



CITY COUNCIL MEETING MINUTES ~ APPROVED

APRIL 28, 2021 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, April 28, 2021 meeting of the Dunes City Council to order at 6:04 pm.

2. ROLL CALL

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

Present: Mayor Robert Forsythe, Council President Sheldon Meyer, Councilor Tom Mallen, Councilor Robert Orr, Councilor Rory Hammond, Councilor Duke Wells, and Councilor Susan Snow.

Absent and Excused: None.

Also Present: City Administrator/Recorder Jamie Mills, videographer Alan Campbell and several Dunes City residents.

3. PLEDGE OF ALLEGIANCE

All who were present joined Mayor Forsythe in the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Mallen made a motion to approve the Agenda. Councilor Orr 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

City Administrator/Recorder Mills read from the list of announcements on the Agenda:

- A. The City has five openings for citizen members to the Budget Committee. If you are interested in serving, please call Jamie at City Hall. Deliberation of the 2021-2022 Fiscal Year Budget has already begun!
- B. The City has received numerous applications for the positions of Permit Tech and Planning Secretary. Once testing with OED is complete, interviews will begin.

7. CITIZEN INPUT ON ITEMS NOT DISCUSSED IN PUBLIC HEARING

Mayor Forsythe recognized Mr. John Branning, a Dunes City resident who lives next door to the proposed Montgomery View Estates development. He expressed concern about the proposed access road that is set to be a public road, noting that it is just beside his house and there is an ongoing problem with traffic from people looking for lake access or trying to camp on the property or using the road as a turnaround. He asked the Council to consider requiring the developer to install a gate or other barrier to prevent public access or to try to move the road farther from his property line. He went on to say that his neighbors on Kiechle Arm Road were also concerned about the developer using Kiechle Arm for access to the development.

City Administrator/Recorder Mills explained that the preliminary plat was approved some years ago but before the final plat can be approved the developer will have to put the roads in correctly and finish other work. She noted that at the time the preliminary plat was approved the City required that the roadways be dedicated to the City for maintenance but now the City does not have the resources to maintain new roads. She went on to explain that she and the developer are exploring options.

Mr. Branning went on to express concern about how using the well on the developing property to supply water to the new houses could cause other wells in the area to run dry or run with reduced volume. City Administrator/Recorder Mills explained that the owners of the property are hoping to draw water from Woahink Lake to supply a community water system, but no decisions have been made at this time.

8. PRESENTATIONS/TRAINING

None was scheduled.

9. OLD BUSINESS

None was scheduled.

10. PUBLIC HEARING(S)

- A. Appeal of Findings of Fact, Conclusions of Law and Final Order Entered on March 4, 2021. Dunes City Code Enforcement Officer v. John A. Cournoyer and Hannah Cournoyer, Individually and Severally

Mayor Forsythe closed the Regular Session of the Council meeting and opened the public hearing at 6:21 pm.

1. Review of Complaint, Findings of Fact and Conclusions of Law and Final Order by Code Enforcement Officer Mills.

City Administrator/Recorder Mills explained that she investigated a total of eight complaints against the Cournoyers, but reduced the number of violations to four because some complaints had been resolved.

City Administrator/Recorder Mills reviewed the four counts briefly.

Count 1. During the week of April 20 through April 26, 2020, a violation of §91.05 of Dunes City Code occurred in that unreasonable noise occurred and was allowed to continue on at least one occasion. The complaints are on file at City Hall.

Count 2. On November 18, 2020, unreasonable noise occurred and was allowed to continue in the early morning hours as evidenced by decibel recordings close to 100, a violation of §91.05 of Dunes City Code.

Count 3. On January 22, 2021, unreasonable noise occurred and was allowed to continue, a violation of §91.05 of Dunes City Code, as evidenced by email and affidavit from complainant. The affidavit is on file at City Hall.

Count 4. On February 14, 2021, unreasonable noise occurred and was allowed to continue, a violation of §91.05 of Dunes City Code, as evidenced by affidavit from complainant. The affidavit is on file at City Hall.

