



PLANNING COMMISSION SPECIAL SESSION MINUTES ~ APPROVED
THURSDAY, NOVEMBER 19, 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 November 19th Planning Commission Special Session was called to order by Chairman Paul Gargis at 6:00 pm.

2. ROLL CALL

Roll Call was taken by Interim City Administrator/Recorder 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: Interim City Administrator/Recorder Jamie Mills, Administrative Assistant Rapunzel Oberholtzer, LCOG planning staff 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 Special Session Meeting Minutes of October 29, 2015

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

6. ANNOUNCEMENTS /CORRESPONDENCE

Commissioner Allen clarified her response to a question from the October 29 public hearing, "Does any Commissioner wish to declare a conflict of interest, bias or ex-parte contact?" During that October 29 meeting she did not declare any conflict of interest, bias or ex-parte

contact and the reason that she did not was because she requested that the Woahink Lake Association remove her name from its email list until after the City has finished its work on the proposed septic maintenance ordinance issue. Mr. Darnielle explained that in this instance the Commission is considering a legislative issue, not a permit, and, therefore, the bias and ex-parte contact disclosures are not relevant—decision makers are expected to have opinions or bias on legislative matters.

7. PUBLIC HEARING

A. Ordinance No. 228 – Septic Maintenance

Prior to opening the public hearing, Chairman Gargis declared that the maximum time allowed for citizen comments during the hearing would be five minutes.

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

“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 6:10 pm and requested the Staff Report.

Mr. Darnielle described several documents that have been entered into the record with copies provided to each Commissioner including a letter to the Planning Commission from the Oregon Coast Alliance, and a memo from Marlene Grant, written comments on Staff's Findings of Fact provided by Susie Navetta. He pointed out that if there were any required notification errors, they could be remedied for the City Council and were not procedural errors that should concern the Commission. He also noted that one of Ms. Navetta's concerns about proposed Ordinance No. 228 was that the Ordinance did not state a start date for required inspections but that was an issue that the Planning Commission or the City Council could easily remedy. THE COMPLETE COPY OF THE ORCA LETTER AND MS. GRANT'S WRITTEN STATEMENT ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT A.

Mr. Darnielle explained the Commission's options with regard to the proposed ordinance which were to recommend denial of Ordinance No. 228, to recommend approval of the ordinance as it is written, or to recommend approval of the ordinance with modifications to the language. He went on to explain that when the City Council considers the proposed ordinance it will consider the Planning Commission's recommendation as well as all of the other testimony and material that have been submitted to the record. He suggested that Commissioners review Ms. Navetta's comments on the Findings of Fact.

Chairman Gargis asked Commissioners if they had questions for Staff.

Commissioner Allen asked Mr. Darnielle if Commissioners should take time during this meeting to review Ms. Navetta's comments. Mr. Darnielle explained that, unless Commissioners decide to extend the hearing, they should consider all of comments received before making a recommendation during this meeting. He pointed out that the City Council would also receive copies of the minutes from the last meeting and public hearing and the minutes from this meeting and public hearing as part of their documentation when they consider the Commission's recommendation on the proposed ordinance.

Chairman Gargis suggested that Commissioners take a few minutes to review Ms. Navetta's comments. Vice Chairman Henderson asked Ms. Navetta to clarify the contents of her document, which she did by explaining that she typed her comments on certain findings into the draft Findings and highlighted them, and also copied and pasted passages from the Comprehensive Plan into the draft Findings. Later in the discussion, she went on to clarify that she was opposed to Ordinance No. 228.

Commissioner Allen asked Ms. Navetta to explain her comments on page six of her document, "Ordinance 228 does not improve septic maintenance issues. It takes away periodic inspections and replaces them with voluntary education." Ms. Navetta noted that the City was taking away regular, scheduled inspections and replacing them with education, and went on to say that the City has been extremely lax in education and monitoring the septic inspections. Commissioner Allen pointed out that Ordinance No. 228 does not do away with inspections, it requires inspections at a frequency determined by inspectors.

