



**CITY COUNCIL SPECIAL SESSION MINUTES ~ APPROVED
JUNE 19, 2012 AT 5:30 PM**

City Hall ~ 82877 Spruce St., Westlake, OR

These proceedings of the Dunes City Council were recorded on tape and are on file at Dunes City Hall. Upon approval by the City Council, these minutes will be available online at www.DunesCity.com

1. CALL TO ORDER

Mayor Rebecca Ruede called the meeting of the Dunes City Council Special Session to order at 5:30 pm.

2. ROLL CALL

Roll Call was taken by City Recorder Fred Hilden.

Present: Mayor Rebecca Ruede, Council President Jamie Mills, Councilor Duke Wells, Councilor Richard Koehler, Councilor Dick Anderson and Councilor Ed Scarberry.

Absent and Excused: Councilor Troy Sathe.

Also Present: City Recorder Fred Hilden, Amy Bartlett (Siuslaw News) & Bob Sneddon (KCST).

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Scarberry made a motion to approve the Agenda. Councilor Wells seconded the motion. The motion passed by unanimous vote.

5. EXECUTIVE SESSION

A. Held pursuant to ORS 192.660(2)(h), consultation with legal counsel.

Mayor Ruede recessed the Dunes City Council meeting to go into Executive Session at 5:33 pm.

Mayor Ruede opened the Executive Session at 5:35 pm and closed the Executive Session at 6:30 pm.

Mayor Ruede reconvened the Special Session of the Dunes City Council at 6:32 pm.

6. CITIZEN INPUT – NONE

7. UNFINISHED / OLD BUSINESS

A. LUBA Remand: Ordinance No. 211A (Septic)

Mayor Ruede stated that they have had discussions with the City Attorney, Lauren Sommers, on the phone and that now is the time to discuss this matter and make a decision.

City Recorder Fred Hilden added to be careful not to disclose anything that was discussed with the City Attorney because at that point it throws all of the Executive Session stuff out the window.

Council President Mills stated that she thinks we should get together and take Mr. Malone up on his offer to hear what they have to say.

Councilor Wells stated that he has no problem meeting with the folks from ORCA in a regular Council meeting. He stated he does not want to meet with them in a special session or work session and he wants it to be televised in a regular meeting. Mayor Ruede stated that is a great idea, that way the citizens can hear what they have to say and they can hear our response and what we have to say. She added that way everyone will be informed.

Councilor Anderson stated that if we consider meeting with them, we should make it a very tightly run meeting.

Councilor Wells stated that he requests ORCA to bring this mysterious evidence and all of the stuff to back up their opinion. He added that all that he has read through all of this, is their opinion. He added that it states in their own letters that there is no evidence and there has been no evidence on how effective 203 has been; not a bit through the whole time we have sat here and listened to citizen input. We asked where the evidence on this is and it has been their own opinion. He invites ORCA here to a regular meeting to present some facts to us, something we can put our teeth into because all he has seen from ORCA is opinions and he would like to see something more than that.

Councilor Scarberry stated that he agrees with most of what Councilor Wells said. He also added that he listens anytime to a citizen of Dunes City but he has a real problem with outside groups, going to bat, so to speak, or stirring the pot, and he thinks there is an ulterior motive there. When we have a Woahink Lake Association, they are residents of the City and he does not have a problem with that, but he does not know if the rest of the Council has been on ORCA's website. It makes him real nervous having outside groups coming in trying to promote something that goes against the wishes he thinks of the majority of Dunes City. He has no problem inviting them to a meeting that he thinks like Councilor Wells said, tightly controlled and not a cheerleading session for them or giving in to their political aspect of things because we have a definite ruling here. Whether we agree with it or not and from here, we need to go and decide what we are going to do of the options that we have at our disposal. Mayor Ruede stated that we have had some communications from ORCA and it

sounds to her, as her personal opinion, that every communication that they have had with us has had a threatening undertone to it. It is something that she will not allow in the City Council meeting as she will not allow them to come and threaten us. So, they can certainly state their opinion but when it comes to making threats, that is not right.

Councilor Scarberry stated his take on the letter, and he has read it several times, is that negotiate means that you will end up doing it our way. He added that is what he gets from that, so he is happy to come for another meeting to listen to them if they want to present something in open session but he is not going to be threatened. He likes the idea of us Council referring this to the ballot and thinks one way or another then we will have a definitive answer, maybe several of us or all. He thinks the majority of the people that live out here want the government off their back and don't want to be told how to run their lives. It's basically the ordinance that we tried to overturn. It was intrusive and was a problem for some people with money aspect, not everyone that lives on the lake can afford things like that. We have a pretty diverse community out here; so his preference would be for us to have a properly written and put to the ballot measure for November.

Councilor Anderson stated that he is still a little concerned because some have complied and some have not and there isn't a level of playing field. He added it would be wonderful if everyone could start from scratch and then go from there, but now some have paid this year, some paid three years ago and yet they have to come in and do it again. It just somehow isn't fair to everybody.

Councilor Wells stated that he talked today with a resident who has just had that issue that had already paid and is still against it and wants it still to go to the ballot measure. He added now that we are in open session he will say because of the time restraints that we have with November coming up he is going to be active in it. He knows the folks that would rather see it come from Council; a ballot measure. If it does not come from Council there will be one on there, we will do everything that we have to get something on the ballot for November.

Council President Mills asked if we could take a minute and ask City Recorder Fred Hilden to go get Chapter 34 because it will address how the Council goes about doing it. Mayor Ruede stated that in her opinion, if we do nothing, then there is possible jeopardy that we would have. For example, we've learned there is possibly a citizen initiative that has not been perfected and at this point, even if it were perfected, they could withdraw it at the last minute and we wouldn't have an opportunity to do one. She thinks that if we really want to know what the desires of the citizenry are, then we should consider this.

Council President Mills stated that the other thing is that 203 is in effect and we are already past the deadline. We voted the other day to give them (those not in compliance) 8 months until March of 2013. Come March of 2013, if we haven't done anything by then, we are going to have to come up with something to pay for those people to abate. It is going to be really, really expensive and while she is all for clean water, she is not sure if people do not do it, how are we going to afford to force them to do it. She just doesn't know how we are going to do that and was hopeful that they would do it out of the goodness of their heart. A lot of people did but maybe not all of them can afford it too or they are afraid. They are afraid to

have it inspected because they are afraid they are going to find out it is not working and then they have to replace the whole thing. That really gets expensive, especially if you are on one of these little RV lots around here, they do not have room to put in a cheap septic system so they have to do the expensive ones.

Councilor Scarberry stated getting back to the referendum, he thinks that we need to show leadership. We did that by being proactive and creating a new policy with an educational program; we just didn't it in the right order, but for us to just hope that someone out there is going to get the ballot on there for voting, is irresponsible. He thinks that we need to show leadership and do it and say ok folks here it is, yes or no. Make it as plain and simple to read as possible. Councilor Wells added he agrees.

Councilor Koehler stated that he thinks it is a good idea to consider your allegiance to the health and welfare of the people of Dunes City and maybe supporting an ordinance that would eliminate protections and enable the health and welfare of the citizens of Dunes City to go downhill. He said maybe it would be advantageous to your group, but he has a hard time thinking that... Mayor Ruede interrupted Councilor Koehler and stated to him, please do not refer to us as a group because... Councilor Kohler interrupted Mayor Ruede and stated he is sorry; he should have said the Council. He went on to say that, the septic cost there is a way of difference between the septic maintenance cost and the cost that will be incurred on the citizens after sources if it is necessary. So you are either preventative or you are not; so the simple way of looking at this is you have two ways of going, you do a preventive measure, you institute a plan that works, so that everyone is involved with the septic cost or you put in a sewer system and enable a tax base to take place. He said that there is 30% more people or 30% of the listing of residents that have to take place or take part of this septic maintenance until March, it seems like a simple plan. We can do that or we can fight the issue that brought the 15th Century and a lot of the disease that created the 15th Century. Big cities have tax bases they take care of their water by money, they take care of their sewerage by money, by taxes. People in Dunes City have to deal with it by cooperation, so if people aren't cooperating then the inevitability is a septic system or a water system or something similar to Lane County, which brings up another point. What are we doing as a City? If not to ensure the health and welfare and some future concept of where we are going as a City, so there is three things folding into this whole conversation he was hoping to bring up and that is, what are our duties? Is it to prevent the government, that is us, from doing its job or is it for enabling a strict pattern of mindset that came in, to continue. It is up to you, he is a proponent for prevention, he is a proponent for the health and welfare of the citizens of Dunes City, and he is a proponent for doing anything he can to ensure people cooperate in time. He is an opponent to divisiveness.

Councilor Scarberry stated that he does not want to be disrespectful, but he doesn't want any member of this Council to worry about his health and welfare, that is his job.

Mayor Ruede stated that we have whatever percentage of those person's that have not complied with 203 and since that is still in effect it's paramount that they be in compliance, as soon as possible and they have a deadline before them. She said perhaps we could go to the Oregon Coast Alliance and ask if they would give a grant for those person's that haven't

complied so they could all become in compliance. She said they seem to be well funded; maybe that is something they would willingly offer to the City, with the intentions of being cooperative and well-meaning for the citizens of Dunes City. Maybe, we should consider asking them for money to help those persons becoming compliant with their ordinance; it would be interesting. Perhaps we will ask them when they come.

Council President Mills stated that she would like to hear from City Recorder Fred Hilden what he found out from what he has been reading. City Recorder Fred Hilden stated that Council President Mills was asking about the timing of Chapter 34 on elections or the portion on elections that deals with that, basically states that a referral by Council, the time limits for that are that the Council may refer a measure only at the session at which it enacts the measure. He went on to read from Chapter 34, "The Council may refer a measure only at the session at which it enacts the measure," in other words if the Council were to enact a ballot measure at the July Council meeting, that would be the meeting at which you would have to also refer the measure to the elections officer. Short of that it looks like pretty much standard timing, it is very... frankly it is very tight in terms of timing to get this done and processed because it is 5 days. He stated that his only concern is how to get the ballot measure properly written, prepared, legal review and all that stuff done prior to the meeting, at which it would be looked at. He stated that he believes the filing deadline for the State is August 28th. He knows that is what it is for candidates, but he is not sure that is what it is for initiative and referendums, it might be earlier. Council President Mills stated that it is on the calendar they sent to all of us. Councilor Wells stated that from hearing what City Recorder Fred Hilden just said, he thinks that maybe we could take a week or so and proactively get out and talk to as many Dunes City residents as each of us can, whether at the grocery store or wherever we may run into somebody. He said then come back and have another Special Session. He thinks that this is that big and important that it calls for their attention and make a decision on this, where we want to go with it and either leave it alone and let the citizens do it or be as Councilor Scarberry said that is be responsible and do what we were voted in to do, make a decision.

Mayor Ruede asked City Recorder Fred Hilden if there is any reason why we couldn't make a decision tonight? City Recorder Fred Hilden stated that there is no reason you can't make a decision tonight, the question is what would you make a decision on, there is nothing really prepared to make a decision on. He said he got some direction from last week City Council meeting to move ahead with letters to the people who have not complied with Ordinance 203 and the one thing that he thinks is important is that we make sure that were...this is a very emotional issue for everybody and obviously that includes me. He thinks it is important that the City Council be consistent in its decisions; it would be unfortunate to run off and help the remaining people that have not complied to get in non-compliance and then turn around - there is a piece of him that says it's inconsistent to turn around and support a ballot measure that repeals Ordinance 203. At the same time, that is only his opinion and he is not trying to influence the Council.

Councilor Koehler stated that he would like to move that we invite the people that brought this objection to our decision to the meeting either before, in fact he would consider it best before the July meeting. Mayor Ruede stated that there is a motion to invite all

the people (petitioners) to meet with us before the next Council meeting. She called for a second on the motion. **The motion died for lack of a second.** Council Koehler asked if he could continue and stated that it is important to realize that there may be major problems financially, if we don't start clearing up the past and he would hate for the City to lose any more money.