City Administrator/Recorder read from the Order to the Cournoyers, as the Responsible Parties, for the record.

“It is hereby ordered that the property owners, John A. Cournoyer and Hannah Cournoyer, are the Responsible Parties, and that they must take or cause to be taken, the following corrective action:

- “1. Within thirty (30) calendar days of receipt of this Order, make arrangements to have the sound system located on the subject property either removed from the property or install a governor on the system that does not allow the sound levels to exceed 60 decibels inside the property; and*
- “2. Within thirty (30) calendar days of receipt of this Order, provide evidence to Dunes City, in the form of photos or by allowing a Dunes City representative to*

come onto the property for confirmation purposes, the following mandated postings:

“A. The name of the owner or local representative and a telephone number where the owner or local representative may be contacted at all times;

“B. The telephone number and website address of the City of Dunes City, Si-uslaw Valley Fire and Rescue and the Lane County Sheriff’s Office;

“C. The number of approved parking spaces outside the garage and maximum number of vehicles permitted on the property;

“D. The maximum occupancy permitted for the Subject Property;

“E. Any prohibited occupancy, such as sleeping rooms not available due to parking or egress limitations;

“F. The solid waste collection day, pickup location, and requirement to place all garbage and recyclables in approved containers;

“G. Required Dunes City quiet hours pursuant to Dunes City Code, Chapter 91, that is, between 7:00 pm and 7:00 am; and

“H. A notice that states: ‘Whoahink and Siltcoos Lakes serve as drinking water supplies to this facility. Please protect lake water quality as if it is your own drinking water supply—because it is.’”

She explained that the Responsible Parties were ordered to reimburse the City for costs and fees associated with processing the complaints and making inspections and investigations and that the Cournoyers appealed the Code Enforcement Officer’s decision and paid an appeal fee.

THE COMPLETE NOTICE OF VIOLATION IS ON FILE AT CITY HALL.

2. Response to Complaint, Findings of Fact and Conclusions of Law and Final Order by the Cournoyers.

Mayor Forsythe recognized Ms. Hannah Cournoyer, attending the meeting remotely via GoToMeeting, who read from a statement she emailed to City Administrator/Recorder Mills and addressed to the Council members.

“This letter is to inform you of our desire to appeal the fines and fees imposed on us from the alleged code violations on our property and respectfully request for a waiver on all fines and fees associated with the property including the appeal fee.

“We are accused of 4 counts of code violation Section 91.05; in particular 91.05(B) which defines unreasonable noise as follows: ‘Noise is presumed to be unreasonable if, during the hours of 7:00 am to 7:00 pm it is audible to a person of normal hearing at a distance of 100 yards, or during the hours of 7:00 pm to 7:00 am, it is audible at a distance of 50 yards.’”

“We are contesting the interpretation of the word ‘unreasonable’ which we feel has been interpreted in an extreme manner that has caused fines and fees to be applied to our property unjustly.

“Our property is equipped with interior noise monitors which have recorded the decibel level for the nights associated with our code violations. On April 20th-26th the decibel level indoors never exceeded 90dB. On November 18th, the decibel level indoors never exceeded 100dB. On January 22th [sic], the decibel level indoors never exceeded 90dB. On the weekend of February 14th, the decibel level indoors never exceeded 90dB.

“Though these may seem like high numbers, normal speaking volume ranges from 55-70dB and a shouting voice ranges from 75-90dB. At a distance of only 10 yards, speaking volume drops below 40dB and shouting reduces to below 60dB. Given these parameters and the fact that our noise monitors detected these decibels levels inside the house and not at a distance of 50 yards it is reasonable to understand that though decibel levels inside the house reached up to (and at times into) the range of 90dB, that this level of noise was greatly reduced at a distance of 50 yards. Dunes City code requires that noise levels are reasonable at a distance of 50 yards and our records have proven that the noise levels inside the house were only slightly elevated from normal speaking levels.

