

1. Call to order

Mayor Eric Hauptman called the meeting of the Dunes City Council to order at 7:01 p.m.

2. Roll call

Roll Call was taken by Dunes City Recorder, Amy Graham.

Present: Mayor Eric Hauptman, Council President Peter Howison, Councilor Richard Koehler, Councilor Jamie Mills, Councilor Susie Navetta, and Councilor Rebecca Ruede.

Absent: None.

Also Present: Dunes City Recorder Amy Graham, Planning Secretary Lisa Ekelund, Administrative Assistant Fred Hilden, Planning Chairman David Bellemore, and 17 individuals.

3. Pledge of Allegiance

All who were present stood for the Pledge of Allegiance.

4. Approval of the agenda

Councilor Koehler made the motion to approve the agenda. Councilor Ruede seconded the motion. The motion passed by unanimous vote.

5. Consent agenda

- City Council meeting minutes from 02/11/10 and 02/16/10

Councilor Mills requested to pull the minutes of 2/11/10 from the consent agenda for further discussion.

Amy Graham said they also have corrections for the work session minutes.

Mayor Hauptman said they would move the discussion of the minutes to be placed on the agenda after the public hearing.

- Bills of the session through 03/04/10

Councilor Navetta requested to pull the bills of the session.

Mayor Hauptman asked if anyone wanted to pull the receipts of the session and Councilor Navetta said no, the receipts of the session are just for informational purposes.

Mayor Hauptman said they would move the bills of the session to be placed on the agenda after the public hearing.

- Receipts of the session through 03/04/10

Councilor Ruede made the motion to approve the consent agenda as amended. Councilor Howison seconded the motion. The motion passed by unanimous vote.

6. Announcements / Correspondence

Mayor Hauptman announced that the artist of the month is Norma Richter. The Mayor also announced that there are overnight closures planned for US Highway 101 at the Siuslaw River Bridge located South of Florence. The Mayor said these Highway closures would take place during the timeframe of 11:00 p.m. through 5:00 a.m. on the dates of 03/15/10 through 03/19/10. The Mayor finished his announcement by stating that volunteers are needed for the Site Review Committee, the Revenue Committee, and the Planning Commission.

In regards to April being Sexual Assault Awareness Month, Mayor Hauptman announced that the city received a copy of a proclamation from the office of the Governor, Mr. Theodore Kulongoski, recognizing the compassion and dedication of the individuals who provide services to survivors of sexual violence. Mayor Hauptman said the proclamation is available to anyone who would like to read it.

Mayor Hauptman said he is regretful to announce the resignation of Rob Quandt from the City Council.

Councilor Koehler said during last month's Council meeting and work session, questions were raised about the process of accepting a bill for a contract about the Road Director position not approved by Council motion. Councilor Koehler said keeping to appropriate process is a very demanding course for Volunteers, Committees, Commissions, Councilors Mayor, and Staff. Councilor Koehler said he (Councilor Koehler) regrets now his (Councilor Koehler) motion, at that Council meeting may have lead to the Road Commissioner, Councilor Quandt taking this in a personal way. Councilor Koehler said after all, to some of us, this is a full time job with much time invested. Councilor Koehler said he (Councilor Koehler) would like to emphasize how much work Councilor Quandt has done for us all during the last two years, from Rob Quandt's completing road projects, creating a Roads Director position, having minutes and agenda's available to the website to Rob Quandt taking on work that others could not complete. Councilor Koehler said Rob Quandt's dedication and follow through has been quite admirable. Councilor Koehler said he (Councilor Koehler) was under the assumption that this type of contract, the Director of Roads contract, was to be presented to Council and he (Councilor Koehler) is quite sorry if Mr. Quandt left as a result of his (Councilor Koehler) false assumption.

Councilor Koehler moved to not accept Councilor Quandt's resignation. Councilor Navetta seconded the motion.

Mayor Hauptman said if Rob Quandt watches this meeting on television, maybe he would come back. Mayor Hauptman said at this point the City does have an opening on the Council and the City would like applicants. Mayor Hauptman said the cut off for applications is March 28th, 2010.

Councilor Mills said although she (Councilor Mills) would really like to have Rob back, she (Councilor Mills) respects his position and will not be voting in favor of the motion.

The motion to not accept Councilor Quandt's resignation passed by vote of 4 ayes and 1 nay with Councilor Mills voting nay.

7. Citizen Input

Mr. Norman Martin - 83750 Rio Drive - Florence, OR 97439

Mr. Norman Martin read a statement to the Council, which was also placed on file. Mr. Martin spoke in regards to permit number 2009029DSEMPG, which was issued to Mr. Del Riesenhuber. Mr. Martin said he is in disagreement with the continued construction and requested, if warranted, that the City issue a stop work order.

Mr. David Bellemore – 83548 Salal – Florence, OR 97439

Mr. David Bellemore stated regarding the resignation of Councilor Quandt, this resignation is a sad loss to the City. Mr. Bellemore stated that Mr. Quandt is a hard working and smart person. Mr. Bellemore said the work Mr. Quandt did for the City is excellent. Mr. Bellemore said he (Mr. Bellemore) believes the controversy is a misunderstanding in communication. Mr. Bellemore said he (Mr. Bellemore) believes Mr.

Quandt felt his (Mr. Quandt's) integrity had been challenged. Mr. Bellemore said the City owes Mr. Quandt a huge thank you.

Mr. Troy Sathe 83550 Clear Lake Rd.

Mr. Troy Sathe said when he (Mr. Sathe) previously spoke of the Road Commission Auxiliary; he used the wrong word of "Commission". Mr. Sathe said he (Mr. Sathe) would like to see a volunteer group, which focuses on Road Department projects. Mr. Sathe said these volunteers would simply only be volunteers and the volunteers would have no vote or say in any decisions. Mr. Sathe apologized for any confusion this may have brought to the Council.

8. Mayor's report

Mayor Hauptman said last Thursday, the Planning Secretary, Lisa Ekelund and himself went and spoke to the Central Oregon Coast Board of Realtors. The Mayor stated that the Association had contacted the City and set up a list of questions they had for the City. The Mayor said the meeting lasted about two and a half hours. The Mayor said that he believes that all of the Association's questions were answered. The Mayor commended Lisa Ekelund for an incredible job. The Mayor said the meeting was good for both sides. The Mayor said anyone interested in building could come into City Hall and have a pre-construction conference with Lisa Ekelund. The Mayor said the City is striving to be as transparent as it possibly can and not make it a confusing issue to do business of any kind within the City.

9. Committee / Commission reports

- A verbal report of the Community Center was received from Councilor Susie Navetta.

Councilor Navetta said she received a list of things to do from the City Recorder. Councilor Navetta said they still have the issue of the flag outside. Councilor Navetta said the flag is tattered and torn. Councilor Navetta said they need to order a new flag and they need to light it.

Mayor Hauptman asked if the items regarding the flag are in the budget.

Councilor Navetta said there is money for the Community Center. Councilor Navetta said the Parks and Recreation Committee also require an electrician for one of their projects and the two could be tied in together.

Councilor Ruede said she and Councilor Navetta have discussed this.

Councilor Navetta said additionally, there is a possible leak in the kitchen. Councilor Navetta said the roof is about five years old. Councilor Navetta said the City Recorder intends to inquire about the warranty for the roof.

Councilor Navetta said there is also a danger tree and they probably need to hire a yard maintenance person to spruce up the property.

Mayor Hauptman asked if the danger tree should to come down.

Councilor Navetta said she believes it just needs to be pruned.

Councilor Navetta added that she (Councilor Navetta) was not made aware that the City received a new security system in early January. Councilor Navetta said they plan to install the new system and perhaps it could be tied in with the previously discussed electrical project.

- A verbal report of the Communication and Education Committee was received from Councilor Susie Navetta.

Councilor Navetta said the Committee would soon write the newsletter.

Councilor Navetta said she anticipates that this evening, they would acquire a new member for the Committee.

- A written report of the Conservation Committee was received from Councilor Peter Howison and placed on file.

Mayor Hauptman asked if the Conservation Committee had the opportunity to look at a plume of dirt in the right-of-way on Woodland Lane.

Councilor Howison said he has had no formal request for the Committee to look at the dirt on Woodland Lane.

Mayor Hauptman asked Troy Sathe who was sitting in the audience if the Road Commission discussed the dirt on Woodland Lane.

Troy Sathe responded from the audience saying that the Road Commission did discuss the dirt, they had the owner of the property come in and the Road Commission will be at the location at 3 o'clock on Saturday. Troy invited Councilor Howison to join the Commission on Saturday.

Councilor Howison said if it was earlier in the day, he could attend but at 3 o'clock, he would be out of town. Councilor Howison said he would find someone to attend.

David Bellemore, the Planning Commission Chairman volunteered to attend.

