

**MINUTES
DUNES CITY COUNCIL
SPECIAL SESSION – JULY 01, 2008 - 7:00 PM
City Hall – 82877 Spruce Street 97493**

1. Call to Order and Roll Call

The regular meeting of the Dunes City Council was called to order at 7:00p.m. by Mayor Eric Hauptman. Roll call was taken by Amy Graham, Acting City Recorder.

Present: Mayor Eric Hauptman, Councilor Peter Howison, Councilor Susie Navetta, Councilor Richard Koehler. Councilor Gerald Curran AND Councilor Bob Petersdorf were not present and excused.

Others Present: City Recorder Amy Graham, Planning Secretary, David Allen (Macpherson, Gintner, and Diaz) and 14 members of the community.

2. Pledge of Allegiance

The Mayor and the City Councilors joined in the Pledge of Allegiance.

3. Consent Agenda

A. Mayor Hauptman announced there were applications received for a City Council position and called Mr. Robert Quandt up for interview.

Councilor Howison asked several questions and Mr. Quandt replied.

Councilor Koehler asked if Mr. Quandt felt he was a detailed person and Mr. Quandt said he did feel his experience helped him to excel with detail.

The Mayor asked him what type of art Mr. Quandt focuses on. Mr. Quandt said mixed media.

Councilor Koehler asked what Mr. Quandt felt he could give to the City.

Mr. Quandt said he believes he has good judgment and a level of interest that will help Dunes City. He said he understands managerial concepts. He expressed his experience with documentation and process.

Councilor Navetta stated Mr. Quandt's resume is excellent.

Mayor Hauptman called Mr. Alfred Hilden up for interview.
Councilor Howison asked Mr. Hilden of his experience with Dunes City.

Mr. Hilden gave a background of his business endeavors. He said he has been involved in the past with the Planning Commission and the Dunes City website.

Councilor Howison asked Mr. Hilden to go into more detail as to why he quit working on the Planning Commission. Mr. Hilden gave explanation stating he is in a position where he can again serve the City.

Councilor Koehler asked Mr. Hilden what he felt he could bring to Dunes City.

Mr. Hilden said one of the biggest challenges the City faces is trying to put their hands around issues and situations. He believes he is a good facilitator in groups of people and thinks he could help consensus be reached.

Councilor Koehler asked him how Mr. Hilden believed he could bring people together.

Mr. Hilden said he is a status quo kind of person who isn't interested in change. He is conservative, but feels he is wise.

Councilor Navetta said she had no questions.

Mayor Hauptman asked if Mr. Hilden had any questions.

Mr. Hilden said no and that he looks forward to serving the City.

Mr. Quandt volunteered to step out of the room and Mr. Hilden followed.

The Council began discussion regarding both candidates.

Councilor Howison said they both have experience and both love Dunes City. He said he feels a younger attitude towards the City would be helpful.

Attorney David Allen gave legal council regarding the issue and that it was a majority vote of the Council. He said because two Councilors were not present, he wanted to make sure they were in compliance with the charter. While Mr. Allen reviewed his book, Council continued to discuss both applications.

Councilor Koehler said he liked Mr. Quandt's' specificity with his responses.

Mr. Allen said in looking at the Mayors functions in Section 17 of the Charter, the Mayor shall vote only in the case of a tie. He suggested that just to make sure whatever vote is taken, it should not run into this situation.

Councilor Howison asked for clarification regarding the number of Councilors and a majority vote of the quorum as opposed to the whole Council.

Councilor Howison said assuming there were seven members present, it would be the majority so the Council this evening would need to be a unanimous vote.

Councilor Howison moved to appoint Robert Quandt and it was seconded by Councilor Navetta. After unanimous vote of 3 to 0, the motion passed.

Councilor Howison suggested Mr. Quandt be sworn in at the next meeting in case there are any issues. By consensus, everyone agreed.

City Recorder, Amy Graham, brought the gentlemen back into the room and Mayor Hauptman announced the council had decided to choose Mr. Quandt. He explained they would swear him in at the next meeting.