“Additionally, it is well documented that noise is greatly affected by temperature and, correspondingly, also affected by bodies water [sic]. The complaints made against our property were all made at night during months that commonly have cooler temperatures. Noise on or near large bodies of water appear to be higher in volume to the listener when temperatures at the water are very low, such as during night time and during the late fall to early spring months. Though noises appear to be higher in volumes during these times, they are not necessarily unreasonable or very high in decibels.

“In conjunction with these factors, two of our neighbors’ homes are situated considerably less than 50 yards away from our house. Our neighbor to the west of our property at 83929 Cloud Nine Rd, is easily within 50 feet however is largely unoccupied and therefore has not generated any noise complaints. Our neighbor to the east of us at 83921 Cloud Nine Rd, is also well within the stated 50 yard radius of the noise ordinance. Despite the fact that complaints have been logged as Dune [sic] City noise code violations, and it must be considered that the neighbors who submitted those complaints do not reside outside of the 50 yard radius, and therefore it is reasonable to conclude that the noises that were reported, were not necessarily ‘excessive’ or in violation of code. Audible noises within the 50 yard radius of our property do not violate Dune [sic] City Code as written. Additionally it can be concluded that any fees and fines levied in relation to the alleged code violations are also unnecessary and inappropriate.

“Technicalities aside, we have made every effort in our power to be good neighbors to the people living both directly next to our property as well as across the lake. We have earnestly made every effort to remedy the perceived disturbances caused by guests of our property and we have enacted numerous policy changes in hopes of stopping these occurrences.

“For every call we have received from a neighbor and letter we have received from Jamie Mills we have responded promptly, and have worked hard to put measures in place that take the burden off of code enforcement. We have installed a live-in caretaker on the property who maintains the grounds, tends to the garbage removal, and serves as an on-site point of contact when neighbors are disrupted. We appreciate when our neighbors do us the courtesy of calling us when there is an issue and we have been open with our neighbors around us that we are only a phone call away and are available to help 24/7. In addition to calling us or our caretaker [sic] directly, this after hours phone number that can be called any time, day or night and a live person will answer and contact the guests staying there if there are urgent problems: 888-807-5533. When we personally receive calls from our neighbors, we respond rapidly every time, by calling our management company and our on site manager to work with us to remedy the situation. In addition, we have increased our nightly rates and reduced occupancy to dissuade party crowds, and have placed signage inside the house showing Dune [sic] City Code regarding noise and neighborly. We removed the fire pit in the yard to discourage late night noise making and comply with environmental mandates. We have disallowed trailers on the driveway to reduce disturbances to the south of us. We have modified our garbage service so that garbage from our property is not accidentally polluting our neighbors [sic] properties. All this in an effort to be good neighbors to those around us on the Lake.

“To date we have already spent more than \$2,000 (not including the compensation for the on-site manager) on improvements and adjustments to our property mitigate code violations by our tenants and to show good-faith to our neighbors. This money has been spent on things like removing the con-compliant fire pit in the yard that was put in by the previous owner of the property, installing the signage in the home reminding tenants of Dune [sic] City code, installing the on-site caretaker to ensure that tenants are respectful [sic] and courteous, installing noise monitors, and repairing the driveway that is shared with multiple other properties. Though we find the fees and fines levied by Dune [sic] City on our proper to be unwarranted, we would like the Dune [sic] City Council members to recognize the funds and efforts we have already put towards both being good neighbors and staying current and compliant of all Dune [sic] City Code. Paying unwarranted fines would be counterproductive towards our goal of expending every resource towards providing a safe residence for our tenants as we work hard to ensure to the best of our ability that those who come to enjoy and contribute to the local economy of the area are respectful [sic] (temporary) neighbors of Dunes City. We continue to spend time and money modifying the house to help police guests in the home. We are currently in the process of installing a 2 way audio system so that if an issue arises we can literally talk to the tenants through the system in order to get in touch with them faster than a phone call.

