



**CITY COUNCIL MEETING MINUTES ~ APPROVED
NOVEMBER 8, 2017 AT 6:00 PM**

City Hall ~ 82877 Spruce St., Westlake, OR

These proceedings of the Dunes City Council were recorded 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 Robert Forsythe called the Wednesday, November 8, 2017, meeting of the Dunes City Council to order at 6:00 pm.

2. ROLL CALL

Roll Call was taken by City Administrator/Recorder, Jamie Mills.

Present: Mayor Robert Forsythe, Councilor Tom Mallen, Councilor Robert Orr, and Council President Sheldon Meyer. There is one vacancy on the Council.

Absent and Excused: Councilors Duke Wells and Alan Montgomery.

Also Present: Administrative Assistant Rapunzel Oberholtzer, *Siuslaw News* community reporter Mr. Jared Anderson, and many Dunes City residents.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Mallen made a motion to approve the Agenda. Council President Meyer seconded the motion. The motion passed by unanimous vote.

5. APPROVAL OF THE CONSENT AGENDA

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

6. ANNOUNCEMENTS / CORRESPONDENCE

Mayor Forsythe read aloud from the list of announcements on the Agenda.

- A. Dunes City is seeking residents to serve on the Citizens Advisory Committee (CAC) that is reviewing the Land Use Codes of Dunes City. Applications are available on the Dunes City website or at City Hall, 82877 Spruce Street in Westlake.

7. CITIZEN INPUT ON ITEMS NOT LISTED ON THE AGENDA

Mayor Forsythe recognized Mr. Greg Hicks, a Dunes City resident, who explained that he had obtained a copy of the OLCC application and noticed that it contained several significant errors. He pointed out that the OLCC LUCS application had to comply with Dunes City Code and all provisions of Code are construed to conform to the Comprehensive Plan. Mr. Hicks went on to say that he understood that the Planning Secretary, or his or her designee, could sign the LUCS if the decision is a Type I with clear and objective approval criteria. He explained if the approval criteria are not clear and objective, the approval process requires a Type II decision by the Planning Commission with public notice—there was no public notice of any of the LUCS applications. Mr. Hicks went on to say that, according to City Code, if the applications are incorrectly completed the City Council can void them. He noted that the LUCS for the Greengate Road operation was approved with conditions, which meant it should have been approved using a Type II process that did not happen. He asked the City Council to recall that specific LUCS to address these concerns and revisit the approval using a public review process with notice to the adjoining property owners.

Mayor Forsythe recognized Ms. Catherine Caudle, a Dunes City resident, who explained that she had sent an email to Linda Stevens and asked her to provide each of the Councilors an envelope under confidentiality. She went on to explain that the reason she requested confidentiality is that the material she provided contained information that the Councilors may not have been aware of. One of the matters involved a March 30, 2017, meeting of the City Councilors and the Planning Commissioners after which the administration announced that the City had received two LUCS that day, one from Dennis Smith and one from Patricia Smalley, that were approved in April. In May, the City received a LUCS from Mr. Maguire that was approved that month and submitted to OLCC. She went on to say that what the Councilors might not know is that on February 2, 2017, Valeria Cain-Mathis also submitted a LUCS to the City that was approved by Renee Green and then submitted to OLCC. Ms. Caudle explained that under a request for public records to OLCC she received copies of the applications. That was the first time that she had heard of Ms. Cain-Mathis' application. Ms. Caudle noted that Ms. Cain-Mathis had provided testimony to the Council multiple times but no one had ever seen her LUCS. Ms. Caudle noted that the important thing about that LUCS is that it talks about the well and says that Ms. Cain-Mathis' lot on Doonbrae would have three 30' by 60' greenhouses for marijuana, not a house, and that the well would be used to water the plants. Ms. Caudle went on to note that her concerns about the well appear to be justified. She explained that the Water Master and OLCC are also concerned about the well being used for watering because they did not know that the well was a domestic well.

Ms. Caudle pointed out that it was also important to know that Dennis Smith, who owns the Greengate grows, incorporated the grows on Doonbrae—his corporation would be called Terpene Farms I and II. She noted that there are five other lots for sale and asked what are the chances of having III, IV, V, VI, VII. The 40' by 60' foot building on the first lot would be one of two with three 30' by 60' buildings on the second lot in a residential zone.