- The draft minutes of the 02/11/10 Conservation Committee meeting was received from Councilor Peter Howison and placed on file.

Councilor Howison said he had no report for the Ordinance Review Committee.

- A written report of the Parks and Recreation Commission was received from Councilor Rebecca Ruede and placed on file.

Councilor Koehler asked if the sign would be separate from a logo.

Councilor Ruede said she asked the Recorder to bring her (Councilor Ruede) samples of existing stationary and logos that the City has. Councilor Ruede said the topic would be on the agenda for discussion at the next meeting of the Parks and Recreation Commission.

Councilor Navetta asked if they plan to change the sign on the Highway and on the building. Councilor Navetta said there would have to be quite a bit of alteration of the sign for it to be placed on the building.

Councilor Ruede said she (Councilor Ruede) is confident that the Parks and Recreation Commission, with the good help of Bill Robert's Signs can accomplish this project. Councilor Koehler said he (Councilor Koehler) had made a comment earlier about the website address, www.dunescity.com, may be changing in the future to a city oriented website name. Councilor Koehler said he (Councilor Koehler) is sure if it is necessary, they could paint the new website address on the sign.

Councilor Ruede said this topic was brought to the attention of the staff. Councilor Ruede said the Recorder responded that www.dunescity.com would remain as the City's website. Councilor Ruede said because of this response, they would leave the current website as it is, on the sign.

Amy Graham said actually, at some point, they would like to change it to a ".org" or a ".gov" but they had spoken about possibly having Bill Roberts easily change just the last three little letters and it should not be a problem.

- The minutes of the 02/18/10 Parks and Recreation Commission meeting was received from Councilor

Rebecca Ruede and placed on file.

- A written report of the Road Commission was received from the City Recorder Amy Graham, read by Mayor Hauptman, and placed on file.

Mayor Hauptman said a resolution is placed before the Council. The Council discussed if they should decide on the resolution to allow the City to remove illegally parked cars this evening.

Commissioner Sathe said there are no items pending at the moment but they are receiving complaints. Commissioner Sathe stated that illegally parked cars could be dangerous in the event of fire or emergencies.

Mayor Hauptman asked the City Recorder if the City Attorney had the opportunity to review the resolution and the City Recorder answered the Mayor stating that the City Attorney has not reviewed the resolution.

Mayor Hauptman said he would like the City Attorney to look at this to make sure that they can pass this in the form of a resolution.

Councilor Navetta agreed with Mayor Hauptman.

Amy Graham said she has a quick question about the budget issue and closing out the City County Road Partnership Fund on how the Council would like to proceed with that because she (Amy Graham) does need to finish up their budget documents for their next meeting and she (Amy Graham) needs to know if she (Amy Graham) is going to be leaving the City County Road Partnership at all zero's and transferring the rest of the funds.

Mayor Hauptman asked Amy Graham why she could not just leave the Fund as it is and at then at the first budget meeting, the Road Commission then recommends that it the Fund is transferred. Mayor Hauptman said there might be some discussion that would be held with the Budget Committee as well as the Council. Mayor Hauptman said it is not difficult to make this move and the first Budget meeting is for items such as this.

- Mayor Hauptman spoke regarding the Stormwater Committee.

Mayor Hauptman announced Dr. Wasserburg will be the Chair and Mr. Burke will be the Vice-Chair of the Stormwater Workgroup. The Mayor said he (the Mayor) believes they will make great leaps with this in the next couple of months.

- A written report of the Site Review Committee was received from Councilor Jamie Mills and placed on file.
- A written report of the Revenue Committee was received from Councilor Jamie Mills and placed on file.
- A written report of the Water Quality Committee was received from Councilor Richard Koehler and placed on file.

Councilor Koehler stated that he would like to invite Mr. John Stead to answer any questions that the Council may have regarding the report that was requested of his Committee by the Council last month.

Councilor Mills moved that we (the Council) schedule a special Council meeting to discuss the Woahink Weir and water rights of Dunes City issue in the near future. Councilor Ruede seconded the motion.

Councilor Navetta asked if they could hear what Mr. Stead has to say before the Council votes.

Mayor Hauptman invited Mr. Stead to address the Council.

Mr. John Stead - 83505 South Cove Way – Florence, OR 97430

Mr. Stead said there are serious considerations that need to be dealt with. Mr. Stead said the recommendations that they found were the result of Water Quality Committee kicking this thing around for a while. Mr. Stead said they have developed a chronology. Mr. Stead said this was not amateurs putting this together and as far as addressing anything further, he would like to defer to the work session.

Mayor Hauptman asked if there was a date in mind that they could have a work session.

The City Recorder recommended the session be scheduled in the daytime so the State Watermaster could attend.

The Council decided to hold a work session of 04/07/10 at 2:00 p.m., subject to the Watermaster's schedule.

The motion made by Councilor Mills that we (the Council) schedule a special Council meeting to discuss the Woahink Weir and water rights of Dunes City issue in the near future passed by unanimous vote.

Councilor Koehler made the motion that the Council accept this report and thank the Water Quality Committee for doing the report. Councilor Navetta seconded the motion.

Councilor Navetta thanked Councilor Koehler and the Committee for the amount of work that they put in for this report. Councilor Navetta said she hopes that all of the Councilors take the time to read it and understand it. Councilor Navetta said this is an opportunity and she hopes the Council takes advantage of it.

The motion made by Councilor Koehler that the Council accept this report and thank the Water Quality Committee for doing the report passed by unanimous vote.

- The written 02/17/10 outlet control structure/Weir discussion of the Water Quality Committee was received from Councilor Richard Koehler and placed on file.
- The draft minutes of the 02/17/10 Water Quality Committee meeting was received from Councilor Richard Koehler and placed on file.
- A written report of the Planning Department was received from Planning Secretary Lisa Ekelund and placed on file.

Councilor Mills stated that as they know, earlier this evening, an issue was raised in citizen input. Councilor Mills asked if Lisa Ekelund could tell her (Councilor Mills) the circumstances, what the current situation is with regard to the allegations that were made by Mr. Martin.

Lisa Ekelund said she had a conversation with Mr. Martin where she (Lisa) explained her stance on it as far as the code relates. Lisa said Mr. Riesenhuber's project is permitted properly. Lisa offered to site the codes, which were used in issuing the permits.

Councilor Mills said that it was not necessary to hear the sited codes and that she (Councilor Mills) was just wondering what the status was. Councilor Mills asked if this is going to be treated as a shoreland violation or complaint subject to inspection by the Conservation Committee.

Mayor Hauptman said the basic issue is on non-conformity.

Councilor Mills agreed with Mayor Hauptman.

Mayor Hauptman said where Mr. Martin's letter is a little off is that Mr. Riesenhuber is re-building his primary residence, not one of the rental units, and the non-conformity of the property is in that a number

of years ago, the out-buildings have been converted into rental units, which are non-conforming, but the primary residence is conforming. The Mayor said the property is about two and a half acres, the inspector has been out and there are no riparian issues or anything like that. The Mayor said Lisa sent the Building Inspector out to look at the possible violation of the removal of a tree and the Inspector said the tree is not in violation.

Amy Graham said Mr. Riesenhuber followed the process.

Lisa Ekelund said if anyone has any questions about non-conforming lots or the replacement of a home, etc., she (Lisa) is available and her (Lisa's) door is always open.

Mayor Hauptman thanked Lisa Ekelund for the colored charts, which document permit issuance that she (Lisa) is providing to the Council.

- The draft minutes of the 02/25/10 Planning Commission meeting was received from Planning Secretary Lisa Ekelund and placed on file.

10. Unfinished / Old business

- Lake Boulevard road work

Mayor Hauptman stated that he and Mr. Burke have had a couple of conversations regarding his retaining wall. The Mayor said the legal description was all right but he (the Mayor) was concerned that the City was not taking any additional part of the wall. The Mayor said the language that was added is 3.6 on page two in the grant of an easement. The Mayor read the retaining wall exclusion aloud. The Mayor asked Mr. Troy Sathe if he is aware of the amount of work that is needed for Lake Blvd.

Troy Sathe spoke from the audience stating the Road Commission is going just before Mr. Burke's property around the corner to the Fishmill entrance. Mr. Sathe said they are afraid if they do not get this roadwork done timely, it may slide as it is on sand. Mr. Sathe recommends this easement be granted because the easement is needed to move forward with the project. Mr. Sathe said they definitely want to do this project in the next fiscal year during the year 2010.

Councilor Navetta asked if the concrete is eroding because of the heavy trucks.

The Mayor said it is a more demanding road.

Councilor Navetta said that possibly larger vehicles should go in the other direction.

