

Woahink Lake Association



[Presentation to Dunes City Regarding Ordinance 203](#)

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August 9, 2012

[See the video](#)

Council Meeting

First, Presented by: Dr. G J Wasserburg

I am a 23 year resident of Dunes City and a member of the Woahink Lake Association. My wife and I live here because we think that this is a beautiful place. We would like to keep it in good shape.

I am a scientist with known contributions to the transport of trace elements in rivers, estuaries and the ocean.

The lakes are a major local attraction and attraction for visitors including fisher-people and water-sports people. They are substantial contributors to the local economy. As for the lakes, they all have a finite lifetime, ending by eutrophication and filling up with sediment.

Since early in human civilizations - for villages, for cities, for fortresses and states, a basic need is a reliable, potable water supply. This is the fundamental requirement for public safety, health, and survival.

Just as all other residents, we have a septic tank for our sewage disposal. About 25% of the people in the USA use septic systems-on site disposal, so their proper function is of general interest. The tank typically stores about one ton of waste including fecal material. Naturally, we continuously replenish the waste by eating, excreting, adding kitchen waste and washing our dishes (often with high 'P' ['P'=[Phosphorus](#)] detergents). The outflows of these septic systems

are universally recognized, by almost all governments as a source of serious concern because of their pollution effects when there are failures. This concerns bacterial inflow into the water supply and contaminants that have deleterious effects on the water supply. Septic systems, which are well run, are reliable waste control systems if their density is not high and they are regularly and properly maintained. However, these systems constitute possible wide spread “point sources” of high levels of contamination if they become leaky or fail. If they fail, then we have a real mess. I will focus here on ‘P’ although ‘N’ [‘N’=[Nitrogen](#)] is an important pollutant. The waste in tanks has a high phosphorous content, which typically, for a good system, has a normal outflow with 3ppm ‘P’. That is a high number. Our bodies contain 10,000 ppm ‘P’. That is lots of ‘P’.

There are natural ‘P’ and ‘N’ sources. Run off from soils by rains are a significant contributor to the inflow to rivers and lakes.

In addition drainage from animal feces, fertilizers and septic systems play a very significant role.

Warm spells with low water turn over enhance algal growth.

There are also lots of different sources for plant nutrients that flow into the lakes and a variety of causes of algal blooms and of cyanobacteria (toxic blue green algae).

As for up to date wake up calls;

The problem of algal and cyanobacteria in lakes is wide spread and current - see :

- [\(2012\) high level toxic algae in dorena reservoir, lane county](#) or;
- [\(2010\) sewage pollution in Tenmile lakes, OR.](#),
- Devils Lake OR, officially listed [by EPA as an impaired water body for chlorophyll a and ph](#), two signs of cultural eutrophication.
- [\[TMDL\]](#)
- [\[Impaired Waters 303\(d\) Listings\]](#)

[Lake Erie has this algal infestation as an ongoing problem, \(2012\)](#) ; [algal blooms appeared on lakes across Wisconsin in the summer of 2012](#) when temperatures were high (2012). The Kansas department of health and environment issued blue-green [algae warnings or advisories for at least 12 Kansas bodies of water](#), including state parks. This is a short list!

Just as all other residents, we drink the water from the lake or from wells that drain into the lakes. We leach our septic tank outflows into the ground water and the lake. In Dunes City, the

underlying sediments are, of course, highly permeable old sand dunes with low retentive capacity.

Now for a bit of history:

I wish to show that Ordinance 203 did not arise from an arbitrary, thoughtless action. It is the result of an extensive effort to evaluate the security of the Dunes City water supply (that is state property) by concerned citizens.

Based on the result of a preliminary study-

On March 9, 2006, Dunes City, Oregon, adopted a septic system maintenance ordinance “to ensure that all onsite wastewater disposal systems, also known as sewage disposal systems or septic systems, are operated in a safe, healthful and environmentally responsible manner.” The septic system maintenance ordinance requires homeowners in Dunes City to provide updated maps of the location of their onsite wastewater disposal systems and to regularly evaluate the integrity of their onsite wastewater disposal systems.”