“We understand the need to impose penalties on violators who are not cooperative and unresponsive to the issues of the neighborhood, but our hope is that we have adequately demonstrated to you that we are active participants in the management of this property despite the fact that we do not live there full time. We therefore respectfully

ask that all fees and fines (including the appeal fee) associated with our property be waived.

“This property has been in our family for 35 years and means a lot to us and we want our neighbors and tenants to enjoy the neighborhood as much as we do. Thank you for your time and attention to the issues laid out in this appeal.”

A COPY OF THE COURNOYER’S EMAIL STATEMENT IS ON FILE AT CITY HALL.

3. Testimony in favor of the City Enforcement Officer and Questions by Councilors.

Mayor Forsythe recognized Mr. Andrew Sturgill, a Dunes City resident and neighbor of the subject property. Mr. Sturgill noted that at the time he filed a complaint there was a large and noisy group of people staying at the property. He went on to note that it did not appear the fire pit had been removed, it may have been disturbed, as smoke can still be seen from the area.

Mayor Forsythe recognized Ms. Tina Johnson, a Dunes City resident and neighbor of the subject property. Ms. Johnson noted that there are still loud parties outside at night and that it appears there are bonfires in the yard at night.

Mayor Forsythe recognized Mr. Patrick McAleney, a Dunes City resident and neighbor of subject property. Mr. McAleney explained that the noise situation seems to have improved somewhat and noted that the Cournoyers and City Administrator/Recorder Mills have responded quickly to his complaints. Mr. McAleney went on to note that the summer will be an indicator of whether or not the adjustments the Cournoyers have made will make a difference in the noise and other issues with that property.

4. Testimony in favor of the Cournoyers and Questions by Councilors.

Mr. and Mrs. Cournoyer explained that they did remove the fire pit, but tenants may be burning wood in that same area. They noted that if that is the case, neighbors should call them so they can advise their tenants to stop. They also noted that they are in the process of installing outside noise monitors and reiterated that they are available via telephone 24/7 to address complaints.

5. Rebuttal by Code Enforcement Officer (if any).

City Administrator/Recorder Mills had nothing further to add. Mayor Forsythe recognized Mr. McAleney who mentioned that he had tried to contact the on-site manager but never received a call back. Mayor Forsythe recognized Mr. Sturgill who noted that at one time when he called on the on-site manager in person and asked for the Cournoyer’s telephone number, the manager refused to provide it and when he asked the manager to speak to the tenants, the manager refused to do so. He now speaks in person directly to the Cournoyers.

6. Rebuttal by Cournoyers (only if rebuttal by Code Enforcement Officer).

Mr. Cournoyer noted that he and his family want to be good neighbors and hope to find common ground for all to live in harmony. Mrs. Cournoyer reiterated the request to waive the fees and fines so that the money could instead be spent on improving the property for the benefit of all.

7. Deliberation by Councilors and Entry of Decision.

There was some discussion among the Councilors about the legality of the fire pit and whether the County had restrictions on outside burning. City Administrator/Recorder Mills explained that the problem with the fire pit was that it was located within the Riparian Zone in violation of City Code. There was some further discussion about the noise complaints, with Councilors generally agreeing that more should be done to control noise, even though the owners are working toward better solutions.

Councilor Orr made a motion to keep the fines as proposed and to uphold the Code violations as written. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe thanked the Cournoyers for their input and expressed hope that they and the City could continue to work toward resolving issues to everyone's satisfaction.

Mayor Forsythe closed the public hearing at 7:25 pm and reconvened the regular meeting of the City Council.

11. NEW BUSINESS

A. Consideration of Proposal for Improvement to Clearwater Cove Way in Front of Councilor Mallen's Driveway

City Administrator/Recorder Mills referred Councilors to a copy of the Knife River quotation included in their meeting packets and noted that Councilor Mallen would have to recuse himself from any vote on the issue. She explained that City Code requires homeowners to install a driveway apron with a culvert, if necessary. Councilor Mallen is planning to have that work done, but before it is done he has asked the City to install a trench drain to catch water coming off the City roadway and channel it to the existing catch basin at the top of the driveway area so it drains off the roadway correctly.

