

Councilor Petersdorf Letter Review Report

To: Mayor and City Council

CC: City Attorney, Roads Commission

Report by: Robert Quandt, City Council

Report submitted: September 30, 2008

Report includes:

- 1) Report Summary
- 2) Findings of Fact
- 3) Copy of Councilor Petersdorf's letter to City Council
- 4) Copy of City Recorder's letters to the Middlestadts and Strouds
- 5) Copy of Access permits from Middlestadts and Strouds
- 6) Copy of Ordinance 168 referenced in the Petersdorf letter

Councilor Petersdorf Letter Review Report Summary

At the 9/11/08 City council meeting we discussed the authorization by Councilor Petersdorf of a private parking lot on public land in the shoreland protection zone.

- ? We discussed the legal procedures for evaluating such a request.
- ? We discussed the applicable ordinance that does not allow this type of project.
- ? We discussed Councilor Petersdorf's involvement giving permission contrary to provisions and authorities laid out in the ordinance.
- ? We discussed the City Recorder's Office role in evaluating project requests, dispensing the appropriate permits and initiating procedures required by Dunes City Ordinance.
- ? We discussed that the City Recorder's Office has the sole authority in issuing permits.

During that discussion, Councilor Petersdorf entered into the public record a response letter. The letter was to support his authority and the process by which he came to his decisions. He asked that it be looked at and evaluated. At the Mayor's request, I have done this and produced the following report.

The report includes this report summary, the findings of fact, councilor Petersdorf's letter, the City Recorder's letters to the Middlestadts and the Strouds and a copy of ordinance 168 referred to by councilor Petersdorf in his letter.

The report addresses the assertions made by Councilor Petersdorf in his letter paragraph-by-paragraph and citation-by-citation and compares them to Dunes City Ordinance.

The full report is available for public scrutiny as are the supporting documents. The report is very detailed and I would encourage anyone interested to take a close look at it.

If anyone has any questions regarding anything in my report I would be happy to answer them.

The findings of fact and supporting Ordinance show that if proper procedures were followed multiple permits would have been required. Evaluating those permits would have included detailed drawings and descriptions of the projects in question. Since the project involved the removal of vegetation in the shoreland zone, Dunes City Ordinance requires a site visit from the Conservation Committee and subsequent report to the planning Commission for their decision. The right of way use permit requires a recommendation from the Roads Commission and a decision made by the City Council.

However this project would have not been allowed given that it included a parking lot in the protected shoreland zone and only water related structures are allowed in this area. The appropriate procedures to reach this end would have been initiated by the City Recorder's Office. The findings also show that an access permit alone cannot cover this project and even if it could, Councilor Petersdorf would not have the authority to issue it.

Councilor Petersdorf's letter includes 6 paragraphs and 10 supporting citations.

The Findings of Fact show that the assertions and citations given by Councilor Petersdorf in support of his actions are either invalid, unrelated, misleading or directly contradicted by Dunes City Ordinance. None of the citations in his letter support his actions or authority. The Findings of Fact outline 34 findings that are backed up by city ordinance and supporting documents. In addition the findings of fact also shows that the City Recorder's actions in issuing the stop work orders and subsequent letters to the applicants were appropriate.

Councilor Petersdorf Letter Findings of Fact

Councilor Petersdorf's Paragraph 1

September 9, 2008

The Mayor and Dunes City Council,

The following is in response to information in Amy Graham's August 26, 2008 letters to Eugene & Myrtle Stroud and to Dale Middlestadt. The subject is in regards to the Road Commission's authority, as provided by the Master Road Plan, in issuing a Temporary Right-of-Way Use Permit (MRP Appendix E Pg4).

Findings RE paragraph 1

- 1) Roads Commission did not issue a "temporary right of way use"(T.R.O.W.U.) permit as represented above. The Roads Commission issued an access permit to cover this project. See attached permit.
- 2) For this project a T.R.O.W.U. permit would have been required as shown in the MRP Ordinance below.

"MRP A. Driveway Standards and Fire Access

3. Driveway Permits

Applicants for driveway permits shall be required to obtain approval of the location of a proposed driveway from the Road Commission prior to the issuance of a driveway permit.

B. Parking on City Streets

1. Due to the right-of-way width of most streets in Dunes City, on-street parking in general is discouraged.

2. On-street parking is permitted for a maximum duration of two hours out of 24 hours for no more than two consecutive days.

3. On-street parking exceeding the limits of item B. 2. above, shall require a Right-of-Way Use Permit. The Dunes City Road Commission shall evaluate such applications."

- 3) For a T.R.O.W.U. permit the procedure is the Roads Commission would make recommendations to the city council. The City Council has the authority in approval of T.R.O.W.U. permits as shown in the MRP Ordinance below.

"Roads Commision § 32.47 DUTIES.

(E) It shall consider citizen requests for temporary use of City street rights-of-way, removal of trees and vegetation from street rights-of-way and make recommendations thereon to the City Council. (Ord. 149, passed 8-8-96)"

- 4) The reference to (MRP Appendix E Pg4) is to an outdated ordinance noted on a "permit form" that refers to a (01-04-93) council action. The appropriate ordinance is within the MRP Ordinance itself and it refers to Ordinance 149, passed 8-8-96. The MRP Ordinance makes it clear that the Roads Commission is only to make recommendations on T.R.O.W.U. permits to the City Council as shown in the Ordinance below.

“ Roads Commision § 32.47 DUTIES.

