that its residents do.

Vice Chairman Henderson asked Ms. Navetta to clarify whether or not she was speaking in favor of Ordinance No. 228. She stated that she was not.

Referring to the July, 2015, Septic System Maintenance Status Report, Commissioner Allen remarked that although the statistics show that no inspection notices were sent in 2013 and 2014, there is a compliance rate of 89% of residents having their systems pumped and inspected. Ms. Navetta disagreed, noting that residents due for follow up inspections may not have had them done, and she did not know if all of the inspections that have been done included pumping. Ms. Allen commented that she was pleased to know

that 89% of residents became compliant, whether they received written notices, telephone calls or complied without any kind of notice from the City.

City Administrator Mills pointed out that prior to the meeting, copies of several letters received by the City prior to today's meeting, some supporting Ordinance No. 228, were distributed to Commissioners. THE COMPLETE WRITTEN COMMENTS SUBMITTED TO CITY HALL PRIOR TO OCTOBER 29 ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT C.

Mr. John Stead requested permission to speak to Ordinance No. 228, noting that he signed the Request for Recognition form to do so. Chairman Gargis recognized Mr. Stead.

Mr. Stead stated his name for the record and requested that the record be held open. He proceeded to read from a written statement:

"You have been asked to make a profound decision this evening—to take action regarding Ordinance 228..."

"A 1972 Lane County survey of septic tanks within 100 feet of Woahink Lake found that 26% were performing unsatisfactorily.

"To determine whether Ordinance 228 will result in improved water conditions, the entire proposed document must be available for review. Unfortunately, 'Exhibit A – Findings of Fact'—the Staff Report promised in the Public Notices—is available only in draft form. It is a preliminary document, not ready for public review.

"Another concern is, have the septic inspectors been trained and qualified to predict the future of all septic systems?"

Mr. Stead remarked that Ordinance No. 228 gives inspectors the authority to determine future dates of inspection and added that he is unaware of any training or certification that qualifies inspectors to make those kinds of predictions. He went on to urge the Commission to take no action on Ordinance No. 228 and let it die. THE COMPLETE WRITTEN COMMENTS PROVIDED BY MR. STEAD ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT B.

Ms. Martin raised an objection to the statistics in the 1972 Lane County survey referenced by Mr. Stead, noting that she was aware of the study and, after some research, found the statistic cited to be without substantiation.

Chairman Gargis asked Commissioners if they had any questions for those who testified. None did and Chairman Gargis closed the hearing at 7:14 pm.

9. NEW BUSINESS

A. Deliberation and Decision (Recommendation) – Ordinance No. 228

Commissioner Allen remarked that it was tremendous to have this amount of interest and participation in making this decision. Chairman Gargis agreed.

Commissioner Allen noted that during previous Planning Commission meetings during which a proposed septic maintenance ordinance was developed, numerous written and oral comments were submitted during citizen input.

Commissioner Allen made a motion to include the written and oral comments received and considered in earlier Planning Commission hearings on a septic maintenance ordinance be brought forward and entered into the record for Ordinance No. 228. Vice Chairman Henderson seconded the motion. The motion passed with Vice Chairman Henderson and Commissioner Allen voting in favor. Commissioner Martin voted against the motion.

Vice Chairman Henderson agreed with Commissioner Allen that turnout for the meeting was great, with attendance by both long-term City residents and several residents new to the City. He noted that protecting the City's drinking water source is absolutely essential. He went on to note that he was a former member of the Water Quality Committee during the time the water quality of Woahink Lake began to improve and it was gratifying to see that the testing results have showed a continued improvement in water quality.

There was some discussion about the effects of septic inspections on water quality. Vice Chairman Henderson pointed out that he was on committees involved in drafting what is now Ordinance No. 203. During that time, he noted there was considerable discussion about whether or not inspections could be done without pumping a septic tank or needing to have the tank pumped for inspection. He went on to say that, given his personal experience with a recent septic inspection and the inspector's recommendation, he would have an issue with relying on the recommendation of the inspector.

Referring to the Dunes City Septic System Maintenance brochure, Chairman Gargis read, "The homeowner needs to determine how much of the tank's volume is being taken up by solids, scum and sludge. When sludge and scum take up more than 35 percent of the tank volume, these solids need to be removed by pumping." He remarked that the statement means that it is not necessary to have the tank pumped in order to inspect. He added that the inspector needs to know what he is doing.

Commissioner Allen noted that the Oregon Administrative Rules for Oregon's Department of Environmental Quality specify the training and certification requirements for septic system installers, inspectors and maintenance providers. She noted that if it is determined that any inspectors, installers or maintenance providers are not licensed by the State, they should be reported to the State—the City does not license them.

Vice Chairman Henderson noted that inspectors and pumpers make money providing their services and could profit by recommending more frequent inspections and pumping than may actually be necessary.

Commissioner Allen remarked that the question is whether to keep Ordinance No. 203, which makes it mandatory to inspect septic systems every five years regardless of the number of people in the house or the house is vacant part of the year, or depend upon an inspector's recommendation. Chairman Gargis said that a lot of issues were raised during the meeting and the Planning Commission would need more time to review everything presented.

Chairman Gargis made a motion to leave the record open and continue the hearing on November 19 at 6:00 pm and have the testimony from previous meetings as well as Exhibit A – Findings of Fact available. Commissioner Allen seconded the motion. The motion passed with Vice Chairman Henderson and Commissioners Allen and Martin voting in favor.

At the request of Chairman Gargis City Administrator Mills agreed to publish and post written notice of the meeting on November 19 and to make sure that everyone who has testified on the proposed ordinance receives notice about that meeting.

10. ADJOURNMENT

Commissioner Allen made a motion to adjourn. Vice Chairman Henderson seconded the motion. No vote was taken.

Chairman Gargis adjourned the Planning Commission meeting at 7:30 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 19th DAY OF NOVEMBER 2015.

[Signed copy available at City Hall]

Paul Gargis, Chairman

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, Acting City Administrator/Recorder