Councilor Orr made a motion to approve the request. Councilor Hammond seconded the motion. The motion passed with five votes in favor and one abstention (Mallen).

B. Consideration of Award of Auditor Municipal Audit/Review Services Proposal for Fiscal Years Ending June 30, 2021, 2022 and 2023

City Administrator/Recorder Mills referred Councilors to a copy of the Municipal Audit/Review Services Proposal from Accuity, CPAs, that was included in their meeting packets. She explained that the proposal is to perform an audit on all City funds for the year ending June 30, 2021, and a review of the City's financial statements for the years ending June 30, 2022 and 2023.

Councilor Hammond made a motion to accept the proposal presented pending reference checks of the references provided by Accuity. Council President Meyer seconded the motion. The motion passed by unanimous vote.

C. Notice of Non-Renewal of Workers' Compensation Coverage

City Administrator/Recorder Mills referred Councilors to a copy of the notice from CIS announcing that CIS will no longer offer workers' compensation coverage. Instead, she explained, worker's compensation coverage will be provided by SAIF, a State not-for-profit insurance company.

D. Appointment to Planning Commission – Michael Mathews

City Administrator/Recorder Mills referred Councilors to a copy of an application for appointment to the Planning Commission from Mr. Michael Mathews. She explained that Staff has some concern about the fact that if Mr. Mathews is appointed three of the five Commissioners would live on the same street. Councilors generally agreed that that shouldn't be an issue and having Commissioners with diverse backgrounds is just as important. Councilors noted that the Council is the final decision maker on most issues. Councilor Orr expressed the same concern as Staff and suggested that the Council take action if it appeared that there was inappropriate behavior by Commissioners.

Councilor Hammond made a motion to accept the application from Mr. Mathews. Councilor Wells seconded the motion. The motion passed by unanimous vote.

E. Consideration of Acceptance of Property Donation

City Administrator/Recorder Mills explained that the owners of a property surrounded by land recently acquired by the City for Rebecca's Trail have expressed interest in donating the land to the City. She went on to explain that the property's new wetland delineation deems the lot unbuildable. She noted that DSL has determined that the previous owners had violated State law for use of wetlands and is currently deciding how to proceed with penalties for the violations. Following discussion, Councilors generally agreed that City Administrator/Recorder Mills should notify the owners that the City would accept the donation, contingent upon clear title and resolution of issues with DSL by the owners or by the City.

12. EXECUTIVE SESSION

There was none.

13. REPORTS

- A. Mayor's Report: Mayor Forsythe did not have a report.
- B. Community Center Report: City Administrator/Recorder Mills explained that the City's water system was recently repaired. She went on to report that during the repairs to the pump area, 220 wire became exposed and an electrician has been contacted to fix it.
- C. Water Quality Report: Councilor Snow did not have a report.
- D. Emergency Services Report: City Administrator/Recorder Mills reported that the storage shed has been partially repaired but the roof needs to be replaced to finish the job.
- F. City Administrator/Recorder/Planning/Staff Report: City Administrator/Recorder Mills reported that complaints received by City Staff were mostly associated with new property owners clearing land and disturbing the wetland and riparian areas. She noted that the City has no jurisdiction or code that regulates whether people can remove trees from their property unless the trees are within 25 feet of any water source or in the wetland and riparian zone. She also noted that grading land for construction is allowed unless the area is located within 150 feet of a water source, on a slope greater than 12% or the area is more than 4,000 square feet in area.

14. FOR THE GOOD OF THE ORDER

There were no comments.

15. ADJOURNMENT

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

Mayor Forsythe adjourned the meeting at 7:59 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 26^h DAY OF MAY 2021

[Signed copy available at City Hall]

Robert Forsythe, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder