



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

11/23/2011

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Dunes City Plan Amendment
DLCD File Number 001-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, December 08, 2011

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Fred Hilden, City of Dunes City
Angela Lazarean, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative

<paa> YA



FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

DATE STAMP

DEPT OF

NOV 18 2011

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Dunes City**

Local file number: **Ordinance 211A**

Date of Adoption: **11/10/2011**

Date Mailed: **11/17/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 11/7/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Ordinance Number 211A repeals Ordinance Number 203 "Septic System Maintenance" from Title 15, Chapter 157 of the land use code and directs the city to establish an educational program to ensure proper septic system maintenance.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **n/a**

to: **n/a**

Location: **n/a**

Acres Involved: **0**

Specify Density: Previous: **n/a**

New: **n/a**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Oregon DEQ and Lane County

Local Contact: **Fred Hilden, City Recorder**

Phone: (541) 997-3338 Extension:

Address: **P.O. Box 97**

Fax Number: 541-997-5751

City: **Westlake**

Zip: **97439-**

E-mail Address: **recorder@dunescityor.com**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

ORDINANCE NO. 211A

AN ORDINANCE REPEALING ORDINANCE NO. 203 ENTITLED "SEPTIC SYSTEM MAINTENANCE" AND ESTABLISHING AN EDUCATIONAL PROGRAM TO ENSURE SEPTIC SYSTEM MAINTENANCE

WHEREAS, the Dunes City Council adopted Ordinance No. 203, on January 14, 2010, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance" and;

WHEREAS, the Dunes City Council reviewed the maintenance, inspection and reporting requirements of Ordinance 203 and initiated amendments to the septic system maintenance standards;

WHEREAS, the Dunes City Planning Commission held a public hearing on Ordinance Number 211A on October 27, 2011 after sending notice to all required parties;

WHEREAS, the Dunes City Council held a public hearing on Ordinance Number 211A on November 10, 2011, after receiving the Planning Commission's recommendation;

WHEREAS, the Dunes City Council finds it is not in the best interests of Dunes City residents to establish mandatory septic inspections, evaluations or pumping;

WHEREAS, the State of Oregon has reserved unto itself, unless it has entered into an agreement with one of its counties pursuant to ORS 454.725, jurisdiction over wastewater disposal systems in the State of Oregon; and

WHEREAS, the State of Oregon has entered into an agreement pursuant to ORS 454.725 with Lane County, Oregon, for the oversight of wastewater disposal systems in Lane County;

WHEREAS, the Dunes City Council finds it is in the best interests of Dunes City residents to establish an educational program to ensure adequate septic system maintenance;

WHEREAS, the Dunes City Council finds Ordinance Number 211A meets all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1: Repeal.

The repeal of Ordinance 203 shall not affect any action occurring before the repeal takes effect. Ordinance Number 203 is hereby repealed and replaced with an educational program for septic system maintenance, to be implemented within one year of adoption of this ordinance.

Section 2: Findings of Fact.

Dunes City adopts the findings of fact in Exhibit A as the basis for the decision to adopt this ordinance.

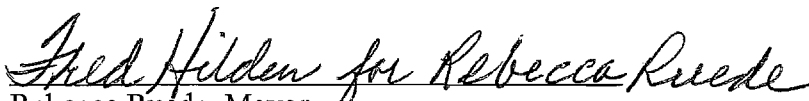
Section 3: Effective Date.

According to Dunes City's Charter, this ordinance will become effective 30 days after adoption.

Passed at the second reading, placed on final passage, and adopted by the City Council of Dunes City, Oregon, on this 10th day of November, 2011.

Ayes: 4 Nays: 2 Abstain: Absent: Vacant:

ADOPTED BY THE DUNES CITY COUNCIL THIS 10th DAY OF NOVEMBER, 2011.


Rebecca Ruède, Mayor

ATTEST:


Fred Hilden, City Recorder



**CITY COUNCIL FINDINGS OF FACT
LEGISLATIVE TEXT AMENDMENTS
SEPTIC SYSTEM MAINTENANCE REQUIREMENTS
ORDINANCE NUMBER 211A**

City Council
Public Hearing Date: November 10, 2011 ~ 7:00 pm

Applicant: Initiated by Dunes City

Proposal: Legislative Text Amendment to the Dunes City Code to Amend the City's Septic System Requirements

Staff: Melissa Anderson, AICP, Contract Planner

I. INTRODUCTION

On March 09, 2006, the City Council of Dunes City adopted Ordinance No. 173, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance." On January 14, 2010, the Dunes City Council amended Chapter 157 "Septic System Maintenance" by repealing Ordinance No. 173 and adopting Ordinance No. 203 to ensure adequate septic system maintenance, inspections and reporting to the city.

After reviewing the existing standards for maintenance, inspections and reporting of septic systems, the city initiated amendments to the septic system maintenance requirements. Two alternatives were under consideration by the city and both proposals are legislative text amendments to Title 15 of the Dunes City Code of Ordinances by repealing Ordinance Number 203 entitled "Septic System Maintenance," and replacing it with an alternative program for septic system maintenance.

The two options considered for an alternative septic maintenance program were presented as Ordinance Number 210A and Number 211A. These two options are described below:

Option #1) Ordinance Number 210A repeals Ordinance Number 203 and replaces it with new regulations to ensure proper septic system maintenance by adding a new Chapter 142 entitled "Septic System Maintenance" in Title 14 of the Dunes City Code of Ordinances; and

Option #2) Ordinance Number 211A repeals Ordinance Number 203 and establishes an educational program to ensure proper septic system maintenance.

On October 27, 2011, the Planning Commission held a public hearing on the proposed ordinances and deliberated to a decision that night. The Planning Commission recommended the City Council adopt both Ordinance Number 210A and 211A.

On November 10, 2011, the City Council held a public hearing on the proposed ordinances, deliberated to a decision that night and adopted Ordinance Number 211A, repealing Ordinance Number 203 and establishing an educational program to ensure septic system maintenance.

II. NOTICE AND REFERRALS:

Public Notice: Prior to the Planning Commission and City Council public hearings, notice was mailed directly to all property owners within Dunes City on September 28, 2011, and a notice was published in the Siuslaw News on October 8, 2011 and on October 26, 2011. The public notices stated the nature of the proposals, how to participate and the date, time and location of the public hearings as required by state law and the city code. Prior to the Planning Commission public hearing of October 19, 2011 one comment had been received in favor of retaining Ordinance No. 203, which is included in the exhibits. At the Planning Commission public hearing on October 27, 2011, written testimony was submitted into the record and these comments are included in the exhibits. At the City Council public hearing on November 10, 2011, additional written testimony was received, submitted into the record and these comments are included in the exhibits.

Agency and Organization Referrals: Notice of the proposed code amendments were sent to the Department of Land Conservation and Development (DLCD) on September 7, 2011 not less than 45 days prior to the first evidentiary hearing of October 27, 2011, as required by State law.

On October 3, 2011, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, the Oregon Department of Environmental Quality and the DLCD Regional Representative notifying them of the proposed amendments, public hearing dates and requesting comments. On October 7, 2011, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments.

III. APPLICABLE CRITERIA

The proposed amendment is a legislative amendment to the Dunes City Code and the following criteria apply to this matter.

- Dunes City Code of Ordinances, Title 15 *Land Usage*, Chapter 155 *Zoning and Development*, Section 155.4 *Applications and Review Procedures*, Subsection 155.4.1.7 *Type IV Procedure (Legislative)*
- Dunes City Comprehensive Plan Elements: *Citizen Involvement, Land Use, and Air, Land and Water Quality*
- Oregon Revised Statutes (ORS) 197.610 *Local government notice of proposed amendment or new regulation; exceptions; report to commission.*
- ORS 227.186 *Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.*

IV. REVIEW OF APPLICABLE CRITERIA

Dunes City Code (DCC) Chapter 155 – Zoning and Development

155.4 Applications and Review Procedures

155.4.1.7 Type IV Procedure (*Legislative*)

B. Notice of Hearing.

1. **A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications submitted to the City.**

Finding: The proposals are consistent with this criterion because two hearings were conducted before a final decision was made. A public hearing was conducted before the Planning Commission and a public hearing was conducted before the City Council prior to making a final decision. This criterion is met.

2. **The Planning Secretary shall give notice of public hearings for the request in the following manner:**
- a. **At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:**
 - 1. **Each owner whose property would be rezoned in order to implement the ordinance;**
 - 2. **Any affected governmental agency.**
 - 3. **Recognized neighborhood groups or associations affected by the ordinance;**
 - 4. **Any person who requests notice in writing;**
 - 5. **For a rezone affecting a manufactured home or recreational vehicle park, all mailing addresses within the park.**

Finding: The proposals are consistent with this criterion because a public notice was mailed to all property owners in Dunes City, affected government agencies and neighborhood groups and anyone requesting a notice on September 28, 2011, at least 20 days and not more than 40 days before the first public hearing before the Planning Commission on October 27, 2011. This criterion is met.

- b. **At least 14 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, notice shall be published in a newspaper of general circulation in the City.**

Finding: The proposals are consistent with this criterion because at least 14 days before the Planning Commission public hearing on October 27, 2011, a notice was published in the Siuslaw News on October 8, 2011. Additionally, at least 14 days before the City Council public hearing on November 10, 2011, a notice was published in the Siuslaw News on October 26, 2011. This criterion is met.

- c. **The Planning Secretary shall:**
 - 1. **For each mailing of notice provided in Subsection B.2. above, file an affidavit of mailing in the record; and**
 - 2. **For each published notice provided in Subsection B.2. above, file an affidavit of publication in the record;**

Finding: The proposals are consistent with this criterion because an affidavit of mailing and publication were filed into the record. This criterion is met.

- d. **The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.**

Finding: The proposals are consistent with this criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

155.4.1.7 Type IV Procedure (*Legislative*)

E. Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. **The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for Comprehensive Plan amendments only);**

Finding: This criterion does not apply because the proposals are not comprehensive plan amendments.