As is well known in the field of septic tank management - a key is - 'perform regular maintenance.'

This 2006 ordinance was led by an intensive study by the CCC and included professional consultants. This led to the report - [Protecting Critical Water Resources in Dunes City, Oregon](#) Standards for septic systems and their effluents, including phosphorus and nitrogen, and regulation of phosphate containing products.

Background material and draft ordinance.

It followed best management procedures.

I, again, submit a copy for the record. It can be gotten from the Dunes City office or [off the web](#) (please see Councilor Koehler for the site). The cover has a photo by Bob and Joyce Anderson who led the way in monitoring the Woahink Lake waters. This has been skillfully and energetically continued by Mark Chandler and the Water Committee to this day. Mark early recognized the significance of 'P' in affecting algal growth in our lakes. We hope this important monitoring function continues.

The report was authored by a group of Dunes City residents and explored alternative septic systems and their possible applicability.

As cited in that report, experiments in Canadian lakes clearly demonstrated that 'P' was the critical nutrient that causes very strong algal growth. The intense study by this CCC provided the city council with a substantial factual base for its deliberations regarding the regulation of on site disposal systems and proposed a draft ordinance.

As an outcome of the specific concerns laid out in this report, a new ordinance #203 was passed in 2009.

"To amend chapter 157 within the Dunes City code of ordinances entitled "septic system maintenance"

Ordinance #203 follows the general guidelines used by a wide number of states, counties and cities considering installation, location, and monitoring of septic tank system in Dunes City. The uses of high 'P' (>0.5%) detergents and fertilizers are treated elsewhere and remain a matter of considerable importance.

In our report, cited above, we had investigated the recommendations and policies of various nations - from [Norway](#), [Sweden](#), [Switzerland](#) to [Canada](#). We looked through the policies and recommendations of states from [Massachusetts](#) to [Washington](#) and [Oregon](#) and [California](#) and [Minnesota](#) to [Texas](#). We investigated a wide variety of [modern septic systems](#). There were no known systems that were demonstrably capable of containing 'P'.

The general rule that one recognized was-keep your crap out of the drinking water and regularly maintain your systems and know where they are. In all cases, performance based standards are necessary. Old/ancient systems are a more immediate problem, but all systems must be evaluated and maintained on a regular basis. It is my opinion that following Ordinance 203 is the clear and proper course of action. If with ongoing attention, it is after subsequent serious studies found not to be effective then it can be appropriately modified.

The authority of the city in this area of responsibility can be found in Oregon administrative rules.

With regard to the current situation, the issues, as I see them are as follows:

- 1) [LUBA](#) has [made a decision](#) and Dunes City must respect that decision or appeal it (that is possibly too late);
- 2) Dunes City must return to the ordinance 203 as an ordinance in effect and declare it so;

- 3) The City Council must propose a course of action to respond to the LUBA decision. The implied request by council to “defend” the existing ordinance 203 at this meeting is quite improper and violates the sense and spirit of the LUBA decision and the extensive and intense effort that went into laying the background for preparing and writing Ordinance 203. The documentation provided by the report, resubmitted [here](#), was given to the city (2006) and was a basis on which ordinance 203 was laid out. In my view, sufficient evidence has been presented to explain and justify the ordinance.

The fundamental issues are based on:

- a) the Dunes City comprehensive plan;
- b) the city codes;
- c) the relationship of the preceding documents to the necessary availability of potable drinking water for the citizens (a matter of public health and safety).

The concept of performance-based requirements is new to onsite wastewater management. As a result local and state officials should work together to target those technologies that are cost-effective, sustainable and suitable to local conditions.

As for philosophy, I close by telling the story of ["the commons"](#).