Ms. Caudle provided copies of the Cain-Mathis LUCS and the Articles of Incorporation from Mr. Smith and Ms. Cain-Mathis, which are on file at City Hall.

Ms. Caudle went on to explain that City Code 155.1.2.7 (Official Action) provides that if the LUCS were not completed by the proper individual, the Council can void them.

Mayor Forsythe recognized Ms. Mary Jo Leach, a Dunes City resident, who read aloud from an email she sent to several people, including the City Administrator, about Mr. Smith's OLCC application to obtain a recreational marijuana growers permit.

"I requested all Dunes City documents regarding this property in response to the Smiths' OLCC application to obtain a recreational marijuana growers permit.

"During examination of the property documents it was determined that a number of concerns must be addressed involving the State of Oregon and Dunes City. These concerns are iterated below so that parties can be made aware of the scope of my complaint.

"The Smiths have been operating a medical marijuana grow for a number of years on a parcel containing three residences – the primary residence, a second un-permitted residence, and a third, placed there on a variance and conditional use permit issued on September 10, 1987 as a 'caretakers cottage'; it appears that the Smiths now use two of these residences as rental properties. Additionally, un-permitted auxiliary buildings have appeared on current maps submitted, for which there is no authority.

"The conditional use authorization appears to have expired, as I obtained a copy of the letter from Dunes City, dated June 12, 1997, (copy attached) to Gladys Miller, regarding revocation of the variance and conditional use permit, and questioning the existence of a third unknown residence. It is possible she transferred the property to family members, rather than selling as planned, since the 'caretaker's cottage' is no longer being used as such, but as a rental property.

*"Water Permit #41109, Certificate #84479, (attached) authorizes 'domestic use for **one** family', not to exceed 0.005 cfs..."*

*"The waters of Woahink Lake have been, and continue to be, used to service three homes, instead of one as authorized. Additionally, the waters are being used to irrigate what appears to be a **commercial** medical marijuana grow; irrigation run-off, containing chemicals is entering the Woahink Lake watershed.. The mandated water deliveries to this commercial site from an outside source have not occurred.*

"The Smiths own a retail marijuana store located in Florence, at the Dunes Village Shopping Center. The licensing authority for that operation is unknown to me.

"Attached is a link from Google maps showing the extent of the outdoor grow. It appears to be larger than the maximum 96 plants to which Mr. Smith may be legally limited. Also visible is a bladder structure probably used to store water, and numerous bags of chemicals.

“The Oregon Health Authority should review the situation as the health and well-being of the watershed upon which City residents, ODFW and Honeyman State Park users are dependent, should be a top concern.

“The disregard of licensee requirements exhibited by the Smiths is appalling. They are inappropriate candidates for an OLCC recreational grow permit; and have violated their medical grow permit.

“If your actions are dependent upon a formal complaint, I will be most happy to oblige.”

ABOVE COPIED EXACTLY FROM MS. LEACH'S PREPARED STATEMENT. A COPY OF MS. LEACH'S STATEMENT IS ON FILE AT CITY HALL.

Ms. Leach went on to say that in looking at OMMP regulations, someone who has been given a medical marijuana license violates these waters, a felony that can cause revocation of the license.

Mayor Forsythe recognized Mr. Del Riesenhuber, a Dunes City resident, who read, in part, from his prepared Notice of Inappropriate Action.

“At the October 25, 2017 Special Council Session, the Council voted unanimously to approve improperly submitted LUCS and to support commercial growing of marijuana in residential neighborhoods. It is clearly understood that the council took this action as a result of communications from the growers' attorney Ross Day in which he threatened legal action against the city staff, council members personally, and the city in general if the council acted to withdraw LUCS.

“I wish to point out that this action by the council is contrary to Oregon Law, specifically ORS 244.040 which follows:

“ORS 244.040 Prohibited use of official position or office...a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official...

“I strongly urge the council to once again recall the improperly approved LUCS and take such action as to support the Dunes City Comprehensive Plan and not allow the commercial growing of marijuana in our residential neighborhoods. If the council finds they are unwilling to act in accordance with Oregon Law, I ask that all members of the council and city staff resign immediately since they have demonstrated they are incapable of acting in the best interests of the city as they are acting to protect themselves from potential financial detriment.”

