



PLANNING COMMISSION SPECIAL SESSION MINUTES ~ APPROVED
THURSDAY, OCTOBER 30, 2014 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 October 30th Planning Commission Special Session was called to order by Vice Chairman Paul Gargis at 6:00 pm.

2. OATH OF OFFICE

Planning Secretary Rapunzel Oberholtzer administered the Oath of Office to Planning Commission appointee Bonnie Allen.

3. ROLL CALL

Roll Call was taken by Planning Secretary Rapunzel Oberholtzer.

Present: Vice Chairman Paul Gargis, Commissioner Ken Henderson, Commissioner Norman Martin, and Commissioner Bonnie Allen. (As of October 3rd, 2014, there is one vacancy.)

Others Present: Planning Secretary Rapunzel Oberholtzer, unpaid consultant George Burke and several citizens.

4. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

5. APPROVAL OF THE AGENDA

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

6. APPROVAL OF THE CONSENT AGENDA

Commissioner Henderson made a motion to approve the Consent Agenda. Commissioner Allen seconded the motion. The motion passed by unanimous vote.

Commissioner Henderson made a motion to approve the October 9th, 2014 meeting minutes as submitted. Commissioner Martin seconded the motion. Commissioners

Henderson and Martin voted in favor of the motion, Commissioner Allen abstained. The motion passed.

7. ANNOUNCEMENTS /CORRESPONDENCE

Planning Secretary Rapunzel announced that a press release about the Planning Commission's October 30th special session to hear citizen comments about Ordinance No. 203 was published in *The Siuslaw News* on October 22nd. In addition, she announced that the Public Notice about the October 30th meeting was published twice, as required, in *The Siuslaw News*.

8. CITIZEN INPUT – None

9. UNFINISHED/OLD BUSINESS

A. Planning Commission Acting as Citizen Advisory Committee Re: Ordinance No. 203

Vice Chairman Gargis asked whether any citizens had signed the Request for Recognition form to provide input on Ordinance No. 203. No one had.

B. Review DEQ Info Re: Ordinance Nos. 203, 210A and 211A

Vice Chairman Gargis asked if the Commissioners had read the Orenco whitepaper on Septic Tank Septage Pumping Intervals and then asked unpaid consultant Mr. Burke for comments.

Mr. Burke explained that he read the Orenco document and other information in the Commission's meeting packets, including information from DEQ and EWEB. He went on to explain that studies from 1970 to date show a consensus in recommendations for pumping intervals and provide similar charts that illustrate pumping intervals for the size of a house and the size of its septic tank. Mr. Burke pointed out that the documents also reference the fact that pumping a septic tank too often is harmful to the septic system. He went on to say that the pumping interval recommendations should be a consideration when revising septic ordinances.

Mr. Burke noted that most of this same information was available when Ordinance No. 210A was written. He remarked that 210A could be tweaked but, in his opinion, that was the latest and best option for the City. He pointed out that the Ordinance had been thoroughly vetted, having been created by the Ordinance Review Committee, sent for a review by the Planning Commission and then sent back to the Ordinance Review Committee and reviewed again by the Planning Commission before being sent to the City Council.

Mr. Burke concluded by recommending that, in his opinion, the Planning Commission should start with the limitations and regulations in 210A, review the new information on hand and determine what revisions to make to 210A.

Vice Chairman Gargis noted that he spoke at length with Randy Trox from DEQ and, as a result of that conversation, has a new opinion about septic systems. He pointed out that one of the concerns about any requirement to pump a septic tank every five years is disposal of the waste material, which is treated and sprayed on the ground. He went on to comment that, with the exception of waterfront properties, the City could loosen its regulations for septic systems—waterfront properties should be more tightly reined to make sure they are meeting requirements. Vice Chairman Gargis expressed surprise that DEQ and Lane County did not seem too concerned about Dunes City’s regulatory efforts, though the representatives to whom he spoke were familiar with the situation here.

Mr. Burke explained that DEQ’s rules for protecting air and water come from federal regulations and, in Washington and Oregon, DEQ is strict about enforcement. In addition, Lane County has its own air quality regulatory agency (the Lane Regional Air Protection Agency). He added that the information used to draft earlier septic ordinances came from DEQ recommendations. He also noted that he agreed in general with Vice Chairman Gargis, there could be stronger, more frequent inspection requirements but not necessarily more frequent pumping requirements.

Commissioner Allen referred to the Septic System Maintenance Status Report presented to Commissioners by City Administrator/Recorder Hilden at a meeting earlier in October and noted that she did not see a reference to mandated pumping, only mandated inspections. Mr. Burke clarified by pointing out that pumping is required at the time of a first inspection. Commissioner Allen noted that the Report data indicated that about 80% of homes had septic systems pumped. Mr. Burke pointed out that they may not have been pumped but had been inspected. Commissioner Allen referenced the DEQ [sic] whitepaper where on page seven monitoring of septic systems is recommended. She went on to point out that elsewhere in that whitepaper (Glide, Oregon and Montesano, Washington audits) references to periodic inspections were also made. She went on to remark that it seemed there was consensus for periodic, mandatory and enforced inspections to safeguard water sources.

Chairman Burke disagreed with Commissioner’s Allen’s use of the term “mandated” and explained that in Ordinance No. 210A, rather than the City mandating specific inspection intervals, the frequency of inspections is set by a qualified inspector at the initial inspection. The inspector’s recommendation is based on the condition of the septic tank, number of people living in the house and size of the house—the City does not mandate the inspection frequency but, as experts, the inspector recommends the frequency. He went on to explain that the goal of Ordinance No. 210A was to remove a City-mandated, blanket requirement for everyone. Mr. Burke also explained that the interval recommended by the inspector would be on file with the City. He noted that Ordinance No. 210 also allowed residents to get a second opinion about their inspection results.

Commissioner Allen asked how the City would know how many people live in a household. There was some discussion about that with Commissioner Henderson pointing out

that, based on the number of homes in Dunes City (645 or so) and the estimated population of the City (1,300-1,500), the average number of people living in one house is about two.

Commissioner Henderson also noted that, in the past, there have been complaints that inspectors automatically recommended pumping, whether or not it was necessary.

Mr. Burke clarified that the City currently “mandates” the inspection frequency in Ordinance No. 203. Under Ordinance No. 210A, the responsibility for determining inspection frequency is up to the inspector. He pointed out that the local inspectors are licensed by DEQ and are supposed to operate according to DEQ/federal guidelines.

Vice Chairman Gargis remarked that the DEQ representative suggested that the City could use out-of-town inspectors. Mr. Burke explained that the Planning Commission has requested the City Council allow the Commission to look into a franchise agreement with local companies. The franchise agreement with them, as with a cable provider or a utility provider who have a franchise agreement with the City, would require that the companies would have to present their fee schedules to the City Council for approval, just as any other franchised company has to do. He went on to explain that the agreement would give the City some control over the costs the companies charge and help slow the increase in costs that has occurred over the last few years.

Mr. Burke went on to explain that the effluent pumped from septic tanks is sprayed in the mountains above Fiddle Creek in the summer and spread in low pastureland in the winter. He pointed out that disposal sites are designated by DEQ but these local sites are also in the Siltcoos Lake watershed. Commissioner Henderson noted that the effluent disposal was a concern of the Water Quality Committee several years ago; at that time the Committee took water samples from Fiddle Creek and ran DNA tests on them. He went on to say that the only DNA present in the samples was from waterfowl and that substantiates DEQ’s claim that the disposal practice is safe.

There was some discussion about the evolution of septic system use in Dunes City over the years. Comments included mention of the fact that older homes, with older systems, may have been built as vacation homes years ago but are now full-time residences using the original septic system—these are the types of systems that have a greater potential to fail and need to be inspected to prevent that. It was noted that, because of the inspection requirements, over the last few years several properties are now current on inspections or have upgraded their septic systems.

Discussion about enforcement mechanisms followed. Mr. Burke offered an explanation. A few years ago, the City learned that, according to the City Charter, the only person who could enforce remedies for Ordinance infractions or levy fines is the City Judge, which the City has never had. In the meantime, the Planning Commission has been working to strengthen City Code and provide for better enforcement. At this point, the City cannot go to court to enforce fines or liens until the Charter is changed, or the City has a Judge. As the Planning Commission’s work is completed and the new Ordinances passed, it may

be necessary to change the Charter to eliminate the need for a City Judge. The City cannot afford to hire a Judge so the Charter would have to be changed, an action that requires a vote of all citizens of Dunes City. He went on to explain that it is a lengthy process and citizens would need to be educated about the reason for changing the Charter, a document that many citizens believe is the basis for Dunes City's rule of law. Until City Code is strengthened and new Ordinances passed the City does not have the legs to withstand court appearances to defend its attempts at enforcement.