7. Public Hearings

A. Montgomery Subdivision

This is a hearing regarding Mr. Allen Montgomery's request for a subdivision regarding Map # 19-12-23-40 Tax Lot 100 Montgomery View estates (SUB 01-07). He said this is the second hearing. The hearing procedures were read.

Mayor Hauptman asked if anyone wanted to declare any conflicts of interest. All said they had none. He asked for ex-parte contacts where the attorney of the applicant stepped in to state her view on ex-parte.

Navetta said she spoke to the Planning Secretary who questioned what a fire acre was. She answered she did not know.

Hauptman walked the property with Mr. Montgomery. The only other contact was with Mr. Riechel when they discussed, last Friday, if the Planning Commission felt they could reach a conclusion at the meeting in the morning. He asked so that meetings could be scheduled appropriately.

Mr. Allen clarified zoning code and statute that communication ORS 227.180 subsection 4. Communications between city staff and the governing body is not considered an ex-parte contact.

Under type 3 quasi proceedings that we are under tonight, 155.4.1.6 under Section 7, Ex-parte Communications, subsection C, it says that communication between city staff, and City Council or Planning Commission is not considered an ex-parte contact.

Ms. O'Dea said that there is LUBA case law clarifies the statute and that in some instances it is ex-parte.

Mr. Allen said that the disclosure was made which was the requirement.

Mayor Hauptman opened the public hearing at 7:35pm for the land use decision on the Montgomery Estates.

Mayor clarified everyone had the staff report.

Kim O'Dea stepped up and gave her address. She said the minutes came in today at 3:00pm and the applicant could not have a coherent response.

The Montgomery subdivision conditions were discussed

Ms. O'Dea said she is a nice person and everyone wants to make sure there is development with the code met.

She discussed that the permit was not necessary. Under requirement of the code they needed to just make contact.

Regarding the letter from Ms. Kirkpatrick. She guaranteed there were no creeks running on the property.

She handed copies of the beefed-up variances. She said there was a response to the staff report and findings of fact. She said they are the same as the ones in front of the Planning Commission except the date had changed. She said they were given an alternate site plan and said if they do not approve the variance, the Council must approve the other plan. The errors of the lot size had been corrected on a map she handed out.

She gave a copy of the conceptual re-division of lot 20.

She handed out another three copies of the original copies of the erosion control plan.

She handed out another engineers report regarding suitability and safety regarding the punching of the roads if the variance was not approved.

Mayor Hauptman said to elucidate the variance she spoke of, she has not been clear on the variance.

Ms. O'Dea gave explanation of current block length requirements of 600 ft.

She said what the Council will find in response to the staff report is that there are several issues of law that keep coming up over and over. There are nine issues with the approval criteria and she will summarize them and as to why they are relevant.

Decisions must have standards 197.195(4) Standards and conditions. Decision to be based on standards of the variance.

Standards and Criteria 197.195(1) erosion control ordinance is not applicable because it contains no standards. Because it is under appeal with LUBA, it cannot be acknowledged.

Mayor Hauptman wanted Ms. O'Dea to clarify her definition an acknowledgement of an ordinance.

Ms. O'Dea stated that it is sent to LCDC and they put their stamp on it.

Mr. Allen stated technically it was adopted and took effect 30 days after; however it was appealed. At this point in time it is unclear if there will be any changes. Because of the uncertainty of the appeal and the remand that might occur, he says there is a point to be made that the erosion control ordinance may not be the one that is used.

Mayor Hauptman said an answer was due from LUBA today. Mr. Allen said the Council decided not to file an appearance. A call was received by his office that a 14 day extension was requested. He said he was no longer on 2007-163 and staff should have called Dunes City.

City Recorder Amy Graham said she was not contacted today by LUBA.

The City Recorder handed out the large copy of the erosion control plan to the Council and they reviewed it.

Mayor Hauptman asked if the Council wanted to take a moment. Councilor Navetta said she wanted to look at the larger print. Ms. O'Dea declared she could try to answer questions, but she is neither an engineer nor an erosion specialist.

Councilor Howison said it was a general state form.

Ms. O'Dea said decisions need to be made under Standards and Criteria under 197.195.1. The impact study is an informational requirement at the front of the code, not back in Standards and Criteria. The law is that you can do that, but you have to tie it back to the Standards and Criteria. She has already addressed all the criteria.

Higher design standards are not clear. Re-vegetation plan is discretionary and not applicable.

Ms. O'Dea read her response to all of the issues.

She asked the Council to look at the response to the draft findings of fact. She said it was worthwhile to look at the larger issues.

Mr. Allen asked for clarification to response to findings of fact reference to needed housing issue. He said she didn't state what this reference was based on. Ms. O'Dea explained this was for single-family housing.

Mr. Allen said that 197.303, subsection 1a and 1d, 1a specifically representing housing, does not apply to a city with a population of less than 2,500.

Mr. Allen said Ms. O'Dea had raised legal issues regarding needed housing and the higher clear and objective standards. Mr. Allen said Council has more discretion than she is explaining. He suggested right now based on the reading of the statute and the text, it's pretty clear this does not apply to Dunes City because the population is less than 2,500 people.

Mayor Hauptman said LUBA will defer to its interpretation of code as long as the interpretation is not clearly contrary to the inactive language.

Ms. O'Dea said this was true and read according to section 197.195.1, which is decisions must be made under standards and criteria, she am quite confident that what is currently in the Dunes City code for erosion control, the impact study, the higher design standards, and the master road plan are not going to pass LUBA as actually being standards and criteria.

Mr. Allen stated his view on Ms. O'Dea's suggestions and intentions of such.

He said the other issue regarding the higher standards of design, he would need to look deeper into the codes and he reserves that to the Councils deliberation.

Ms. O'Dea moved to discuss the proposed conditions.

She said the DEQ 1200-C prior to final plat was possible.

She said the re-vegetation plan was in a letter at the last Planning commission hearing.

She is not okay with a Hydrologist.

Mr. Allen discussed the timeline and that LCOG was initially doing the application. He believed some assessment came out in May and a recommendation was to put out notice that this would be put in front of the Planning Commission. He said there was inconsistency. Notice requirement 155.4.1.9 because of sending out the notice there was a 20-day requirement and then put them in a tight timeframe. Mr. Allen asked for an extension but the applicant denied. He then explained the process the Council needs to take then he explained the timeframe.

Mayor Hauptman then asked if the final decision could be made with conditions, or if the conditions need to be prior to July 24th. Mr. Allen said at the point at which the record is closed, that is the point the Council makes a decision. He said the initial decision, if made tonight, would then be dealt with the final order for their consideration at a following meeting.

Ms. O'Dea said she was ready for the next phase.

8. Public Comment

Mayor Hauptman asked for testimony in support of the application for development.

No one came forward.

Mayor Hauptman asked for testimony in opposition of the application for development.

No one came forward.

Mayor Hauptman asked for testimony from anyone in neither support of opposition to express concerns.

No one came forward.

Mayor asked if Ms. O'Dea wished to present a final argument. She declined.

At 8:20p.m July 1st, 2008 Mayor closed the public hearing and began deliberation.

Mr. Allen asked Ms. O'Dea with the record being closed, was she, or anyone, anticipating making a request for the record remain open? Have anything been seen in writing? Ms. O'Dea said she did not think so.

Mayor Hauptman said the record has been closed. Mr. Allen asked if there was an issue with notice of Ms. O'Dea. She said she didn't know and would reserve that argument for LUBA should the need arise.

Mr. Allen asked regarding the initial notice, did Ms. O'Dea have any issues regarding the notice. She said she would reserve the argument for later if she needed it.

9. DELIBERATION

Mr. Allen said it is now the Councils time to review the materials and staff is here to help.

Navetta said her main concern was about water supply. She said she had looked at written material and found nothing that describes what the water system will look like. She said she had three maps identifying water pumps and their locations. She said on two of the maps, the water comes from a wetland area. She does not believe this is possible. She wonders about the storage tank and how the water will be provided to it and propelled from it.