Councilor Howison said to go the other direction the larger vehicles would be lined up the wrong way to then have to back down toward the lake. Councilor Howison said it would inconvenience Fishmill Lodge. Councilor Howison said this is not the issue, the issue is accepting the easement and that the City would not be taking on the liability of the wall. Councilor Howison said the road is in serious need of update and he (Councilor Howison) believes this is a good idea.

Councilor Howison moved they accept the recommendations of the Road Commission by accepting Mr. and Mrs. Burkes' Grant of Easement, and not accept the liability of the wall. Councilor Ruede seconded the motion. The motion passed by unanimous vote.

- Director of Roads contract

Mayor Hauptman said the individual who was hired for Director of Roads would not be able to continue with this job at Dunes City as he has other commitments in California.

Councilor Mills said she would like to talk about Ordinance 174 because Ordinance 174 does name the City Recorder as the Purchasing Manager for Dunes City and authorizes the Recorder to issue solicitations and award contracts as long as they do not total more than \$500 per month and if it is going to go over \$500, the Recorder has to have the approval of the Mayor and the President of the City Council. Councilor Mills said in section 39 of the Charter it states there is a limit of \$2,000 for a

private contract, but that is not what it says in Ordinance 174. Councilor Mills said Ordinance 174 does not put a limit on it. Councilor Mills said she (Councilor Mills) believes that this is part of the controversy and part of the problem that they ran into and she (Councilor Mills) would recommend that this be one of the issues put on the work session agenda for examination and clarification for the future.

Mayor Hauptman agreed with Councilor Mills that this should be included in the work session. The Mayor directed Lisa Ekelund to make a note of Councilor Mills comment so it would be placed on the next work session agenda.

- Business License Ordinance

Councilor Mills said nothing has changed much from the last discussion other than they cleaned up some additional information that is not required. Councilor Mills said the Committee recommended that the Council adopt the Ordinance as it is written and then adopt a Resolution that directs City Staff because of budgetary constraints and implementation in that it only be implemented as to certain businesses. Councilor Mills said this should go to legal Council for an opinion.

Councilor Howison said they could create an exceptions section.

Councilor Koehler asked Councilor Mills if there is a boiler plate listing in the Oregon Statutes that could be referred so that she (Councilor Mills) could go to it for a listing and then just accept a few of them but at least include a listing that Oregon has of all trades that are licensed so that in the future the Council could make it by resolution.

Councilor Mills said she has not found the list Councilor Koehler references. Councilor Mills said the exceptions they have now are the exceptions found from business licenses, some of it was based on State law, some of it was based on Federal law and some of it is based on examples from other cities. Councilor Mills said because it is exactly the opposite of what Council Koehler is saying, which is what made it so hard, is to try to figure out how to word it.

Councilor Howison said the Council should get legal council to direct them as to what is the best way. Councilor Howison said it has never been his intention to license all businesses in Dunes City. Councilor Howison said he does think it would be very important to license certain businesses so if someone does mess up, they can address it. Councilor Howison said this could be a big step forward for discipline. Councilor Howison said he thinks there should be a public hearing on it next month.

Mayor Hauptman said he would like to see this sent to the City Attorney for input. The Mayor said whatever changes the Attorney makes, bring those back to the Council. The Mayor said they are concerned primarily with contracting type businesses that could cause damage to the homes of the citizens as opposed to a daycare (as example). The Mayor said that they should bring this back next month, have a public hearing, and move along with it.

Councilor Ruede said she (Councilor Ruede) would like to go on the record as not being in favor of this, with all due respect to Councilor Mills and her Committee for the many volunteer hours that they have put in to this, she (Councilor Ruede) cannot support this at this time for multiple reasons. Councilor Ruede said it is too complex, the fees collected will not compensate for the man hours put in to administer this, and this is designed for a larger municipality. Councilor Ruede said she (Councilor Ruede) thinks this does allow for bias and she just cannot support it at this time.

Councilor Navetta said does support this but there a few things that need to be added to it. Councilor Navetta said it does not specifically say licensed and bonded and this is very important. Councilor Navetta said also, after someone has been denied their license or the license is revoked, they only have a 90-day punishment, which is not enough.

Councilor Mills said the provision with regard to bonding; they have to show proof of insurance and bonding in the application process, under provision 120.20. Councilor Mills said it might not be as clear as perhaps Councilor Navetta wants so maybe some language changes could be made.

Councilor Howison said there are penalties and regarding the 90 days, it states they have to reapply but the City does not have to approve the application.

Councilor Koehler asked if they could also ask the City Attorney about this because there is something about denying work that he had learned through the sanitarian. Councilor Koehler said the denial of a license and the penalties are all legal issues.

Councilor Navetta asked what the fees were set at.

Councilor Howison and Councilor Mills both said the yearly fee is \$100.

Councilor Mills said they estimated 3-4 hours of staff time for everything.

Councilor Navetta stated that 3-4 hours of staff time seems correct.

Councilor Howison it is an estimate using 3-4 hours as staff time.

Councilor Mills said it is not a revenue-generating thing.

- Solid Waste Collection License Ordinance

Councilor Mills said the language is straight out of the code. Councilor Mills said exhibit B goes through each section showing what changes were made. Councilor Mills said during discussion, they noticed and as a result of allegations made, it would be wise to try to require that the vehicles be in such a condition that they are not leaking and tearing up the roadways.

Mayor Hauptman said it is an excellent way in which Councilor Mills presented this information. Mayor Hauptman directed the City Recorder to place this on next month's agenda as an action item.

11. New business

- Committee and Commission appointments (Emergency Services Coordinator, Road Commission, and Communication and Education Committee)

Mayor Hauptman recommended the Council appoint Mr. Donald Hayes as the Emergency Services Coordinator.

Mr. Donald Hayes approached the council stating he has extensive FEMA training for emergency management scenarios. Mr. Hayes said he is part of the Coast Guard Auxiliary in Winchester Bay. Mr. Hayes said he lives on Spruce Lane and that he has attended past CERT training with Dave Davis along with the local Siuslaw Fire Department. Mr. Hayes said he also has two hand held radios that would go right into the network that the City has. Mr. Hayes continued giving his educational and employment background.

Mayor Hauptman asked if Mr. Hayes could provide a monthly, one-page report and Mr. Hayes said he would be happy to do this, as he wants to keep the Council aware of what is going on.

Mr. Hayes said Dunes City is vulnerable to being secluded if the bridges go out.

Mayor Hauptman said the Communication and Education Committee would like the information so that the Committee can send it out to the community.

Mr. Hayes said that they should identify individual citizens as to what they can do in case of an emergency. Mr. Hayes said there is a supplies container available at St. Mary's Church and there are boats that could cross the river for supplies but they still need to identify the emergency shelter.

Councilor Howison said the fire station could act as the emergency shelter.

Councilor Howison made the motion that the Council appoints Mr. Donald Hayes as the Emergency Services Coordinator. Councilor Mills seconded the motion. The motion passed by unanimous vote.

Mayor Hauptman stated that Dave Persons resigned and he is another volunteer that will be sorely missed. The Mayor recommended the Council appoint Mr. Henry (Hank) Leach to the Road Commission. The Mayor said the Council should have a resume attached to the application they have before them. The Mayor said he did not have a resume attached.

Amy Graham said she did not attach the resume because it is not required for the Road Commission, only for the Council and Planning Commission.

Mayor Hauptman said it does not hurt to have it anyways.

Amy Graham said she would scan the resume on Monday and forward it to the Council.

Mr. Leach approached the Council stating that he spent 45 years in the printing industry. Mr. Leach said he does not know a lot about roads but he does have a good eye for detail, which he believes, will be helpful on the Road Commission.

Councilor Navetta made the motion that the Council appoints Mr. Henry (Hank) Leach to the Road Commission. Councilor Koehler seconded the motion. The motion passed by unanimous vote.

Mayor Hauptman recommended the Council appoint Mr. Michael Herbert to the Communication and Education Committee.

Mr. Herbert was not present at the meeting.

Councilor Howison made the motion that the Council appoints Mr. Michael Herbert to the Communication and Education Committee. Councilor Navetta seconded the motion. The motion passed by unanimous vote.

- Shoreland zone vegetation/tree removal application (map/tax lot: 19-12-27-40-02200)

Mayor Hauptman said the applicant is requesting an extension.

Councilor Howison recused himself, left the dais, and took a seat in the audience.

Councilor Ruede asked Mr. Turner to state the necessity of the extension.

Mr. Turner said the re-vegetation plan is timely. Mr. Turner said the extension request is for the permitting of the gazebo. Mr. Turner said Mr. Atkeson had until March 15th but there was a misunderstanding on the procedure. Mr. Turner said when he spoke to the Planning Secretary; he learned that the process is quite lengthy. Mr. Turner said the process would take beyond March 15th. Mr. Turner said everything else such as the fence, the pavers, the bridges applications, and the re-vegetation plan has been done but gazebo will go beyond March 15 because of hearing and notice times.