In medieval England, some villages or towns had some land made available to them, usually by some lord or duke or other big shot. This land was for use in common by all the members of that particular community. It was called “the commons” and the people who had access to it were commoners. They all had free access to it. The major problem was that if you grazed your sheep or cattle excessively on the common, the grounds effectively were denied to the other commoners.

The lakes are our commons. We are the commoners sharing the lakes.

We do not own them; they belong to [under the control of] the state along with the strip of land immediately adjacent to them and the streams, which feed them.

Our responsibility is to use this common with great care and to insure its availability and well being for both ourselves and our village.

- End -

[continued referenced notes]

Representatives to review performance-based options. For example, Washington state's technical review committee developed recommendations for [effluent treatment performance-based standards](#) following the review of more than 40 publications and a thorough analysis of state law.

A performance-based program must have the appropriate tools and resources to be effective.

In general, an assessment should be conducted to help in:

- defining legal authority to enact management regulations
- identifying management areas
- identifying program goals

[E-handbook](#) for managing individual and clustered (decentralized) wastewater treatment systems and decentralized systems are used in 25% of U.S. homes and are permanent components of our nation's wastewater infrastructure.

- identifying specific resource areas that need an additional level of protection (i.e., aquifers, areas with existing water quality problems, and areas likely to be at risk).

” Ultimately it is the absence of a comprehensive management program addressing each of these issues that prevents onsite and clustered (decentralized) systems from being considered as an effective and reliable wastewater treatment strategy.

Consequently, the potential for health and water quality problems from poorly managed systems is increasing.

If effectively implemented by state, tribal, and local governments, the management guidelines might provide for a viable, long-term option for meeting public health and water quality goals, particularly for small and rural communities. Few systems receive proper maintenance...most regulatory programs do not require homeowner accountability for system performance.

Water quality in Devils Lake is poor and it is classified as eutrophic. Because of its proximity to the ocean the water shows the influence of sea spray in the slightly elevated concentrations of sodium and chloride. McHugh (1979) included the lake in his study of highly eutrophic lakes in Oregon, and his observations are summarized as follows: Devils Lake has been a problem area for many years. Until 1970 it had the dubious distinction of being the worst polluted lake in the state, as the south end was frequently contaminated by a poorly functioning sewage treatment plant, a situation which has since been corrected. Repeated surveys have found areas with high nutrient levels and coliform counts. Septic systems from homes in the un-sewered areas or still

functioning in the sewered areas contribute to the problem. In addition, the two creeks flowing into the lake pass through farmyards and cattle pastures have been found to contain high levels of nutrients and bacteria. These contributions compound the problems of excessive algae and macrophyte growth found in the lake.

[memo](#) [to Lincoln City Council / Mayor]

from: David A. Hawker, City Manager comments

date: January 6, 2010

re: Septic tributary to Devils Lake 20100111 cc-hawker - septic regulation.wpd

This is a revision to my preliminary position memo of December 3, 2009 on a possible program to regulate septic systems tributary to Devils Lake. It comes after a meeting of various agencies hosted jointly by Devils Lake water improvement district and the city. While what follows was influenced by the input from various agencies, the recommendation is mine.

Council goal “examine means to reduce pollution in Devils Lake from faulty septic systems.”

Means because we provide water to the vast majority of properties that have septic tanks tributary to the lake, presumably we could impose any reasonable requirement on these properties as a condition of continued water service. For properties outside the city, the applicable section of the LCMC is:

13.12.050 b 2. Discontinuation of service and guarantee of supply. Except where service is required by written agreement, all water delivered outside the city limits shall be considered as a special service and not provided by the city as a common utility service. The city may reduce the quantity of water supplied by the service or entirely discontinue the service at any time, on a temporary or permanent basis, and by area or areas or by customer or classes of customers, in accord with such policies as the city may establish from time to time by ordinance or resolution adopted by the city council. The utility shall have no liability in any way to customers for failure to provide service or for any failure of the system.

