

Fred Hilden

From: Cameron La Follette [cameron@oregoncoastalliance.org]
Sent: Thursday, June 27, 2013 1:58 PM
To: Dunes City Recorder
Subject: ORCA Testimony on Ordinance 223
Attachments: Article re DC Septic Ord 218 Nov 12.pdf; Article re Dunes City Septic Inspection Feb 13.pdf; ORCA to DC re Ord 223 proposal June 13.pdf

Dear Mr. Hilden,

Attached please find the testimony of Oregon Coast Alliance (ORCA) in the matter of an evidentiary Planning Commission hearing tonight, June 17, 2013, concerning proposed Dunes City Ordinance 223. Also attached are two articles from the Siuslaw News concerning the Dunes City septic system, dated November 2012 and February 2013.

Please respond to this email and let me know that you received the email and all three attachments, were able to open and read them, and placed them into the record concerning this matter.

Thank you for your attention.

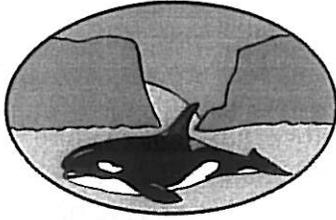
Sincerely,

Cameron

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Cameron La Follette
Land Use Director
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ORCA: Oregon Coast Alliance
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Protecting the Oregon Coast

June 27, 2013

Dunes City Planning Commission
c/o Dunes City Hall
P.O. Box 97
Westlake, OR 97493
Attention: Fred Hilden, City Recorder

Sent via Electronic Mail

Re: Proposed Ordinance 223, An Ordinance Amending the Citizen Involvement Provisions of the Dunes City Comprehensive Plan

Dear Members of the Planning Commission,

Oregon Coast Alliance (ORCA) is an Oregon nonprofit corporation whose mission is to protect and conserve coastal natural resources, and work with coastal residents for livable communities.

ORCA has a longstanding concern with the maintenance of water quality in Woahink Lake, Siltcoos Lake and associated springs, creeks and other waters. These sources form the drinking water supply for Dunes City residents and many visitors to the area. ORCA notes that Woahink Lake is the drinking water supply for Honeyman State Park, which hosts upwards of *1.5 million visitors per year*. It is the second most popular State Park in Oregon. Thus, the water quality of Woahink Lake is enormously important statewide and affects literally millions of people.

Dunes City has passed and implemented a cutting-edge septic maintenance ordinance to protect the water supply, Ordinance 203. Unfortunately, the City has also sought several times to repeal the ordinance, and/or substitute a vaguely-described educational program for the mandatory septic inspections required under Ordinance 203. In 2012, ORCA and the Woahink Lake Association won a case at the Land Use Board of Appeals (LUBA No. 2011-113) against such an attempt, which required the City to implement the ordinance. Nevertheless, there continue to be efforts by Dunes City to undermine this law.

Proposed Ordinance 223: Decreasing Public Involvement

Currently, the Dunes City Planning Commission is holding a hearing on June 27 concerning proposed Ordinance 223, which would substantially change the existing process in Dunes City for public involvement in the land use planning process. By means of this ordinance, Dunes City proposes to amend the City's citizen-developed Comprehensive Plan and change the nature of the Citizen Involvement Program.

Instead of an independent Committee for Citizen Involvement (CCI) as currently exists, the Planning Commission alone will serve as the City's CCI, having its function to increase public involvement in the planning process. Under existing Policy A.1 of the Comprehensive Plan, any person who shows up to a CCI meeting becomes a voting member for that meeting, in order to encourage a town-hall atmosphere. The portion of the Policy allowing this will be deleted in its entirety.

Citizens will now have only a separate, lesser opportunity to participate in the public process on particular land use and/or Comprehensive Plan matters through temporary, ad hoc Citizen Advisory Committees (CACs) appointed by the Planning Commission.

This provision contains yet another specious requirement: that CACs are to be appointed "during periodic review." Periodic review is not a regular process required of small towns the size of Dunes City; this requirement therefore effectively chokes off the appointment of any CACs except "when directed by Council."

Proposed Ordinance 223 Is Not Required and Is An Unnecessary Change

It is important to note that this structured, two-tiered process is a drastic change of the existing Dunes City public involvement process. Currently: (a) the CCI includes the Planning Commission, City Council and citizen members and all can vote at a meeting and become members thereby; and (b) the CCI combines in one body both functions separated in Ordinance 223, concerning both the public involvement program generally *and* public input on specific land use and Comprehensive Plan matters through the proposed CAC mechanism.

