

CITY COUNCIL REGULAR SESSION MEETING MINUTES ~ APPROVED
JULY 22, 2020 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, July 22, 2020, 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, Council President Sheldon Meyer, Councilor Robert Orr, Councilor Alan Montgomery, Councilor Duke Wells, and Councilor Susan Snow.

Absent and Excused: Councilor Tom Mallen.

Also Present: Videographer Alan Campbell and several Dunes City residents.

3. PLEDGE OF ALLEGIANCE

Mayor Forsythe led a reciting of the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Snow made a motion to approve the Agenda. Councilor Wells 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 Wells seconded the motion. The motion passed by unanimous vote.

6. ANNOUNCEMENTS / CORRESPONDENCE

City Administrator/Recorder Mills read from the list of announcements on the agenda.

- A. There will be a City Council meeting on Wednesday, September 23, at 6:00 pm to consider a Conditional Use Permit to build a guest house on a lot with an existing dwelling.

City Administrator/Recorder Mills noted that the discussion of the Conditional Use Permit application will be in a public hearing.

7. CITIZEN INPUT ON ITEMS NOT DISCUSSED IN PUBLIC HEARING

Mayor Forsythe recognized Mr. Paul Roberts, a Dunes City resident, who asked if there had been any further action on regulations for outdoor lighting. City Administrator/Recorder Mills explained that the matter is still in the hands of the Planning Commission and the Commission should be able to start work on rules in the near future.

Mayor Forsythe recognized Ms. Wanda Phillips, a Dunes City resident, who explained that she submitted applications for appointment as a Siltcoos Water Tester and as a Planning Commissioner.

8. OLD BUSINESS

There was none.

9. PUBLIC HEARINGS

- A. Case No. 2020.07.01, Dunes City Council and Board of Appeals Appeal of Findings of Fact, Conclusions of Law, and Final Order Entered June 26, 2020, Filed by Andy and Megan Kay Shervin and Terry W. Duman, d/b/a Duman Inc., an Oregon Corporation

Mayor Forsythe closed the regular Council meeting and opened the Public Hearing at 6:06 pm.

Mayor Forsythe announced, “This hearing will be held in accordance with the procedures required by the City and State of Oregon. Staff will identify the applicable substantive criteria and Code provisions which have been listed in the Staff Report. These are the criteria the Council must use in making its decision. All testimony and comments must be directed toward these criteria or other criteria which you believe apply to this decision. Failure to raise an issue accompanied by statement or evidence sufficient to afford the City and parties involved an opportunity to respond to the issue will preclude an appeal to the Oregon Land Use Board of Appeals with regard to Title XV violations. With regard to City Code violations, the City Council’s decision is final.

“The City Council will hear all Title XV violations in its capacity as the Board of Appeals. The Board of Appeals shall hear and determine the appeal of the appellates’ written statement and any additional evidence the Board of Appeals deems appropriate. At the hearing, appellates may present evidence or oral testimony personally or by Counsel. The burden of proof shall be on the Building Official and Code Enforcement Officer. The rules of evidence used by courts of law do not apply.

“The Council in its capacity as the Board of Appeals shall issue a written decision within ten days of the hearing date. Any interested party to this action may challenge the qualifi-

cations of any Councilor or participant in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Councilor's bias, prejudgment, conflict of interest, or other facts from which the challenging party has concluded that the Councilor will not make a decision in an impartial manner."

Mayor Forsythe asked if any party to this action wished to challenge a Councilor's impartiality. No one did.

Mayor Forsythe asked if any Councilor wished to declare a conflict of interest, bias or ex-parte contact. None did.

Mayor Forsythe went on to say, "This matter is before us this evening to consider the appeals of Andy and Megan Kay Shervin and Terry W. Duman, doing business as Duman, Inc., an Oregon Corporation, of Findings of Fact, Conclusions of Law and Order entered June 26, 2020, for violations of Dunes City Code provisions as follows: As to the Shervins, Section 90.01(D) failure to obtain a permit from the City to encroach on the City's right-of-way to be considered on appeal by the City Council; Section 92.032 and 93.003 failure to obtain a permit from Dunes City for excavation and grading, to be considered on appeal by the City Council; Section 141.003 failure to submit an erosion and sediment control plan for consideration and approval by the City prior to any land disturbance, to be considered on appeal by the City Council; Section 155.3.1.2(H) violating the authorized number of access points permitted per single-family dwelling, to be considered on appeal by the City Council in its capacity as Board of Appeals; As to Duman, Inc., Section 120.15 doing business in Dunes City without a current valid Dunes City business license, a violation to be considered on appeal by the City Council; Section 90.01(D) encroaching on the City right-of-way without a permit, a violation to be considered on appeal by the City Council; Section 155.3.1.2(H) creating more than one access point to the property from the City right-of-way without first obtaining a permit, a violation to be considered on appeal by the City Council in its capacity as the Board of Appeals; Sections 92.032 and 93.003 failure to obtain a permit from Dunes City for excavation and grading to be considered by the City prior to any land disturbance, to be considered on appeal by the City Council; Section 141.003 failure to submit an erosion and sediment control plan for consideration and approval by the City prior to any land disturbance, to be considered on appeal by the City Council."