Councilor Navetta asked where they are in the process now.

Mr. Turner said they have submitted the application but it will not make the notice deadlines to appear on the March Planning agenda.

Councilor Navetta said Mr. Turner and Mr. Atkeson were aware of this in October.

Mr. Turner said they were aware they had until March 15 but not aware it would take as much as 70-80 days to comply.

Mayor Hauptman asked the Council if they understand what is asked of them. The Mayor said the question is if they allow an extension to the application.

Councilor Mills moved that the Council allow an extension for Mr. Atkeson to comply with the previous order of compliance by the conditional use permit application process to May 31st to allow adequate time for Mr. Atkeson's application to go before the Planning Commission for a full consideration. Councilor Ruede seconded the motion.

Councilor Navetta said what concerns her (Councilor Navetta) is that both Larry Lewis the Planning Consultant and the City Attorney suggest that the Council does not encourage this permit because it will probably be denied and there is a lot of work and expense that goes into it. For this reason, Councilor Navetta stated that she is against the extension.

Mr. Turner said the application has been submitted. Mr. Turner said it is troubling to hear that the application that has not yet been heard by the Planning Commission has already been pre-disposed to be denied.

Councilor Ruede said when she originally read this item on the agenda, she (Councilor Ruede) felt they had ample time to comply but after further reading the order, she does understand how it could be confusing.

Councilor Mills said she (Councilor Mills) would like to see the conditional use application run through the whole course.

The motion made by Councilor Mills to allow an extension for Mr. Atkeson passed by vote of 3 ayes and 1 nay with Councilor Navetta voting nay.

Councilor Mills moved to approve the re-vegetation plan for Mr. Atkeson as submitted on 3/10/10. Councilor Ruede seconded the motion. The motion passed by unanimous vote.

Councilor Howison returned to his seat on the dais.

Mayor Hauptman called for a recess at 8:54 p.m.

The Council reconvened at 9:10 p.m.

12. Public hearing

- Ordinance No. 205 (an Ordinance repealing Ordinances No. 187 and Ordinance No. 191 and amending Chapter 32 of the Dunes City Code of Ordinances)

Councilor Navetta asked why this ordinance is declared an emergency.

Amy Graham said the City Attorney stated that it specifies the quorum requirements for the Planning Commission and it can be enacted for the next Planning Commission meeting.

Councilor Howison said it really does not change the reality and that calling it an emergency seems like abuse of system.

Councilor Mills agrees with Councilor Howison and Councilor Navetta except that the current code is a violation of law and she (Councilor Mills) does not think they should allow that to continue.

Councilor Howison moved they read Ordinance Number 205 by title only. Councilor Mills seconded. The motion passed by unanimous vote.

Mayor Hauptman read Ordinance Number 205 by title only.

Mayor Hauptman opened the hearing for public comment at 9:16 p.m.

There was no public comment.

Mayor Hauptman closed the hearing for public comment at 9:16 p.m.

Councilor Howison moved they have the second reading of Ordinance Number 205 by title only. Councilor Navetta seconded. The motion passed by unanimous vote.

Mayor Hauptman read Ordinance Number 205 for a second time by title only.

Councilor Mills made the motion to adopt Ordinance Number 205. Councilor Koehler seconded the motion. The motion passed by roll call vote, which was as follows.

Councilor Navetta - aye
Councilor Koehler - aye
Councilor Howison - aye
Councilor Ruede - aye
Councilor Mills - aye

13. Consent Agenda

Amy Graham read a list of corrections for the minutes of 2/11/10, which are as follows:

On page 4, second paragraph, last sentence, replace the word "Weir" with the word "permit".

On page 5, first paragraph, last sentence, add a "w" to the word "rapped".

On page 6, seventh paragraph, "the City" needs to be changed to "the State".

On page 9, item 11, second paragraph, remove the letter "t" in front of "he".

On page 11, sixth paragraph, remove the word "and".

Amy Graham said there was some discussion and she (Amy Graham) actually watched the video when it came down to a vote on page 11, the motion down at the very bottom the Mayor broke the tie, technically, there was no tie the vote was 4 to 2. Amy said Councilor Mills voted aye.

Councilor Mills corrected Amy Graham stating that she (Councilor Mills) voted nay so that the bill would be paid.

Amy Graham said she did not know how the Council wanted to handle this. Amy asked if she should add a disclaimer stating what the vote actually was.

Councilor Mills said she would like to see the minutes amended to reflect what actually happened.

Councilor Ruede said she would like to see the minutes be corrected to the exact way it was done so therefore you would delete that.

Councilor Howison agreed. Councilor Howison said the vote was 4 to 2 and the Mayor's vote does not need to be in the minutes unless the Mayor would like to see it in the minutes.

Councilor Howison reminded Amy Graham that he spoke to her and said he would like clarification on page 11, third line from the bottom. Councilor Howison requested to insert the words "stated sarcastically" between "light" and "that".

Amy Graham said Councilor Howison did contact her about his correction and she forgot to add it.

Amy Graham said this is all the corrections she has at this time for the meeting minutes of 2/11/10. Amy

Graham said she does have corrections for the work session.

Mayor Hauptman said they would now have a motion to approve the minutes as corrected for the 02/11/10 City Council meeting.

Councilor Ruede moved they approve the minutes as corrected for the 2/11/10 City Council meeting. Councilor Howison seconded the motion. The motion passed by unanimous vote.

Amy Graham read a list of corrections for the minutes of 2/16/10, which are as follows:

On page three, 13th paragraph, the sentence begins with "David said that the other thing they could do" add the word "is" is added after the word "do".

On page three, 13th paragraph, remove the word "artisan" and the word "that".

On page four, fourth paragraph, in the second sentence, add an "s" to the word "Councilor".

On page 12, second to the last paragraph, delete the second "is not".

On page 14, in the first line on the page, change the word "the" to "there".

On page 25, ninth paragraph, "c" in "capaCity" needs to be lower case.

On page nine, seventh paragraph, "managerialist" needs to be changed to "manager".

Councilor Mills made the motion to approve the minutes of the work session dated 2/16/10 as corrected. Councilor Howison seconded the motion. The motion passed by vote of 4 ayes and 1 abstain with Councilor Ruede abstaining.

Councilor Howison asked the Mayor if there is a way to get the technical glitches corrected before the Council receives the minutes.

Mayor Hauptman said Lisa Ekelund takes the minutes but does not have the authority to make changes. The Mayor said if the Councilors could call or email in any changes to the minutes prior to the meeting, those changes could easily be emailed to the Councilors or placed on the dais and that way the Councilors would have the corrections for review prior to approval.

Councilor Navetta said the Council is talking about changing and re-printing 40 pages of minutes. Councilor Navetta said another idea would be to have a one pager that acknowledges the grammatical errors, which could be stapled onto the existing minutes.

Councilor Ruede said that perhaps the City Recorder could proofread these minutes and then have notes that the Council could review.

Councilor Howison said the other idea would be to have a one pager that acknowledges the grammatical errors.

Councilor Ruede said someone would have to proofread the minutes in order to have the one page acknowledgment.

Mayor Hauptman said it is the responsibility of the City Recorder to proof the minutes for grammatical errors. Mayor Hauptman said this is something that should just automatically be done so that the Councilors do not have to do this.

Mayor Hauptman asked Lisa Ekelund if spell check kicks in.

Lisa Ekelund said she types the minutes in Word. Lisa said she reviews the minutes several times and runs spell check before they are forwarded to the City Recorder. Lisa said that she is honestly shocked that there are so many errors.

Amy Graham said a lot of it is like the word "the", it is not a spelling error so it would not show up in spell check.

Lisa Ekelund said that the word "capacity" spelled as "capaCity" would show up in spell check.

Koehler asked if they could get a cost analysis on what it costs to do minutes. Councilor Koehler said Lisa does the minutes, and Amy proofs the minutes, and then the Council needs to rehash it. Councilor Koehler said the cost is getting out of hand.

Councilor Howison said the minutes are very thorough.

Mayor Hauptman said he is not criticizing Lisa. Mayor Hauptman said the City Recorder should proofread the minutes before they are sent out.

Councilor Howison said there are different levels of programs for spell check. Councilor Howison said the program he has automatically changes the misspelled words.

Lisa Ekelund said her program changes misspelled words automatically and she does not understand why these last sets of minutes had so many errors.

Regarding the bills of the session, Councilor Navetta said one concern was the Building Codes Consultancy. Councilor Navetta said last month, it seemed like the fees were this high. Councilor Navetta said she is wondering what is happening.

Mayor Hauptman said Lisa would be the best person to answer this question.

Councilor Navetta asked if this is for Larry Lewis.

Lisa Ekelund said Building Codes Consultancy is the Building Inspector and not Larry Lewis the Planning Consultant.

Councilor Navetta said she does not like the attorney bill and requested that it be given to the Council in itemized form.

Councilor Howison made the motion to pay the bills of the session. Councilor Mills seconded the motion. The motion passed by unanimous vote.

14. Citizen input.

Judy Bedsole 4840 Summit Avenue.

Mrs. Bedsole asked the council to void the temporary right-of-way use permit on Lake Blvd. and Fishmill Way. Mrs. Bedsole said the permit was processed without going through proper procedures. Mrs. Bedsole said the temporary right-of-way use permit is for a retaining wall that is 5' into the road. Mrs. Bedsole said a wall is not temporary use and it has been there for a number of years. Mrs. Bedsole said this wall interferes with her business and her customers have complained. Mrs. Bedsole said she is asking the City to revoke the temporary right-of-way use permit and open up the road. Mrs. Bedsole said the City should not have made a narrow road narrower.

Mayor Hauptman asked if any Councilors had anything further to say.

Councilor Navetta thanked Councilor Koehler for being the Webmaster.

Councilor Koehler encouraged input of any suggestions for the website.

Mayor Hauptman said Siuslaw Watershed is testing for e-coli but he does not see it on the website.

Councilor Koehler said it is linked in the minutes on the Water Quality page.

Councilor Mills said the Census forms should be in the mailbox. Councilor Mills said the forms have not been delivered to Dunes City yet and staff is working on making those forms available at City Hall.

Councilor Koehler said the idea that they are going to be morphing with the Siuslaw Watershed Council is important and the graphs will eventually be linked with the Dunes City website.

Councilor Mills asked if they could add a link to the City website that would take people to Campbell (the meeting videographer) so that people are able to find a way to watch the Council meetings.

15. Adjournment

There being no further business to come before the City Council, Councilor Navetta made the motion to adjourn the meeting and Councilor Ruede seconded. The motion passed by unanimous vote.

The meeting of the Dunes City Council adjourned at 9:56 p.m.

The next scheduled meeting of the Dunes City Council is to be held on 04/08/10 at 7:00 p.m. The proceedings of the Dunes City Council meeting were recorded on tape, and are on file at Dunes City Hall. Upon approval by the City Council, these minutes will be available online at www.dunescity.com

APPROVED BY THE DUNES CITY COUNCIL ON THE 08TH DAY OF APRIL 2010.

[Signed copy available at City Hall]

Eric Hauptman, Mayor

ATTEST:

[Signed copy available at City Hall]

Fred Hilden, City Recorder

===== Reports =====

Conservation Committee Report, March 2010

The Conservation Committee met on 11 Feb 2010. The draft minutes are included in the packet. We had several site review visits last month. An educational pamphlet regarding protection of the shoreland and riparian areas was prepared for the upcoming newsletter and has been submitted to Councilor Navetta.

PLANNING DEPARTMENT REPORT

Report Date:

March 2010

Staff:

Lisa Ekelund, Planning Secretary



In the Month of February, I issued six permits. I attended the regular session meeting of the City Council. I typed the minutes for the regular session and the work session of the City Council. I attended and took minutes for one Planning Commission meeting. I attended at took minutes for one CCI workgroup meeting.

At the last Planning Commission meeting, the Commissioners unanimously voted to appoint Mr. David Bellemore to his second year as the Planning Chairperson. Our most recent addition to the Planning Commission, Mr. Tom Bassett, was unanimously voted in as the Planning Vice-Chairperson. To assist the Planning Commission with the code audit, I am updating the Commissioners codebooks to reflect the code changes that have taken place. Our Commissioners are eager to assist the City with this and I believe the Commissioners will offer recommendations that the Council with find to be detailed, sensible, and fair. The next Planning Commission meeting is scheduled for March 25, 2010 at 6:00 p.m.

I recently attended a meeting during the first week of March with the Mayor along with many local real estate agents to update the agents on the septic ordinance, the permitting process, and the water rights applications. This educational forum was quite successful and I anticipate an assembly such as this with the local septic inspectors to be just as helpful in the near future.

Parks & Recreation Commission

Report to the Council

March 11, 2010

The Commission met on February 18, 2010. The focus of the meeting was the signs project for Dunes City. Since that meeting the sign proof has been presented to staff, Mayor and Councilors for comments. There is a general consensus of opinion that the sign is good and the Commission will proceed with the project. There will be a detailed article in the upcoming newsletter that will be sent to all Dunes City Residents.

At the last council meeting, the Commission received approval to pursue a possible project for grant funding that entails purchase of the properties adjacent to city hall. We have contacted a local realtor to help with this. At this time, I have no new news to report on that project.

Respectfully submitted,

Rebecca Ruede, Councilor

PRC Chair

Road Commission Report for the City Council meeting on 3/11/10

The Road Commission did not have a meeting in the month of February, however they did hold a meeting on March 8, 2010 and have scheduled a second meeting for March 22, 2010. The regularly scheduled meeting has been cancelled for March 15, 2010.

At the March 8 meeting, Vice-Chairmen Curran chaired the meeting since the Commission is without a Chair at this time. The Commission started work on the 2010-2011 budget and will be finishing it at their next meeting. The Commission made a recommendation to have the City Council authorize the closure of the City County Road Partnership fund for the upcoming budget year and transfer the remaining funds to the State Street fund.

The Road Commission also discussed Ordinance 149 and Chapter 32 of the Dunes City code and is making a recommendation to the City Council to amend both, to remove the Director of Roads as the Chair of the meeting in the absence of the Chairman and to establish a Vice-Chair and have the Vice-Chair, chair the meetings in the absence of the Chairman.

The Road Commission also discussed the road work to be done on Lake Blvd and is recommending the City Council accept George Burke's easement in order to enable the City to move ahead with the repairs on Lake Blvd.

The Road Commission is also recommending the City Council approve a draft resolution to approve a towing ordinance for the City which would validate the proposed Courtesy Notice.

Submitted by Amy Graham, City Recorder

DUNES CITY JOINT REVENUE AND ORDINANCE COMMITTEE REPORT **February, 2010**

The Revenue Committee met on Wednesday, February 24, 2010. The draft business license ordinance was again discussed and a few revisions made. The Committee recommendation is for Dunes City to adopt the ordinance drafted to address all businesses, but suggests the City, due to financial constraints, adopt a resolution instructing that it only implemented as to entities that conduct business related to activities covered by Title 15 of the Dunes City Code (which is land use).

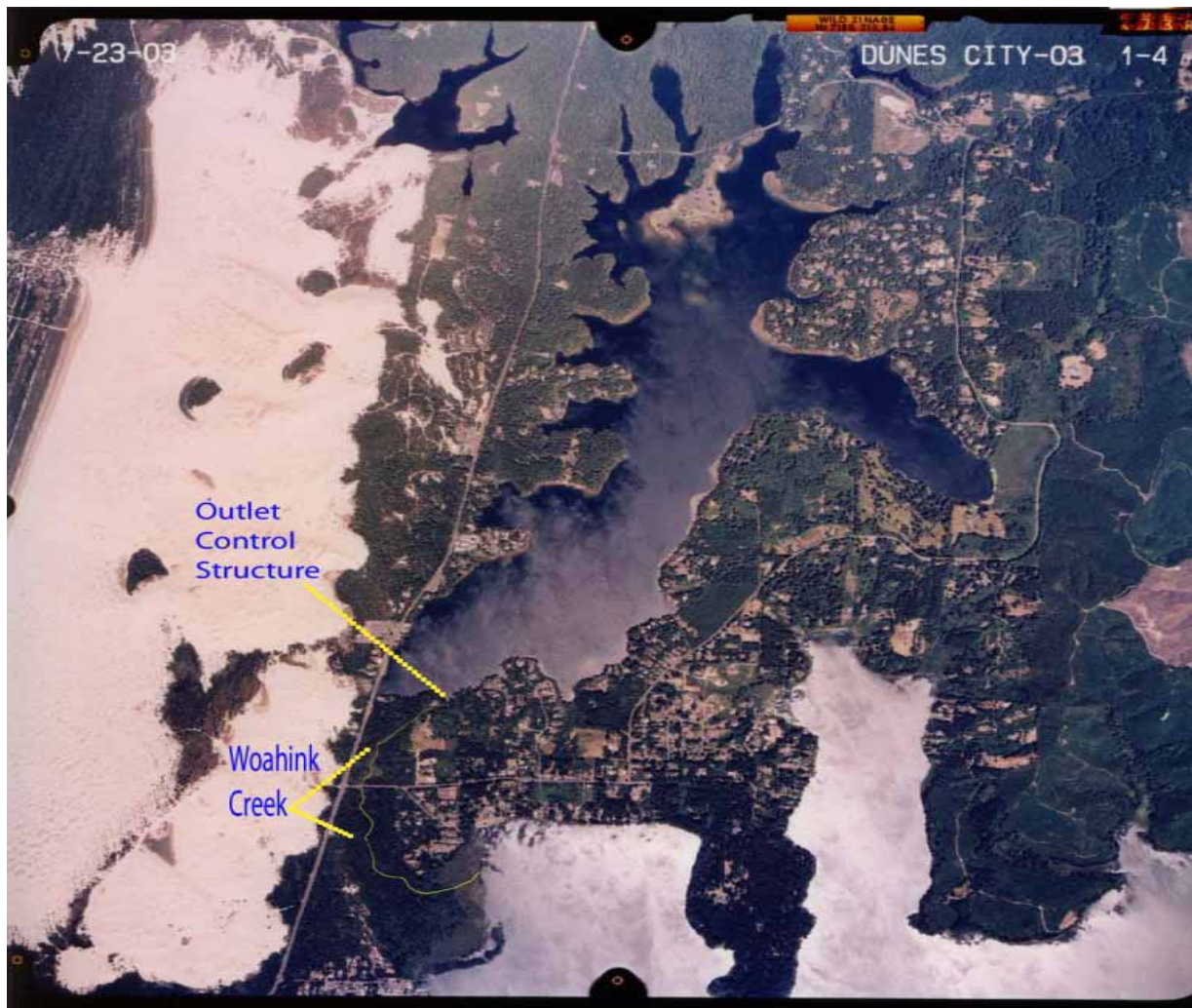
The Solid Waste Collection Service License Fees draft ordinance was also reviewed and further revision made. The Committee recommends that Dunes City adopt the draft ordinance.

Respectfully submitted this 2nd day of March, 2010.

Jamie Mills, Chairman

Note: The Site Review Committee did not meet.

**WATER RIGHT ISSUES
AND THEIR RELATIONSHIPS WITH
THE OUTLET CONTROL STRUCTURE**



**PREPARED AT THE REQUEST OF THE DUNES CITY COUNCIL
BY THE CITY'S WATER QUALITY COMMITTEE**

March 11, 2010

From inception the Water Quality Committee has been involved, to varying extents, with the City's water right permits. The City Council at its meeting of February 11, 2010, asked the Committee to prepare a detailed report with recommendations for presentation at the March 11 Council Meeting. The Committee was asked to review the City's Application for Extension of Time applicable to the water storage permit, and address water right issues and their relationships with the outlet control structure.

Prior to its February meeting, committee members studied copies of the Water Storage Permit document presented during the Council's meeting of February 11th and the Application for Extension of Time. An additional document (copy attached) was reviewed during the committee's February 17th meeting as options and possible recommendations were being discussed. It was agreed that John Stead and Richard Koehler would prepare the committee's report.

APPLICATION FOR AN EXTENSION OF TIME

This application is a request for an extension of time, until October 1, 2012. "Surveys to identify points of diversion have been completed, water meters to record usage have been installed, and a database to track monthly usage has been completed." [and] The conditions in the permit satisfied: "Initial meter readings recorded at installation. Meters are read monthly and usage information is recorded. Fish passage was provided by the original Output Control Device" (sic). Cost of the project to date is reported as \$77,138.15. Estimated additional cost to complete the project during 2010 – 2011 is \$50,000.00.

WATER RIGHTS AND THE OUTLET CONTROL STRUCTURE

THE BASICS

All waters of the State belong to the public for use by the people for beneficial purposes without waste. The Oregon Water Resources Commission, appointed by the Governor, establishes basin standards and establishes policies for operation of the Oregon Water Resources Department (OWRD). OWRD allocates the public water through the permitting and certification process whereby the right to use the water is allocated to the first person appropriating it for beneficial use. Permits can be converted into water right certificates after the water has been put to beneficial use for least a year. It is wise for eligible permit holders to obtain certificates as soon as possible since permits are subject to change, while certificates are stable and run with the land, subject only to periods of non-use approaching five years or uses inconsistent with the certificate.

Over the years residents have pumped water from Woahink Lake, streams, springs and wells for home/domestic use — Favoring the economic efficiencies afforded by individual and community water systems (a system shared by three or more residences). According to the *Comprehensive Plan*, voters have rejected the creation of a public water system three different times. And people desire to maintain the City as a predominantly rural residential community without the necessity of a municipal water system.

MID-COAST BASIN PROGRAM

The Water Resources Commission, the Water Resources Board's replacement, oversees and gives direction to OWRD's activities while retaining its authority to amend basin programs. On March 26, 1974 the Mid-coast basin Program Update was approved based on a 1.5 year study. The domestic use purpose for Woahink Lake was reaffirmed.

The waters of Woahink Creek and its tributaries [Woahink Lake] “. . . are classified by the Mid Coast Basin Program as being only for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes.”

The waters of Woahink Lake are classified, “. . . only for utilization of water for domestic, livestock and in-lake uses for recreation, wildlife, and fish life purposes”. Because water right applications must stipulate the water use classifications specified in the basin Program, Dunes City’s first permit application asked for and obtained its 1968 domestic use permit. Later, at the Water Resources Board’s public hearing in Florence on January 14, 1974, the City requested that the Board revise the Mid-Coast Basin Program to authorize Woahink Lake water for municipal purposes. The Program was amended as follows: “. . . 1.5 cfs of lake water is reserved for municipal purposes and 0.75 cfs for public park purposes.”

DUNES CITY’S WATER RIGHT PERMITS

The first permit (1968 Priority Date), authorizes 1.4 cfs (cubic feet per second) from Woahink Lake for a public water system to provide water for domestic supplies.

This permit was amended in 2005 by adding 217 points of diversion, representing persons who signed a contractual agreement with the City. Use of the City’s permit does not guarantee an amount of water, nor does it authorize the use of water for business or commercial purposes. The City’s Extension of Time Progress Report Form, sent to OWRD April 1, 2009 reported, a total financial investment of \$77,138.15 through 2008. The City collects an annual fee of \$150 for each of the approximately 135 active diversions for a total annual amount of \$20,000. The annual fee is not collected from the estimated 82 contract holders not using water.

The second permit (1978 Priority Date), obtained following amendment of the Mid-Coast Basin Program to include municipal purposes, and authorizes 1.5 cfs from Woahink Lake for municipal use. References are made to possible use of the outlet structure and a 10-25-09 letter.

The third permit (2004 Priority Date) authorizes storage of 410 acre-feet of water diverted from Woahink Creek and stored in Woahink Lake for multiple purposes during the storage season at times when instream water right demands are being met. Outside the storage season the City shall pass all live flow. A record shall be kept of the amount of water used month. Out of lake water use requires a secondary permit.

The fourth permit (2005 Priority Date) authorizes use of the stored water for “creek flow augmentation” and “domestic use expanded” — the diversion of water from 217 different points (the same points listed in the amended 1968 permit). Diversion is allowed only when the City has physical control of the water at the outlet control structure. Storage adjustments will be made and readings from a staff gage in Woahink Creek will be recorded on a regular twice-a-month basis. The Memorandum of Understanding, Item 12, specifies stored water will not be used to satisfy existing rights including the instream water right.

HONEYMAN STATE PARK WATER RIGHT CERTIFICATES

The Oregon State Highway Commission holds a water right certificate (1958 Priority Date) for the purpose of use in Honeyman State Park. It authorizes 3.45 cfs. A second certificate issued to the Oregon State Parks and Recreation Department (1991 Priority Date) authorizes 0.24 cfs for irrigation and park use. Such use may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WOAHINK CREEK’S INSTREAM WATER RIGHT CERTIFICATE

Issued in 1989 with a priority date of 1974, this certificate specifies minimum flow rates for Woahink Creek on a monthly basis and confirms the right to use the waters of the creek to maintain an instream flow for the purposes of supporting aquatic life and recreation. It requires that flows be maintained from the outlet of Woahink Lake to its confluence with Siltcoos Lake. (Flow rates were initially recommended by the Oregon Department of Fish and Wildlife.)

Based on the doctrine of “prior appropriation”, when creek flow demands are not being met, OWRD can determine that the water supply (Woahink Lake) is over allocated, that water is unavailable, and limit the City’s 1978 municipal permit to human consumption purposes — drinking, cooking and sanitation.

WATER AVAILABILITY

"Water is Available," means Woahink Lake is not over-appropriated during any period of the proposed use [OAR 690-300-0010(57)].

Woahink Lake is an 820-acre sand dune dammed lake abutting an unconfined aquifer extending from the Siuslaw River to Coos Bay. Its surface is 39 feet above sea level and at its deepest point it is 36 feet below sea level—a crypto-depression with a retention time is 1.2 years.

Woahink Lake provides water to meet the needs of Honeyman State Park's more than 1.5 million visitors per year as well as the park's irrigation needs.

The City's 1979 *Comprehensive Plan*, states:

- "There is no problem at present with water withdrawal volumes on any of the lakes. . . [and] Most lakes retain a relatively constant level all year due to subsurface water infiltration."