Nothing in state law or administrative rules requires Dunes City to separate these two functions. The fourth "Whereas" in the proposed Ordinance is therefore inaccurate, in that it implies there is a disconnect between state law requirements and the current Dunes City system. This is untrue. Let us remember that the Department of Land Conservation and Development long ago "acknowledged," i.e., approved, the Dunes City Comprehensive Plan. In other words, the State has agreed that the Comp Plan meets all State requirements for public involvement and all other matters.

Many cities and counties have appointed their planning commissions as the CCI, but it is not required. In fact, Goal One of the Statewide Land Use Planning Goals, clearly prefers an independent CCI, stating, "If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public

process.” (OAR 660-015-0000(1)), section 1. Furthermore, the use of ad hoc CACs is not required by Goal One at all. It is entirely permissible to have specific land use public involvement flow from the same CCI responsible for creating and maintaining an overall public involvement program.

In ORCA’s opinion, the current CCI in Dunes City is perfectly structured to allow maximum public input on both the public involvement and specific land use / Comprehensive Plan issues. Why would City Council wish to *decrease* the amount of public involvement, when clearly Goal One and state law seek to increase it?

Let us also consider one other matter: the concept of amending the Comprehensive Plan. The Comp Plan is like the Constitution; it is the fundamental blueprint document for the community. It was forged through public processes to reflect the will of Dunes City residents, and was acknowledged by the State of Oregon. *The Comp Plan should only be revised when there is a real necessity, because it no longer reflects the will of the residents.* In this instance, there is no demonstration of dissatisfaction with the Comp Plan’s public involvement requirements, except by City Council members. No residents or committee of residents have indicated any problem with the current structure. So why is City Council so insistent on making this change?

Proposed Ordinance 223 Is a Back-Door Attempt to Undermine the Septic Requirements

We suspect that the City Council’s proposed Ordinance 223 is a sly attempt to restrict the vigorous public input process for which Dunes City is renowned, in order to limit public support for and defense of Ordinance 203, the mandatory septic maintenance requirement. Limiting the public input process to a system imposed by a City Council appointed and controlled Planning Commission is the beginning of reducing full citizen involvement in planning issues, as only the Planning Commission (when directed by Council) will be able to appoint temporary CACs for specific involvement.

Council has been at the forefront in recent years of attempting to amend or repeal Ordinance 203 and its mandatory septic requirements. Attempts have included repeal, substitution of a vague educational ordinance, proposing repeal of the ordinance through a vote of Dunes City residents via ballot measure, and (most recently) direct instruction from Council to City staff not to enforce liens and fines applicable under the ordinance. The ordinance is in place because Dunes City Comprehensive Plan policies mandate a “program to improve maintenance of septic system for the benefit of all residents” (Policy E6).

A backhanded effort to amend Ordinance 203’s provisions, or the Comprehensive Plan with respect to septic/water quality policies would need to start with exercising more control over the existing inclusive Citizen Involvement Program, and this is what the proposed Ordinance 223 is ultimately about. This is clear, since nothing in state law requires this change, and City Council members have frequently stated their intent to emasculate mandatory septic requirements by whatever means are possible.

Recommendations for Increasing Dunes City Citizen Involvement Program

ORCA recommends that Dunes City take a step back from this proposal and recognize that state law encourages *increased* public involvement. Ordinance 223, rather than amending the Comprehensive Plan, should be a City ordinance implementing Policy A.1 to clarify and strengthen it. Rather than creating a Council-controlled two-tiered structure, 223 should expand the town hall CIP atmosphere by defining and enumerating the powers of the existing CCI-CAC, the single entity that provides all public input in Dunes City, in at least the following ways:

1. Allow all attendees at a CCI-CAC meeting to vote and become members not just for that meeting but permanently, unless the person requests to be removed;
2. Expand CCI-CAC's reach so that it makes recommendations directly to City Council as well as the Planning Commission;
3. Expand and clarify the CCI-CAC powers so that it makes recommendations on Post Acknowledgment Plan Amendments, Dunes City land use regulations and ordinances, and specific land use / planning proposals, including land use applications for specific projects.
4. Clarify that CCI-CAC can call a meeting on its own, as well as at the request of Planning Commission or City Council, and provide recommendations to either or both governmental bodies, which must be available in writing to any interested party.

Conclusion

If any changes need to be made to Dunes City's Citizen Involvement Program or the septic maintenance program (Ordinance 203), then these changes should be openly and clearly discussed; and public involvement resulting from the proposed changes should increase, not decrease. Furthermore, the Comp Plan should *not* be amended unless there is a clear and dire need to do so – which has not been shown to be the case. The current roundabout attempt to restrict public involvement bodes ill for the democratic process in Dunes City. The ultimate losers, if this attempt succeeds, will be the public involvement process, Dunes City residents, whose drinking water supply is threatened by City government's lax enforcement of septic requirements, and Woahink Lake itself.