ABOVE COPIED EXACTLY FROM MR. RIESENHUBER'S PREPARED STATEMENT. A COMPLETE COPY OF MR. RIESENHUBER'S STATEMENT IS ON FILE AT CITY HALL.

8. OLD BUSINESS

A. Appointment of Individual to Finish the Remaining City Councilor Term of Robert Forsythe

Council President Meyer explained that he, Councilor Wells and Councilor Mallen had met with all six applicants, all of whom were very qualified. He went on to say that after meeting the candidates, he and Councilor Wells agreed to recommend Ms. Susan Snow and Councilor Mallen opted to recommend Mr. Terry Duman. There was some discussion about the recommendations. Council President Meyer noted that although Ms. Snow is a new resident of Dunes City, she a lot of experience that could be helpful and bring some fresh perspectives to the Council. Councilor Mallen explained that he supported Mr. Duman because Mr. Duman has lived in Dunes City for over forty years, is familiar with issues the City has faced in the past, and might be helpful in sorting out issues the City is currently facing.

There was some discussion about the fact that two Councilors were absent from the meeting. It was generally agreed that the decision is important enough to warrant a full Council present for the vote. Mayor Forsythe suggested that the decision should be made at the next meeting. There were no objections.

9. NEW BUSINESS

A. December Council Regular Session

City Administrator/Recorder Mills announced that she would not be available for the regular December meeting scheduled for the 13th. Following discussion, it was agreed to keep the regular meeting schedule and ask City Administrator/Recorder Mills to determine a date for a Special Session in which the new City Councilor could be appointed.

B. Request for Engineering of Drainage Issue

Mayor Forsythe suggested tabling the discussion because the issue at hand involves a Council member who would have to recuse himself from discussion, leaving the Council without a quorum.

C. New Equipment Lease Contract for Copy Machine

City Administrator/Recorder Mills explained that the lease for the office copy machine will soon expire. She noted that the new lease agreement was included in the Councilors' meeting packets and showed a network service charge of \$199 that would be billed separately. She went on to explain that the cost of the new machine is about the same as the old one, so there is no impact on the budget.

Council President Meyer made a motion to allow City Administrator Mills to sign the lease agreement. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

D. Water Management and Conservation Plan for State Permit S-44501

City Administrator/Recorder Mills explained that Dunes City currently holds four permits for surface water rights and one of the permits, S-44501, is a municipal water right. She went on to explain that the City had contemplated developing a municipal system, on more than one occasion, but the voters did not approve the development. She noted that the last time an extension for developing the system was granted to the City, a condition was attached that required the City to submit a Water Management and Conservation Plan (WMCP) by August 15, 2017, and that has not been done.

City Administrator/Recorder Mills explained that the requirements for Dunes City's WMCP are the same for a city the size of Portland, but the governor is considering the idea that small cities should not have to meet the same requirements as larger cities. She noted also that the WMCP would need input from engineers and would cost over \$2,000 to file. She went on to suggest that this matter could be on the Agenda for the next work session during which the Council could discuss next steps. In the meantime, she noted that she has prepared a preliminary WMCP that she would submit. There were no objections.

E. Agreement for Use of Water Right under Shared Domestic Water Supply Program Between Dunes City and South Coast Water District

City Administrator/Recorder Mills explained that South Coast Water District has made application to enter into an agreement to share in the City's Shared Domestic Water Supply Program for purposes of providing water from Woahink Lake to its 85 customers. She noted that the governor's office recommended that Dunes City share water with South Coast Water District as a way to alleviate the District's problems with delivering water from Siltcoos Lake.

Mayor Forsythe suggested that it might be more appropriate to negotiate the agreement when the applicant has identified its point of diversion. City Administrator/Recorder Mills noted that there was time to do that. There were no objections to delaying further action.