There was some discussion about the possibility of Dunes City entering into a contract arrangement with Florence Judge Cindy Cable to act as Dunes City's City Judge or City Counsel. Mr. Burke explained that the City investigated a similar option a few years ago and found the cost to be prohibitive. It was suggested that if a franchise agreement with inspectors provided any revenue to the City, that income could pay for a judgment from a Judge on water issues from time to time. In further discussion, it was noted that it was less expensive and easier to change the Charter than to hire an interim Judge. It was also noted that at the time Dunes City was considering hiring an interim Judge from another city there were concerns about violating state rules.

Vice Chairman Gargis recognized Susie Navetta in the audience. Ms. Navetta offered comments. She pointed out that Dunes City is different from other communities because City residents drink the water from the lakes. The City has no municipal water system to fall back on, something that other cities cannot understand. She also pointed out that the City has a detailed form for inspectors to complete and submit to the City. The form was designed to give the City information about inspections and, if the City is using the forms, it should have the information it needs to monitor residents' compliance, number of people living in a household, next inspection due date, etc.

Ms. Navetta asked if a resident is not in compliance, could the City take away the Certificate of Occupancy based on a health and safety issue. Vice Chairman Gargis noted that the City needs better enforcement mechanisms. Commissioner Allen asked how suspected septic failure complaints are made and to whom. Mr. Burke explained that Lane County DEQ has authority over septic systems. The County follows up on complaints, the City has no authority in such matters and has been instructed by City Counsel not to become involved in septic complaints. Complainants should call the County.

Commissioner Martin pointed out that the sand and clay soil in our area helps support septic systems. A discussion about soils, various septic systems and filter systems ensued. Mr. Burke noted that most new homes in Dunes City are required by the County DEQ to install sand filter systems, but the actual system requirements are determined on a case-by-case basis depending on the results of the County's site inspections.

Vice Chairman Gargis opened the discussion to waterfront properties with a question about how often they should be inspected. Commissioner Martin noted that "waterfront" property needed a clear definition. There was also some discussion about the fact that protecting lake water was not the only issue, there are residents on well water, which also needs to be protected from failing septic systems.

Vice Chairman Gargis recognized Mary Jo Leach who was present in the audience. Ms. Leach pointed out that Ordinance No. 203 only requires pumping for the initial inspection, it does not mandate pumping at any other time.

Mr. Burke noted that the issue is not so much whether a property is lakefront, but the distance between the lake and the septic system is the key issue. He went on to explain that, in the Devil's Lake development, the lots were about 50 feet wide so the shoreline could accommodate as many lakefront properties as possible. In that case, the ensuing water quality issues were not caused by houses located near the lake, but the fact that there were too many houses with septic systems around the lake. There was a short discussion about municipal sewer systems. Mr. Burke summarized the discussion by noting that Dunes City and its residents could not afford a municipal sewer system, nor would residents want one. To avoid the necessity of a sewer system, the City needs to be smart about protecting the quality of water, but not over regulate septic maintenance. He concluded by noting that the two most common citizen comments about the City's septic maintenance program is the cost of compliance and the feeling that it's overly regulatory.

Mr. Burke suggested that the Commissioners review the existing Ordinance, and the alternatives, review the hand outs and think about the changes, if any, that should be made to Ordinance No. 203 and discuss changes at the next meeting. Vice Chairman Gargis asked if any Commissioners would like to have the DEQ or County Sanitation representatives attend a meeting. There was no consensus to do so.

Commissioner Henderson requested that City Staff look into contracting for Judge services. He noted that Florence has a City Judge. He asked Staff to find out whether it is possible to hire that person to adjudicate a specific compliance problem and, if so, what would it cost?

There was further discussion about the City's enforcement powers. Commissioner Allen asked if the City could deny a permit to a resident who was not in compliance with the septic maintenance ordinance. Mr. Burke pointed out that current City Code did not allow the City to do so, but if a resident had a building code violation on record, according to state law, that resident could not obtain another permit until the violation was resolved. There was some additional discussion about the Planning Commission and the Ordinance Review Committee work to strengthen City Code, and changing the Charter to eliminate the requirement for a City Judge so the City Council can enforce City Code.

C. Chapter 155 Detached Building Code Recommendations

Vice Chairman Gargis called for a short break at 7:15 pm and reconvened the meeting at about 7:28 pm.

Vice Chairman Gargis opened discussion by noting that this subject was one he brought up some time ago. Commissioner Allen referenced item B(2)(b) of the Henderson (NV) Accessory Uses and Structures Code and the term "Community Development Director"

asking if Dunes City had that position. Vice Chairman Gargis clarified that the reason for reviewing the Henderson Code is to identify language that could apply to detached buildings in Dunes City. He went on to explain that the rationale for having the discussion about detached buildings was based on his opinion that a property with a 2,000 square foot house should not also be allowed to have an 8,000 or 10,000 square foot, 32 foot high detached building that he would see from his house. He went on to add that while there are places for such buildings, there are also places they should not be. He pointed out that although the Henderson Code is restrictive, it has some good points, such as a height and size limitations.

Vice Chairman Gargis pointed out that the Henderson Code allows a detached building to be either 50 percent of the floor area of the principal structure or ten percent of the lot size, with height and architectural restrictions. Commissioner Henderson noted that in newer areas of Dunes City, Code requires a stick-built or site-built home which is inconsistent with the allowance for a tilt-up or steel detached building. Vice Chairman Gargis remarked he would like to see the steel buildings limited to a reasonable size in a residential neighborhood. He went on to explain that in Henderson, the City sent notices to surrounding property owners soliciting citizen comments to a proposed new building.

Vice Chairman Gargis asked for comments about restricting the size and height of detached buildings. Commissioner Henderson agreed with the idea and added that the buildings ought to be consistent in construction and material. Mr. Burke explained that the City has every right to mandate the size, height and construction of accessory buildings through City Code. Current Code, he added, limits lot coverage to 30% for all buildings on a lot. He went on to note that there are large parcels in Dunes City that could support a big accessory building without adversely affecting neighbors, but lakefront or near lakefront properties with big buildings that impede the view of neighbors could negatively affect those neighbors. Mr. Burke pointed out that Dunes City currently does not have a view ordinance and he was not advocating for one, but using Code to limit size and height of accessory buildings could accomplish the same goal as a view ordinance which could be difficult to enforce. He reminded the Commissioners that residents could apply for a variance to Code and go through the public hearing process for the application. He went on to note that he agreed it would be a good idea to come up with square foot and height limitations and it could be added to Code the Commission is working on now.

Vice Chairman Gargis asked for comments about limiting the size of accessory buildings. Commissioner Allen agreed that limitations would be beneficial to the community. Commissioner Henderson agreed, noting that the Commission should come up with a formula that makes sense. Mr. Burke suggested that when the Commissioners have the proposed language added to Chapter 155, Staff should send it to the City Attorney for review and he requested that Staff provide the Commissioners with Chapter 155's setback section.

Vice Chairman Gargis suggested that the Commissioners think about the language they would like to use and be prepared to discuss ideas at the next meeting.

Commissioner Allen asked what enforcement mechanisms were available to the City if an unpermitted building or a building violating Code was built. Mr. Burke explained again that the City has strong enforcement power through the state's building code and the Building Official.

10. NEW BUSINESS

Commissioners agreed that the next special session would be on Thursday, November 13th at 3:00 pm, as tentatively scheduled during the October 9th meeting. A special session is also tentatively scheduled for December 11th at 3:00 pm, if needed. The regularly scheduled November 27th and December 25th meetings have been cancelled due to holidays.

11. UNSCHEDULED ITEMS NOT LISTED ON THE AGENDA

Commissioner Henderson asked Staff what sort of recruiting efforts were underway to fill the remaining Planning Commission vacancy. Staff reported that a press release was published in *The Siuslaw News*, as well as posted at City Hall and the Westlake post office, and outreach would continue.

12. ADJOURNMENT

Vice Chairman Gargis adjourned the Planning Commission Special Session at 7:50 pm. There was no motion, no second and no vote.

APPROVED BY THE PLANNING COMMISSION ON THE 13th DAY OF NOVEMBER 2014.

[Signed copy available at City Hall]
Paul Gargis, Planning Commission Vice Chairman

ATTEST:

[Signed copy available at City Hall]
Rapunzel Oberholtzer, Planning Secretary