This provision was used to require consent to annex and a water service agreement for properties outside the city where there was a change of a name on the utility bill. Failure to do so would have resulted in discontinuation of water service. This requirement was tested in the federal district court and found to be valid¹. I see no reason why a court challenge on a

reasonable requirement regarding the operation of a septic system would succeed. For properties inside the city, I am assuming that we have the authority to impose regulations either directly on the septic systems, or indirectly through the provision of water (as for outside the city properties). This is an area that would need further research. **Nexus** the following information was provided by Devils Lake water improvement district "Devils Lake is a significant natural resource to Lincoln City, Lincoln County and the state as a whole. However, years of intensive development on its shores and in the watershed have left the lake impaired. The lake itself is officially listed by EPA on their 303d list of impaired water bodies for chlorophyll a and ph, two signs of cultural eutrophication.

¹City of Lincoln City v. Roads End Sanitary district, April 9, 2008, civil no. 06-1001-tc United States District Court, during the 2000s blooms of toxic microcystis were reported as common in the western basin. In August 2003, a massive bloom of the cyanobacteria microcystis aetuginosa formed in western Lake Erie and persisted for nearly a month. Surface scums of microcystis containing high concentrations of the toxin microcystin washed ashore in [Michigan and Ohio](#), resulting in foul-smelling, rotting, algal mats. Beaches and recreational boating areas were rendered unusable and sport fishing was adversely affected. The microcystis bloom of 2003, perhaps the most severe in Lake Erie's recent history, was only the latest in a trend towards increasing frequency of microcystis blooms in the last decade. The 2003 bloom was followed by smaller blooms in 2004 and 2005. Microcystis reappeared in 2006, but the extent of the bloom remains to be determined.

A recent study by researchers from the Indiana university school of public and environmental affairs found;

- algal toxins in [Indiana lakes](#) at levels elevated above the national average. the survey found detectable levels of microcystin in 68 percent of Indiana lakes and reservoirs sampled.
- algal blooms in [Wisconsin](#)
- [the challenges of phosphorus reduction](#), invasive species, and climate change
- [Wisconsin people and ideas: summer 2012](#) contributor: Gina Laliberte
- unsightly multi-colored algal blooms appeared earlier than usual on lakes across Wisconsin in the summer of 2012. Their premature arrival was induced in part by an exceptionally warm period in March when temperature records were set

throughout the state. The unseasonably warm weather changed the trajectories of many natural communities.

- [algae advisory](#) again issued at Dorena Reservoir posted: tuesday, aug 7th, 2012
[by jon stinnett the cottage grove sentinel](#)

[2010 Lakeside \(KMTR\)](#) - the Tenmile Lake basin partnership reports that septic tanks may be leaking into Tenmile lake. The partnership, along with several other local groups, will host a state of the lakes free barbecue and presentation tonight. The main topic of discussion will be sewage contamination. Representatives from the lake basin partnership say some homeowners have not properly maintained their septic systems, which now pose a threat to water quality.

- Perform regular maintenance
- Solids must eventually be pumped from the tank.
 - o Many experts advise a family of four with a 1,000 gallon septic tank to have the tank pumped after 3-5 years of full time use.

(ORS sections in this chapter were amended or repealed by the legislative assembly during its 2012 regular session. see the table of ors sections amended or repealed during the 2012 regular session: 2012 AANDR tables

[see also [Science for Lawyers' - Dunes City Final Report 4-10-06](#)]

**Secondly, Presented by Dr. John Stead,
Woahink Lake Association Board Member
Dunes City Council, Regular Meeting
August 9, 2012
Agenda Item 9. A. Unfinished / Old Business**

Mayor Ruede, Councilors, and members of the audience,

My name is John Stead.

Thank you for providing the opportunity for us to make a presentation to the Council.

Why is the Woahink Lake Association involved in this matter? The Association's goal is, "To promote the understanding, protection and management of Woahink Lake, its watershed and its ecosystem." It's as simple as that.

How do we find ourselves here, this evening, and under these conditions?

Let's review eleven facts — Some history.