There was some further discussion about septic education, during which Ms. Navetta argued that education was required by the LUBA remand of Ordinance No. 203 [sic]. Mr. Darnielle explained that the ordinance remanded by LUBA is not technically a legally binding document. The City would have to make the corrections recommended in the remand, notify all interested parties and have the changes reviewed and commented upon. In further discussion, it was clarified that it was Ordinance No. 211A remanded by LUBA and not in force, not Ordinance No. 203.

Commissioner Allen noted that it appeared that Ms. Navetta's objection of an educational requirement is that it is not addressed in Ordinance No. 228. Commissioner Allen also noted that Ordinance No. 228 does not eliminate a requirement for inspections. THE COMPLETE COPY OF MS. NAVETTA'S WRITTEN STATEMENTS ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT A.

Chairman Gargis announced that the Commissioners would take testimony from those opposed to Ordinance No. 228 and recognized Mr. John Stead who distributed copies of a letter he prepared and a table showing Secchi readings from 2006 to 2014.

Mr. Stead proceeded to read from his prepared statement;

"Good evening Planning Commission. I appreciate the opportunity to speak before you regarding the proposed Ordinance No. 228.

"My first concern is that the Notice of Public Hearing, mailed to residents on October 5, 2015 said, and I quote, 'The City of Dunes City has determined that adoption of this ordinance may...change the value of your property.' What this suggests to me, and many others, is that the City anticipates a drop in property values, the result of decreased water quality in Woahink Lake."

Commissioner Allen interrupted Mr. Stead to point out that the language he referenced is standard, pro forma language. Mr. Darnielle explained that the language is from the Oregon Revised Statutes (ORS) and is required for any land use change that may affect property. He went on to explain that notifications to property owners must include statutory language.

Mr. Stead continued to read from his prepared statement:

"You may recall studying Ordinance 203 in October of 2014. According to the minutes of October 9, the Planning Commission's work on Ordinance 203 should be completed by the end of the year.

"City Administrator/Recorder Hilden told the Commission, 'One of the biggest concerns is cost to residents. One of the biggest flaws with Ordinance No. 203...is that it requires inspections on a fixed interval for everybody, no matter how big a tank the residence has or the number of people living in the residence.'"

Referring to Statewide Planning Goals 2, 5 and 6 described in his letter to the Commission, Mr. Stead remarked that Ordinance 228 alleges there are no exceptions to the Goals. He asked the Commissioners to review them in detail. Mr. Stead reminded Commissioners that Goal 2 requires land use decisions to be made in accordance with the City's Comprehensive Plan and factual information, and he urged them to review the proposed ordinance to make sure that these two requirements are included.

Mr. Stead went on to comment that the fact that the Staff Report is labeled as a draft leads him to surmise that it is not a complete document ready to be adopted. Mr. Darnielle explained that although the "draft" reference was not removed from the document before it was made public, the fact is that these hearings and the testimony will help Commissioners determine the final content of the Staff Report. He went on to explain that the Findings represented a starting point for Commissioners to consider and were based on certain instructions about the kind of ordinance the City Council wanted to see. Further, he added, if the Commissioners hear testimony and/or evidence that they believe should be included in the Staff Report, they should direct Staff to make changes. Mr. Darnielle also noted that the evidence may help Commissioners determine whether or not they support Ordinance No. 228 the way it is currently written.

Mr. Stead asked why Ordinance No. 228 itself was not labeled as a draft. Mr. Darnielle replied that it could have been but since the Planning Commission doesn't have the authority to adopt the final ordinance, it is understood that the document is a draft.

Referring again to his prepared letter, Mr. Stead described Goal 5 and Goal 6 in addition to explaining that the chart illustrating Secchi readings shows that water quality has improved over the years. He ended his remarks by urging the Commissioners to adopt a recommendation to deny the proposed ordinance. THE COMPLETE COPY OF MR. STEAD'S WRITTEN STATEMENTS ARE ON FILE AT CITY HALL, AND ATTACHED TO THESE MINUTES IN EXHIBIT A.