The 2008 *Geomorphic and Hydrologic Assessment of Historical Water Level Rise at Cleawox Lake*, authored by the Oregon Department of Geology and Mineral Industries (ODGMI), states,

"Observed seasonal water level fluctuations ranged from 3 to 6 feet for ground water and 1.5 to 2.0 feet at lakes. Additionally, ground water discharge maintains local lake levels and stream flow; some inflow comes from surface runoff; and surface outlets keep lake levels fairly constant."

CONSTRAINTS ON WATER AVAILABILITY

Water availability is based on the capacity of the resource, in this instance, Woahink Lake. Capacity is a balance of public and private uses — without causing over-appropriation of the resource. Today, over-appropriation means that the quantity of water available in a specified time is insufficient to meet the expected demands from all water rights, including instream water rights, 80 percent of the time.

In January 1992, OWRD's over-appropriation standard was changed from 50 percent to 80 percent exceedance. OWRD then used its water availability model (a statistical model) to predict flow rates in Woahink Creek for comparison with the creek's instream water right requirements. Creek flows were found to be inadequate to meet water right demands during seven months of the year.

In December of 1992, the Lane County's Public Health Engineer wrote to the Mayor of Dunes City that he supports the City's efforts towards a city water system and believes,

". . . it would be appropriate for the state Water Resources Commission to limit the granting of new water rights for domestic use to private users within the city limits. This action would prevent the diversion of needed support for the municipal water system to private systems. "

In July 1996, OWRD issued its first permit limiting water availability to domestic use four months and human consumption eight months. Later permits and certificates were limited to human consumption for from seven to twelve months of the year, depending on the water right. Prior water rights were authorized domestic use as specified in the Mid-Coast Basin Program and were conditioned to protect senior rights as follows:

"The use confirmed herein is made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows."

According to OWRD's meeting notes of an April 20, 2004 meeting at City Hall with three OWRD staff members, staff advised, "Neither the 50 or 80 percent exceedance factor would allow new live-flow water rights to be issued from Woahink Lake, since water is not available year-round under either standard. Additionally, even if water rights were issued, regulation of water takes place based on real-time data."

Actions such as these created much consternation, discouraged residents from applying for water rights, and created myriad difficulties for realtors and developers who are required by law to notify potential buyers of

water availability.

During a Water Resources Commission work session on August 8, 2002, a developer from Florence spoke about his concerns about illegal diversions of Woahink Lake water and the need for Dunes City to develop a tax base for a municipal water system. The time consumed by Representative, now Senator, Joanne Verger, OWRD staff, members of the Woahink Lake Association, City Council, Water Quality Control Committee and numerous other persons regarding these matters is incalculable.

In 1992 WRD and Dunes City began a collaboration to circumvent the effects of the actions against use of water for domestic purposes. A Woahink Lake Water Rights Community Forum was held on October 29, 2002 at the Florence Events Center. In attendance were eleven staff members from four state agencies and 160 residents, OWRD discouraged potential water right applicants, indicating that use of Dunes City's 1968 water right is the preferred alternative. OWRD staff member Bob Rice said, "The option for applying for new water rights is possibly not available since there are other options and the water has already been allocated during the months of April through November." And Tom Paul, OWRD's Administrator, Field Services Division said, "WRD has no evidence that domestic use has drawn down the lake and the proposed solution will not solve the water flow problem. . . The issue isn't stream flow, but the fact that people do not have a right to divert water"

[Woahink Lake Water Rights Meeting Minutes, October 29, 2002].

On May 6, 2004, OWRD staff met with the Water Quality Control Committee and assured the Committee that OWRD will continue to work with locals to find solutions to problems.

ACCESS EASEMENT REQUIREMENTS

On September 18, 2001, OWRD sent letters to right permit holders identifying a lack authorization to place "your works" on State of Oregon property and . . . Failure to obtain the necessary easement may result in the cancellation of your permit. . . " This action was followed by an October 5, 2001 letter from the Oregon Division of Sate Lands (ODSL)\ saying the bed and banks of Woahink Lake are state owned and the Division requires that water pipelines be authorized by easement. The application fee is \$750.

Subsequently the legislature changed Oregon law to read,

"a person holding a water right permit, water right certificate, proposed or final order approving a water right permit . . . may occupy state-owned submersible lands for . . . domestic use . . ." without charge or written documentation to substantiate the permission granted. [ORS 274.040(3)(b)]

The City's three applications for authorization to use the City's water right permit require certification that the applicant owns the land, or has an easement allowing the diversion and/or transport of water over land not owned by the applicant, and without such an authorization the application will not be accepted.

The MOU under II. 5., states that the State of Oregon has granted permission for, ". . . domestic water users holding contracts under Dunes City's water right permit to occupy state-owned submersible land for . . . diversion and delivery of water. ORS 274.040".

OUTLET CONTROL STRUCTURE OWNERSHIP

Woahink Lake was meandered in 1857. All meandered lakes are navigable and public waters. Title to the submersible and submerged land of such meandered lakes is vested in the State of Oregon [ORS 274.430 (1)]. A DSL document states, "The people of Oregon own the submerged and submersible land underlying all navigable streams, rivers, and lakes in most cases up to the ordinary high water line. . . "

In the early 1930's, according to the *Comprehensive Plan*, "Woahink Outlet . . . flowed through the lily pond on the west side of Hwy 101 and then turned back east into Siltcoos Lake. The outlet was diverted into a channel east of the highway to save building two bridges."

On October 24, 1939, the State of Oregon obtained an easement over Lot 2 to install, maintain and repair the outlet control with the condition that, should the State fail to operate and properly maintain the outlet control for one year, the easement would terminate. The easement does not specify the outlet control's location, only that the purpose of the easement was to support its construction and maintenance.

In a March 2, 2004 email to John Stead, ODSL's Greg Willnow stated, "There exists a weir located at the south end, whereby the lake is controlled. The concrete structure was built by a federal works project in the 1930's. The State Engineer does not allow manipulation of the weir."

According to the meeting notes of an April 20, 2004 meeting at City Hall to discuss with three OWRD staff members, the problem of flows into Woahink Creek being controlled by the outlet control structure, it was reported that, ". . . The state-built outlet-control structure, which Dunes City repaired this past fall is privately owned."

After the State of Oregon abandoned the Outlet Control, the City, by Resolution 11-13-03 (A), authorized funds for its repair and on March 30, 2005 the State of Oregon quitclaimed its interest in Lot 2 to Richard Anderson et al., the current owner of the property underlying the easement.

CONCLUSIONS

1. The application requesting an extension of time is inaccurate and misleading to the extent that it is fatally flawed. It reports activities lacking relevance to the permit and represents that permit conditions have been satisfied (when they have not) and it reports expenses unsupported by facts.
2. Residents of Dunes City and others have suffered ethically, morally and financially from the perplexing application of heavy handed, arbitrary water management. This worrisome situation is the result of inappropriate resistance by OWRD. Holders of water right certificates conditioned to human consumption are out of compliance as are those diverting water without water rights. Persons using the City's water right permit are out of compliance with the City's permitting process and paying annual fees of \$150, while holders of water rights issued by OWRD are not burdened with any annual fees.
3. Inconsistent standards have arbitrarily been applied to the water management of Woahink Creek and its tributary Woahink Lake.
4. The level of Woahink Lake remains relatively constant as the result of interactions with the unconfined aquifer.
5. Ground water discharge maintains the level of Woahink Lake and the outlet control structure regulates flows into Woahink Creek.
6. ODGMI findings and the City's Comprehensive Plan support the notion that water use by residents has absolutely no impact on the adequacy of flows in Woahink Creek. These flows are regulated by the outlet control structure (weir).
7. The process of approving applications for use of the City's water right appears to be flawed. Many applications were approved contrary to the requirement that written authorization to divert and/or transport water [over submerged state land] is required. The requirement is in agreement with ORS 274.040(3)(b) limiting use submerged state land to those holding water rights. Use of the City's permit does not convey title. While the MOU says contract holders are permitted to use submerged state land, it also states that nothing in the MOD constitutes a valid defense to parties operating in violation of statutes, rules or permits.
8. The City's water right permit restricts use to water from a natural body of water. Permit number four, authorizes those holding contracts to use the City's permit to use stored water which is in conflict with the City's authorization.
9. Access to and ownership of the outlet control structure is vital to fulfilling the conditions of two and possibly three of the water right permits held by the City. Dunes City will have extreme difficulty in obtaining access to and ownership of the outlet control structure. A paper trail establishing ownership does not exist. The City will have extreme difficulty establishing ownership of the outlet control structure.
10. Implementation of the City's third and fourth water right permits will require regular bi-weekly access to the outlet control structure and a staff gage to be placed in Woahink Creek. After obtaining needed access, the City could install automatic devices for manipulating the outlet control

structure and measuring and recording the associated data. However, it is doubtful that the City will be able to obtain access to the outlet control structure and Woahink Creek.

RECOMMENDATIONS

1. Place a stop work order on any further activities regarding the storage of water or the use of stored water.
2. Give serious consideration to statements implicit with the *Comprehensive Plan* that discourage the City's preparations for and implementation of a municipal water system.
3. Survey all Dunes City property owners to determine the level of support for pursuit of a municipal water system for Dunes City.
4. Engage the Water Resources Commission, and members of the Oregon Legislature in efforts to obtain a release of OWRD's strangle hold on the use of water from Woahink Lake for domestic purpose. Success would enable the City to discontinue its extraction of more than \$20,000 annually from selected citizens of Dunes City (\$200,000 over ten years) — A noble effort considering current financial conditions.
5. Having another 400 acre feet of water impounded in Woahink Lake might someday be a good idea, however in order to capture that water the city would have to have control of the Outlet Control Structure (OCS). In as much as the City cannot get ownership of the OCS with an easement for repairs and maintenance and because of the Cities limited resources the Water Quality Committee recommends no further action be taken at this time either on the acquisition of the OCS or the storage permit.

Attachment: Water Quality meeting 3-17-10

OUTLET CONTROL STRUCTURE / WEIR DISCUSSION WATER QUALITY MEETING February 17, 2010

HISTORY

October 9 2003, Weir Impending Failure: In a fragile state and in need of repair before the winter storm period. ODOT has claimed no responsibility for its maintenance. The weir is adjacent to Dick Anderson's property. City's contingency fund, \$3,750 used to make repairs.

May 13, 2004, Council took action to proceed with the application to store water. Ward said that Dunes City would work out an arrangement where Dr. Anderson would give the weir to the City along with an easement for access to the weir for maintenance.

June 10, 2004, Ward gave the report for the Water Control Committee. John Stead will be filling out the application to the State to add the 6" board to the Woahink Weir.

September 9, 2004, City Insurance Services (CIS) investigator will be visiting the site of the Weir to determine liability. CIS would be able to defend the City, but not pay damages.

February 10, 2005, Ward said that the permit was received from the Water Resources Department to store water on Woahink Lake using the weir.

January 9, 2006, Signed MOU received by the City.

The permit to store water authorizes the City to construct a reservoir and store the public waters for multiple purposes. Water from Woahink Creek can be diverted to storage October 1 through July 31.

Outside the storage season, all live flow must be passed into the creek. Records of the amounts of water used each month must be maintained and reported to WRD annually.

EMAIL – (Opinion from DSL)

From: YOUNG Cyril
Sent: Monday, November 23, 2009 1:55 PM
To: newlands222@msn.com
Subject: RE: Woahink Lake Weir Structure

I think I have resolved some of your questions but not all. When Woahink Creek was moved to make way for the Highway 101 construction, that is considered to be an avulsive action and not a natural movement of the creek. At the time that the creek was relocated by ODOT, State ownership would not have moved with the creek, but would have remained with those southern portions of the creek which remained in their original bed. I have reviewed our plat book and other surveys of the lakes and the creek from the early days and compare those to the current Woahink Creek location. The State does not claim the bed and banks of the upper end of Woahink Creek at its current location, it does seem to be in private ownership and if the weir is located with in Parcel 2 or Tax Lot 105 then it is not on state owned lands. . . .

DEFINITIONS

Avulsive

The term "avulsive". At [http://en.wikipedia.org/wiki/Avulsion_\(legal_term\)](http://en.wikipedia.org/wiki/Avulsion_(legal_term))
"In real property law, AVULSION refers to a sudden loss or addition to land, **which results from the action of water.** (emphasis added) It differs from accretion, which describes a gradual loss or addition to land resulting from the action of water."

Avulsion

"The immediate and noticeable addition to land caused by its removal from the property of another, by a sudden change in a water bed or in the course of a stream.

When a stream that is a boundary suddenly abandons its bed and seeks a new bed, the boundary line does not change. It remains in the center of the original bed even if water no longer flows through it. This is known as the rule of avulsion.

Avulsion is not the same as accretion or alluvion, the gradual and imperceptible buildup of land by the continuous activity of the sea, a river, or by other natural causes.

West's Encyclopedia of American Law, edition 2. Copyright 2008

The implication seems to be that the "immediate and noticeable" definition is intended for acts of nature, not man made changes such as the creation of a new channel for the creek incident to road construction.

ORS

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(7) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

Additional attachment - Application for extension R14131 20100202.pdf 18pp

REPORT SUMMARY

WATER RIGHT ISSUES AND THEIR RELATIONSHIPS WITH THE OUTLET CONTROL STRUCTURE

March 11, 2010

Scrivener's Errors:

Page 5, Last paragraph, first sentence: Delete the first two words, "In 1992".

Page 8, Item 10. last sentence: Substitute "it" for "tt".

Item 11, last sentence: Substitute "City's" for "Cities".

Summary:

The Report provides detailed information supporting the following recommendations:

1. Place a stop work order on any further activities regarding the storage of water or the use of stored water.

The City's permits for storage (2004) and use of water (2005) from Woahink Creek allow those already using the City's 1968 water right permit to also use stored water for domestic purposes when the City has physical control of the water. There appears to be a lack of benefit for the City.

These permits require that the City have bi-weekly access to the outlet control structure (weir). Ownership of the weir has not been established nor has access been provided, thus preventing the City from moving forward; and making the application for an extension of time to implement the storage permit a futile effort.

2. Give serious consideration to statements implicit with the *Comprehensive Plan* that discourage the City's preparations for and implementation of a municipal water system.

The City's 1968 and 1978 permits authorize use of Woahink Lake water for a public water system. Voters have denied a public water system three different times, favoring the economic efficiencies afforded by individual and community water systems.

3. Survey all Dunes City property owners to determine the level of support for pursuit of a municipal water system for Dunes City.

Results from such a survey would be useful in guiding Council deliberations concerning pursuit of a municipal water system.

4. Engage the Water Resources Commission, and members of the Oregon Legislature in efforts to obtain a release of OWRD's strangle hold on the use of water from Woahink Lake for domestic purpose. Success would enable the City to discontinue its extraction of more than \$20,000 annually from selected citizens of Dunes City (\$200,000 over ten years) — A noble effort considering current financial conditions.

Residents and others suffer from the perplexing application of water management by OWRD. Those holders of water rights conditioned to human consumption (in home use) are out of compliance water users as are those diverting water without permits.

Persons using the City's water right permit appear to lack the City required authorization for use of submerged state land, have no guarantee of water availability and pay an annual fee. In contrast, holders of water rights issued by OWRD are automatically authorized to use submerged state land, are guaranteed a specific water flow subject only to appropriation by senior water right holders, and are not subject to annual fees.

PRIORITY DATE	PERMIT	PURPOSE	WATER AMOUNTS:		USE LIMITATIONS
			Authorized	Peak Demand	
10/7/1968	S-33923	Domestic Use	1.4 cfs (cubic feet per second)		Water use is authorized from a single point of diversion connected to a Public Water System.
10/7/1968	T-9854*	Domestic Use Expanded	1.4 cfs	0.077 cfs**	Water use is authorized from the listed 217 points of diversion. The City reports monthly water use summaries to OWRD annually.
(Domestic use plus 1/2 acre of lawn and/or garden. Date for complete application of water: 10/1/22 unless extended.)					
8/21/1978	S-44501	Municipal Use	1.5 cfs		Water use is authorized for a municipal water supply system use as long as Woahink Creek's instream water right demands are being met.***
(Municipal use authorized per amendment to the Mid-Coast Basin Program. Municipal system to be completed by 10/1/98. Application for time extension to 10/1/48, completed on 11/29/07)					
10/28/2004	R-14131	Multiple Purpose	410 af (acre feet)		Appropriation to storage is authorized between 10/1 and 7/31 as long as instream water right demands are met.*** A Secondary Permit is required for any and all out of reservoir uses. Access to the outlet control structure is required.
(Reservoir to be filled and complete application of stored water to use before 10/1/09 unless the permit is extended.)					
8/25/2005	S-54405	Domestic Use Expanded and Streamflow Augmentation	410 af		Use of stored water is authorized for creek flow augmentation and persons identified with the same 217 points of diversion authorized under T 9854 only when City has physical control of the water. Access to the outlet control structure is required

(Complete application of stored water to use shall be made on or before 10/1/11 unless the permit is extended.)

* This permit, an amendment to S-33923, was authorized on 12/2/05.

** Estimated maximum flow rate for the listed 217 points of diversion.

*** Woahink Creek's Instream Water Right, S-59892, is junior to the City's domestic use Permit S-33923

###