1. Dune City's founders determined that the city's border should cross Woahink lake, at Honeyman State Park' southern border, placing the majority of Woahink Lake within the city's stewardship. Expressed in the City's Comprehensive Plan, Policies B5 through B9, E1 through E6 and Oregon's Statewide Planning Goal 6, this serves as a legacy to the present City Council.

2. Dunes City's "[Drinking Water Source Assessment and Potential Planning Strategies](#)", December 2002, page 13, recommends the city should develop a septic maintenance and upgrade program, requiring the periodic testing and inspection of septic systems.

3. Dunes City is required by state law to have a Comprehensive Plan.

[ORS 197.175 \(2\)](#) says: each city and county in this state shall:

(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission.

(b) Enact land use regulations to implement their comprehensive plans;

[The City's Comprehensive Plan](#) provides for the logical and orderly development of the City. It contains policies that guide the city's decision-makers. I'll offer two examples of policy implementation:

First, **Policy B8**. says, and I quote, "Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink Lakes through monitoring recreation use, commercial and industrial use, and run-off of septic tank effluent. A Water Quality Control Committee will be formed to examine problems with water quality."

The Water Quality Committee operates under [Ordinance 197](#). Its purpose is, "to make recommendations to the City Council for the conservation, protection, maintenance, and improvement of the quality of the City's waters and the promotion of public health, welfare, and safety". One of the Committee's duties is to, "Serve in an advisory capacity to the City Council in matters relating to water quality and quantity."

Second, **Policy E6** states, The City shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

Following extensive work by the Water Quality Committee, the Council adopted Ordinance 173, "Septic System Maintenance" in March of 2006. This ordinance was updated as Ordinance 203 and adopted by the Council in January of 2010.

4. [July 14, 2011](#), Council held first public hearings on Septic Ordinances 210 and 211.

5. [August 11, 2011](#), Council held second public hearings on Septic Ordinances 210 and 211.

6. On [October 27, 2011](#), the Planning Commission held a hearing regarding Ordinances 210A and 211A, Septic Maintenance. Both proposals would repeal Ordinance 203 entitled "Septic System Maintenance". Following considerable discussion the Commission took action to recommend both proposed ordinances to the council.

7. [November 10, 2011](#), the Council voted in favor of repealing Ordinance 203 and adopting Ordinance 211A, an educational program to ensure septic system maintenance.

8. December 7, 2011, The Attorney for Oregon Coast Alliance (ORCA) sent a letter to the City's Attorney saying ORCA and the Woahink Lake Association (WLA) would prefer to work with Dunes City rather than going to the Land Use Board of Appeals (LUBA).

9. December 15, 2011. ORCA's attorney sent the City's Attorney a second letter suggesting mediation as an efficient and cost effective alternative, and offering that ORCA and WLA begin meeting with the City at its earliest convenience.

10. [June 5, 2012](#), The LUBA remand was mailed overturning the Council's decision to repeal Ordinance 203. (The City had 21 days to file an appeal but has not done so and the time for Dunes City to appeal has lapsed.)

11. June 13, 2012, a letter was sent to Dunes City stating a preference to work with the City to address all parties' concerns.

That's the end of the list of facts and the end of my comments.

We are here this evening to ask what they, the Council itself, would like to do, and where do we go from here?

Thank you.

**Lastly, Presented by Keith Hull
reading [ORCA's response](#)**

[Originally sent via electronic mail] August 10, 2011

[To] Dunes City City Council

Re: Proposed Dunes City Ordinances 210 and 211

[From] Oregon Coast Alliance (ORCA) P.O.Box 5464, Charleston OR 97420

(503) 391-0210 <http://www.oregoncoastalliance.org> *Protecting the Oregon Coast*

Dear City Council members,

Oregon Coast Alliance is an Oregon non-profit corporation whose mission is to protect and restore coastal natural resources, and work with coastal residents for sustainable communities.

We write this testimony on our own behalf and our members' behalf.

Dunes City on January 14, 2010 enacted Ordinance 203, entitled "Septic System Maintenance." This created Chapter 157 in the Dunes City ordinance code. Dunes City is currently considering Ordinances 210 and 211, which would repeal Ordinance 203 directly or render it ineffective, thus ending Dunes City's proactive septic maintenance program. The reason for Ordinance 203 is simple: many Dunes City residents live in the vicinity of Woahink and/or Siltcoos Lakes, and the majority of Dunes City residents use Woahink Lake, Siltcoos Lake, Little Woahink Lake, Woahink Creek and/or the Siltcoos River as their source of drinking water. Dunes City has a water right for Woahink Lake, and provides permits to residents who apply for water use; other residents obtain water from nearby sources as listed above, or from wells. All these sources are vulnerable to contamination from failing septic systems.

Woahink, Little Woahink, Siltcoos Lakes and their tributaries are all near one another, and hydrologically connected in the manner well understood in dunal lake ecosystems. Sandy soils are porous. Therefore, to protect against contamination of the drinking water supply, the City enacted Ordinance 203. Oregon Coast Alliance notes that there have been at least two Public Health Advisories listed for Siltcoos Lake in the recent past, in September 2007 and October 2008.

It is simply good policy to have a drinking water ordinance in place that requires prudent care of septic systems in the area, as any overflow, leakage or failure would seep into one or another of the connected lakes, or their tributaries, and very easily foul the drinking water supply.

Oregon Coast Alliance opposes both Ordinance 210 and Ordinance 211, for several reasons.

Dunes City is Fulfilling a Critical Need for Septic Oversight

Ordinance 211 states, “The State of Oregon has reserved unto itself, unless it has entered into an agreement with one of its counties pursuant to ORS 454.725, jurisdiction over wastewater disposal systems in the state of Oregon...” and continues by noting that the State has entered into such an agreement with Lane County for the oversight of waste disposal systems.

Ordinance 211 fails to note that the Department of Environmental Quality (DEQ)’s rules *also* require that the owner of an on-site wastewater treatment system maintain that system in working order. OAR 340-071-120(2). The county, as agent for DEQ, is prohibited from allowing any system to operate in contravention of DEQ rules or otherwise discharge untreated wastewater into ground, surface or public waters. OAR 340-071-130(1-4). Owners must at all times maintain and operate their systems in accordance with DEQ rules. OAR 340-071-130(13).¹

Oregon permits local ordinances to be enacted which are stricter than state law, if the ordinance follows the requirements in state law. Nothing in Oregon statute prohibits a municipality from proactively enacting legislation to require inspection, evaluation and pumping of septic systems. The only matter pre-empted by the State of Oregon or Lane County is the authority to permit **new** wastewater treatment systems. There is no preemption of maintenance of *existing* septic systems. OAR 340-071-0120 specifically authorizes DEQ to enter into agreements with local governments, which then authorizes the local entity to become DEQ’s agent in permitting onsite wastewater systems. The purpose of this Rule is to protect public waters from public health hazards. However, this power does not eliminate the power of municipalities to pass an ordinance stricter than DEQ or a delegated County may have for wastewater inspection and evaluation. On the contrary, OAR 340-071-0130 lists the responsibilities of a local agent, and enumerates the responsibilities and prohibitions of “any person” with respect to wastewater. Given that such requirements are mandatory, it is perfectly in accordance with the law that Dunes City enact a septic evaluation and maintenance ordinance. It essentially implements the requirements of OAR 340-071-0130 that neither Lane County nor DEQ has the staff or

resources to undertake. Existing systems are subject to review at any time under DEQ statutes. “Any person” may request such a review on any system. OAR 340-071-155. DEQ or the agent must produce a report on the system including any evidence that the system may be malfunctioning.² A failing system must be immediately repaired. OAR 340-071-215(1). Needed repairs must go through the same application process as for initial systems, and are subject to the same approval criteria. OAR 340-071-160(2). Before the system can be put back into use, the repairs must qualify for a “Certificate of Satisfactory Completion” just the same as new systems. If a failing system cannot be repaired, it must be decommissioned. OAR 340-071-185. Dunes City’s ordinance is thus fulfilling state law requirements in an appropriate and extremely necessary manner; it is far preferable to require regular septic maintenance and pumping than for DEQ or its agent to step in only at the time of septic failure, when damage has already occurred.

DEQ does require a permit renewal every few years, but it does not require a septic owner to demonstrate whether the system is failing or is working well. The owner need only demonstrate that the septic system in use has not been changed to another kind or size. Thus, Dunes City’s ordinance fills a critical gap: neither DEQ nor Lane County has an active program of septic maintenance and oversight.

The Dunes City Comprehensive Plan Requires a Septic Ordinance

Under the land use laws, Ordinance 203 likely qualifies as a “second-level” land use ordinance. ORS 197.015 (11) defines “land use regulation” as as, among other things, “any...land division ordinance adopted under ORS 92.044...or similar general ordinance establishing standards for implementing a comprehensive plan.” Let us then turn to ORS 92.044 (1)(b), the standards governing approval of plats and plans, which requires taking into consideration the location and surrounding area of a subdivision or partition. ORS 92.044 (1)(b)(E) includes requirements for “Facilitating adequate provision of...water supply, sewerage, drainage...or other needs.” Since inadequate septic maintenance will likely lead to continuing health advisories such as those already issued for Siltcoos Lake in 2007 and 2008, with the result that drinking water may have to be trucked in from outside sources, the proper functioning of Ordinance 203 is critical to Dunes City’s efforts to meet the requirements of the land use laws. Though it is a septic maintenance ordinance rather than an ordinance for *providing* drinking water, its regulation directly affects provision of drinking water in the manner described above.

Ordinance 203's direct relationship to the land use laws is buttressed by the fact that the Dunes City Comprehensive Plan contains several policies that focus specifically on protection of the drinking water supply. Most especially applicable are policies B8, E1, E2, E3, E5, E6 and I10. Of all these, the most directly on point is policy E6, which states, "The City shall adopt a program to improve maintenance of septic systems for the benefit of all residents."

This is as clear and unambiguous as language can be. Both Ordinance 210 and 211 would either remove a section of, or amend, the Dunes City Zoning Code. Prior to taking such action, the City Council must first determine whether the repeal or amendment of Ordinance 203 is *consistent* with the Dunes City Comprehensive Plan. Oregon law prohibits a municipality from adopting a zoning code provision that makes provisions of the Comprehensive Plan redundant or meaningless. Both Ordinance 210 and 211 would do exactly that: render meaningless the Comprehensive Plan Policies cited above.

Oregon law also **prohibits** "back door" attempts to amend the Comprehensive Plan through findings used to amend the zoning code. If a local government wishes to amend its Comprehensive Plan policies, it must do so directly, before changing a zoning code provision that reduces required regulation. In other words, to amend the Comprehensive Plan, Dunes City must go through all required steps, including a finding of consistency with all statewide planning goals through a post-acknowledgement plan amendment (PAPA). As part of the process, the City must also demonstrate compliance with all relevant state and federal laws.

Thus, passage of Ordinance 210 or 211 will amend the Comprehensive Plan in a prohibited manner, circumventing the required public process.

Dunes City Must Meet Goal 5 and Goal 6 Requirements

The Dunes City Comprehensive Plan has components reflecting the requirements of both Goal 5 and Goal 6 of the land use laws.

Goal 5 requires, among other things, identification of fish and wildlife resources associated with the lakes in the area covered by the Plan. The continuing contamination problems of Siltcoos Lake clearly have an adverse effect on fish and wildlife of the Lake, and thus Dunes City, by repealing or hamstringing Ordinance 203, will be acting in a manner inconsistent with Goal 5. This will apply equally to Woahink and/or Little Woahink Lakes, should they also begin to experience wastewater contamination after a repeal of Ordinance 203.