Chairman Gargis recognized Mary Jo Leach. Ms. Leach opened her remarks by stating that she sent electronic files to City Hall requesting that they be entered into the record. Both files are historical water testing results. THE COMPLETE COPY OF MS. LEACH'S TWO ELECTRONIC FILES ARE ON FILE AT CITY HALL. WOA HINK TOTAL PHOSPHORUS 2004 -2014 TABLE AND HER WRITTEN REQUEST FOR INCLUSION IN THE RECORD ARE ALSO ON FILE AT CITY HALL AND ATTACHED TO THESE MINUTES IN EXHIBIT A.

City Staff distributed copies of Ms. Leach's additional four documents to the Commissioners. Ms. Leach opened her remarks by saying that the proposed ordinance does not pertain to land use. She proceed to read from her first handout, from Wikipedia, a definition for land use, "*Land use involves the management and modification of natural environment or wilderness into built environment such as settlements and semi-natural habitats such as arable fields, pastures, and managed woods. It also has been defined as 'the arrangements, activities and inputs people undertake in a certain land cover type to produce, change or maintain it...'*"

Ms. Leach remarked that septic is a land use. She went on to note that as far as Ordinance No. 228's enforcement provision (§142.100) is concerned, the City Official must immediately notify DEQ of any failed septic system, according to the DEQ website. DEQ does all enforcement, not the City, and City Officials are not qualified to do so or authorized to offer extensions of time to repair a failed system.

Ms. Leach went on to read from her second handout, a printout from <http://www.deq.state.or.us/wq/onsite>, "*Over 30 percent of Oregonians rely on septic systems to treat wastewater from their homes and businesses. DEQ regulates the siting, design, installation and ongoing operation and maintenance of septic systems.*" Ms. Leach noted that Dunes City's Comprehensive Plan expressly charges the City with oversight of water quality and then read, "*Without this oversight, septic systems can fail or malfunction, pollute Oregon's land and waterways with raw sewage and create public health hazards.*" Ms. Leach remarked that after reading this and other information about septic systems it seems bizarre that the City would take the position that sewage does not impact water quality. Chairman Gargis and Commissioner Allen questioned Ms. Leach's opinion, which she clarified by saying that the Findings state that water samples taken from Siltcoos and Woahink have demonstrated no clear correlation between water quality and erosion and septic system effluent. She went on to comment that the LUBA remand also rejected that opinion.

Mr. Darnielle pointed out that that particular Finding was one made by the City Council during earlier work on septic ordinances and the Commission may decide not to agree with that opinion and recommend revising the statement. Commissioner Allen disagreed with Ms. Leach's opinion that the proposed ordinance did not support water quality.

Ms. Leach went on to comment that the most effective part of Ordinance No. 203 was the requirement for an initial inspection and that requirement is not in Ordinance No. 228. Ms. Leach also noted that Ordinance No. 228 refers to "experts" but does not define what an expert is and that Dunes City has a small pool of not very highly skilled professionals to deal with septic systems.

Ms. Leach proceeded to read from her third handout, a printout from <http://www.de.state.or.us/wq/onsite/aboutseptic.htm>. She pointed out that the information from DEQ definitively states when a septic tank should be pumped after its initial pumping and inspection as required under Ordinance No. 203. "*When the solids accumulation is greater than 40 percent, have your septic tank pumped by a DEQ-licensed pumper... You can avoid costly repairs by having your septic tank inspected on a regular basis...for solids accumulation.*" Chairman Gargis pointed out that Ms. Leach had exceeded her five minute time allotment. Ms. Navetta yielded her five minutes to Ms. Leach.

Referring to a copy of a Dunes City Septic System Maintenance Record and Evaluation Report dated March 10, 2011, Ms. Leach pointed out that the form was false, forged and filled with errors, most notably that there was no inspection at all performed on the date stated on the report. Ms. Leach explained that she was concerned about this report be-

cause she was home on the day of the reported inspection and saw no inspection or pumping take place. In addition, she noted, the City's database record for this particular property shows that the inspection was done, which means that the database is wrong and cannot be relied upon to determine accurately how many properties are in compliance with the City's septic maintenance regulations. THE COMPLETE COPIES OF MS. LEACH'S FOUR HANDOUTS ARE ON FILE AT CITY HALL. AND ATTACHED TO THESE MINUTES IN EXHIBIT A.

There was some discussion about the validity of the form submitted by Ms. Leach.

Chairman Gargis asked if Commissioners had any additional questions for those who had testified. None did.

Chairman Gargis asked if anyone had signed in to give testimony in favor of Ordinance No. 228. No one had. Chairman Gargis closed the public hearing at 6:55 pm.

8. NEW BUSINESS

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

Chairman Gargis reconvened the Special Session and asked Vice Chairman Henderson for comments. Vice Chairman Henderson had none.

Chairman Gargis asked Commissioner Martin if he had comments. Commissioner Martin remarked that there was nothing on record about abandoning the Ordinances, and he was against both of them, Ordinance No. 203 and Ordinance No. 228.

Chairman Gargis asked Commissioner Allen if she had comments. Commissioner Allen remarked that based on her experience as a lake resident and a water tester as well as the comments she heard during the public hearings, she has heard a lot of comments both pro and con on Ordinance No. 203. She went on to say that Ordinance No. 228 was developed with broad participation and review sufficient to hear various viewpoints and comply with state requirements. In her opinion, Ordinance No. 228 is consistent with state regulations, statutes, plans, rules, and goals. Under Ordinance No. 203, she added, the City has made significant progress in improving water quality. She went on to remark that she has heard citizens complain about the pumping frequency mandated by Ordinance No. 203, regardless of how many people reside in a home or how often the home is occupied. She said that she believes inspections and pumping are both needed and Ordinance No. 228 continues to require them in addition to requiring the City Administrator to report on septic compliance to the City Council twice yearly. She ended her remarks by saying that Ordinance No. 228 does a good job of balancing the needs of the community with concerns for water quality and that she fully supports the passage of Ordinance No. 228.

Chairman Gargis made a motion for the Planning Commission to recommend that the City Council take no action on Ordinance No. 228 and leave Ordinance No. 203 in place as it is.

Chairman Gargis explained his motion by noting that the Comprehensive Plan may be a little lofty for a City because the City has no way to force a resident to have a septic inspection done and the local inspectors are not there to inspect, they're there to pump. He went to say that the City can not force compliance with its ordinances on residents, when a system fails the City reports the failure to the County which then takes action. He added that he is in favoring of dropping the issue, getting guidance from the Council about what it expects and finding out what the City can reasonably do and enforce. He ended his remarks by noting that City should not spend any more time working on an ordinance it can not enforce.

Commissioner Martin seconded the motion.

During discussion of the motion, Vice Chairman Henderson remarked that the Commission put forth a considerable amount of time and effort on Ordinance No. 228. In his case, he went on, he had an inspection performed recently in compliance with Ordinance No. 203 and the inspector recommended a next pumping interval that was inconsistent with the recommendation in the OSU pumping frequency guidelines for the tank size and number of residents that he has. Unless that issue is resolved, he said, he could not support Ordinance No. 228. He went on to note that relying on a pumping vendor to determine the pumping frequency is not the answer.

There was some discussion about whether or not an inspection could be done without pumping a tank. Vice Chairman Henderson suggested that City Council should be made aware that although Ordinance No. 228 is a well thought out document it is still flawed in the pumping and inspection requirements—especially the fact that the pumping frequency is determined by a vendor who makes a living pumping septic tanks.

Following further discussion about various septic systems, maintenance requirements, inspection/pumping frequencies, Vice Chairman Henderson asked for clarification of the motion on the floor, whether the recommendation is to take no action on Ordinance No. 228 or to reject it. Chairman Gargis agreed to recommend rejection of the Ordinance. Administrative Assistant Rapunzel read aloud the amended motion:

Motion for the Planning Commission to recommend that the City Council reject Ordinance No. 228 and leave Ordinance No. 203 in place as it is.

Chairman Gargis requested for a roll call vote on the motion.

The motion passed with two votes in favor (Vice Chairman Henderson and Commissioner Martin) and one opposed (Commissioner Allen).

There was some general discussion about the various requirements in Ordinance No. 203 and in Ordinance No. 228.

9. 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 7:25 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 28th DAY OF JANUARY 2016.

[Signed copy available at City Hall]

Paul Gargis, Chairman

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, Interim City Administrator/Recorder