Thank you for the opportunity to testify in this matter. Please place this testimony in the record of the Post Acknowledgement Plan Amendment known as proposed Ordinance 223, and notify Oregon Coast Alliance of any further activity on this proposal.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette
Land Use Director

DC council plans for public vote for septic ordinances

Councilors have been working for about two years to repeal septic ordinances for inspection and education.

BY AMY BARTLETT Siuslaw News

November 14, 2012

DUNES CITY After hearing from Dunes City residents protesting such a move, the city council unanimously decided at its Nov. 8 meeting to notify the state's Department of Land Conservation and Development (DLCD) of its intent to address septic maintenance by ballot in the May 2013 special election.

Councilors Richard Koehler and Richard Anderson were absent from last week's meeting .

As a first step in the process to get the issue on the ballot, the council considered ordinance No. 218, which would repeal the current ordinance, 203, and establish a voluntary education program. DLCD notification follows, then public hearings before the planning commission and city council. The cost of the special election would only be a rough estimate at this point, said Lane County Clerk Cheryl Betschart, because the county is considering adjusting fees due to changes in printing costs. Currently, the county charges \$2.50 to \$3.50 per voter. As of October 2012, Dunes City has 1,008 registered voters. There are also the city's legal costs and staff time associated with bringing the issue to the ballot.

"I feel it's our duty," said Councilor Duke Wells. "We've been working on this steadily for two years at this level and we are right back, basically, at square one. I think it's time for the citizens to have their say in this."

Ordinance 203 requires mapping of each septic system and initial pumping and inspection, and periodic inspections at least every five years, with records to be kept by the city. Homeowners must be in compliance by March 2013.

The city has no public sewage system and residents draw their drinking water primarily from Woahink and Siltcoos lakes, tributaries and wells.

Some councilors have argued the requirements are a hardship for citizens on fixed or low incomes and that state and county regulations, water testing , and building code requirements are enough oversight.

In November 2011, the council repealed 203 and established a voluntary education program, to be implemented within one year. Following the repeal, Oregon Coast Alliance (ORCA), former councilor Susie Navetta and the Woahink Lake Association filed an appeal to the Land Use Board of Appeals (LUBA). LUBA found in the petitioners' favor in June 2012 and 203 was reinstated. The city spent about \$23,000 defending its decision.

LUBA determined that by not having its voluntary educational program developed and ready for implementation at the time the city repealed 203, the city had no program in place, as stated in its comprehensive plan, to "improve maintenance of septic systems for the benefit of all residents."

Since that time, proponents of the repeal have considered options for getting the issue on the ballot.

Three residents spoke during the citizen input portion of Thursday's meeting. All were against the council's plan of action. Secretary of the Woahink Lake Association, Del Riesenhuber, who read from a prepared statement, said if the council once more repeals 203, or adopts an ordinance with lower standards, or places such an action on the ballot, the issue will go to LUBA.

"It is unclear why the council would again undertake the cost of defending its action before LUBA, but I can assure you that it will be necessary," said the secretary.

Former city councilor David Bellemore spoke about the voluntary aspect of the education program and claims of financial hardship.

"You want to make the septic maintenance voluntary. For sure, some residents will then voluntarily not maintain their septic systems because as long as they push down the handle on their commode and everything disappears, everything is fine and it's not necessary to spend money on septic maintenance. And it's absolutely guaranteed that sooner or later some of those septic systems will fail and their neighbors will be drinking what disappears when they push down the handle on the toilet."

Bellemore said the expense of not maintaining septic systems will prove more costly in the long run.

"If the lakes are polluted, until the city is forced by the state of Oregon to put in a metropolitan sewer and water system " that will cost a lot more than the cost of septic maintenance . " You are heading in the wrong direction," he added.

City resident and scientist Gerald Wasserburg suggested that some modifications could be made to the current ordinance, such as eliminating inspections for septic tanks that are not in use, however, he disagreed with the notion that an education program is a substitute for a maintenance program, stating that the city "would abrogate its responsibility and its authority."

In a letter to the council, ORCA, petitioner on the original LUBA appeal, expressed disappointment that the city, instead of collaborating with the organization, is once again considering repeal. ORCA claims the new ordinance, No. 218, is "entirely void of substance," and will fail for the same reasons the original ordinance that repealed 203 failed.

"Simply saying that brochures, posters and videos, appearances and websites will provide the format for the educational program is very different than actually setting forth the substance of the educational program," said the organization.

Numerous issues related to other comprehensive plan policies were not settled by LUBA in the earlier case, said ORCA, because there was no actual educational program in place. Consequently, at that time, LUBA could not determine if standards would be met.

ORCA also suggested the city provide financial assistance to the few residents who have expressed difficulty with compliance. City councilors, in previous meetings, have suggested ORCA do the same.

Councilor Ed Scarberry said that some people will be unhappy with the election outcome, but they should accept it.

"Well, it's 'big boy time' in Dunes City. " If you don't like it and the election doesn't go your way, well, I guess you have options, but one of the options is not to keep making threats about suing or trying to get something appealed. Trying to appeal or overturn something that the majority of voters have agreed to " is, to me, undemocratic ."

Said Mayor Rebecca Ruede, "When it is all said and done and it's on the ballot and everyone can vote, then maybe this issue will be put to rest."

She added that whatever the outcome, she will "strive to lead the city forward."

"We want to bring the community together and we really think that this is the next step " that is why we are embarking on this," she said.

"One outcome everyone can agree on," said ORCA's land use director Cameron La Follette on Monday, "is that no one wants contaminated water. The question is, what is the best way to prevent contamination from occurring?"

DC to require septic inspections

Property owners asked to comply before March 31 deadline.

BY AMY BARTLETT

Siuslaw News

Wednesday, February 20, 2013

DUNES CITY The March 31 deadline to comply with Dunes City's septic maintenance ordinance, No. 203, still stands. In a 3-2 vote last week, with Councilor Ed Scarberry absent, the city council rejected a motion to extend the deadline to June 30. In November 2011, the council repealed 203, prompting an appeal to the Land Use Board of Appeals (LUBA). LUBA decided against the city and the ordinance was reinstated. No. 203 requires property owners to provide records that show their septic systems have been mapped, pumped and inspected.

Enforcement of the ordinance is a concern for councilors. Of more than 780 city property owners, 150 have not responded to requests for records. Notices were sent more than a year ago and then again last summer, according to City Recorder Fred Hilden, who also serves as the city's code enforcement officer.

Councilor Jamie Mills said she has been auditing the records and some of the 150 may have alternative systems that are subject to the state's stringent inspection schedules, so they would actually be in compliance with the city's requirements. A list is forthcoming from the county, which will be checked against the city's records.

Two councilors voted for the deadline extension, Duke Wells and Troy Sathe.

Wells wants an extension so the council can "review 203 further and our comprehensive plan."

He said there could be a special election in the future.

"I don't believe that 203 at the end of the day is going to be the septic ordinance of Dunes City " maybe similar to it, but it's not going to be 203," he added. Sathe, who made the motion for extension, suggested the council not enforce 203.

"Every ordinance in this city is set to be enforced by the council or not. So " until the city has a clear way to go, nothing has to be done," said Sathe.

Councilor Maurice Sanders rejected that notion.

"I think for this body to entertain taking any action here " could be very disruptive to the code enforcement officer," said Sanders. " " I think it's very dangerous ground for us to ... start picking and choosing laws that we don't want them to enforce.

" ... Justice is blind. He (the code enforcement officer) has to approach every issue just as objectively, within the discretion that the law permits."

Sathe argued that procedures to help property owners unable to afford the cost of pumping and inspection of their septic systems should be established before the city moves to enforce the ordinance. In one case, property owners contacted the city about wanting to comply, but not having the money to do so. "Are we going to have the code enforcement officer go out there and say, 'OK, now we are going to put a lien on your property?' " I don't want to get anybody where they are feeling like they are forced to

leave their homes " because of the ordinance we have," he said.

Hilden said the city has requests for proposals out to septic companies to provide a flat rate for the city.

There are also USDA funds available to help homeowners, but only those with failing systems .

Said Councilor Mills, "We gave flexibility with the code enforcement officer to work a deal with them."

She added that property owners can appeal. "We will look at it on a case-by-base basis." The city recorder said there is a "fairly lengthy process" to follow before a lien is filed against a property.

Certified letters will be sent to property owners not in compliance . The code enforcement officer's decision can be appealed to the council. The council can then decide to let the lien stand or remove it.

"No citizen in this community because of 203 will be put in a position to lose their home," said Sanders.

After voting against extending the deadline, the council unanimously decided to instruct city staff to prioritize implementation by focusing first on those properties with the oldest systems on the water's edge.

Later in the meeting, Sathe announced his resignation and said he will be moving to Albany.