Goal 6 deals specifically with air, water and land resource quality. The Goal has language requiring that waste and process discharges from future development, when combined with existing development, neither violate *nor threaten to violate* state or federal environmental quality statutes. The Goal strongly recommends that Comprehensive Plans investigate methods of implementing the Goal, including enforcement of local health and safety ordinances.

Furthermore, Comprehensive Plans, to implement Goal 6, must consider the carrying capacity of the land, air and water; find ways of buffering land uses that will cause conflicts; and coordinate with river basins described in environmental quality statutes and rules. Siltcoos Lake is currently listed as a 303(d) limited water body for aquatic weeds and/or algae under the federal Clean Water Act, and has been since 1998. No Total Maximum Daily Load (TMDL) has been set for the Lake. That means DEQ cannot authorize any new or increased discharges that would increase the weed problem until the TMDL is completed. See *Friends of Pinto Creek v. EPA*, 504 F.3d 1007 (9th Cir. 2007). Increased nutrient loads from failing or overloaded septic systems could very likely cause additional weed problems, as phosphorus and other nutrients are the primary cause of such weeds.

Ordinances 210 and 211, if either are enacted, will potentially allow new or increased discharges of nutrients into Siltcoos Lake as a result of failing or poorly maintained septic systems. This will clearly be in violation of both Goal 6 and the federal Clean Water Act.

Repeal of Ordinance 203 Will Likely Trigger A Building Moratorium

If Dunes City repeals or renders ineffective its septic maintenance ordinance, it is failing to address the existing problems causing algae and weeds in Siltcoos Lake, which most probably include increased phosphates from poorly maintained septic systems. A similar problem may well develop on Woahink or Little Woahink Lake as well as a result of lack of septic maintenance. This failure on the City's part may very well affect the City's ability to grant additional building permits in the near future. DEQ has the authority to cease issuing new septic permits in situations where additional development will add to the pollution load. See OAR 340-071-0460 (1).

Essentially, this effort to repeal or severely restrict Ordinance 203 is initiating a de facto moratorium on new development in Dunes City, once water quality problems reach a point that DEQ and/or Lane County exercises its authority over new septic permits.

Conclusion

Ordinance 203 is an excellent ordinance that accomplishes several things very effectively: (1) It complies with Dunes City Comprehensive Plan policies on water quality and septic maintenance; (2) It complies, and is consistent with, Land Use Goal 5 and Goal 6, as well as state and federal environmental quality statutes; (3) It provides a critical service of septic oversight that neither DEQ nor Lane County are able to regularly fulfill; (4) It complies with DEQ requirements for protections of Siltcoos Lake, which is a water-quality-limited lake required by law to have a program in place for pollution reduction.

It would be shortsighted for Dunes City to fail to oversee and maintain the septic systems of its residents, who enjoy Woahink and Siltcoos Lakes and other nearby waterbodies by both living on their fringes and drinking water from them. ORCA urges the City Council to deny both Ordinance 210 and 211 and retain Ordinance 203 as part of the Dunes City zoning code.

Many thanks for the opportunity to testify. Please enter this testimony into the record of this matter, and notify ORCA of any further action taken by Dunes City.

Sincerely,
Cameron La Follette
Land Use Director

¹ OAR 340-071-130(13) Operation and maintenance. Owners of onsite systems must operate and maintain their systems in compliance with all permit conditions and applicable requirements in this division and must not create a public health hazard or pollute public waters.

²340-071-0155 (3) the agent must:

- (a) Examine the records available on the existing system, including all permit records and pumping and other maintenance records;
 - (b) Conduct a field evaluation of the existing system; and
 - (c) Issue a report of findings to the applicant. The report must address the information obtained relevant to system performance such as age; usage; records of installation, maintenance, and repairs; type, size, capacity and condition of components; evidence of any failures; other relevant information (e.g., condition of repair area if known); and a complete sketch of the system showing location and distances of major components.
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