Councilor Howison asked if a detailed water system is needed before approval. He said this is the first application that has had with so little detail at the meeting. He read response from Ms. O'Dea as an example. He said the Council should want a reasonable development. He said he doesn't believe there is intention of the applicant to work with the City.

At 8:28pm Ms. O'Dea handed in documents.

Recess for 10 minutes at 8:30pm.

Mayor Hauptman reconvened the meeting at 8:52pm

Councilor Howison asked for explanation and whether or not there is a re-vegetation plan.

Brandi Bell came up and said the procedure they have done for water rights.

Councilor Howison said he didn't see the re-vegetation plan.

Ms. Bell said her attorney was out of the office and would like to defer to her.

Councilor Navetta said her concern was on water and she still does not have an answer to her questions: How big is the pump, where is it coming from, etc. She said the maps are inconsistent as to locations. How big is the storage tank? How do you run a water line through a wet land?

Mr. Allen asked Ms. O'Dea clarify the re-vegetation plan. She said after reading the code, they saw there were no standards and chose that this was not open for response.

Mr. Allen said he had several suggestions. He said the City had until July 24th for a final decision. He believed the Council has all of the details before them. He suggested the Council table the issue tonight and review the information before a decision is made. He threw out July 10th as a time frame to meet again.

Mayor Hauptman said there still needs to be a regular meeting in the month of July.

Mr. Allen gave options to working with staff in preparing a final written order. He said there would be a special meeting and a regular meeting in July. He said there was plenty of time to get the appropriate notices out.

Councilor Navetta said the CC&R's came from Eugene. She says it mentions items that are not feasible in Dunes City.

Mayor Hauptman said he also had questions and feels having another special meeting is a good idea.

The Mayor asked who he should call with questions.

Mr. Allen said it's important to have the entire record in front of the Council. Mr. Allen said he would be the contact to Ms. O'Dea.

Mayor Hauptman discussed days of availability.

Mr. Allen said the final written order needs to be adopted by July 24th. He suggested 10 days between the decision and the final adoption.

Mr. Allen said it would be preferable the Councilors not present at the meeting this evening watch the video tape and/or listen to the audio tapes so they are informed adequately to make decisions.

Robert Quandt raised his hand and said he had to recuse himself from the future meeting if they were counting on him to make a quorum.

It was decided by all Council members that they meet for the regular meeting on July 15th at 7:00p.m. They discussed the light agenda and the ability to discuss this.

The City Recorder stated she anticipated the hearing of this so the agenda is light. She suggested the next special meeting be set on July 24th.

Mayor Hauptman stated his concerns with the practical physical aspects of the property. He clarified he could not speak to anyone regarding the issue.

The City Recorder said more questions could be answered at the meeting on July 15th. Ms. O'Dea asked the questions be typed in an email and sent to Mr. Allen.

Mayor Hauptman stated his intent is not to deny, but to prevent bad developments and keep Dunes City special.

Mr. Allen reiterated that if the Council has questions, they should go through him.

Councilor Howison asked if they were permitted to discuss this with anyone.

Mr. Allen said at this point it is to only be kept to the record with no outside discussion.

14. Adjournment

Councilor Koehler moved to adjourn the meeting. There was no second.

Councilor Howison motioned to table the Montgomery subdivision proposal until July 15th, 2008 at 7:00pm. Councilor Navetta seconded. Unanimous vote passed 3 to 0.

Councilor Koehler made comment of the Festival of the Lakes raffle prize which is distributed throughout the Grocery Outlet.

Councilor Koehler moved to adjourn the meeting. Councilor Navetta seconded the motion.

City Recorder suggested if announcements were made, there could be comment on Relay for Life. She gave the announcement. Councilor Howison confirmed the date as August 15th and 16th.

Councilor Koehler suggest they adjourn. Councilor Navetta seconded. All voted unanimously and the meeting was adjourned at 9:25pm

APPROVED BY THE DUNES CITY COUNCIL ON THE 15th DAY OF JULY 2008.

Respectfully Submitted,

Lisa Ekelund/ Virginia Neklason
Planning Secretary/ Admin Asst.