



**CITY COUNCIL MEETING MINUTES ~ APPROVED
NOVEMBER 14, 2013 AT 7:00 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 to order at 7:01 pm.

2. ROLL CALL

Roll Call was taken by City Administrator Fred Hilden.

Present: Mayor Rebecca Ruede, Councilor Maurice Sanders, Councilor Dick Anderson, Councilor Duke Wells, and Councilor Ed Scarberry.

Absent and Excused: Council President Jamie Mills.

Also Present: City Recorder Fred Hilden, Administrative Assistant Renee Green, Road Secretary Laurale Lorentzen, Planning Commission Chairman George Burke, City Planner Jacob Callister and several citizens.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Sanders made a motion to approve the Agenda. Councilor Anderson seconded the motion. The motion passed by unanimous vote.

5. CONSENT AGENDA

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

6. ANNOUNCEMENTS / CORRESPONDENCE

- A. All Dunes City residents are invited to a Mayor's Holiday Potluck on Friday, December 20th at 5:30 pm at Dunes City Hall. Bring a dish and come join us for the fun!
- B. Volunteers are needed to fill four Budget Committee openings, two Parks & Recreation Commission openings, three Water Quality Committee openings and one Water Tester for Siltcoos Lake.
- C. Dunes City Artist of the Month is Dunes City resident & artist Kenny Henson.

- D. November birthday wishes to Council President Jamie Mills on the 23rd and Councilor Maurice Sanders on the 25th.

With regard to Ordinance 223, City Administrator Hilden announced that the changes to the City's Citizen Involvement Provisions of our Comprehensive Plan are now in effect. He stated that on Tuesday, November 12, 2013, the Oregon's 8-member Citizen Involvement Advisory Committee (CIAC), met and unanimously voted in favor of the City's recommendation that the Planning Commission become the CCI for Dunes City. Administrator Hilden stated that this is a huge milestone for the City and he further noted that this does not mean that the Planning Commission becomes the CCI as Dunes City has traditionally known it, but that the citizens will still weigh in on land use matters via Ad Hoc Citizen Advisory Committees (CACs). Administrator Hilden thanked everyone involved in this arduous endeavor and went on to explain that Ordinance No. 223 was adopted on October 10, 2013, all notices were sent to the people that testified, the appeal period passed on November 7, 2013, no LUBA appeal was filed, and Ordinance No. 223 went into effect on November 10, 2013. Mayor Ruede also commended everyone involved in this milestone venture for Dunes City.

7. CITIZEN INPUT (NONE)

8. PUBLIC HEARING

- A. Conditional Use Permit Application – Richard Stronegger, parking structure in the riparian and shoreland overlay zones at 82868 Lake Blvd (Map/Tax Lot 19-12-34-21-05200)

Mayor Ruede announced that this evening a public hearing for this subject will be recorded and held in accordance with the land use procedures required by the City and the State of Oregon as a Type III Quasi-Judicial Procedure. She also stated that staff will identify the applicable substantive criteria which has been listed in the staff report and that these are the criteria the City Council must use in making its decision. All testimony and evidence must be directed toward this criteria which 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 based on that issue. She also stated that any party interested in a land use matter may challenge the qualifications of any Councilor to participate in such a hearing and decision. Such challenge must state facts relied upon by the party relating to a Councilor's bias, prejudgment, conflict of interest, or other facts from which the party has concluded that the Councilor will not make a decision in an impartial manner. Such challenges shall be made prior to the commencement of the public hearing. The Chairperson shall give the challenged member an opportunity to respond. A motion to accept or deny the challenge will be accepted and voted. Such challenges shall be incorporated into the record of the hearing.

Mayor Ruede questioned if any Councilor wished to declare a conflict of interest, bias or ex-parte contact. Chairman Sanders questioned if his prior appearance to this site when dealing with another issue would declare a conflict of interest to the Council. Councilor Sanders disclosed that being at that location had not biased him in any way in regards to

this hearing. Mayor Ruede asked if any member of the public wished to challenge a Councilor's impartiality. There were no challenges from the public.

Mayor Ruede opened the Public Hearing for this Conditional Use Permit at 7:14 pm. and introduced Dunes City's City Planner, Jacob Callister. Mr. Callister began his discussion by noting that an Application for a Conditional Use Permit by Richard Stronegger for an RV parking pad and covering at the property address mentioned above and that the existing unpermitted structure was the purpose of the hearing tonight. Mr. Callister proceeded to explain to Council, the Planning Commission's findings and their evaluation of the criteria.

Mr. Callister read, discussed, and referred to the Dunes City City Council Item Summary Memo and explained that the two key decision criteria provisions that contain a certain element of subjectivity to the Dunes City Code in this matter is the water related uses and the variance criteria. He went on to explain that Dunes City Code does not provide a definition of the terms "water related" and "water dependent" and that this Conditional Use Permit Application hangs on a significant amount of subjectivity to these definitions. He went on to note that in the future, this is something that needs consideration in a glossary or in a definition of terms in the Dunes City Code.

Mr. Callister went on to explain the possible actions that City Council may take, namely: a) deny the Conditional Use Permit based on the findings in the Proposed Final Order, b) approve the Conditional Use Permit based on findings identified by the Council through additional facts or insights, c) continue the public hearing on the Conditional Use Permit if Council determines more information or time is needed.

Mr. Callister reviewed the applicable criteria for this request for a Conditional Use Permit by referring to the Dunes City Planning Commission's Staff Report - Findings of Fact. He referred to the two Overlay Zoning Districts, the Open Space Overlay Zone (Shorelands) and the Riparian Overlay Zone. He stated that the first question to ask is "is this a conditional use"- mainly conditionally allowed use. He read the Planning Commission's finding (page 3) stating that:.....the use cannot be interpreted to be "water-related." The Planning Commission is basing the finding on the facts that 1) the structure is being used for RV parking, a use that is not water-related and 2) any use of the structure for boat parking, seasonally or otherwise, is not a water-related use because the boat must be launched elsewhere. In short, the Planning Commission finds that the structures would serve the same purpose far from the water, and that its proximity is mere happenstance. The Planning Commission finds that the use is not water-related. The Planning Commission further finds that the structure cannot meet variance criteria. In light of this finding, the use is not a permitted conditional use, and therefore not allowed in Open Space Overlay Zone. The criterion is not met.

Mr. Callister continued the discussion by referencing the requirements for variance criteria (page 4) citing: a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of this Section. Although Mr. Callister read the complete findings of the Planning Commission on page 4, summary statements include that 1) the Planning

Commission finds that the applicant has adequate alternatives available and that the criteria is not met, 2) the Planning Commission finds that the applicant is not deprived of any privileges legally enjoyed by the owners of other properties within the same zoning district. He also noted that a notice was sent out to all the neighbors within the vicinity of this application and received no negative responses of the development of the structure, and in fact, one neighbor, Sue Dietz, provided a positive response stating that she felt it was fine (which is one component of this criterion).

After a considerable amount of time was spent reading and interpreting all four criteria variances, Mr. Callister noted that the Planning Commission's interpretation is that there is a concern in granting anything that has the potential to compromise water quality on the site. He noted that the Planning Commission's opposition to issuing a Conditional Use Permit rests on the "not met" findings of all four criteria variances.

Mr. Callister stated that the riparian overlay zone situation is very similar to the variance criteria requirements, but once again this section applies to the "water related or water dependent" subjectivity of these definitions as discussed earlier. He read the Planning Commission's fourth finding on page nine noting that the use has been identified by the Planning Commission as "prohibited use" within the Riparian and Open Space Overlay Zones, therefore this criterion is not applicable." He went on to note that the questions of location, size, and if the characteristics of the structure are compatible become moot with these key findings.

Mr. Callister went on to point out the process at hand is to evaluate the petition against the criteria and the question is; can we allow the structure as a conditional use based on the criteria. He also noted that the question about what to do next is to be considered later. Photo exhibits of the structure were discussed.

City Administrator Hilden provided a short history of his involvement in this matter beginning in late 2010 when Mr. Hilden was the City Recorder. Mr. Stronegger came into City Hall and questioned Mr. Hilden regarding different types of roof coverings, including flexible roof coverings and storage garages. He went on to explain that at this time, he was not aware of where this structure would be placed. Mr. Stronegger asked what kinds of structures do not require a permit. City Administrator Hilden stated that he explained that a flexible roof (commonly referred to as a day shade with a steel-post frame with a white vinyl roof) does not require a structural permit in Dunes City, but that they still cannot be placed in our riparian or shoreland overlay zones. Mr. Stronegger explained where he wanted to put this structure, and Mr. Hilden recognized that it was well within the shoreland zone, and explained to him that a Conditional Use Permit (CUP) would be required before a building permit could be issued. When Mr. Stronegger asked if that was Dunes City Code, Mr. Hilden stated that it was. Mr. Hilden also explained to Mr. Stronegger that the Planning Commission at the time, had started working on Chapter 155 Zoning and Development, and he wasn't sure where that was going to go, but knew there would be some changes to the code at some point and time in the future, and as you all know, we're still working on that three years later. About a year later, Mr. Stronegger came back to City Hall and inquired if there had been any change to the code, and one of Mr. Hilden's assis-

tants spoke with Mr. Stronegger and she stated that the requirements had not changed, but were the same for a CUP and a building permit. In October of 2012, Mr. Hilden stated that he received a call from a concerned citizen in Dunes City stating that there was a structure being erected in that location. Mr. Hilden stated that as owner of an RV park, he lives about 100 feet from this property and structure and knows Mr. Stronegger who is in the RV sales business. Although he considers him a good neighbor, Mr. Hilden stated that he has no extended business relationship with him. He also stated that he recognized that through all of this process, he wanted to be very clear with Mr. Stronegger about Dunes City code and make sure he kept the relationship with him at arms-length about this matter. He went on to explain that at the time of the call, the City's Building Inspector David Gates happened to be present and they both went out together and issued and stop work order on the structure because the structure was being built without a building permit. A CUP was also required and according to him, it had not been applied for and he certainly would be aware of it if it had been. Within an hour after issuing a stop work order, a City Counselor (the one Mr. Callister referred to) visited Mr. Hilden and he was told that this was no matter for the City to get involved in and that the City did not have jurisdiction. He further stated that a substantial amount of discussion took place, and he advised the City Counselor that he was wrong, and even though it was vacated Ocean Boulevard (referring to a photo) the area was once platted in 1914 (before the City even formed as a municipality) was in the original Westlake Plat as part of Ocean Boulevard. The former City Counselor contended that since Ocean Boulevard was vacated, the City had no jurisdiction. Mr. Hilden stated that he refuted the Councilor and told him that the City's urban growth boundary and city limits go to the middle of the Siltcoos River and even though that area had been vacated, the City still has jurisdiction over it. City Administrator Hilden felt that by refuting the Councilor and his conversations with Mr. Stronegger, his actions reflected enforcement of our code.

Mr. Hilden stated that during the discussions of the Findings of Fact for the staff report and the Amended Findings of Fact for the Planning Commission Report, removal of the structure was mentioned only because of the hardship term of the various criteria. As Mr. Callister pointed out, tonight's action is a determination of approval or denial of the CUP and has nothing to do with enforcement actions. Mr. Hilden stated that about a year ago, Mr. Stronegger started working with the City, which at that time the City did not have a City Planner, and had not yet entered into a contract with LCOG. Mr. Hilden stated he felt it was appropriate to let this sit for a bit before starting the process, and the bottom line is that we started processing this in September of this year. He also stated that in his opinion, Mr. Stronegger has been very straightforward and diligent in trying to rectify this matter and gain approval of the CUP. Mr. Hilden stated that his direction to Mr. Callister in preparation for the original staff report for the Planning Commission meeting was to consider the code, and did not direct him one way or the other in respect to how he felt Mr. Callister should come down on this issue. He did tell him that he needed to approach it with a certain amount of compassion. City Administrator Hilden added that Mr. Callister reported his findings to the Planning Commission. The Planning Commission felt very strongly that there were circumstances that were beyond Mr. Callister's knowledge (local circumstances, history, and their understanding of the code) and so their findings came down in a different direction and that is why you see different Findings and Fact prepared by Mr. Callister for the Planning Commission and the Planning Commission's Findings

and Fact that were prepared for the City Council. He further stated that the Planning Commission has recommended denial of this CUP and it is before the City Council for a decision.

Mayor Ruede asked Planning Commission Chairman George Burke if he had any comments. He stated that he was the concerned citizen who reported the building being built, and he conveyed this in his findings. Planning Chairman Burke stated that he would like to discuss four key points. He stated that the amount of times that the applicant was told that he needed a CUP was 2 times, that he got the information from somebody else, which is irrelevant in his mind because he was told directly from this office what he needed to do. The key point the Planning Commission found is that the structure is not water related, (docks, and boathouses) and they are spelled out and allowed in our code. He went on to point out that, the only thing allowed in our code is an eight-foot walkway through the area to get to your dock and boathouse. Planning Chairman Burke referred to the 12 Conditions of Approval listed on page 10 listing the limitations and requirements of the City. Chairman Burke mentioned that the City was not allowed to put conditions on the building because it was already erected illegally without a permit. Chairman Burke stated that the whole Planning Commission held a site view before their meeting, and noted that the 3' tall retaining wall is actually 5'8" (he measured himself) and it is illegal because Code requires retaining walls over 4' in height to be engineered and permitted, so it couldn't stay there even if you decided to approve this; it would have to be torn out and a new retaining wall would have to be built. He further stated that these are the main items and there hasn't been a building allowed in the 50' area since he's lived here and going around the two lakes, there's not many structures on the lakes within the 50' area, and the few that are, were built before the code was in effect. Chairman Burke stated that this is the Planning Commission's reasons, and it was unanimous, and Council has the report from the Planning Commission's meeting, which includes every question and every answer, and again he stated, we recommend denial.

Mayor Ruede stated that we will be taking testimony from all those who wish to testify. If you have not already done so, please sign in and include your name and mailing address so that we can send you a copy of the final order as required by our code. Mayor Ruede asked Mr. Strongegger if he was prepared to give a statement, and he responded yes.

Mr. Strongegger stated that the piece of property that he has, has always been a parking area and has been for at least 30 to 40 years and he has parked his boat trailers there for the last six years and my enclosed car hauler. He stated he got tired of looking at it so he straightened it up, did not take one bush, weed, or anything out of there. He stated that is not a retaining wall, but he built a fence that is three feet from a bank (or hillside) to make it look good and after it was done, he put about 3 feet of potting soil behind 3 to 4 foot wide fence so plants could grow. He stated that he put 2 cables from a post to a tree on each side, and the reason he did that was when he laid the 4 x 4 post in there, he made a boo-boo and the posts were in the wrong direction and didn't catch it in time because they were in 4 feet of cement, so he brought them back to straighten them so he could put the boards on them. Referring to the photos, he stated that they were not viewed properly, and you can see that it is not connected to the building and has nothing to do with the building as stated by Mr.

George Burke. Secondly, looking at the driveway photos in the 50' setback (house was built in the 60's), all of the trim and boards for the landscaping, they continue all the way out and the birch trees planted 30 plus years ago, all have sprinkler systems on them, and they reach past where he built the structure. As he gradually went back, there was wood all the way back and it was probably 1.5' high, and since it was in bad shape, he straightened it and put new boards to make it nice and neat and parked his rigs and 2 boat trailers. He further stated they are actually in the same area he always parked them. Quite a few years before that, he stated that he put in 75 trees to protect the hillside so as not to get movement or anything like that. That was there almost 7 months before he put the building up. Mr. Strongegger stated that when he put the building up (he paused here and added that he is responsible for doing it wrong without the permits, and that there is no sense in denying it), but stated that when he put the building up, he made sure he had all the proper colors (it's been up about a year and 3 months now), it's absolutely stable, and there is absolutely no, no, no erosion of any kind (anybody is welcome to look at it), it looks like it's been there for 50 years, it all matches, the birch trees are all straight, no sewer, no water, no electricity in that whole building, and he has no intentions of doing that because that is not what it is for. He stated he has had his RV in the building, his boat trailers, and he does have another big offshore boat sitting in Lake Mead that he has been trying to sell. He stated that as long as the building has been there, next-door to him is Siltcoos Lake Resort with a yurt that was supposedly grandfathered in. He questioned if he has a piece of property like this that has been used for everything including his guest's coach, we have to have a place to park because there is no parking up on top. He has to park there to get to his boathouse, and it has been used forever for that and thought maybe it was grandfathered in. He added that everything he has done has been done first class, and he did not feel he needed to walk door-to-door to get ahold of his neighbors, and that no one showed up to say it looked bad in any way. Referring to Mr. Burkes' comment stating that RV's leak gasoline, sewer, and oil, he stated that in working with RV's all over the country and being in this business all of his life, these RV's come into Oregon with an Oregon sticker - they don't leak oil, gas or sewer and that's why you're allowed to park next to water like Darling's Resort, and he mentioned that boats can pollute way more than an RV and gave an example, but didn't want to argue this. His wish is that something can be worked out, whether it be a fine for this project, or if there is any way that he can redo the structure to make sure it meets code. He went on to say he meticulously takes care of his property and has a gardening company that takes care of it every week, and they have been maintaining that ground that we're talking about right now, forever. He stated that he is not supposed to even walk on that bank, but has his gardener's walk on it and make sure everything is nice, neat, and planted and lot of cover on it and all that. As far as Lake Boulevard, "everybody parks right next to the bank as it is, because when they go fishing, they park there, so everybody's parking is illegal if you really want to get down to this." He just hopes he is not having an example made out of him because he wants to get along with the situation, but the thing that kind of made him nervous is "when Mr. Burke said he turned me in, and yes he did, but he also made a couple of statements that he never saw my boat trailers which is totally out of the question because they have been there forever, and why did it take 30 days for him to turn me in if he watches my property continually like he says he does." Mr. Strongegger went on to say, "That was the day I finished the building other than the trim and I'm not quite sure on that situation, ok." He stated that he put some doors on it and encouraged the Council to go

look at it at any time and go through it. Mr. Stronegger stated that he feels this is a grandfather situation, and the property is in better shape than it has ever been and thought Council would agree if they saw it.

Mayor Ruede asked Mr. Stronegger if he would like to add anything to his statement in Exhibit C. He stated that the only thing he would add is that his property is approximately one acre and it is all uphill and he has no place to put anything, and in regards to RV storage, in town it starts at \$450 and the airport charges \$650 a month. Even though his RV is in and out of there, he uses it for multi-purpose also. He has a storage unit in Nevada, run by his grandson, and they go back and forth with the RV being gone 3 or 4 months. He also mentioned that he did not put up a portable tent at the time because he did not want to do that to the neighbors and everything he does is done right. He further mentioned his landscaping and that he tries to keep everything up to snuff by not letting anything lay around. He also mentioned how he had cleaned the place up and that the parking area has always been there and he did put gravel on it, straightened it up and raked it, and did all that stuff, and that was all he had.

Mayor Ruede stated that he could step done now while we take other testimonies, but that we may want to have him come back later to answer some questions. Mayor Ruede stated that we will now take testimony of those in favor of the application and in support of Mr. Stronegger.

Citizen Sue Dietz stated that she sees nothing wrong with the application as he has it, and that she does not know any of the codes, rules or regulations but just as a personal opinion, she is definitely in favor of it. Mayor Ruede asked Ms. Dietz to fill out the sign-up sheet with her name and address so the City can send her some documents after the hearing.

Major Ruede asked for any other testimony in favor of the application.

Bonnie Allen gave testimony that she rents RV space in Florence at Pacific Pines and pays \$210 a month.

After hearing no other interest in testifying in favor, Mayor Ruede asked for testimony from anyone opposed to the application.

Mr. Paul Floto from Dunes City came forward and stated that he believed the applicant is correct in that he has a preexisting right to park anything he must park there, but putting a building up is a major change from his parking space. Mr. Floto stated that "a structure adds load to the soil and it changes and I don't know what happens to all the water from the roof, whether it goes into the gutter or into a proper dry well and defuses, or whatever and increases the chance of a landslide later." Mr. Floto stated that he bought a lot that was a very difficult lot to build on, and he had to comply with setbacks and was only able to do certain things because of what the lot was, so he complied with all of the rules, which was a pain. He further stated that if you let someone build something that does not meet the rules, and oh it is pretty and it does not cause a problem, then you do not have any more

rules. He stated that personally, he doesn't think that Council would like to set up a situation where you don't have to follow the rules.

Mayor Ruede offered further testimony from anyone who opposed the application, and no one replied.

Mayor Ruede asked if any Councilors have questions of the staff, namely Mr. Hilden or Mr. Callister.

Councilor Scarberry questioned City Administrator Hilden if Mr. Strongegger's first inquiry into the procedure of getting the building going was in 2010, and Mr. Hilden confirmed. Mr. Hilden gave details regarding the conversation that he had with Mr. Strongegger regarding the procedures involved to build the pole building. He stated that the process would include obtaining a Structural Permit, a Conditional Use Permit, a public hearing would be held before the Planning Commission, applications would be made, a \$600 deposit would be required, staff would evaluate the application against the Dunes City Code, a staff report with findings would be made which goes before the Planning Commission's Public Hearing, the Planning Commission then would make a recommendation to City Council and a public hearing would be held before City Council where ultimately a decision is made to either approve the Conditional Use Permit or deny it. Councilor Scarberry also asked when the building was actually finished and City Administrator Hilden replied - October 2012, approximately one year ago.

Councilor Sanders asked if someone could show him on the map where the yurt is that was referred to. Councilor Anderson questioned when was the yurt built and City Administrator Hilden stated 2009 (after the City Code was in place). Councilor Sanders asked to put into public record that lot 5200 is the CUP application property under discussion tonight and lot 5300 is where the yurt is located. Councilor Sanders questioned staff if the yurt was a permitted structure, yes or no. Administrator Hilden stated that on September 10, 2009, a letter was written by the then City Recorder advising the property owner that the structure being built required a building permit and a CUP. Twenty days later on October 1, 2009, the Planning Secretary issued a building permit for that structure, and obviously, in twenty days, you cannot go through the CUP process, so there was no CUP issued, but Staff and the Building Official approved a building permit at that time. Councilor Sanders asked: what is the water related use of that structure? City Administrator Hilden answered it provides the location for where you can visit and look at the water, and stated it would be a stretch to say that it was anything more than a parking structure in his personal opinion. Councilor Sanders questioned City Planner Callister how water related is defined in LUBA land use decisions. He stated that he was having difficulty understanding what the concept of the intent of the term means without it being defined. Mr. Callister stated that he immediately went to Florence's code because he does planning for Florence as well, and they have an extensive definition (which he wished he had right now), but that it is essentially what Mr. Burke is saying. He stated that their water related uses definition is primarily for economic uses, something that truly relies on proximity – such as a business that processes fish, something that truly relies on water; water dependent would be docks, boathouses, they have to be on water otherwise they are not serving their purpose. Mr. Callister sug-

gested Council make an immediate attempt to get a definition of these terms. Councilor Sanders stated that Council will make a decision based on what Dunes City code says. Mr. Callister stated that the Planning Commission came down pretty hard on it, and that he thought that one of the Commissioners said it very well when he said that the use of this structure could be 150 yards from where it is now and do the exact same thing - - it's storing an RV, it's not launching from the structure, and there's subjectivity there because there is no definition.

Referring to the Dunes City Planning Commission's Staff Report - Findings of Fact page 3 Section 155.5.1.1, B1, Councilor Sanders read the criteria that states that: variances to a requirement of this Section with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearances, fences and walls, and other **quantitative requirements** He asked Mr. Callister, what is meant by quantitative requirements? Mr. Callister explained that quantitative requirements are a planner's dream, because you can quantify that the frontage has to be 160 feet (for example), therefore it can be quantified. Councilor Sanders reiterated to confirm his understanding that if you had a water structure, that structure in respect to lot area, dimensions, setbacks, yard area, lot coverage, height of the structure, vision clearances, fences, walls and other measurables is what determines if that structure would be permitted if it were water related for a variance. Mr. Callister stated that this was an excellent question because one of the head-scratchers with this CUP is that there are 2 criteria for this condition, one is that it is water related (one element of subjectivity), and two, that it meets variance criteria, which puts you into an odd place, because you're not saying it has to receive variance approval, it has to meet variance criteria. He stated that Councilor Sanders hit on something that is not a real conducive situation for a variance because as Councilor Sanders pointed out perfectly what situations are very appropriate for variances. He stated that it is a provision that is rather awkward in the Dunes City Code. Chairman Sanders questioned if a CUP expires upon transfer of ownership. City Administrator Hilden answered that our City Code states that if a CUP is approved, it can be revoked by City Council at any time without cause. Chairman Burke added that the CUP transfers with the property and can be revoked, but it takes a City Council Hearing with a cause. Mr. Burke gave an example of his own property and the CUP he had to obtain to build the stairs to the waterway because it was city property. City Administrator Hilden added that in the case of Mr. Stronegger, since the right-of-way was vacated, the vacation of that right-of-way diverts the property to the adjacent property owner (which he is), so he doesn't require a CUP for a walkway/stairway down to the lake or river, but he would require a CUP for a structure (such as the one being discussed tonight).

Councilor Wells commented that he feels this is a classic case of the carriage in front of the horse because he feels like Council was denied an opportunity to take this situation in order of need from Mr. Stronegger. He stated that if this issue had come before Council with the CUP, the Council could have reviewed this information instead of after the building was built. Even though he is an advocate for property rights and personal rights, Councilor Wells stated that he also believes one have to follow the codes.

Councilor Anderson inquired if the yurt mentioned earlier is occupied. City Administrator Hilden stated that it is rented out for days and weeks and there is both plumbing and sewer there.

Mayor Ruede asked to confine the questions to the topic at hand.

Councilor Anderson questioned if there was any precedent for what we are considering tonight. Mr. Callister stated that the gazebo mentioned at the Planning Commission meeting, was a structure that was removed. Administrator Hilden explained that that was another condition in 2009 where a gazebo was considered (by the property owners who built it), to be a water related structure, but Council found that it was not water related.

Mr. Burke noted that the difference between the two properties was that one was residential property and the other was commercial property. He stated there is a far greater expanse to what can be done to commercial property.

Mayor Ruede asked if the flooring of Mr. Stronegger's structure is a cement pad. Mr. Stronegger answered that it is a type two compact gravel, a black sand that packs almost like asphalt. He stated also that he did lay a road skirt, a plastic he put down when he covered it because he did not want it to move. She also questioned if there is a path from the structure that goes to his boathouse that is on the water. Mr. Stronegger answered no, but that there is a stairway within 3 feet of the boathouse.

Mayor Ruede asked if the Councilors had any questions of anyone who has testified here this evening. There was no response. She asked Mr. Stronegger if he had anything else to say. He stated that if he did have to take the structure down, it would cause quite an impact because everything is laid in four feet of cement all the way down to every post, but it's not a heavy building and is really very light and it's basically a pole building and it has no insulation with metal siding, so there's not a lot of weight there whatsoever. It has really protected that piece of ground there, and no chance of erosion ever happening. The trees in front of it have protected it for 30 – 40 years.

Mayor Ruede stated that she felt everyone had been given an ample opportunity to give his or her point of view on this subject. Mayor Ruede closed the public hearing 8:37 pm. and she announced a 5-minute break.

Mayor Ruede reconvened the City Council meeting at 8:42 pm.

9. New Business

A. Deliberation and Decision: Stronegger Conditional Use Permit

Mayor Ruede announced Council will now deliberate and discuss the decision. She further stated that if Council decides to make a decision, keep in mind that a delay is acceptable and the record can be left open if more findings and facts are needed.

Councilor Sanders stated that he is struggling with water related structures as a definition and the fact that it is not defined in our code and is completely subjective. After listening to testimony and reading this material, besides “what-if” scenarios, the idea that comes to him is, what rule did this applicant have to read and understand so he could enjoy the property rights the way that he would see fit? Hearing of the yurt, Councilor Sanders stated that he felt the issue was bigger than this application and probably needs more discussion. He also questioned how the applicant is to show that his property is water related, and stated that the logic here is that we need a strict definition, and because we do not have it, how can we hold an applicant to something that is not defined. He asked that if the structure is water related with respect to the lot area and the dimensions, and does it meet setbacks? He stated he is not sure if the 50-foot setbacks are a requirement for the riparian zone. He also stated that what amazes him is that a temporary plastic ugly thing out there can lessen the value to the neighborhood and it would be lawful. Discussion ensued and Administrator Hilden stated that outside the open space overlay zone or riparian zone, a temporary-type structure with a vinyl roof would not require a CUP, but it is all contingent upon where it is located. Councilor Sanders asked what the actual measurement is from the edge of the structure to the river’s edge and Mr. Hilden replied that it is approximately 15 feet.

Councilor Scarberry stated that in his mind, there are two issues here; one is an unpermitted building, (but that is not what we are talking about here), and the real issue is a Conditional Use Permit. He admitted that this is all quite confusing with all the unfamiliar terminology for example and he felt that he has to go with the findings of the Planning Commission because they have been involved in this issue for a long time. He stated that he has great compassion for property rights, but feels that the wrong procedural steps were taken for the application and therefore he agrees with the Planning Commission’s recommendation. He also stated that the Council needs to tighten up on language and there are probably other situations out there like this one.

Councilor Anderson stated that it is important to make sure we are not sending the message that it is easier to get forgiveness than it is to get permission. He stated that he has compassion for what went on, but for the same reason, the Council is charged with seeing that the law is obeyed.

Councilor Wells affirmed that he too believes in property rights and keeping the yard beautiful. He went on to say that he had driven by the structure and noticed it looks beautiful, but the procedural timing was not done correctly and he wishes we could have done this before the building was up because he felt Council could have come to some kind of agreement to get the storage area for Mr. Stronegger. He stated he agrees with Councilor Scarberry and that the Planning Commission knows the code a lot better than he does and feels that he has to go with the Planning Commission’s decision.

Councilor Sanders commented that regarding the overlay of the riparian zone and the comments that were voiced gives him a guiding light that the object is to protect the watershed, the area around it, and minimize intrusion. He stated that he would have to agree with Councilor Wells and support the Planning Commission’s findings.

Mayor Ruede stated that this is a lot of information and the Council has given a lot of thought in preparation for this meeting tonight and asked Mr. Stronegger to understand that we do not take these decisions lightly and we are sincere and believe what you are saying and just want you to make that clear to you.

Councilor Sanders made a motion to deny the Conditional Use Permit based on the findings of the Planning Commission relative only to the riparian overlay zone. Councilor Wells seconded the motion.

After discussion between the Councilors, Mayor, City Planner and City Administrator, a decision ensued to withdraw the motion and the second and start over. Councilor Sanders withdrew his motion and Councilor Wells withdrew his second.

Chairman Sanders made a motion to deny the application for the Conditional Use Permit based on the findings of the Planning Commission relative to the variance criteria. Councilor Wells seconded the motion. The motion passed by unanimous vote.

Before the motion was unanimously passed, Mayor Ruede questioned City Planner Callister stating, if this motion was approved and Mr. Stronegger does what he needs to do (remove the building), at some later date, could he reapply for a CUP and take the application to the Planning Commission and perhaps put conditions on there, and be successful with his application. Mr. Callister stated that theoretically that would be accurate. Councilor Sanders stated that he concurred with Mayor Ruede and that the door is always open, but just because the motion may be a no now does not mean forever.

10. UNFINISHED / OLD BUSINESS

A. Determination of 2013 – 2063 Time Capsule Contents

After discussing the suggested contents of the time capsule, Mayor Ruede announced that the December 20, 2013 Christmas potluck will have a ceremony to wrap up and seal the time capsule for another 50 years.

B. Oregon Dunes Triathlon & Duathlon (F. Hilden) Response(s) to Request for Proposal

City Administrator Hilden gave an update for the Request for Proposal (RFP) for the second annual Oregon Dunes Triathlon & Duathlon scheduled for Saturday, May 10, 2014. He reported that we were able to unravel our current agreement with Smith Rock Race Group LLC by acquisition and transfer of the assumed business name for the event. In October, they moved ahead by submitting a public notice to the Siuslaw News for an RFP for an event production company for this event. He also directed three RFP's to targeted organizations including Double A Sports in Beaverton, Oregon, Dark 30 Sports in Eugene, Oregon and Best of the West Events in Corvallis, Oregon (business owned by Blair Bronson – the race director for last year's event). Two organizations did not respond, but Best in the West Events responded before the deadline and a two-page document is included in

the Councilor's packets for their review. At the next City Council meeting in December, a proposal from Blair Bronson will be discussed. City Administrator Hilden felt it was important to mention that the last conversation he had with Brian Douglas, founder of Smith Rock Race Group, was very cordial and Mr. Douglas acknowledged the problems we encountered such as T-shirts, finisher medals and other minor problems. He noted that the T-shirts were mailed previously, and the medals were mailed out today. Mr. Hilden stated that feedback on the T-shirts have been very positive, but next year the T-shirts will be distributed at the event. Administrative Assistant Green concurred with Mayor Ruede to have the T-shirts and medals available before the event. City Council agreed to the City Administrator's request to sell the remaining T-shirts. Mayor Ruede announced that we only have 5 months, 25 days, 10 hours and 30 minutes before the event. It was the consensus of Council to authorize the City Administrator to go ahead and enter into contract negotiations for the language of the contract (except for the budget), for a final approval from the Council.

11. REPORTS

Mayor's Report: Mayor Ruede thanked Staff and Councilors for their dedication and service, and stated that Dunes City is in an excellent position to move into 2014.

Communication & Education Committee Report: Council President Mills was absent.

Ordinance Review Committee Report: Council President Mills was absent.

Water Quality Committee Report: Council President Mills was absent.

Community Center Report: Councilor Wells stated that he changed a ballast at City Hall.

Conservation Committee Report: Councilor Anderson stated it was good to be back and has no report.

Parks & Recreation Commission Report: Councilor Scarberry reported there was no meeting, but will be meeting next week.

Road Commission Report: Councilor Sanders read his report into the record and the highlights are that K-rails are expected to be delivered tomorrow morning for the Ocean Blvd project and the Alder Drive slide issue is in the process of being resolved.

Emergency Services Report: City Administrator Hilden read his report into the record highlighting the request that WLEOG's training classes be video taped for the purpose of the web and training classes. Councilor Sanders questioned the possibility of the City purchasing a satellite phone south of the bridge. Discussion ensued.

City Administrator / Recorder / Planning Staff Report: City Administrator Hilden read his report into the record highlighting the largest year in recent history for subdivision partition work, the Conditional Use Permit for the Public Hearing tonight, RFP for the Oregon Dunes

Triathlon & Duathlon, work completed on the 1st Quarter of Fiscal Year 2013-2014 Revenue and Expense Budget vs. Actual, thankful for Richard Palmer and his work done for the City, Ocean Boulevard's reopening, and success in lieu of the training for the website day-to-day maintenance. He also commented on the accomplishment of passing Ordinance 223 (Comp Plan Amendment) with special thanks to Planning Chairman Burke and Councilor Sanders for their time and effort. Councilor Anderson mentioned the possibility of a back-up generator for City Hall.

12. FOR THE GOOD OF THE ORDER

Mayor Ruede expressed her support and excitement for upgraded technology for Dunes City.

Councilor Anderson stated it was good to be back.

Councilor Sanders commented on the recent success of Ordinance 223 with the CCI and suggested that the Planning Commission focus on the opportunity to use the designated CCI for the adoption of the Master Road Plan as the initial CCI project. He also mentioned that he would like to see the Council authorize the development of a sign that says "The Home of the Oregon Dunes City Triathlon & Duathlon."

Councilor Wells expressed that as a City Councilor, tonight's Conditional Use Permit issue was the most uncomfortable thing he has ever had to do, and he will be encouraging citizens to please let City Staff, Planning Commission and Councilors have an opportunity to review their CUP so this situation does not happen again.

14. ADJOURNMENT

Mayor Ruede requested a motion for adjournment. Councilor Wells made a motion to adjourn. There was no second and no vote taken. Mayor Ruede adjourned the meeting at 9:50 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 12th DAY OF DECEMBER 2013

[Signed copy available at City Hall]

Rebecca Ruede, Mayor

ATTEST:

[Signed copy available at City Hall]

Fred Hilden, City Recorder