F. Memorandum of Agreement Relating to Delegated Building Inspection Program

City Administrator/Recorder Mills explained that the City has, in the past, routinely entered into agreements with Northwest Code Professionals to provide building inspection and building code enforcement services and would normally do so again as a routine process. She referred Councilors to a letter on the dais from the Assistant General Counsel for League of Oregon Cities and explained that, as outlined in the letter, the Oregon DOJ has

opined that when a city contracts its building programs to third-party vendors, the city is violating the State constitution's prohibition on delegation of governmental authority to a private party. She noted that this development affects dozens of cities throughout the State that have building programs administered by an outside contractor. City Administrator/Recorder Mills also noted that a copy of the BCD's Memorandum of Agreement, included in meeting packets, needed to be signed by the first of the year. She went on to explain that she contacted Dunes City's legal counsel who advised that the City not sign the proposed Memorandum of Agreement with the Building Codes Division until the issues with LOC, BCD and the DOJ are resolved. There were no objections.

G. Schedule November Work Session

During discussion, Councilors agreed to schedule a Special Session on Tuesday, November 21, at 3:30 pm.

10. PUBLIC HEARINGS

There were none.

11. EXECUTIVE SESSION

There was none.

12. REPORTS

- A. Mayor's Report: Mayor Forsythe reported that he had met with Florence Police Chief Turner who shared some ideas for providing law enforcement services to Dunes City; Mayor Forsythe will follow up with Chief Turner. Mayor Forsythe also reported that he had met with County Commissioner Jay Bozievich to discuss some of Dunes City's concerns, and he would be scheduling meetings with Sheriff Trapp and the State Police to talk about ideas for providing services to Dunes City.
- B. Community Center Report: On behalf of Councilor Wells, City Administrator/Recorder Mills reported that work on the trench for the pipeline to the propane tanks was completed by Richard Palmer.
- C. Water Quality Report: Council President Meyer reported that the secchi readings were as good or better than in past few months. He noted that there were some concerns about water levels in Siltcoos. City Administrator/Recorder Mills explained that Siltcoos dam operators were operating strictly according to the Order.
- D. Public Works Maintenance Supervisor's Report: City Administrator/Recorder Mills reported that the Kiechle Arm project seems to be diverting water as planned and that the paving on Parkway is completed.

- E. Emergency Services Report: City Administrator/Recorder Mills reported that she attended the October WLEOG meeting. Her full report was included in the Councilors' packets and is on file at City Hall.

- F. City Administrator/Recorder Report: City Administrator/Recorder Mills reported that there were a total of eleven building permits issued in September; the CAC and the Planning Commission continue their work on Title XV. City Administrator/Recorder Mills went on to report that the US Naval Sea Cadet Corps installed a walkway down to the river next to the Dunes City Overlook Park; the trench for the gas line to the propane tanks has been dug. She went on to report that she contacted an appraiser to work on valuation of the unimproved roadways in the Tsiltcoos Lake Club Plat; the Siuslaw Watershed Council will be seeking input when they begin work on their Siltcoos Lake Strategic Plan; this year's eclipse is largely credited with doubling the amount of revenue the City received from the motel taxes this summer. She also noted that she has contacted an engineering firm for an estimate to conduct a seismic evaluation on City Hall, which is required in order to apply for seismic rehabilitation grant funding. She went on to explain that the City's intent to place a barrier along Highway 101 by Woahink Lake is not acceptable to ODOT, ODOT would prefer to see landscaping along the road.

City Administrator/Recorder Mills also reported that the City conducted an investigation into the Cain-Mathis LUCS that was submitted to OLCC. She explained that the City did not have a copy of that LUCS on file even though the submitted LUCS was signed by the then permit technician. She went on to note that the City's attorney advised her to notify OLCC that the LUCS was entered in error and is incorrect, which she has done with a request to amend the LUCS accordingly—it appears that OLCC will consider the LUCS invalid. City Administrator/Recorder Mills also explained that the State is conducting an investigation into the unpermitted buildings on the Smith property.

City Administrator/Recorder Mills also noted that criminal activity at City Hall was reported on October 18. It is being investigated.

13. FOR THE GOOD OF THE ORDER

Councilor Orr asked if ODOT would pay for the landscaping along Highway 101. City Administrator/Recorder Mills explained that the cost would likely be borne by the City, but the work could be done by volunteers. She suggested that the project could wait until the State is working on that part of Highway 101, at which time the City could submit a request to include the landscaping in the project.

14. ADJOURNMENT

Councilor Orr made a motion to adjourn. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe adjourned the meeting at 6:58 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 13th DAY OF DECEMBER 2017.

[Signed copy available at City Hall]

Robert Forsythe, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder