



PLANNING COMMISSION REGULAR SESSION MINUTES~APPROVED
THURSDAY, JUNE 27, 2013 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 Planning Commission meeting was called to order by Chairman George Burke at 6:04 pm.

2. ROLL CALL

Roll Call was taken by City Recorder Fred Hilden.

Present: Chairman George Burke, Vice Chairman Lee Riechel, Commissioner Darlene Beckman, Commissioner Paul Gargis, Commissioner Ken Henderson and Commissioner Norman Martin.

Others Present: City Recorder Fred Hilden, City Attorney Emily Jerome, 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

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

5. ANNOUNCEMENTS / CORRESPONDENCE

City Recorder Hilden announced that a Planning Commission Special Session is scheduled for Tuesday, July 16, 2013 at 2:00 pm to continue the review of Chapter 154. Also, the regular Road Commission meeting scheduled for Monday, July 15, 2013 has been canceled and will not be rescheduled as there is no urgent business to conduct.

City Recorder Hilden introduced City Attorney Emily Jerome, City Planner Jacob Callister and Planning Intern Nicole Peterson.

6. CITIZEN INPUT

David Bellemore – Dunes City Resident

Mr. Bellemore stated that he would pass at this time.

Susie Navetta – Dunes City Resident

Ms. Navetta presented a letter and report from the Oregon Public Health Division dated June 19, 2013, regarding water testing results of sampled source water. She commented that what is missing is a comparison to the results from when we began water testing in 1989. She requested that the report be entered into the record.

A copy of the letter presented by Ms. Navetta is attached as EXHIBIT A.

7. PUBLIC HEARING – Ordinance No. 223 Amending the Comprehensive Plan – Goal 1

Chairman Burke stated that there is a public hearing this evening on Ordinance No. 223, an ordinance amending the citizen involvement provisions of the Dunes City Comprehensive Plan. 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 IV legislative procedure. Prior to the hearing tonight, staff will identify the applicable substantive criteria. These are the criteria we must use in making a decision. All testimony and evidence must be directed toward these criteria or other criteria which you believe applies to the decision.

Any party 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, prejudice, conflict of interest, or other facts from which the party has concluded that the Commissioner 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.

Does any Commissioner wish to declare a conflict of interest or bias? All Commissioners replied, "No."

Does any member of the public wish to challenge a Commissioner's impartiality? There were no challenges from the public.

Chairman Burke opened the public hearing at 6:13 pm. Chairman Burke requested the staff report.

Ms. Emily Jerome presented a detailed summary of the staff report. Ms. Jerome stated that the matter before the Commission was, in fact, not a conditional use permit but a legislative action through which the Commissioners would consider Plan amendments to recommend to the City

Council in order to realign the current Citizen Involvement Program with statewide Planning Goal 1. Ms. Jerome explained the process by explaining that the role of the Planning Commission was to hear testimony, deliberate after testimony and the record is closed and provide recommendations to the City Council. The City Council would subsequently hold a hearing to deliberate the recommendations of the Planning Commission and then choose whether or not to act upon those recommendations or to take another course of action.

Ms. Jerome went on to explain the criteria in the code that the Planning Commission was required to consider in making its recommendations: the statewide rules and planning guidelines adopted under Oregon revised statutes, comments from any applicable federal or state agencies regarding applicable statutes or regulations, any applicable intergovernmental agreements and any applicable comprehensive plan provisions or policies of this code that implement the comprehensive plan.

Ms. Jerome stated that your (Dunes City's) Goal 1 provisions are located within the Plan itself and recommendations should be consistent with statewide Goal 1 provisions and there are no inconsistent provisions within the Comprehensive Plan as a result of any action taken. She stated that staff has reviewed your Comprehensive Plan and believes that any changes in the draft Ordinance being considered covers any potential conflict.