Councilor Wells stated to the Mayor that one thing that has been stated to him by the folks that he has talked to are not one bit concerned about the money issue. They want what they want. He added that we are doing the work of the citizens and they understand how the process works. They understand that we didn't bring this deal upon them - people aren't stupid out there. They know what's going on; they know where the issues are being jelled up and not one person has said to him, god I wish we hadn't have spent that money on protecting our rights. Not one.

Mayor Ruede told Councilor Koehler perhaps if you made your motion to invite these folks to a Council meeting at a particular Dunes City Council meeting maybe in July or August you might get a second. Councilor Koehler stated that he thinks that is a matter of the Mayor and the Council or the person that makes up the agenda. What he wouldn't mind questioning is the last statement made by Councilor Wells about the money they put up, "what money was that?" Councilor Wells responded, "Excuse me?" Councilor Koehler continued inquiring of Councilor Wells that he mentioned something about money that was put up in the last statement, in fact that could be played back if you want. Councilor Wells stated that they are not concerned, it is not an issue to them, the money that we would be paying our attorneys with to defend 211A. Council Koehler stated that he thinks that is not the way he phrased it but that's... Councilor Wells interrupted Koehler and said I'm not the smartest guy in the world and you know what that is the best that I can do for you.

Councilor Scarberry stated that referring to what City Recorder Fred Hilden said he understands what he is saying, when we have a directive from LUBA but he doesn't think that should preclude us from still doing something. If the City needs to get the letters out, get the letters out. That should not just paralyze us and stop us from doing what we may need to do. Mayor Ruede stated that she sees what he means and what Fred means, but here we are we have been remanded this back to us. So, we are now under 203 and 203 says that everyone needs to comply and we have extended the deadline, so we have to uphold what our laws are so when asking citizens to comply with that.

City Recorder Fred Hilden stated that he would like to thank Councilor Scarberry for making that statement because that is essentially what he was trying to get out and couldn't. He said the fact that LUBA has remanded this and the City Council has acknowledged the LUBA remand by directing staff to try to get the rest of the people that have not complied with 203 into compliance should not, in any way, in his opinion influence the Council from taking action, that they believe is what's right for Dunes City. Council Koehler stated that in the motion that was made during Council last Thursday, could you review and I will review in the tape as well whether or not we repealed 211A. He said he remembers that we instituted 203 back because of LUBA and does not remember that we repealed 211A. City Recorder Fred Hilden stated that there was no motion or action to repeal 211A. He added he is not sure, but

can ask the City Attorney. He does not think it is required because LUBA remanded 211A which, basically, overturned the City Council's decision to enact 211A. He believes LUBA repealed it for us. Councilor Koehler stated that it is just a point of law. City Recorder Fred Hilden stated he will find out and it is a good point.

Council President Mills asked City Recorder Fred Hilden that the way he read that, they refer a measure at a session that enacts a session. She asked does that mean with what Councilor Koehler just brought up, that if we reconsider 211A, for purposes of repeal or reenactment, is that what we have to do in order to do the remand at the same meeting. City Recorder Fred Hilden stated he doesn't believe so. What he believes it is saying is that if you choose to come up with a referendum petition that that petition needs to be referred at the same meeting at which it enacts the measure. He said you are going to be enacting a ballot measure and you are going to need to refer it to the ballot at the same meeting. Councilor Scarberry asked what action do we need to take tonight to get this process moving. City Recorder Fred Hilden stated that it is a Council decision to decide which direction they want to go.

Mayor Ruede stated that she would think they would want some kind of motion to....

Council President Mills made a motion to direct staff to prepare a ballot measure for consideration at our next regularly scheduled meeting - a ballot measure to adopt 211A and an educational program. She moved to direct staff to draft a ballot measure that inquires of the citizenry as to their desires regarding a mandatory septic maintenance program as opposed to an educational program or in addition to an educational program. Councilor Wells added voluntary inspection, pumping along with an educational program.