Mayor Forsythe asked Councilors if they had read the Staff Report and had questions for Staff. City Administrator/Recorder Mills explained that the Council acts as the Board of Appeals to hear appeals of Title XV orders of Code violation. Other Code violation appeals fall under the jurisdiction of the Council itself. She went on to explain that she had removed the Chapter 151 Code violations from the list of violations because the Council subsequently adopted new Code and repealed Chapter 151. Councilors had no questions for Staff.

Mayor Forsythe invited testimony from Mr. Shervin. Mr. Shervin requested that the Order be overturned and all fees refunded. Reading from a prepared statement, he explained his request noting that the driveway that is allegedly a second access point in violation of

Code has always been there and he had letters from neighbors attesting to that fact. Mrs. Shervin gave copies of the letters to City Administrator/Recorder Mills and explained that they did not intentionally violate City Code.

Councilors reviewed photos of the property and other Exhibits that were included in their copies of the Staff Report.

Councilor Wells noted that he had lived in the neighborhood for thirty-five years and knew that there had been a secondary access point for years. City Administrator/Recorder Mills pointed out that if the Council approved the second driveway, the appellant would have to install an apron and culvert as required by City Code and obtain a driveway permit.

There was some discussion about the grading and excavation that had been done. Mrs. Shervin explained that there was no immediate plan to build a garage on the graded area but, when the garage is built, a retaining wall on the steep cut would be built.

Mayor Forsythe invited Mr. Duman to offer testimony. Mr. John Duman introduced himself and explained that he was representing Mr. Terry Duman because he, not Terry Duman, did the work on the subject property. Mr. Duman apologized for the lack of a current business license and went on to explain the scope of the work he had done at the subject property noting that he had removed brush and stumps from the property and filled in the holes left by the stump removal.

There was some discussion between the Councilors and Mr. Duman to clarify the extent of the work he did. Mr. Duman requested that the City refund his appeal fee.

Mayor Forsythe closed the public hearing at 6:50 and reconvened the regular session.

Councilor Orr made a motion to drop the violations relating to now repealed Code Sections 151.048(B) and (D) as recommended in the Staff Report. Councilor Wells seconded the motion. The motion passed by unanimous vote.

There was some discussion among the Councilors regarding the remaining violations affecting Andy and Megan Kay Shervin.

Councilor Orr made a motion to declare that the Shervins violated Dunes City Code Sections 92.032 and 141.003. Councilor Wells seconded the motion. In a roll call vote, the motion passed with all Councilors voting in favor.

There was some discussion about the amount of fine, if any, that should be levied against the Shervins.

Council President Meyer made a motion to fine the Shervins for one half of the amount the City spent to process this matter, \$230. Councilor Wells seconded the motion.

City Administrator/Recorder Mills reminded Councilors that the Shervins would still need to obtain a driveway permit.

In a roll call vote, the motion passed with all Councilors voting in favor.

Councilor Montgomery made a motion to reimburse the Shervins for their \$400 appeal filing fee. Councilor Wells seconded the motion. The motion passed by unanimous vote.

Council President Meyer made a motion to fine Dumas, Inc., \$230, one half of the amount the City spent to process this matter. There was no second.

There was some discussion regarding the alleged violations against Dumas, Inc.

Councilor Orr made a motion to declare that Dumas, Inc. violated Dunes City Code Sections 92.032, 120.15 and 141.003. Councilor Wells seconded the motion. In a roll call vote, the motion passed with all Councilors voting in favor.

Council President Meyer made a motion to fine Dumas, Inc. \$230, one half of the amount the City spent to process this matter, \$100 for doing business without a City business license, and to reimburse Dumas, Inc., for the \$400 appeal filing fee. There was no second.

Councilor Snow made a motion to fine Dumas, Inc. \$230, \$85 for doing business without a City business license, and to reimburse the \$400 appeal filing fee. Council President Meyer seconded the motion. In a roll call vote, Council President Meyer and Councilors Snow and Montgomery voted in favor of the motion, and Councilors Wells and Orr voted against the motion.

Mayor Forsythe invited Mr. Terry Dumas and Mr. John Dumas to participate with other business owners in a town hall discussion about how the City can raise revenue without increasing fees or levying a property tax.

10. NEW BUSINESS

A. Agreement for City Engineering Services

Council President Meyer made a motion to authorize City Administrator/Recorder Mills execute the Agreement. Councilor Wells seconded the motion. The motion passed by unanimous vote.

B. Appointment to Water Testers on Siltcoos Lake—Wanda Phillips

Council President Meyer made a motion to appoint Ms. Phillips as a water tester for Siltcoos Lake. Councilor Wells seconded the motion. The motion passed by unanimous vote.

C. Appointment to Planning Commission—Wanda Phillips

Councilor Orr made a motion to appoint Ms. Phillips to the Planning Commission for the term ending January 12, 2022. Councilor Wells seconded the motion. The motion passed by unanimous vote.

11. EXECUTIVE SESSION

There was none.

12. FOR THE GOOD OF THE ORDER

Councilor Montgomery announced that he would not run for a second term on the Council.

City Administrator/Recorder Mills referred Councilors to a copy of a letter from Mrs. Leach that was distributed to each of the Councilors prior to the meeting.

A COPY OF MRS. LEACH'S LETTER IS ON FILE AT CITY HALL.


City Administrator/Recorder Mills stated that she was working on new language for short-term rental regulations.

13. ADJOURNMENT

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

Mayor Forsythe adjourned the meeting at 7:42 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 26th DAY OF AUGUST 2020


Robert Forsythe, Mayor

ATTEST:


Jamie Mills, City Administrator/Recorder