Ms. Jerome went on to clarify that Oregon Statewide Planning Goal 1 requires that every city and state have a Citizen Involvement Program, and that Program provides ways for citizens to be involved in the ongoing land use process. Goal 1 also requires certain components of that Program: there must be a Citizens Involvement Committee (or Committee for Citizen Involvement also known as a CCI); the members of that Committee are broadly representative of the City's geographic areas and interests; the members of the Committee must be selected by an open and well publicized public process. Ms. Jerome noted that the current Dunes City Plan essentially states that anyone who attends the advertised meeting is a member of that Committee and that as long as those attendees represent the geographic area and interests the Goal 1 requirements are met.

Ms. Jerome went on to say that the State defines a Committee for Citizen Involvement (CCI) for the purposes of Goal 1 as, "A local group appointed by the governing body for these purposes: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning; assists in the implementation in the Citizen Involvement Program and evaluating the process being used for citizen involvement. A CCI differs from a Citizens Advisory Committee (CAC) in that the (CCI) advises the local government only on matters pertaining to citizen involvement and Goal 1. A CAC, on the other hand, may deal with a broad range of planning and land use issues. Each city or county has only one CCI, whereas there may be several CACs."

Ms. Jerome noted that her understanding of the text of Dunes City's Plan (Policy A-1) as currently applied means that the Dunes City CCI convenes for recommendations on any Comprehensive Plan amendment, not just proposals that have to do with citizen involvement. She reiterated that Goal 1 intends that a CCI be used to periodically review Code and Plan provisions to inform this Commission and City Council as to how well you're getting citizens involved, as

well as whether or not your current system of notices of public hearings is doing enough to solicit sufficient citizen input.

Ms. Jerome further noted that according to Goal 1, cities are empowered from time to time to convene CACs which may be comprised of individuals with special expertise, interest or knowledge.

Ms. Jerome explained that the Dunes City Plan regarding CCIs is slightly different from the statewide Goal 1 in that it requires a CCI for every Plan Amendment, an issue that might be resolved with the passage of Ordinance 223. She went on to say that Goal 1 was revised in 1988 to allow cities and counties to allow Planning Commissions and City Councils to serve as CCIs, so long as they are representative of the geographic areas and interests and are selected by an open and well publicized public process. Ms. Jerome's understanding of the process for selecting Planning Commissioners meets the Goal 1 requirement.

In closing, Ms. Jerome commented that she recently facilitated a recent CCI meeting about the proposed Plan Amendment and did so in a nontraditional format, described in her written staff report. She also advised that DLCD received notice of the revised hearing date for this testimony and the draft Ordinance. Ms. Jerome further noted that she had spoken with the DLCD ordinance expert and that person had no issues with the draft Ordinance in its current form.

A copy of Ms. Jerome's Staff Report is attached as EXHIBIT B.

Chairman Burke asked whether any Commissioners had questions for the staff. There were no questions, however, one Commissioner deferred his questions until later.

Chairman Burke briefly described the intensive review and vetting process that the current draft Ordinance has undergone over the last two years.

Chairman Burke asked for testimony from those who opposed the draft Ordinance and clarified the time limits for speakers representing the Citizens Involvement Committee and for individuals.

David Bellemore offered to yield his opportunity to speak first, stating that he would like to do so after others.

Chairman Burke called on John Stead, spokesman for the Citizens Involvement Committee, to speak next.

Mr. Stead, speaking on behalf of the Citizens Involvement Committee and as an individual, began by pointing out a law in use citation for the benefit of the attorney. He recounted the history of the Comprehensive Plan by noting that the Comprehensive Plan is the controlling land use planning instrument for a city and upon its passage the city assumes responsibility to effectuate the plan and conform zoning ordinances including prior existing ordinances to it, (Baker vs the City of Milwaukee). He went on to say that on February 9th, after hearing Council President Mills stated that the Comprehensive Plan was outdated and erroneous, the Council ap-

pointed the Planning Commission as the Committee for Citizen Involvement (CCI). At the March 6, 2012 meeting the Planning Commission appointed Commissioners Martin, Gargis, Henderson, Beckman, citizen Susie Navetta, City Councilor Richard Koehler, citizens John Stead and Fred Hilden, and City Councilor Jamie Mills to the CCI. During the CCI meeting the proposed ordinance was reviewed. It stated, among other things, Dunes City's Comprehensive Plan does not specifically identify how citizen involvement will take place, and Dunes City has historically mistakenly interpreted the CCI to be the Committee that makes recommendations to the Planning Commission regardless of specific issues. Dunes City's Comprehensive Plan 1-A is incompatible and contrary with requirements of Oregon State Law. According to the Planning Commission's minutes of the March 6, 2013 (2012?), the CCI deliberated on the proposed ordinance and planned to continue the review at the March 13th meeting. That meeting never took place. According to the City Recorder's report to the City Council in April 2012, in March, the first CCI meeting regarding the Comprehensive Plan was held culminating in a request from the Planning Commission to ask the Ordinance Review Committee to review feedback from the City Planner and the City Attorney before moving forward. During the October, November and December 2012 Council meetings, the City Recorder reminded the Council of the need to schedule a CCI meeting. In January of 2013, the City Recorder reported that during a meeting with the City Planner and the City Attorney, "We developed a clear strategy and plan to move ahead with an update to this CCI process and the DLCDC notice should be submitted in February." The notice submitted in February included a revised ordinance without reference to the derogatory findings cited in the first draft. It appears that nothing is wrong with the Comprehensive Plan. It is odd that Section 2 of the draft ordinance strayed into the Introduction of the Comprehensive Plan outside of Part A-1. It deleted the historical context that our CCI members are voting members. It is puzzling that this proposed draft ordinance dabbles in amending the history of our Comprehensive Plan. The first evidentiary hearing was scheduled for April 9, 2013, did not occur. A revision was submitted in May of 2013 along with notice that the first evidentiary hearing would be on May 15th. Instead of an evidentiary hearing, the City announced a CCI meeting would be held on May 15th. Many of the CCI members appointed in March of 2012 thought that the Committee would continue, as members were not notified otherwise. The May 15th meeting attendees consisted of one City Councilor, one Planning Commissioner, two City Attorneys, the City Planner from Eugene, the City Recorder and seven others, for a total of 13 persons. Mr. Stead expressed concern that individuals from outside the Dunes City area would conduct a Dunes City meeting. The two attorneys (Jerome and Sommers) and the City Planner from Eugene conducted the meeting and stated that their goal and their instructions were to produce a finished document for presentation by the close of the meeting. It appears clear that this was not, in fact, a CCI meeting. On June 17th DLCDC received a third notice advising that the first evidentiary hearing would be held on June 27th and that the original submittal date had been April 30, 2013, rather than its true submittal date of February.

Mr. Stead noted that these were procedural errors, and went on to say that if the City Council chose to designate the Planning Commission as the CCI, it is not only doing so in accordance with the code stated in the proposed ordinance, the City must write to DLCDC to explain why it is choosing this ordinance, explain that the Planning Commission is properly constituted, not as it is now which is appointed by the City Council, and it must wait for DLCDC to respond before any action is taken.

Mr. Stead went on to say that the CCI studied the process the ordinance has undergone and its proposed content, they identified several problems that needed to be addressed. As a result, they created an alternate version of the ordinance for the Planning Commission's review.

Mr. Stead submitted copies of the alternate ordinance.

A copy of the proposed alternate ordinance is attached as EXHIBIT C.

Mr. Stead asked Chairman Burke whether the Planning Commission had received communication from the Oregon Coast Alliance (ORCA). Chairman Burke replied that it had and the Planning Commission would review it. Mr. Stead requested and was granted permission to read the ORCA letter aloud to everyone attending the meeting.

A copy of the letter from ORCA is attached as EXHIBIT D.

Chairman Burke called upon Mary Jo Leach for testimony and recommendations from the CCI Committee.

Ms. Leach began by reading the following statement, "Citizen involvement is still a priority for the State of Oregon and its communities. The perspectives of planning professionals and citizenry are equally important and need to be built into the process so that a clear majority consensus can be reached in these decisions affecting residents." She went on to say that that statement was the core of the matters she wished to discuss before the Commission.

Ms. Leach went on to say that the current Goal 1 is brief, simple and the most inclusive of implementation plans giving every citizen in the city equal footing inside the forum, guaranteeing that their opinions will be heard and considered, and ensuring that results are determined by a democratic vote—one citizen, one vote—as is the essence of Goal 1. This method has been used by Dunes City, under state approval for years and is not, as pointed out by Ms. Jerome earlier, illegal or out of compliance.

Ms. Leach continued by reading from a prepared statement her comments and thoughts about the May 15th meeting which was publicized as a CCI meeting to discuss the latest draft of Ordinance 223. In short, she felt that the meeting was not a CCI under Goal 1 requirements, did not have in attendance members of the City Council or Planning Commission as usually is the case in a CCI meeting, did not allow for discussion of proposed Ordinance 223, was not noted or referenced in any prior City Council or Planning Commission meeting minutes that are publicly available and was not officially recorded as most public meetings are. She continued expressing her concern that this was not a CCI meeting.

Ms. Leach read her written testimony into the record. During her presentation, Chairman Burke requested that Ms. Leach refrain from using Councilor or Commissioner names and making degrading remarks about them. Ms. Jerome stated her support of the Chairman's need to maintain decorum, but clarified that Ms. Leach could use names.

Ms. Leach's written statement is attached as EXHIBIT E.

Chairman Burke called upon David Bellemore to speak next.

Mr. Bellemore began his comments by stating that he would address three points. (1) The meeting of May 15th was not a CCI meeting, according to the Comprehensive Plan as it is currently written. It was a “dog and pony” show run by lawyers from outside the city to get the results that they wanted and was a violation of current Plan law. (2) Although the current Comprehensive Plan does not exactly follow the suggested State outline for CCIs, it is effective. CCIs are essentially town hall meetings that all citizens may attend and freely voice their opinions and exchange ideas. It can be a cumbersome process with passionate opinions, but it is a way to determine how people feel about issues. (3) Much of this effort to change the Comprehensive Plan started during the 2010 election when there were at least two Councilors were distributing misinformation about the existing septic ordinance. Now we’re at the point where it seems as if proposed changes to the Comprehensive Plan would allow them to throw out the existing septic ordinance. If anything in the Comprehensive Plan needs changing, it is to provide for more transparency and make decisions based on true, good information and facts. While our CCI may not exactly follow the State guidelines, it works well and should remain in place.

Chairman Burke thanked Mr. Bellemore for his comments and called upon Richard Koehler to speak.

Mr. Koehler began his testimony by requesting that his comments and exhibits be included in the written record of this meeting.

Mr. Koehler asked that the current Comprehensive Plan be kept in its entirety, stating that changing Goal 1 section would be a fundamental change in the way that Dunes City has been doing business since its inception. Mr. Koehler went on to say that delegating the Planning Commission as the CCI without involving other citizens is an alternative to State law and that, contrary to the Mayor’s and Council members’ statements that Dunes City’s Comprehensive Plan is out of compliance with State law, it is not. Mr. Koehler further stated that the State had approved Dunes City’s Comprehensive Plan and questioned the reasoning behind changing it now, suggesting that the reason may be to enable an end run to eliminate Ordinance 203. Referring to the meeting that took place on May 15th, Mr. Koehler stated that although the meeting was touted as a CCI meeting, it was not. Among other things, there was no discussion of Ordinance 223, no valid agenda items and no vote on any issue.

Mr. Koehler then submitted his electronic recording of the May 15th meeting and Ms. Leach’s transcription of that meeting along with a written copy of his oral comments.

Mr. Koehler’s written statement is attached as EXHIBIT F1; electronic recording is attached as EXHIBIT F2; and Ms. Leach’s transcript is attached as EXHIBIT F3.

Chairman Burked called upon Susie Navetta who opted to pass on her testimony saying that her fellow participants had done well in covering the discussion points.

Chairman Burked asked the Commissioners if they had any questions for those who had testified. There were none.

Commissioner Riechel stated that he had comments about what was said, but no questions. Chairman Burked stated that those would be addressed during deliberations.

Chairman Burke asked for testimony from those who favored the draft ordinance. There was none.

Chairman Burke closed the Open Hearing at 7:29 pm and adjourned the meeting for a brief recess.

Chairman Burke reconvened the meeting at 7:41 pm.

8. UNFINISHED / OLD BUSINESS - NONE

9. NEW BUSINESS

Deliberation and Recommendation regarding Ordinance 223.

Amending the Comprehensive Plan regarding Goal 1**Action Item**

Chairman Burke opened the Planning Committee discussion by reviewing documentation that arrived late and was not discussed previously.

A. Letter from ORCA, as read aloud by John Stead. No discussion.

Proposed alternate ordinance presented by John Stead. Ms. Jerome pointed out that the proposed ordinance submitted by Mr. Stead was very similar to the draft (Ordinance No. 223) but the major differences are in Section 2 which is on page 3. Chairman Burke requested that City Recorder Fred Hilden read aloud for the record the proposed ordinance submitted during this meeting by John Stead (EXHIBIT C).

B. Chairman Burke introduced the Staff Report and asked whether any of the Commissioners had questions about it. Ms. Jerome offered to clarify various points about the Staff Report that were raised by citizens in the Open Hearing and Chairman Burke agreed.

Ms. Jerome first addressed the CCI meeting held on May 15th. She also recorded that meeting, but did not offer her copy of the recording into record because Mr. Koehler had already done so. She went on to say that it was acceptable for the City Recorder to make electronic copies of that recording for distribution to the Commissioners and that it might be helpful for the Commissioners to listen to the recording. She noted that attached to the written minutes of that meeting was a copy of the “collective statement” from the meeting and that the collective statement was a result of transcribing the May 15, 2013, CCI members’ individual statements to create a statement for the total group. She further noted that this was not a consensus statement or a majority statement. She went on to point out that the meeting process was not traditional but it allows the opportunity for each attendee a turn to speak in an open environment. She explained that the process includes presenting

attendees with written questions and documenting all of the responses from each speaker, verifying the accuracy of those comments and, if necessary, amending the comments so that the written record is a true reflection of every speaker's remarks. Ms. Jerome noted that she has on file the written responses submitted by meeting participants. Ms. Jerome also noted that this particular process was one that won DLCD's Citizen Involvement Award in 2012.

Ms. Jerome pointed out that some citizens had expressed concern that the meeting violated the Comprehensive Plan description of a CCI, but she has reviewed the Comprehensive Plan and, in her opinion, the meeting was not in any violation; further, she noted that there is no vote required to approve a "collective statement" that documents everything said at a meeting. In closing, Ms. Jerome commented that because the notice of the May 15th meeting did not specify that it would be different from prior meetings it may have been confusing for participants.

Commissioner Gargis asked to clarify why many of the May 15th CCI meeting attendees were not clear about the purpose of the meeting. Ms. Jerome replied that the meeting was noticed as a Citizen Involvement Committee meeting to discuss the Citizen Involvement Program.

Commissioner Henderson asked Ms. Jerome to clarify her understanding of the responses to the Collective Statement question, "What is not working in Dunes City's current Citizen Involvement Program? Or, what would not work in a Citizen Involvement Program?" and the response from Group which read, "What we don't have now is enough public energy to come out in large numbers to support the city to do what the city really needs right now. The Council can't do it by itself. Why is that not happening? Is it the citizens or the Council not facilitating? Assume it is a combination of both." This is a statement that might lead some to believe that no one shows up for public meetings. Ms. Jerome replied that that response was one person's sentiment, that it may or may not be repeated in the Collective Statement and that it was a part of what Commissioners should consider in their deliberations.

Chairman Burke called upon Commissioner Riechel who stated that he had comments for later but no questions for staff.

Chairman Burke called upon Commissioner Beckman, who had no questions.

Chairman Burke called upon Commissioner Martin, who had no questions for staff, but would comment later.

Chairman Burke thanked staff for its report.

- C. Chairman Burke asked Commissioners whether they had differences or problems with the Ordinance (223) as it was presented.

Chairman Burke then began discussion of the Ordinance and called upon Commissioner Riechel.

Commissioner Riechel noted that open hearing comments demonstrated that there appeared to be some confusion about the differences between a CIP (a program) and CCI and CAC functionality. A CCI is defined as a group that polices a City's Citizen Involvement Program. He further noted that, going forward, definitions and administrative procedures or other ordinances might need to be implemented to define how the individual committees would be formed and operate. He further stated that he supported changing the Comprehensive Plan Goal 1 through Ordinance No. 223 so that there are those defined processes about where and how citizens will be involved, in compliance with DLCD guidelines.

Chairman Burke recognized Commissioner Beckman.

Commissioner Beckman agreed with Commissioner Riechel's statements in general and went on to say that she thought that the proposed Ordinance was a good one. She elaborated by noting that she appreciated the input from the May 15th meeting, especially that it included everyone's input and not just what was voted on. The whoever shows up gets to vote, just doesn't work. She stated appreciation for the comments from the public hearing testimony, further noting that the Planning Commission allows for public comment at meetings and that the public communicates directly with Commissioners by email, telephone, etc. so there is citizen involvement. She stated that it was the duty of the Planning Commission to make a recommendation that works for the City so that it can move forward under the guidelines of the State, and the proposed Ordinance as written is good.

Chairman Burke called upon Commissioner Henderson.

Commissioner Henderson began by noting that most of what the Planning Commission has done in the past two and a half years has involved such items as land use ordinances and reviewing documents such as Chapter 155, pertaining to development within the community, for clarity of definitions and compliance with state guidelines. He noted that compliance with State law and regulations makes it easier for Dunes City to validate and explain its own requirements. He noted that state guidelines say that the CCI program there are an advisory committee and action groups; the advisory committee only interprets or advises local government on matters that pertain to citizen involvement and Goal 1 whereas the action groups focus on projects or tasks. Commissioner Henderson went on to comment that Dunes City should follow those state guidelines for its CIP as it has followed the state guidelines for land use issues.

Chairman Burke recognized Commissioner Martin.

Commissioner Martin began by saying that he and his wife have lived in Dunes City for about 25 years and were part of the original CCI. He stated that the voting process just didn't work. The outcome of votes changed from week to week or month to month, making meeting participation ludicrous. He went on to explain the cumbersome processes of those original CCIs and the resulting lengths of time required to accomplish goals. He noted that

the cumbersome process of the current CCI is what prompted discussions of changes to the Dunes City Citizen Involvement Program and that Ordinance 223 would simplify the process.

Chairman Burke recognized Commissioner Gargis who had no comment.

Chairman Burke added that during the years that this Ordinance has been in the works it has been vetted through a series of planners and legal staff, it follows the Oregon land use planning and clears up misinterpretations that we have had. He explained that the Dunes City Planning Commission is an independent body of the City Council and that it is the only City Commission that is not led by a City Council member, in accordance with state guidelines, so that the Planning Commission can make independent decisions for which the City Council is the appeal process. He went on to note that he and all of the Commissioners, as well as most of the meeting attendees, have been involved with Dunes City for many years in one way or another and are vested in making it a better place. He stated that he was in full support of Ordinance 223 because it followed the process outlined by the State.

Chairman Burke asked the Commissioners for a recommendation to the City Council.

Commissioner Gargis made a motion to recommend adoption of Ordinance No. 223, as written, to City Council. Commissioner Beckman seconded the motion. The motion passed by unanimous vote (5/0/0).

10. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA (NONE)

11. ADJOURNMENT

Chairman George Burke asked for a motion to adjourn. Commissioner Riechel made a motion to adjourn the meeting. Commissioner Henderson seconded the motion. The motion passed by unanimous vote.

Chairman Burke adjourned the meeting of the Planning Commission at 8:35 pm.

APPROVED BY THE PLANNING COMMISSION ON THE 26th OF SEPTEMBER 2013.

[Signed copy available at City Hall]
George Burke, Planning Commission Chairman

ATTEST:

[Signed copy available at City Hall]
Fred Hilden, City Recorder