Councilor Wells stated that is what is lacking in this whole brief here, they kept going voluntary education, it is a voluntary inspection and pumping and an educational program. He said that it is voluntary owners' responsibility or however, you want to put it, inspection and pumping with an education program, which we already have in place. Mayor Ruede asked Council President Mills if she would restate her motion.

Council President Mills made a motion to instruct staff to prepare a ballot measure for consideration by the City Council at the next regular session that inquires of the voters if they would prefer a mandatory septic maintenance program or a voluntary septic maintenance program. Councilor Wells seconded the motion.

Mayor Ruede called for discussion. Councilor Wells stated that he thinks it is important that we reference to 203 because that is what people know it as, so he would like the number of it that is there, do they want 203 or whatever number we come up with.

Councilor Koehler stated that he thinks we hit the hornet's nest. He said that we are trying not to runaway, but put more clothes on. He said his opinion is that we are going down a road where a lot of people are going to be employed that cost us money. Rather than deal with what was in the attorney's request, not necessary a threat, but a request, to converse with them. We're going down the - we're going to knock you off the pass route. And that

will probably instigate a lot more anger and the anger usually comes out in the form of increased cost. He thinks that one of the things that could take place was a conversation that seemingly does not ever want to take place. He would recommend that, that take place before any other rushed motion take place.

Mayor Ruede asked the Council if they want to invite them to come to their next City Council meeting. Council President Mills informed Mayor Ruede that there is still a motion on the floor.

Council Scarberry stated that it seems like over the years when you read ballot measures, if you just make it as clear as possible and just a choice, either a yes or no. He said he is afraid that if you put 203 or 211A or whatever you put in there, you are going to confuse people. It should be, "Shall the City (and then have your ballot language) and it is either a yes or no," plain and simple, so people know what they are voting for. Mayor Ruede stated, "Shall the City create a mandatory septic maintenance program, yes or no." She said it could be really that simple.

Councilor Wells stated that he thinks we have a mandatory (ordinance) on the books now. He said he thinks it needs to go, "Shall the City create a voluntary inspection, pumping, with an education program attached, that 211A is, you don't have to say all of that but don't mention the mandatory stuff." We have the mandatory stuff right now the City has that. Council President Mills stated that not everybody knows that. Councilor Scarberry stated that we tried to create the voluntary one. Councilor Wells stated that it got repealed and now it is time for the citizens to make the decision and he believes in this.

Councilor Anderson asked if there was a rush to do this by next meeting in order to get on the ballot, is this the idea. City Recorder Fred Hilden stated that it needs to get done fairly quickly because of the election deadlines. Mayor Ruede stated that perhaps we could invite our friends to the next meeting and then have a special session to discuss the wording of this referendum ballot measure because she does not know if it would be a good idea to have all of that discussion at the same meeting.

Council President Mills stated that the motion is to direct staff to draft the language and she thinks they could take the comments and draft the language if the motion passes. Mayor Ruede calls for any further discussion on the motion. Councilor Wells stated we need to keep it simple and to the point.

City Recorder Fred Hilden re-read the motion Council President Mills made, a motion to instruct staff to prepare a ballot measure to enact a septic educational program with voluntary inspection and pumping and it was seconded by Councilor Wells. He stated that the one thing that is of utmost importance with the ballot measure is that it is very clear. He believes that what Councilor Wells said is correct; that we already have 203 in place and basically the ballot measure should be structured in such a matter that it is clear that if adopted this ballot measure would be replacing that with a new educational program and voluntary inspection and pumping. Council President Mills called for the question. **The motion passed by 4 ayes and 1 nay (Councilor Koehler).**

Council President Mills made a motion to invite the petitioners, ORCA, Susie Navetta, and Woahink Lake Association, to our next regular session meeting to discuss... – to our next regular meeting. Mayor Ruede asked for a second to the motion. **Councilor Koehler stated he would second that with a hope that he could abridge the original motion to include a longer time limit than normal.** He went on to state that whenever someone speaks there is a limit so those limits should be liberal. Mayor Ruede stated that what they will do is ask them to give a presentation and a presentation will just have a 15-minute time limit, whatever is appropriate for a presentation, we will ask them what they would like to have. She stated that if you ask for two hours, she would not allow it. City Recorder Fred Hilden asked if the motion had been seconded. Mayor Ruede stated that Councilor Koehler seconded the motion and asked him if that was correct. Councilor Koehler stated that he seconded with the hope that there would be some qualification on time, so that everyone would have a chance to discuss as well as hear the presentation. Mayor Ruede thanked Councilor Koehler and stated that the motion on the floor is to invite the petitioners with special considerations for timing. Councilor Koehler stated that he thinks Council President Mills would amend her motion. **Council President Mills withdrew her motion and set forth a new motion to invite the petitioners to our next meeting and set aside 30 minutes (subject to discussion) for an open discussion instead of a presentation.** Mayor Ruede stated that it would be a conversation back and forth for an hour; conversation. Councilor Anderson stated that he envisions the possibility of packing the house and getting really emotional about this because it has happened before and the group will get together and pack the house and they'll be less than respectful as in the past. City Recorder Fred Hilden stated that his interpretation of the motion is to have the exchange between Council and the petitioners. He said he does not think it should preclude a separate time period for the normal 20 minutes of citizen input, that is divided up by three minutes apiece by the number of people that want to make input is. He thinks that we would have the petitioners come before the Council with Cameron Lafollette representing ORCA and whoever they want have represent Woahink Lake Association and Susie Navetta come up before the presenters table and just have an open exchange with the Council. He thinks that we could construct the agenda in such a manner that we could allow the time that is needed for that and he would still encourage us to do the reports because we failed on reports this month. **Council President Mills amended her motion to be for not more than one hour. Councilor Koehler seconded the motion.** Mayor Ruede asked if there is any further discussion. Councilor Scarberry stated that he is not sure why we are doing this because we got the letter and we have had the other letters in the past. He said he does not see what is going to come out of this other than what Councilor Anderson says, it is going to get emotional, people are going to get mad, and he would not mind a presentation if they want to do some kind of presentation. He said you get into the give and take; you will be wearing your gavel out because it is that emotional for the other side. He thinks that we have done what we have done. We have the LUBA appeal handed back to us. He does not see the reason for the give and take - presentation if there are new facts, sure. Councilor Wells stated that he would go along with a presentation format.

Council President Mills called for the question. Mayor Ruede stated that's not what this motion is about and asked if there was any further discussion. Mayor Ruede then called for the question. **The motion failed by 1 aye and 4 nays (Councilor Wells, Mills, Anderson and Scarberry).**

Councilor Koehler asked about the 14 day limit in the letter and when they (petitioners) would start litigation on us. City Recorder Fred Hilden stated that the letter really did not imply that they were going to litigate, the letter just says please get back to us within the next 14 days and the letter was dated June 13th, so we have until the 27th. Councilor Koehler stated that, so after the 27th there could be problems. Mayor Ruede stated she didn't agree with that.

Mayor Ruede made a motion that we invite the petitioners to our next City Council meeting and direct staff to have a conversation or email or somehow communicate this to their attorney with a time limit of 30 minutes. Mayor Ruede asked for a second. **Council President Mills seconded the motion.** Mayor Ruede asked if there was any discussion. **The motion passed by 3 ayes and 2 nays (Councilor Wells and Councilor Koehler).**

City Recorder Fred Hilden stated that he would invite the petitioners to the next City Council meeting to make a presentation not to exceed 30 minutes. Councilor Wells asked if it would be within our rights if we have a copy of their presentation, so we can review it before the meeting or would that not be possible. City Recorder Fred Hilden stated that he could ask for it. Councilor Wells stated that is good enough.

8. NEW BUSINESS – NONE

9. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA – NONE

10. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA

There being no further business to come before the City Council, Councilor Anderson made a motion to adjourn the meeting. Councilor Scarberry seconded the motion. The motion passed by unanimous vote.

Mayor Ruede adjourned the meeting of the Dunes City Council at 7:20 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 9th DAY OF AUGUST 2012.

[Signed copy available at City Hall]

Rebecca Ruede, Mayor

ATTEST:

[Signed copy available at City Hall]

Fred Hilden, City Recorder