2. **Comments from any applicable federal or state agencies regarding applicable statutes or regulations;**

Finding: The proposals are consistent with this criterion because referrals were sent to the Lane County Sanitation Department, the Oregon Department of Environmental Quality and to DLCD notifying them of the proposed amendments and requesting comments. In response, on October 7, 2011 Lane County Sanitation Department stated they had no comments on the proposed amendments. This criterion is met.

3. **Any applicable intergovernmental agreements; and**

Finding: The proposals are consistent with this criterion because there are no intergovernmental agreements that are applicable to this matter. This criterion is met.

4. **Any applicable Comprehensive Plan policies and provisions of this Code that implement the Comprehensive Plan. Compliance with Section 155.4.7 shall be required for Comprehensive Plan amendment, and Master Road Plan amendment.**

Finding: The proposals are consistent with this criterion because applicable Comprehensive Plan Policies are addressed in the following section and these findings are incorporated herein. Additionally, applicable provisions of the Dunes City Code are addressed for consistency in this report. Lastly, Section 155.4.7 of the Dunes City Code is not applicable because the proposals do not amend the Comprehensive Plan Map or the Master Road Plan. This criterion is met.

DUNES CITY COMPREHENSIVE PLAN

Citizen Involvement and Land Use Planning

Policy A1. Citizens involvement. Dunes City's citizens involvement program shall insure that the citizens of Dunes City have the opportunity to be involved in all phases of the planning process.

The citizens involvement program shall incorporate the following components:

1. **Citizen Involvement; to provide for widespread citizen involvement.**
2. **Communication; to assure effective two-way communication with citizens.**

3. **Citizen Influence; to provide the opportunity for citizens to be involved in all phases of the planning process.**
4. **Technical Information; to assure that technical information is available in an understandable form.**

Finding: The proposals are consistent with these policies because citizens have been provided opportunities to be involved in all phases of the planning process. Public notice was mailed to all property owners and published in the Siuslaw News, notifying the public of the proposed code amendments and how to participate in the public hearing before the Planning Commission and City Council. The information contained in proposed Ordinance No. 210A and 211A was available to the public prior to the hearings. Citizens were provided an opportunity to provide testimony before and during each public hearing. Widespread public involvement was solicited and provided for through all phases of the planning process. These criteria are met.

Land Use and Urbanization

Policy A12. Dunes City shall coordinate land use decisions where needed with Lane County, Douglas County, the Oregon Dunes National Recreation Area, Oregon State Parks, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, The Oregon Department of Forestry, and other local, state and federal agencies.

Finding: The proposals are consistent with these policies because referrals were sent to affected local and state agencies in order to coordinate the proposed land use decision. Dunes City sent referrals to the Dunes City Building Official, Lane County Sanitation Department, Oregon Department of Environmental Quality and the Department of Land Conservation notifying them of the proposed amendments, public hearing dates and requesting their comments. A response from Lane County Sanitation and the Building Department LLC (the Dunes City Building Official) were received stating they had no comment on the proposals. This criterion is met.

Open Space, Scenic Areas, and Natural Resources

Lakes Policies

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

Finding: The proposals are consistent with this policy because no correlation has been established between septic system effluent and the water quality of Siltcoos and Woahink Lakes. Samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Air, Land and Water Quality

General Policies

Policy E1. The city shall strive to preserve the quality of the land, air, and water resources in the city.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which preserve the quality of land and water resources in the city. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Policy E2. All development in the city shall comply with DEQ's applicable air and water quality standards and noise control standards.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems are provided. This criterion is met.

Policy E3. Waste discharges from future facilities shall not exceed the carrying capacity nor degrade the quality of the land, air, and water resources.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which ensure waste discharges from future facilities do not exceed the carrying capacity nor degrade the quality of the land and water resources in the city. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Policy E4. Regulations involving land, air, and water resources of the city shall be based upon long-term capabilities of the available natural resources to both support economic activity and absorb the future, resulting man-made pollutants.

Finding: The proposals are consistent with this policy because they are consistent with the septic system regulations established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which ensure the long-term capabilities of the available natural resources are preserved. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met

Sewage Systems Policies

Policy E5. The city shall cooperate with the Department of Environmental Quality to ensure compliance with disposal system requirements.

Finding: The proposals are consistent with this policy because Dunes City adheres to sewage disposal system requirements, as established by the Oregon Department of Environmental Quality (DEQ) and administered by Lane County. Installation of new septic systems and modifications to existing septic systems are reviewed, inspected and approved through the Lane County Sanitation Department. The Dunes City Building Official and building permit process coordinates with the Lane County Sanitation Department to ensure sewage disposal system requirements are reviewed and implemented according to state requirements.

To ensure coordination with appropriate agencies, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD notifying them of the proposed amendments, public hearing dates and requesting comments. In response, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Policy E6. The city shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

Finding: The proposals are consistent with this policy because the proposal improves upon the existing code requirements to address maintenance of septic systems for the benefit of all residents in Dunes City. Dunes City found that the existing requirements for mandatory septic system pumping does not benefit all of the residents and therefore initiated text amendments to the code to improve upon the existing program. To ensure that the proposals are consistent with the maintenance requirements established by the Oregon Department of Environmental Quality and administered by Lane County, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD notifying them of the proposed amendments. In response, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Commercial Land Use

Commercial Policies

Policy I-10. Commercial properties shall have adequate sewage disposal systems and be in harmony with their natural surroundings.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems for commercial properties. This criterion is met.

OREGON REVISED STATUTES (ORS)

ORS 197.610: Local Government Notice of Proposed Amendment or New Regulation; Exceptions; Report to Commission.

197.610(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing.

Finding: The proposals are consistent with criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

ORS 227.186: Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.

227.186(1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number _____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property. Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____. For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at ____-____.

Finding: The proposals are consistent with this criterion because a measure 56 public notice was sent directly to all property owners within Dunes City in accordance with ORS 227.186. The public notice was mailed on September 28, 2011, at least 20 days but not more than 40 days before the date of the first hearing of October 27, 2011. The required information stated in the statute was included in the notice. This criterion is met.

V. CONCLUSION

The proposal to amend the Dunes City Code, by repealing Ordinance Number 203 Entitled “Septic System Maintenance” and replacing it with an alternative program for septic system maintenance as presented in Ordinance Number 211A meets all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws.

VI. EXHIBITS

- A. *[Findings of Fact]*
- B. Response from Lane County Sanitation Department (10/07/11)
- C. Response from Building Department LLC (10/07/11)
- D. Comment from Craig McMicken (10/01/11)
- E. Comment from Jamie Mills, Chairman of the Dunes City Water Quality Committee (10/21/11)
- F. Comment from Cameron La Follette, Oregon Coast Alliance (10/26/11)
- G. Comment from John A. Maciolek (10/27/11)
- H. Planning Commission Findings and Recommendation to Council
- I. Comment from Owen Goodrich (11/3/11)
- J. Comment from Liz Purtell (11/7/11)
- K. Comment from Cameron La Follette, Oregon Coast Alliance (11/9/11)
- L. Comment from Gail Nichols (11/9/11)
- M. Comment from Jerry Curran - Siuslaw Newspaper Editorial (11/9/11)
- N. Comment from Dan & Sue Scarberry (11/10/11)
- O. Comment from Peter Howison (11/10/11)
- P. Home Sewage Treatment Workshop Memo, Univ. of Minnesota, 1981 from Rand Dawson (submitted 11/10/11)
- Q. Comment from Del & Barbara Riesenhuber (11/10/11)
- R. Comment from Woahink Lake Association (submitted 11/10/11)
- S. Comment from John Stead (11/10/11)
- T. Comment from April Dumas (11/10/11)
- U. Comment from Dunes City Council President Jamie Mills (11/10/11)

Dunes City Recorder

From: EHLERS George [George.EHLERS@co.lane.or.us]

Sent: Friday, October 07, 2011 10:55 AM

To: Dunes City Recorder

Subject: RE: Request for Comment

Lane County does not wish to comment.

Thank you,

George Ehlers
541-682-3752

From: Dunes City Recorder [mailto:recorder@dunescityor.com]

Sent: Thursday, October 06, 2011 4:26 PM

To: Charlcie Kaylor; EHLERS George; PERRY Dave (OR); Chuck Costanzo

Subject: Request for Comment

Good afternoon,

Attached is a letter requesting comment on Dunes City's proposed septic ordinances. I have also attached the two proposed ordinances for your review. They are also available on the City's web site at www.dunescity.com.

Thank you for your time!

Best regards,

Fred Hilden

City Recorder

City of Dunes City

(541) 997-3338 Fax (541) 997-5751

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.
CONFIDENTIALITY NOTICE: This message is intended solely for the use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable state and federal laws. If you are not the addressee, or are not authorized to receive information for the intended addressee, you are hereby notified that you may not use, copy, distribute, or disclose to anyone this message or the information contained herein. If you have received this message in error, please advise the sender immediately by reply email and expunge this message. Thank you.

10/27/2011

Exhibit B

Dunes City Recorder

From: charlcie@mortierengineering.com
Sent: Friday, October 07, 2011 9:16 AM
To: Dunes City Recorder
Subject: Re: Request for Comment

This doesn't touch on our authority but it is a laudable pursuit and looks to be exhaustive in administration. Kudos to whomever put this together.

I don't envy keeping track of who, where, and when notification process.

Onward.

Charlcie Kaylor, Building Official
Manager City/County Services
The Building Department, LLC
144 East 14th, Eugene, OR 97401
541-484-9043 - office
541-684-3590 - desk

----- Original Message -----

From: "Dunes City Recorder" <recorder@dunescityor.com>
To: "Charlcie Kaylor" <charlcie@thebldgdept.com>, "George Ehlers" <george.ehlers@co.lane.or.us>, "Dave Perry" <dave.perry@state.or.us>, "Chuck Costanzo" <Costanzo.chuck@deq.state.or.us>
Sent: Thursday, October 6, 2011 4:26:25 PM
Subject: Request for Comment

Good afternoon,

Attached is a letter requesting comment on Dunes City's proposed septic ordinances. I have also attached the two proposed ordinances for your review. They are also available on the City's web site at www.dunescity.com.

Thank you for your time!

Best regards,

Fred Hilden

Craig McMicken
5405 Huckleberry Lane
Florence, Oregon 97439-8429

Oct. 1, 2011

Dunes City
82877 Spruce St.
Westlake, OR 97439

Attn. Fred Wilton
Dunes City Recorder

Re: Proposed Alternative Septic System
Maintenance Program.

I am in favor of retaining Ord. No. 203
entitled "Septic System Maintenance."

Craig McMicken

Correspondence File
RECEIVED

OCT 03 2011

DUNES CITY HALL

Exhibit D

MEMORANDUM

**TO: DUNES CITY COUNCIL AND
DUNES CITY PLANNING COMMISSION**

FROM: DUNES CITY WATER QUALITY COMMITTEE

RE: PROPOSED ORDINANCES NOS. 210A & 211A

DATE: OCTOBER 21, 2011

At its October 19, 2011 meeting, the Dunes City Water Quality Committee adopted the following recommendation regarding the proposed septic ordinances numbers 210A and 211A:

The Water Quality Committee recommends that consideration of Ordinances 210A and 211A be tabled and that Ordinance 203 continue beyond the compliance deadline, at which time the committee urges that a comprehensive evaluation of the effectiveness of 203 be completed.

Respectfully submitted,

Jamie Mills, Chairman
Water Quality Committee



ORCA: Oregon Coast Alliance

P.O.Box 5464, Charleston OR 97420

(503) 391-0210

<http://www.oregoncoastalliance.org>

Protecting the Oregon Coast

Dunes City Planning Commission

P.O. Box 97

Westlake, OR 97493

October 26, 2011

Re: Proposed Dunes City Ordinances 210a and 211a

Sent via electronic mail

Dear Planning Commission members,

Oregon Coast Alliance is an Oregon non-profit corporation whose mission is to protect and restore coastal natural resources, and work with coastal residents for sustainable communities. We write this testimony on our own behalf and our members' behalf. Dunes City on January 14, 2010 enacted Ordinance 203, entitled "Septic System Maintenance." This created Chapter 157 in the Dunes City ordinance code. Dunes City considered Ordinances 210 and 211 earlier this year, and ORCA provided testimony in opposition to both proposals.

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

Woahink, Little Woahink, Siltcoos Lakes and their tributaries are all near one another, and hydrologically connected in the manner well understood in dunal lake ecosystems. Sandy soils are porous. Therefore, to protect against contamination of the drinking water supply, the City enacted Ordinance 203. Oregon Coast Alliance notes that there have been at least two Public Health Advisories listed for Siltcoos Lake in the recent past, in September 2007 and October 2008. It is simply good policy to have a drinking water ordinance in place that requires prudent care of septic systems in the area, as any

overflow, leakage or failure would seep into one or another of the connected lakes, or their tributaries, and very easily foul the drinking water supply.

Oregon Coast Alliance opposes both Ordinance 210a and Ordinance 211a, for several reasons. First, we reiterate our opposition as laid out in August 2011 testimony to the Dunes City City Council concerning proposed Ordinances 210 and 211. None of those reasons have changed or lost their value in the public policy debate over septic maintenance. Proposed Ordinance 210a has not been changed from the earlier proposed Ordinance 210. However, Ordinance 211a has been substantially changed, so we add a discussion of the most recent amendments.

Ordinance 211a Cannot Fulfill Requirements with an Educational Program

Ordinance 211a would repeal existing ordinance 203 and replace it with an educational program for septic system maintenance, to be implemented within one year of adoption. The proposal contains no further language, guiding principles, standards or criteria other than this one line concerning the nature of the educational program. The “Whereas” clauses remain the same, except that a new one has been added, which states: “Whereas it is in the best interests of Dunes City residents to establish an educational program to ensure adequate septic system maintenance...”

This shift to repeal of Ordinance 203 by replacing it with education is patently a means of softening the blow of the repeal. However, it addresses none of the objections to the repeal, nor meets the requirements of Policy E6 of the Dunes City Comprehensive Plan. There is certainly nothing wrong with an educational program; it would be appropriate and helpful to implement such a program as regards septic maintenance. *However*, it would not, and cannot by its nature, fulfill the Comp Plan requirement for septic maintenance. This is especially noteworthy because the 211a language makes no guarantee, or even effort, to show that there is any relationship at all between the educational program and actual septic maintenance, nor any showing of how such a connection might be made. It merely asserts in the “Whereas” clause that an educational program will “ensure” adequate maintenance. Such an empty statement, with no relationship designed to bridge education and septic maintenance, is valueless for the purpose it purports to fulfill.

In considering the impact of an educational program, we should also contemplate Dunes City’s resources. An educational program costs money that the City may not have available. Any educational program, to be effective, requires at least: (1) implementing ordinance(s) specifying the nature of the program, the City department(s) responsible for it, the lines of authority in oversight of it, and so on; (2) city staff to implement the program, or at least to oversee the volunteers implementing it; (3) educational materials such as brochures, fliers, booklets, etc.; (4) money for the costs of the program. The history of Dunes City’s educational programs shows that they are often volunteer-led, small scale and sometimes recreational in orientation. This admirably suits some educational programs, but not one purporting to take the place of mandatory septic maintenance.

Since proposed ordinance 211a contains no language whatsoever concerning the actual working of an educational program, we are left in doubt as to the effective and comprehensive nature of it, if it ever gets underway.

There appear to have been some problems implementing Ordinance 203, especially in maintaining proper records and ensuring that all residents have access to septic information and a list of inspectors. However, these are the normal problems one might expect in implementing a new program; they are not a reason to repeal it. The best educational materials available to Dunes City will be the reports and results of the septic inspections required by the current law: Dunes City Code sec. 157.060(C)(5) requires every owner by March 2012 to submit to the City an inspection report, mapping and pumping of all septic systems on their property. It would be most unwise of Dunes City to repeal Ordinance 203 prior to even having fully implemented its requirements – among other things, such an action would make clear the City’s unwillingness to follow its own acknowledged Comprehensive Plan.

With the information available as of March 2012, Dunes City could perhaps compile information similar to that completed by the South Coast Watershed Council and others in the Port Orford area for Garrison Lake. Garrison Lake is bordered by many buildings using septic systems, and has had nutrient-loading increases that may be caused by septic problems. The Watershed Council and colleagues (such as the Garrison Lake Restoration Committee) compiled data and a map showing the age and inspection status of all buildings around the Lake. The Garrison Lake map is an attachment to this testimony.

The Garrison Lake information makes it clear that maintaining water quality in coastal lakes is a fairly common problem, but resources exist to pinpoint the issue and address it effectively. Dunes City is in an excellent position, because it already has a mandatory septic maintenance ordinance. A combination of mandatory pumping, inspection, accurate record-keeping *and* education is probably the best solution to maintaining the water quality of Woahink, Little Woahink and Siltcoos Lakes so essential to Dunes City residents. A vague mandate for “an educational program” will not fulfill Dunes City’s Comprehensive Plan requirements for septic maintenance, nor provide the means for sustaining the necessary water quality level in the lakes.

Dunes City is Fulfilling a Critical Need for Septic Oversight

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

Ordinance 211a fails to note that the Department of Environmental Quality (DEQ)’s rules *also* require that the owner of an on-site wastewater treatment system maintain that system in working order. OAR 340-071-120(2). The county, as agent for DEQ, is

prohibited from allowing any system to operate in contravention of DEQ rules or otherwise discharge untreated wastewater into ground, surface or public waters. OAR 340-071-130(1-4). Owners must at all times maintain and operate their systems in accordance with DEQ rules. OAR 340-071-130(13).

Oregon permits local ordinances to be enacted which are stricter than state law, if the ordinance follows the requirements in state law. Nothing in Oregon statute prohibits a municipality from proactively enacting legislation to require inspection, evaluation and pumping of septic systems. The only matter pre-empted by the State of Oregon or Lane County is the authority to permit **new** wastewater treatment systems. There is no pre-emption of maintenance of *existing* septic systems.

OAR 340-071-0120 specifically authorizes DEQ to enter into agreements with local governments, which then authorizes the local entity to become DEQ's agent in permitting onsite wastewater systems. The purpose of this Rule is to protect public waters from public health hazards. However, this power does not eliminate the power of municipalities to pass an ordinance stricter than DEQ or a delegated County may have for wastewater inspection and evaluation. On the contrary, OAR 340-071-0130 lists the responsibilities of a local agent, and enumerates the responsibilities and prohibitions of "any person" with respect to wastewater. Given that such requirements are mandatory, it is perfectly in accordance with the law that Dunes City enact a septic evaluation and maintenance ordinance. It essentially implements the requirements of OAR 340-071-0130 that neither Lane County nor DEQ has the staff or resources to undertake.

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

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

The Dunes City Comprehensive Plan Requires a Septic Ordinance

Under the land use laws, Ordinance 203 likely qualifies as a "second-level" land use ordinance. ORS 197.015 (11) defines "land use regulation" as, among other things, "any...land division ordinance adopted under ORS 92.044...or similar general ordinance

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

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

This is as clear and unambiguous as language can be. Both Ordinance 210a and 211a would either remove a section of, or amend, the Dunes City Zoning Code. Prior to taking such action, the City Council must first determine whether the repeal or amendment of Ordinance 203 is *consistent* with the Dunes City Comprehensive Plan. Oregon law prohibits a municipality from adopting a zoning code provision that makes provisions of the Comprehensive Plan redundant or meaningless. Both Ordinance 210a and 211a would do exactly that: render meaningless the Comprehensive Plan Policies cited above. Oregon law also **prohibits** “back door” attempts to amend the Comprehensive Plan through findings used to amend the zoning code. If a local government wishes to amend its Comprehensive Plan policies, it must do so directly, before changing a zoning code provision that reduces required regulation. In other words, to amend the Comprehensive Plan, Dunes City must go through all required steps, including a finding of consistency with all statewide planning goals through a post-acknowledgement plan amendment (PAPA). As part of the process, the City must also demonstrate compliance with all relevant state and federal laws.

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

Dunes City Must Meet Goal 5 and Goal 6 Requirements

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

Goal 5 requires, among other things, identification of fish and wildlife resources associated with the lakes in the area covered by the Plan. The continuing contamination problems of Siltcoos Lake clearly have an adverse effect on fish and wildlife of the Lake,

and thus Dunes City, by repealing or hamstringing Ordinance 203, will be acting in a manner inconsistent with Goal 5. This will apply equally to Woahink and/or Little Woahink Lakes, should they also begin to experience wastewater contamination after a repeal of Ordinance 203.

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

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

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

Repeal of Ordinance 203 Will Likely Trigger A Building Moratorium

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

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

Conclusion

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

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

As an alternative, we suggest that Dunes City amend proposed Ordinance 211a so that it does *not* repeal Ordinance 203, but *does* set up an educational program about the importance of septic maintenance in support of Ordinance 203. This would give residents the opportunity to explore and better understand the reasons for the mandatory pumping, inspections and record-keeping required under the current law.

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

Sincerely,

/s/ Cameron La Follette

Cameron La Follette
Land Use Director



Garrison Lake Watershed Septic Map

September, 2011

Map Color Key

Red: septic inspection or permit not current

Blue: 2001-2009 date of installation or major repair

Green: 1991-2000 date of installation or major repair

Yellow: 1985-1990 date of installation or major repair

Pink: wetlands (from National Wetlands Inventory)

Tan: City of Port Orford

372 tax parcels outside the City of Port Orford

110 parcels (30%) do not have buildings

262 parcels have buildings

**85 (32%) parcels have septic systems inspected as of 1985
or more recently**

**176 parcels assumed to have been built or inspected more than 25
years ago.**

Information from City of Port Orford and South Coast Watershed Council

Memorandum

TO Dunes City Planning Commission,

DATE: 10/27/11

FROM J. Maciolek, Dunes City Resident.

SUBJECT: Ord. 203 and proposed Ords. 210A and 211A.

The preamble to proposed Ordinance 210A points out that different septic systems function effectively for different lengths of time depending, largely on the intensity of use. I had one septic system used mostly intermittently (seasonally) for 40 years before needing the tank pumped out (it was inspected after 20 years of use). The amount of "sewage/wastewater" entering the system per unit time is the important factor, especially solid waste. (We have never used a garbage disposal unit in any of the seven septic systems we lived with). Whether or not the system is in use intermittently, or how many persons are using it are secondary approximations. Can a "qualified inspector" factor in these variables in determining the time needed between inspections? Is the inspector associated with the company ~~received~~ from maintenance work?

OCT 27 2011

DUNES CITY HALL
Planning Commissioner
Ken Henderson

Exhibit G

The ultimate objective of this septic system concern, I assume, is protection of lake-water quality. It seems reasonable to assume that a functional system within 50 ft. of the lake shoreline would contribute more nutrients (esp. P & N) to the lake water than one located a considerable distance away. Shouldn't the ordinance take this into consideration?

Although proposed ordinance 111A gives no details of the Educational program, I believe it could be as effective and fairer to all residents than Ord 110A.

John Macisak



**PLANNING COMMISSION
FINDINGS AND RECOMMENDATION TO THE CITY COUNCIL
LEGISLATIVE TEXT AMENDMENTS TO THE DUNES CITY CODE
SEPTIC SYSTEM MAINTENANCE REQUIREMENTS
ORDINANCE NUMBERS 210A & 211A**

WHEREAS, the Dunes City Code 155.4.1.7.B.1 requires a public hearing before the Planning Commission for all legislative amendments; and

WHEREAS, the Dunes City Planning Commission held a public hearing on the proposed text amendments at a regularly scheduled meeting on October 27, 2011; and

WHEREAS, the Planning Commission finds the proposals to amend the Dunes City Code, by repealing Ordinance Number 203 Entitled "Septic System Maintenance" and replacing it with an alternative program for septic system maintenance as presented in Ordinance Number 210A and Number 211A meet all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws; and

NOW, THEREFORE, the Planning Commission recommends the City Council adopt Ordinance Number 210A and Ordinance Number 211A.

PASSED BY THE PLANNING COMMISSION on the 27th day of October, 2011.

AYES 3 NAYS 2

APPROVED BY THE PLANNING COMMISSION this ____ day of November, 2011.

Lee Riechel, Chair
Dunes City Planning Commission

ATTEST:

Fred Hilden, Dunes City Recorder

**DUNES CITY PLANNING COMMISSION
FINDINGS AND RECOMMENDATION TO THE CITY COUNCIL**

Planning Commission

Public Hearing Date: October 27, 2011 ~ 6:00 pm

Applicant: Initiated by Dunes City

Proposal: Legislative Text Amendment to the Dunes City Code to Amend the City's Septic System Requirements

Staff: Melissa Anderson, AICP, Contract Planner

I. INTRODUCTION

On March 09, 2006, the City Council of Dunes City adopted Ordinance No. 173, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance." On January 14, 2010, the Dunes City Council amended Chapter 157 "Septic System Maintenance" by repealing Ordinance No. 173 and adopting Ordinance No. 203 to ensure adequate septic system maintenance, inspections and reporting to the city.

After reviewing the existing standards for maintenance, inspections and reporting of septic systems, the city initiated amendments to the septic system maintenance requirements. Two alternatives are under consideration by the city and both proposals are legislative text amendments to Title 15 of the Dunes City Code of Ordinances by repealing Ordinance Number 203 entitled "Septic System Maintenance," and replacing it with an alternative program for septic system maintenance.

The two options under consideration for an alternative septic maintenance program are presented as Ordinance Number 210A and Number 211A. These two options are described below and included in the exhibits:

Option #1) Ordinance Number 210A repeals Ordinance Number 203 and replaces it with new regulations to ensure proper septic system maintenance by adding a new Chapter 142 entitled "Septic System Maintenance" in Title 14 of the Dunes City Code of Ordinances; and

Option #2) Ordinance Number 211A repeals Ordinance Number 203 and establishes an educational program to ensure proper septic system maintenance.

II. NOTICE AND REFERRALS:

Public Notice: Prior to the Planning Commission and City Council public hearings, notice was mailed directly to all property owners within Dunes City on September 28, 2011 and published in the Siuslaw News on October 8, 2011 stating the nature of the proposal, how to participate and the date, time and location of the public hearings as required by state law and the city code. As of October 19, 2011, one comment had been received in favor of retaining Ordinance No. 203, which is included in the exhibits.

Agency and Organization Referrals: Notice of the proposed code amendment was sent to the Department of Land Conservation and Development (DLCD) on September 7, 2011 not less than 45 days prior to the first evidentiary hearing of October 27, 2011, as required by State law.

On October 3, 2011, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, the Oregon Department of Environmental Quality and the DLCD Regional Representative notifying them of the proposed amendments, public hearing dates and requesting comments. As of October 19, 2011, two comments were received from agencies. On October 7, 2011 Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments.

III. APPLICABLE CRITERIA

The proposed amendment is a legislative amendment to the Dunes City Code and the following criteria apply to this matter.

- Dunes City Code of Ordinances, Title 15 *Land Usage*, Chapter 155 *Zoning and Development*, Section 155.4 *Applications and Review Procedures*, Subsection 155.4.1.7 *Type IV Procedure (Legislative)*
- Dunes City Comprehensive Plan Elements: *Citizen Involvement, Land Use, and Air, Land and Water Quality*
- Oregon Revised Statutes (ORS) 197.610 *Local government notice of proposed amendment or new regulation; exceptions; report to commission.*
- ORS 227.186 *Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.*

IV. REVIEW OF APPLICABLE CRITERIA

Dunes City Code (DCC) Chapter 155 – Zoning and Development

155.4 Applications and Review Procedures

155.4.1.7 Type IV Procedure (*Legislative*)

B. Notice of Hearing.

1. **A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications submitted to the City.**

Finding: The proposals are consistent with this criterion because two hearings were conducted before a final decision was made. A public hearing was conducted before the Planning Commission and a public hearing was conducted before the City Council prior to making a final decision. This criterion is met.

2. **The Planning Secretary shall give notice of public hearings for the request in the following manner:**
 - a. **At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to**

adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:

- 1. Each owner whose property would be rezoned in order to implement the ordinance;**
- 2. Any affected governmental agency.**
- 3. Recognized neighborhood groups or associations affected by the ordinance;**
- 4. Any person who requests notice in writing;**
- 5. For a rezone affecting a manufactured home or recreational vehicle park, all mailing addresses within the park.**

Finding: The proposals are consistent with this criterion because a public notice was mailed to all property owners in Dunes City, affected government agencies and neighborhood groups and anyone requesting a notice on September 28, 2011, at least 20 days and not more than 40 days before the first public hearing before the Planning Commission on October 27, 2011. This criterion is met.

- b. At least 14 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, notice shall be published in a newspaper of general circulation in the City.**

Finding: The proposals are consistent with this criterion because at least 14 days before the Planning Commission public hearing on October 27, 2011, a notice was published in the Siuslaw News on October 8, 2011. This criterion is met.

- c. The Planning Secretary shall:**

- 1. For each mailing of notice provided in Subsection B.2. above, file an affidavit of mailing in the record; and**
- 2. For each published notice provided in Subsection B.2. above, file an affidavit of publication in the record;**

Finding: The proposals are consistent with this criterion because an affidavit of mailing and publication were filed into the record. This criterion is met.

- d. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.**

Finding: The proposals are consistent with this criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

155.4.1.7 Type IV Procedure (*Legislative*)

- E. Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:**

- 1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for Comprehensive Plan amendments only);**

Finding: This criterion does not apply because the proposals are not comprehensive plan amendments.

2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;

Finding: The proposals are consistent with this criterion because referrals were sent to the Lane County Sanitation Department, the Oregon Department of Environmental Quality and to DLCD notifying them of the proposed amendments and requesting comments. In response, on October 7, 2011 Lane County Sanitation Department stated they had no comments on the proposed amendments. This criterion is met.

3. Any applicable intergovernmental agreements; and

Finding: The proposals are consistent with this criterion because there are no intergovernmental agreements that are applicable to this matter. This criterion is met.

4. Any applicable Comprehensive Plan policies and provisions of this Code that implement the Comprehensive Plan. Compliance with Section 155.4.7 shall be required for Comprehensive Plan amendment, and Master Road Plan amendment.

Finding: The proposals are consistent with this criterion because applicable Comprehensive Plan Policies are addressed in the following section and these findings are incorporated herein. Additionally, applicable provisions of the Dunes City Code are addressed for consistency in this report. Lastly, Section 155.4.7 of the Dunes City Code is not applicable because the proposals do not amend the Comprehensive Plan Map or the Master Road Plan. This criterion is met.

DUNES CITY COMPREHENSIVE PLAN

Citizen Involvement and Land Use Planning

Policy A1. Citizens involvement. Dunes City's citizens involvement program shall insure that the citizens of Dunes City have the opportunity to be involved in all phases of the planning process.

The citizens involvement program shall incorporate the following components:

- 1. Citizen Involvement; to provide for widespread citizen involvement.**
- 2. Communication; to assure effective two-way communication with citizens.**
- 3. Citizen Influence; to provide the opportunity for citizens to be involved in all phases of the planning process.**
- 4. Technical Information; to assure that technical information is available in an understandable form.**

Finding: The proposals are consistent with these policies because citizens have been provided opportunities to be involved in all phases of the planning process. Public notice was mailed to all property owners and published in the Siuslaw News, notifying the public of the proposed code amendments and how to participate in the public hearing before the Planning Commission and City Council. The information contained in proposed Ordinance No. 210A and 211A was available to the public prior to the

hearings. Citizens were provided an opportunity to provide testimony before and during each public hearing. Widespread public involvement was solicited and provided for through all phases of the planning process. These criteria are met.

Land Use and Urbanization

Policy A12. Dunes City shall coordinate land use decisions where needed with Lane County, Douglas County, the Oregon Dunes National Recreation Area, Oregon State Parks, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, The Oregon Department of Forestry, and other local, state and federal agencies.

Finding: The proposals are consistent with these policies because referrals were sent to affected local and state agencies in order to coordinate the proposed land use decision. Dunes City sent referrals to the Dunes City Building Official, Lane County Sanitation Department, Oregon Department of Environmental Quality and the Department of Land Conservation notifying them of the proposed amendments, public hearing dates and requesting their comments. As of October 19, 2011, a response from Lane County Sanitation and the Building Department LLC (the Dunes City Building Official) were received stating they had no comment on the proposals. This criterion is met.

Air, Land and Water Quality

Sewage Systems Policies

Policy E5. The city shall cooperate with the Department of Environmental Quality to ensure compliance with disposal system requirements.

Finding: The proposals are consistent with this policy because Dunes City adheres to sewage disposal system requirements, as established by the Oregon Department of Environmental Quality and administered by Lane County. Installation of new septic systems and modifications to existing septic systems are reviewed, inspected and approved through the Lane County Sanitation Department. The Dunes City Building Official and building permit process coordinates with the Lane County Sanitation Department to ensure sewage disposal system requirements are reviewed and implemented according to state requirements. This criterion is met.

Policy E6. The city shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

Finding: The proposals are consistent with this policy because the proposal improves upon the existing code requirements to address maintenance of septic systems for the benefit of all residents in Dunes City. The proposals ensure that all on-site wastewater disposal systems are operated in a safe manner as required by the Oregon Department of Environmental Quality and administered by Lane County. This criterion is met.

OREGON REVISED STATUTES (ORS)

ORS 197.610: Local Government Notice of Proposed Amendment or New Regulation; Exceptions; Report to Commission.

197.610(1) A proposal to amend a local government acknowledged comprehensive plan or

land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing.

Finding: The proposals are consistent with this criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

ORS 227.186: Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.

227.186(1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number _____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property. Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____. For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at ____-____.

Finding: The proposals are consistent with this criterion because a measure 56 public notice was sent directly to all property owners within Dunes City in accordance with ORS 227.186. The public notice was mailed on September 28, 2011, at least 20 days but not more than 40 days before the date of the first hearing of October 27, 2011. The required information stated in the statute was included in the notice. This criterion is met.

V. CONCLUSION & RECOMMENDATION

The proposal to amend the Dunes City Code, by repealing Ordinance Number 203 Entitled “Septic System Maintenance” and replacing it with an alternative program for septic system maintenance as presented in Ordinance Number 210A and Number 211A meet all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws. The Planning Commission recommends the City Council adopt Ordinance Number 210A and Ordinance Number 211A.

VI. EXHIBITS

- A. Ordinance Number 210A, “An Ordinance Amending Title 14 of the Dunes City Code of Ordinances by Addition of Chapter 142 Entitled “*Septic System Maintenance*,” and Repealing Ordinance Number 203.”
- B. Ordinance Number 211A, “An Ordinance Repealing Ordinance Number 203 Entitled “*Septic System Maintenance*” and Establishing an Educational Program to Ensure Septic System Maintenance.”
- C. Response from Lane County Sanitation Department (10/07/11)
- D. Response from Building Department LLC (10/07/11)
- E. Comment from Craig McMicken (10/01/11)

FROM: OWEN GOODRICH,
TO: City Council

Nov 1, 11

What a nice move this has blown its self into. We had a bunch of Imports that were going to save the water, for years permits were given to build right on the water, good example right below Hill Top.

Now everybody is going to suffer even though we live far from the lakes we'll never pollute it. I'm a single living right behind the fire dept. that's on Clear Lake Rd, One person using water not in my life time would it ever reach the lake. "Come on now"

All of us can not clean up the mess that was made by the past.

I do agree that those living on the water and above the water up to 500 ft should be subject to pumping every 50 years. I've lived here in Oregon 63 years, I'm 80 now I'm not a new comer but in 5 years you want me to pump again. Get real.

The past Planning Comm. didn't look before they leaped.

Owen A. Goodrich
8334 Spruce Ln.
Dane, City

City Council
Recorder
Correspondence File

Hand
RECEIVED
NOV 03 2011
DUNES CITY MALL

Dunes City Recorder

From: liz purtell [mizlizp@yahoo.com]
Sent: Monday, November 07, 2011 3:45 PM
To: Dunes City Recorder
Subject: ordinance number 211A

Hi Fred,

Liz Purtell
5394 Buckskin Bob
Florence, Or 97439

I have been a resident of Dunes City for over 25 years. I strongly oppose repealing Ordinance Number 203 and replacing it with Ordinance Number 211A. Water quality seems to have improved since everyone got in compliance with Ordinance 203. There is less algae in Siltcoos Lake.

Education is not enough. The Conservation Committee and others have attempted to educate Dunes City residents about many issues regarding water quality, to no avail. I vote no on Ordinance 211A.

Liz Purtell



ORCA: Oregon Coast Alliance

P.O.Box 5464, Charleston OR 97420

(503) 391-0210 <http://www.oregoncoastalliance.org>

Protecting the Oregon Coast

Dunes City City Council
P.O. Box 97
Westlake, OR 97493

Nov. 9, 2011

Re: Proposed Dunes City Ordinances 210a and 211a

Sent via electronic mail

Dear Members of City Council,

Oregon Coast Alliance submits this additional testimony to you for consideration at the hearing of Ordinance proposals 210a and 211a. As part of this testimony, we resubmit the letter we sent to the Planning Commission on the same proposals, dated Oct. 26, 2011, along with the attachment of the map and statistics of Garrison Lake.

In this additional letter, ORCA would like to urge City Councilors to consider the Dunes City septic maintenance debate as a problem in how best to protect a common resource for the benefit of all residents. The waters of Woahink and Siltcoos Lakes (and the associated streams and groundwaters) are a resource held in common. That is to say: the waters are used by many people for drinking water and other amenities, but are not owned by them. This can lead to a situation in which all wish to benefit from the resource, but none wish to pay the costs of protection. If this is not legislated, the inevitable result is that the resource – drinking water, in this case – becomes degraded. That would mean more sophisticated and costly water filtration systems for Dunes City residents, Honeyman State Park, and any businesses that also use the same water supply.

Dunes City residents have the opportunity, through Ordinance 203, to maintain an across-the-board fair law that requires every resident to bear approximately the same cost of protecting the resource for the benefit of all. It is natural and expected that one whose septic system is failing be required to pay for its upgrade or repair, for his own benefit and that of all other residents who share the waters. In this case, the “commonality” of the resource is even greater than residents alone, as visitors to Honeyman State Park, which receives more than one million visitors per year, also drink the water of Woahink Lake.

Exhibit K

Any degradation of Woahink Lake's water may eventually also increase filtration or treatment costs to the Park, and thus to Oregon taxpayers.

The most current figures compiled under Ordinance 203 indicate the success of Dunes City's septic maintenance program. The law requires an initial mandatory pumping and inspection of all septic systems, and also requires Dunes City to keep records of the septic program. The record-keeping has not been fully implemented, but current data shows that as of summer 2011 there are about 781 septic systems in Dunes City, of which about 69% have complied with the law. There has been some confusion; some of those who have obeyed the law have had their septic systems pumped but not evaluated; others the reverse. But 69% is a fairly good showing of compliance, and indicates that people in Dunes City do care about the water quality the lakes on which they depend for drinking water, recreation, fishing and other amenities. It is especially noteworthy that of the 534 households that have complied thus far, 65 had failed septic systems, or needed replacements or repairs. That certainly indicates Ordinance 203's success in protecting Dunes City's drinking water supply.

Other communities on the coast face similar struggles to protect water quality in coastal lakes important to area residents. Port Orford, for example, has been concerned about Garrison Lake, which is on its border. The South Coast Watershed Council and its partners compiled some data, and a map, of Garrison Lake's shoreline outside the City as of September 2011. ORCA submitted this information in prior testimony to the Planning Commission. Of 262 parcels having buildings on Garrison Lake's shoreline, only about 32% have septic systems inspected in 1985 or more recently. All the others were probably built and/or inspected more than twenty-five years ago.

Dunes City, with its existing septic ordinance and data showing nearly 70% compliance, is an example of what can be done by a community focused on protecting its critical water resources for the good of all. Oregon Coast Alliance hopes the City will continue this proud achievement — and perhaps build on it by adding an educational component to Ordinance 203 in order to expand understanding and willingness of residents to work together for the common good.

Thank you for the opportunity to testify.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette
Land Use Director

Admin

From: Gail Nichols <gmnichols@oregonfast.net>
Sent: Wednesday, November 09, 2011 12:12 PM
To: Dunes City Admin
Subject: Septic ordinances comment

As a homeowner in Dunes City, I am opposed to replacing or amending the current Dunes City septic system ordinances with any alternative septic system maintenance program. We must protect our water supply, and it is not too much to ask to have inspections done regularly and to have homeowners maintain their septic systems.

Gail Nichols
83610 Clear Lake Rd.
Dunes City
541-999-6907
gmnichols@oregonfast.net

Received from J. Gerran
11/09/11
JHG

Dunes City's septic story: Protecting the water supply

Dunes City is currently struggling with a major problem: how much septic maintenance is enough when the town's residents, all of whom are on septic, live around some coastal lakes which also provide the drinking water. True, some residents get their water from groundwater wells, or streams in the area, but all the waters are hydrologically connected. Failing septic can easily leach effluent into the groundwater or Woahink and Silcoos Lakes. Dunes City has no filtration system for its drinking water.

City Council is set to consider two bills that would drastically alter the existing Ordinance 203, which created the septic maintenance program. The existing law requires an initial mandatory pumping and inspection of all septic systems, and also requires Dunes City to keep records of the septic program. The record-keeping has not been fully implemented, but current data shows that as of summer 2011 there are about 781 septics in Dunes City, of whom about 69 percent have complied with the law. There has

GUEST VIEWPOINT

BY CAMERON LA FOLLETTE, LAND USE DIRECTOR
OREGON COAST ALLIANCE

been some confusion; some of those who have obeyed the law have had their septics pumped but not evaluated; others the reverse. But 69 percent is a fairly good showing of compliance, and indicates that people in Dunes City do care about the water quality the lakes on which they depend for drinking water, recreation, fishing and other amenities.

It is especially noteworthy that of the 534 households that have complied thus far, 65 had failed septics, or needed replacements or repairs. That certainly indicates Ordinance 203's success in protecting Dunes City's drinking water supply.

These basic figures should be kept in mind when considering the two bills now before City Council. Ordinance 211a would repeal Ordinance 203 and replace it with an education program to ensure

septic maintenance. Ordinance 210a would keep some of the features of the current law, but eliminate its most effective tool: the requirement for mandatory pumping at the initial inspection.

Both of these proposals would unravel Dunes City's proactive law. The repeal would do so directly, setting up in its place a vague, and completely unspecified, education program "to ensure adequate septic system maintenance." But there is no link, nor any attempt to forge one, between any educational program and septic maintenance.

Proposal 210a is more subtle. The principal means of discovering where a septic system needs repairs or replacement is by initially pumping it so that cracks or other problems can be seen by the inspector. Removing that one requirement greatly reduces the program's effi-

cacy. This mandatory pumping requirement is controversial among some Dunes City residents.

But there are other ways to look at it, rather than as a governmental intrusion or an unjustifiable financial burden on the homeowner. Dunes City is a community, and all residents share the water — whether it comes from the lakes or the hydrologically connected groundwater or streams.

As a common resource, it must be protected by all for the benefit of all. This means that all residents bear a small expense for the common cause of clean drinking water.

Dunes City, with its existing septic ordinance and data showing nearly 70 percent compliance, shows what can be done by a community focused on protecting its critical water resources for the good of all. Oregon Coast Alliance hopes the City will continue this proud achievement — and perhaps build on it by adding an educational component to Ordinance 203 in order to expand understanding and willingness of residents to work together for the common good.

Dunes City Council

Re; Septic Ordinance #203

I am writing in support of keeping Ordinance 203. Sue and I have lived in Dunes City for over 30 years and feel fortunate to be part of this wonderful community. We have voluntarily had our septic systems checked/pumped every 5 years. I do not propose to be an expert on septic systems but when I talk to septic contractors they all recommend having a system checked/pumped every 5 years as part of regular maintenance. This not only is part of a maintenance program but also a plan designed to extend the life of a septic system.

Having the system checked every 5 years should help an owner be informed about any problems that may occur with their system before it fails which can be very expensive. I believe it to be the responsible thing to do. Regular septic maintenance also protects the environment and helps preserve the water quality in the Lakes which is the water source for many Dunes City residents.

The cost of septic pumping can be \$600 plus or minus every 5 years. But compared to the rates of city services which run approx. \$60/month I do not think it is an unreasonable expense.

We are submitting this letter in support of support Ordinance #203.

Sincerely,

Dan Scarberry 11/10/11
Sue Scarberry 11/10/11

Dan and Sue Scarberry
5042 Ford way
Florence, Oregon 97439

Hand
RECEIVED - council 7
- Recorder
- Corres. file
4 NOV 10 2011
DUNES CITY HALL
Exhibit N

10November 2011

Mayor Ruede, Councilors:

My name is Peter Howison, 83243 Kendall Lane, Dunes City

The original septic maintenance ordinance and the current 203 have resulted in 70% compliance with 65 systems found failed or potentially failing. So why continue this system? Clean water was an initial reason but also there is the health risk of septic spills. The previous ordinances were unanimously passed and supported by a variety of city leaders such as councilors Petersdorf, John Scott, Judy Martin and our current Mayor.

The current Planning Commission wisely recommended that the council consider both 210 and 211 understanding the importance of education provided for in 211 and intermittent inspections in 210 where these inspections are individually tailored by using the Oregon State University Extension Service recommended pumping intervals determined by size of the tank and number of household members resulting in variable intervals up to over 30 years.

Two arguments against continuing any septic maintenance ordinance that I have heard voiced include 1) an inability to enforce the ordinance and 2) a lack of time for our staff to follow through with enforcement by the April deadline.

Due to our charter and code limitations such as the lack of a municipal judge, all of our ordinances' enforcement is in doubt not just this one. The council is, of course, not going to repeal all of our ordinances because of this problem. Instead we should pass the proposed enforcement ordinance discussed earlier in this meeting.

As far as the backlog of 30% of citizens that have not yet complied, some who may not have been notified yet, a simple solution might be to extend the compliance deadline by 6 to 12 months in order to give staff and residents the time needed to catch up.

In conclusion, please continue the city's support of citizens to maintain their septic systems. Protect water quality, avoid expensive repairs of failed systems and avoid health hazards. Pass an enforcement ordinance first, delay the final deadline as needed and merge 210 and 211 emphasizing inspection and education.

Voting to repeal by passing only 211 is unfair to those that have complied. Throwing out an effective process the city has maintained for more than 5 years is unwise. Don't contribute to deteriorating water quality, decreased property value and an expensive sewer system. We can all agree on avoiding these things.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Peter W. Howison", written over a horizontal line.

Peter W. Howison, M.D.



UNIVERSITY OF MINNESOTA

AGRICULTURAL EXTENSION SERVICE

Department of Agricultural Engineering
201 Agricultural Engineering Building
1390 Eckles Avenue
St. Paul, Minnesota 55108

*from Rend Dawson
11/10/2011*

1981

Rendy Troy

FOREWARD

This Home Sewage Treatment Workshop Workbook is based on 6 MCAR Section 4.8040 Individual Sewage Treatment Systems Standards (WPS-40) adopted in 1978 by the Minnesota Pollution Control Agency. These Standards provide design criteria for the proper treatment of sewage under a variety of site and soil conditions. A copy is included as Section A. This Workbook is intended to be used by those who are actively involved in the design, installation, and maintenance of individual sewage treatment systems. The Workbook is used as a text for the 1981 3-day Home Sewage Treatment Workshops and each participant who receives a copy is encouraged to also use it for educational purposes such as presenting material at meetings or for individual consultations. Most of the tables and diagrams presented in the Workbook can be used to prepare slides or transparencies.

We hope that this Workbook will be useful to you. We invite any comments that you may have concerning the Workbook and particularly how it might be improved and made more useful for your purposes.

The Citizens' Advisory Committee that developed WPC-40 recommended to the Minnesota Pollution Control Agency Board that the Standards not be mandatory statewide and that development and administration of local sanitary ordinances continue to be the responsibility of local units of government. The Advisory Committee further recommended that a voluntary program be established to certify site evaluators, designers, contractors, inspectors, and pumpers as to their knowledge and experience in the design, installation, and maintenance of individual sewage treatment systems. The certification program was initiated by the Minnesota Pollution Control Agency in 1980 and 162 individuals passed the examination and submitted experience credentials for certification. The examination for certification will be given again this year during the afternoon of the third day of the Workshops.

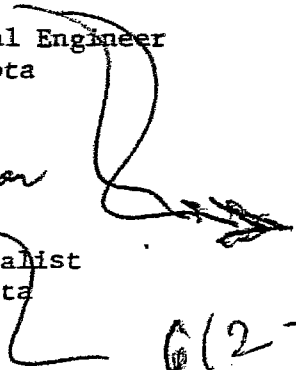
Roger E. Machmeier

Roger E. Machmeier
Extension Agricultural Engineer
University of Minnesota

Michael J. Hansel
Staff Engineer
Minnesota Pollution Control Agency

James L. Anderson

James L. Anderson
Extension Soils Specialist
University of Minnesota



*612-306-6857 cell
Nat. Kromig*

HOW SOIL TREATS WASTEWATER

In the soil, bacteria eat the food (literally break down the BOD and solids, and incorporate them). Pathogens become trapped in the soil, either by being adsorbed onto soil particles, or becoming stuck to the microbial slimes laid down by soil bacteria. Once trapped, some pathogens die off because of differences in temperature, lack of moisture and food, and other causes. Others are inhibited or killed by antibiotics given off naturally by soil fungi and other organisms. Still others are actually preyed upon by soil bacteria and literally eaten.

Nutrients are also removed or modified. Nitrogen from the septic tank is usually in the ammonia form (NH_3). While some is used by the soil bacteria or adsorbed by the soil particles, most of it is converted to nitrate (NO_3) in the aerated soil. Nitrates are soluble and will move with soil water. Nitrate movement is one of the reasons for separation distances between sewage treatment systems and water supply wells. There is little evidence to show, however, that shallow sewage treatment systems such as drainfield trenches or seepage beds cause nitrate problems with water supply wells. Recent research results show that sewage treatment mounds utilizing pressure distribution do an excellent job of denitrification.

Phosphates are removed from wastewater by being adsorbed onto soil particles, particularly particles with high concentrations of iron, manganese, and aluminum. Soils with a greater percentage of clay particles have more of these minerals than sands. When the adsorption sites are filled, phosphates will move through the soil. Laboratory studies on coarse sands indicate the maximum rate of phosphate movement is about 50 cm (20 inches) per year. Field studies have indicated that the rate is even slower under operating sewage treatment systems. Phosphate movement will be still less through loam or finer textured soils which have more adsorption sites. If the treatment system is functioning properly, problems from phosphate movement to surface or groundwaters should be minimal.

UNSATURATED FLOW AND THE BIOMAT

In order for treatment to be effective, the soil bacteria must have air and sufficient time. These conditions will exist if the soil beneath the soil treatment system is unsaturated. In an unsaturated soil, water moves only through the smallest pores or in a thin film around soil particles surrounding the larger pores which are usually filled with air.

The reason for this type of movement is that the driving force behind unsaturated flow is not gravity, but a soil tension force (sometimes called capillary attraction, wicking action, or "sucking power"). If all soil pores were filled with water (i.e., saturated conditions), most of the water would flow by gravity through the larger pores (much the same way one could put more water through a 12-inch culvert than a 1-inch garden hose). However, under unsaturated conditions, the largest pores drain first, since they are able to exert the least tension (or "sucking power"). Water is pulled or "sucked" through the smaller pores. Because water is moving due to tension or "sucking" power, it does not have to go down but can move sideways or even up to wherever the soil is driest. The presence of lush, green grass over the drainfield is evidence of this "capillary" movement of unsaturated flow of water.

As sewage tank effluent flows into a drainfield trench, it moves into the distribution pipe and down through the trench rock to the soil where treatment begins. A biological layer or biomat is formed by soil microorganisms which secrete a gluey or sticky substance and anchor themselves to the soil or rock particles. This biomat forms first along the trench bottom and as liquid begins to pond in the trench, forms along the soil surfaces on the sidewalls. When fully developed, the gray to black slimy biomat layer is about 1/2 to 1 inch thick.

Flow through the biomat is considerably slower than flow through the natural soil and is unsaturated flow. Thus, the biomat acts as a valve to slow down the flow of wastewater into the soil so that unsaturated conditions exist in the soil beneath the drainfield trench. A properly functioning system will have wastewater ponded in the trench while the soil a few inches outside of and below the trench will be unsaturated. The unsaturated soil has pores containing both air and water so that microorganisms living in the soil can effectively treat the wastewater moving through the soil system.

A developed biomat is in equilibrium in that it remains at about the same thickness and the same permeability if proper effluent quality and quantity are maintained. The biomat and the liquid ponded within the trench are anaerobic and the organic materials in the wastewater are food for the anaerobic microorganisms which grow and multiply and increase the thickness and decrease the permeability of the biomat. On the soil side of the biomat, oxygen is present so that conditions are aerobic allowing soil bacteria to feed on and break down the biomat continuously. These two processes go on at about the same rate so that the thickness and permeability of the biomat remain about the same.

If the wastewater contains a greater proportion of organic material because of failure to regularly pump the septic tank, the greater amount of food for the bacteria will increase the thickness of the biomat and decrease its permeability. If seasonally saturated conditions occur in the soil outside the trench, aerobic conditions will no longer exist, the biomat will thicken, and its permeability will be reduced.

Soil of suitable texture is an excellent treatment medium for sewage tank effluent. The soil is a self-renewing treatment system and will maintain its treatment effectiveness and capacity as long as the sewage tank effluent remains of reasonable quality and as long as aerobic conditions exist in the soil outside of the trench. The design and construction procedures presented in this Workbook are intended to show how to utilize the soil system in such a way as to assure that sewage tank effluent is properly treated.

Del & Barbara Riesenhuber
5394 Canary Road
Florence, OR 97439

*Rec'd from Del Riesenhuber
11/10/11
JH*

November 10, 2011

Dunes City Council
82877 Spruce St.
Westlake, OR 97493

Re: Public testimony on proposed ordinances 210a and 211a

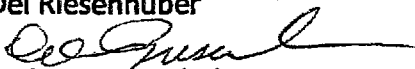
We are opposed to these two ordinances and urge the council to vote no to both proposed ordinances. Ordinance 211a has the effect of eliminating oversight of sewage in Dunes City and creates a public health hazard and jeopardizes our Woahink Lake water supply. This is directly contrary to the Comprehensive Plan. Ordinance 210a will severely limit septic inspections and therefore jeopardize our Woahink Lake water supply.

Existing ordinance 203 was adopted after careful thought and expert input, and is intended to assure appropriate management of septic systems within Dunes City. Both of the proposed ordinances will negate the desired benefits of ordinance 203 and allow further contamination of our Woahink Lake water supply by eliminating or curtailing much needed oversight.

Submitted to the public record of Dunes City

by

Del Riesenhuber



Barbara Riesenhuber



Woahink Lake Association



Rec'd from
Del Riesenhuber
11/10/11

***Our Goal: To promote the understanding, protection and thoughtful management of
Woahink Lake, its watershed, and its ecosystem.***

Dunes City Council
82877 Spruce Street
Westlake, OR 97493

October 17, 2011

Testimony relative to proposed ordinances 210a and 211a:

Woahink Lake Association Board is opposed to both of these proposed ordinances and hereby reserve our right to file a LUBA appeal should either of these proposed ordinances be adopted by the Dunes City Council.

Preservation of the quality of Woahink Lake is a primary concern of the Woahink Lake Association. We are opposed to these proposed ordinances because do not follow the direction of the Dunes City Comprehensive Plan and allow further contamination of Woahink Lake by removing much needed controls over septic systems and run off of pollutants into Woahink Lake.

Attached please find the Resolution written by the Woahink Lake Association Board.

Woahink Lake Association Board,

Del Riesenhuber
Secretary

Exhibit R

**WOAHINK LAKE ASSOCIATION
LANE COUNTY, OREGON**

A RESOLUTION RECOMMENDING THAT THE DUNES CITY COUNCIL AFFIRM THE IMPORTANCE OF HEALTH, SAFETY AND DRINKING WATER PROTECTION, AND DENY PROPOSED ORDINANCES 210a AND 211a.

WHEREAS, Dunes City Policies as stated in the Comprehensive Plan require that the City protect its natural resources and our waterways; and

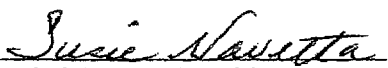
WHEREAS, Dunes City has been proactive in its efforts to maintain the water quality and the longevity of Woahink and Siltcoos Lakes; and

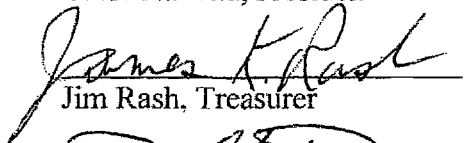
WHEREAS, Woahink Lake is the source of drinking water for the residents of Dunes City, and in addition over 1 ½ million visitors of Honeyman State Park and;


WHEREAS, Ordinance 203 provides for protection of the waters of Woahink and Siltcoos Lakes;


NOW THEREFORE BE IT RESOLVED THAT THE BOARD OF THE WOAHINK LAKE ASSOCIATION URGES THE DUNES CITY COUNCIL TO AFFIRM THE IMPORTANCE OF HEALTH, SAFETY AND DRINKING WATER PROTECTION AND VOTE NO ON THE PROPOSED ORDINANCES 210a AND 211a.

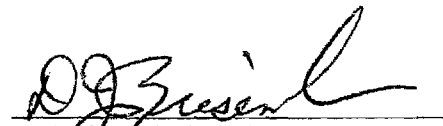
Adopted: October, 1 2011

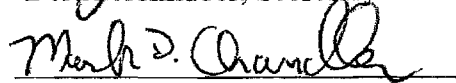

Susie Navetta, President


Jim Rash, Treasurer


Dave Dumas


John Stead


Del Riesenhuber, Secretary


Mark Chandler


Dave Gosselin

**Comments to the Dunes City Council, November 10, 2011
Regarding Proposed Ordinances 210A and 211A
by John Stead.**

Dunes City's Responsibility

Dune City's founders extended the city's border across Woahink lake, at Honeyman State Park placing the majority of Woahink Lake under the stewardship of Dunes City. This stewardship as expressed in the City's Comprehensive Plan Policies B5 through B9, E1 through E6 and Oregon's Statewide Planning Goal 6, is passed on as a legacy to the present City Council. Particular attention is called to Policy E6, which states, "The City shall adopt a program to improve maintenance of septic systems for the benefit of residents. . ." The Council responded by adopting Ordinance 173, and updating it as Ordinance 203.

Planning Commission's Responsibility

It is the Planning Commission's duty to recommend to the Council ordinances intended to carry out the purposes, principles, and proposals expressed in the Comprehensive Plan [Ordinance 32.67 (1)]. Following the October 27th public hearing, the Commission determined to recommend neither ordinance, then following considerable discussion took action to recommend both proposed ordinances to the council.

Consider the following:

1. According to the Forest Service's "Coastal Lakes Watershed Analysis", "Eutrophication of Woahink and Siltcoos Lakes is particularly alarming . . . a 1972 survey of septic tanks found that 26% of all tanks within 100 feet of the lake were performing unsatisfactorily (Lane County, 1978). Where systems had failed, sewage was coming to the ground surface very near the lake and in winter almost certainly drained there. . . [And],

"If nutrient levels continue to increase relatively unchecked by State or County officials, problems such as those in Tenmile Lake south of this watershed will begin to take place. In Tenmile Lake, toxic algal blooms (Microcystis) have made water unsafe for drinking or recreation during certain times of year with uncertainty of its long-term effects on public safety and the viability of local tourism."

[U.S. Forest Service / Siuslaw National Forest, "Coastal Lakes Watershed Analysis", (1999) Pages 48 and 49]

2. According to DEQ, “You can avoid costly repairs by having your septic tank inspected on a regular basis for solids accumulation. When the solids accumulation is greater than 40 percent, have your septic tank pumped by a DEQ-licensed pumper.

[<http://www.deq.state.or.us/wq/onsite/aboutseptic.htm>]

3. Lane County Sanitation says, “A septic tank drainfield system requires regular maintenance to function properly. You can make this maintenance easier by keeping a diagram showing the location of your house, septic tank manholes, piping and soil absorption system. Periodic pumping of the septic tank will be necessary.”

[<http://www.lanecounty.org/Departments/PW/LMD/Sanitation/Pages/septic.aspx>]

4. Dunes City’s Drinking Water Source Assessment and Potential Planning Strategies, December 2002, page 13, specify that the city should develop a septic maintenance and upgrade program requiring periodic testing and inspection of septic systems.

5. The Model Ordinance for Eugene Water and Electric Board Surface Water Drinking Water Protection Overlay Zone (DWP) says, “. . . owners of septic systems within the DWP are required to have their septic system inspected within one year of the ordinance’s effective date and every five years thereafter.”

[<http://www.lanecounty.org/Departments/PW/LMD/Sanitation/Pages/septic.aspx>]

6. DEQ recommend that septic systems be pumped approximately every three – six years. (Copy Attached).

[DEQ Fact Sheet, Septic Tank Maintenance. 10/6/00]

Question to be Asked:

Will the repeal of Ordinance 203 and adoption of 210A and / or 211A serve to restore and improve the water quality of Woahink, Little Woahink and Siltcoos Lakes for the benefit of Dunes City residents and the public?

Septic Tank Maintenance

Background

The most common wastewater treatment system used in rural areas is the septic tank-soil absorption system. The septic tank removes solids from the wastewater, and the soil absorption field (drainfield) filters, treats and disposes of the septic tank effluent.

Removing the solids from the wastewater protects the drainfield from clogging and early failure. The septic tank also stores the settled solids and allows biological digestion of some of these solids.

How does a septic tank work?

The septic tank removes solids by holding wastewater in the tank, which allows the solids to settle and scum to rise to the top. Incoming water should be held in the tank for at least 24 hours in order to improve settling. Up to 50 percent of the solids will decompose into liquids and gases. The remaining solids accumulate in the tank.

Biological and chemical additives are not needed to aid or accelerate settling or decomposition. As a general rule, no solids other than human wastes and white toilet paper should be flushed.

As the septic system is used, sludge continues to accumulate in the bottom of the septic tank. Properly designed tanks have enough capacity for three to eight years use before needing service. The tank should be checked each year starting with the third year to determine how much sludge is there. It is important to understand that septic tanks always appear full because both the inlet and the outlet are at the top of the tank. The homeowner needs to determine how much of the tank's volume is being taken up by solids, scum and sludge. When sludge and scum take up more than 35 percent of the tank volume, these solids need to be removed by pumping.

Servicing a septic tank

When too much sludge and scum are allowed to accumulate, the incoming sewage will not have enough time in the septic tank for solids to settle. Solids may flow to the drainfield and clog the drainfield, causing the sewage to overflow to the ground surface, where it exposes humans and animals to the disease-causing organisms in sewage. To prevent this from happening, it is very important to check the tank and have it serviced when needed.

The drainfield may not fail immediately when a full tank is not pumped. However, the septic tank is no longer protecting the drainfield from solids. This creates inefficiencies in the drainfield and may allow contamination of the groundwater. Continued neglect will result in failure of the drainfield, and it may need to be replaced.

The frequency of pumping depends on the size of the tank and what and how much goes down your drains. Use of a garbage disposal and excessive water use can increase pumping frequency.

In Oregon, a 1,000 gallon septic tank is used for homes with up to four bedrooms. If four people live in a four-bedroom house, a 1,000 gallon tank may need to be pumped approximately every three years. If the same system serves a family of two, the tank would be ready for pumping every six years. Systems installed before the current rules and regulations may have smaller septic tanks and may need to be pumped more often.

Cleaning the tank

A septic tank pumper licensed by the Department of Environmental Quality (DEQ) can pump and clean your tank. It is a good idea to supervise the cleaning to ensure that is done properly. The material pumped out is known as "septage."

To get all of the material from the tank, the scum layer must be broken up and the sludge layers stirred up into the liquid portion of the tank. This is usually done by pumping liquid from the tank and reinjecting it into the bottom of the tank. The septic tank should be pumped out through the large central service hole, not the sanitary tee or baffle inspection ports. Pumping out a tank through the inspection ports can cause damage.

Before closing the tank, check the condition of the tees or baffles. If they are missing or deteriorated, replace them with sanitary tees. Never enter a septic tank. Any work to replace the baffles or repair the tank should be made from the outside. The septic tank produces toxic gases which can kill a person in a matter of minutes. When working on a tank from the outside, make sure the area is well ventilated and someone is standing by. Never go into a septic tank to retrieve someone who was overcome by toxic gases or the lack of oxygen without a self-contained breathing apparatus. In the event someone falls into a septic tank the best thing to



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Last Updated: 10/06/00

Dune City Septic 11/10/11

I know you have already decided to gut the protections to our drinking water but I have to say why I think you are wrong. Everyone knows Woahink is a unique lake, one of only three in the world like it. And that since it is spring and rain fed the turnover time is much longer than most lakes, making pollution more difficult to deal with.

Leaky septic systems in the watershed area do pollute our lake. There is no way of checking whether an old septic tank is leaking without pumping it dry to check for cracks. This is well established and non controversial fact.

Ten Mile Lake residents didn't want to spend the money to check their septic systems. Now it's too late. Their lake is dead, they can't drink the water. It will cost them more now because of their failure to plan for the protection of their lake.

Reedsport has just had to install a six million dollar water treatment plant for their 3,000 people. Each house there now pays \$150 per month for drinkable water.

If you want to save money for our residents, as you have claimed, you will identify grant and low interest loan funding for people than can't afford to repair their septic system. This is the cheapest and most effective way to protect our drinking water.

April Dumas
541-997-2870

Jamie Mills 11/10/2011
JH

I was recently asked to show someone scientific studies that demonstrates a connection between leaking septic systems and harm to lake water. I buried myself in research for a couple of days and have come up with hundreds, if not thousands, of such scientific evidence, with the oldest - perhaps the first, being done in the 1930's in the State of New York. I won't bore you with the details of all the studies I located between 1930 and today, but I can tell you of one study in Nevada that traced a special dye as it migrated for 22 miles underground, where it finally came back to the surface in the marshlands. The most recent study is one that was released by Stanford University last fall which actually traced the pollution plume of a leaking septic system into the groundwater and out into the ocean at Stinson Beach in Northern California. None of these studies, however, were done on Siltcoos or Woahink Lakes where soil structures are likely different.

But even though we do not have a specific scientific study that says leaking septic systems contribute to the detriment of water quality in Woahink and Siltcoos Lakes, the undisputable, scientifically proven truth is, like it or not, leaking septic systems pollute nearby water sources, be they above or below the ground everywhere else in the world.

I am a proponent of the old saying: "An ounce of prevention is worth a pound of cure." I encourage you to think about the potential consequences. If the City Council decides our lakes are not harmed by leaking septic systems and votes to do away with mandated septic inspections, what happens if they're wrong? Now, instead of paying six to nine hundred dollars every five years or so, we're looking at paying \$60 or \$70 dollars a month, on top of additional taxes, to pay for the sewer system the federal government is going to require. And don't think they won't require it. Ask the folks in Lake County, California. In fact, you don't even need to go that far to ask - just ask the folks over in

Exhibit U

Powers. There having to put in a \$3 million sewer system for the 600 homes there. All because the pollution from their septic systems is showing up in the South Fork of the Coquille. Which would you rather pay for – a sewer system for everyone or the occasional septic inspection? I, for one, say septic inspections.

A looming question is whether Dunes City can enforce an ordinance. The ordinance only requires inspection, so if someone does not comply, then, after following the appropriate process, the City can do the inspection. If an inspection shows the system to have failed, the City now has solid proof to provide to the County or State that a violation has occurred. The County and/or State would then HAVE to step in and take care of the problem. The solid proof is the key.

Knowing as many of the people that live in Dunes City as I do, however, I really don't expect there to be too many who don't comply. Most of us are good, responsible adults who care about our neighbors and our environment – particularly when it comes to our drinking water resources. As for the ones who can't afford it, there is financial assistance available from the Department of Agriculture, Rural Development. They have specific funding programs available to assist low income homeowners with just this sort of maintenance.

I encourage my colleagues on the council to err on the side of caution. Either support Ordinance No. 210A, leave Ordinance No. 203 in place, or come up with some other amendments that address concerns raised, but do not support Ordinance No. 211A.

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LAND CONSERVATION
AND DEVELOPMENT

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Attn: Plan Amendment Specialist
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