(E) It shall consider citizen requests for temporary use of City street rights-of-way, removal of trees and vegetation from street rights-of-way and make recommendations thereon to the City Council. (Ord. 149, passed 8-8-96)”

Paragraph 1 Critique Summary

An “access permit” was issued not a T.R.O.W.U. A T.R.O.W.U. would have been required as shown above. Even if a T.R.O.W.U. was involved, there is no authority provided in the master roads plan for the roads commission to issue T.R.O.W.U. permits. The City Council approves T.R.O.W.U. permits.

Councilor Petersdorf’s Paragraph 2

I ask that the Mayor and City Council review the above mentioned form and note the bold typing that indicates, “If proposed use is a structure, this application requires City Council approval per 01-04-93 council action.” The Road Commission made their determination upon the fact that there was no structure involved when the permits were taken out.

Findings RE paragraph 2

- 5) The notation referenced above is not from the permit issued by the Roads Commission.
- 6) A paved parking pad in the City’s right of way was issued under an access permit. A T.R.O.W.U. permit would have been required as shown above and that would require City Council approval.

Councilor Petersdorf’s Paragraph 3

I ask that the Mayor and City Council review the Application for Driveway Permit (required before the actual construction of the driveway) Revision 07/07. Please refer to the bold print paragraph which indicates “The Road Commission will determine if an Excavation and Grading Permit is required.” The Road Commission made their determination upon the fact that there was no grading or excavation required.

Findings RE paragraph 3

- 7) The resident did not submit an application for a driveway permit. The application was for an access permit. (see attached document). However both permits would have been required.
- 8) On August 21 John and Judy Johnson visited Dunes city hall protesting a grading project involving heavy equipment in the shoreland protection zone. They inquired about the permits for this project but none were on file. This prompted a site visit by the City Recorder and Councilman Howison to confirm that the project had begun. If grading occurs in the shoreland zone, a grading permit is required as shown in the ordinance below.

“§ 151.042 PERMITS REQUIRED.

Shoreland zone. A person must obtain a permit to excavate or grade in any shoreland zone. This excavation or grading must be done in compliance with this subchapter, the comprehensive plan, and the vegetation removal ordinance (Chapter 154 of this code of ordinances). There will be no mechanized earth moving or heavy equipment, with the exception of pile drivers with a permit, allowed below 25 feet from the high water line.”

- 9) Public testimony by the Johnson's at the 9-11-08 City Council meeting included before and after pictures confirming that vegetation had been removed from the shoreland zone. A vegetation removal permit would have been required as shown in the ordinance below.

“§ 154.03 PERMIT FOR VEGETATION REMOVAL REQUIRED; EXCEPTIONS.

(A) *Generally.*

(1) A vegetation removal permit is required if any vegetation/tree is to be removed from the shoreland zone or riparian corridor, except as provided in divisions (B)(1) through (3)”

- 10) For the vegetation removal permit the procedure shown in the ordinance below is required. This begins with an application made through the City Recorder including the submissions listed in the ordinance. With this information, the Conservation Committee arranges a site visit and generates a report for the Planning Commission. The Planning Commission will modify, approve or deny the proposal as shown in the ordinance below.

“§ 154.04 PERMIT PROCEDURE.

(A) Permit applications should be made through the City Recorder, utilizing the appropriate form.

(B) The application shall include a map of the property, including dimensions, legal description, the original vegetation inventory as defined in § 154.02, and an inventory of existing vegetation, indicating that which is proposed for removal.

(C) The application shall state reasons for vegetation removal and what steps will be taken to prevent soil erosion and minimize impacts on wildlife habitat, scenic values, and water quality.

(D) Upon receiving an application, the City Recorder will immediately notify the Chairperson of the Conservation Committee who will arrange a visit to the site and prepare a written report for the Planning Commission's next regular meeting.

(E) The Planning Commission shall consider the following criteria:

(1) The Oregon Coastal Shorelands Goals;

(2) The effect the proposed changes will have on scenic values from adjoining properties and bodies of water;

(3) The effect the proposed changes will have on fish and wildlife habitat, soil erosion, and water quality.

(F) The Planning Commission will modify, approve, or deny the proposal.

(G) An appeal of the Planning Commission decision may be made to the City Council by the applicant or an interested person, or by the City Council's own motion. Such appeal shall be taken no later than 10 days after the Planning Commission's action.

(1) The appeal notice shall be filed in written form with the City Council and shall include a concise statement of the grounds upon which the appellant claims the decision

APPENDIX D PG 4 Dunes City Master Road Plan October 2004, Issue 1
appealed was erroneous.

(2) The city shall notify the appellant by letter confirming the receipt of the appeal and stating the appeal procedures and date the appeal will be heard by the City Council.

(Ord. 154, passed 4-10-97) Cross-reference: Planning Commission, see § 32.60 et seq.”

Councilor Petersdorf's Paragraph 4

The Planning Commission Chair has been sitting in on all monthly Road Commission meetings for years in order to keep both commissions informed so as to make the best possible decisions to best serve Dunes City residents. At the time the Road Commissioners approved the two permits, the Planning Commission Chair had no objection. Contrary to Amy's letter, our two commission do work together.

Findings RE paragraph 4

- 11) It is good that the Planning Commission Chair sits in on Roads Commission meetings to keep both Commissions informed however this does not satisfy the requirement shown above in the vegetation removal permit procedure. The Planning Commission approves the permit based on a report from the Conservation Committee.

Councilor Petersdorf's Paragraph 5

It would have been a courtesy to me, as Chair of the Road Commission and to Lee Reichel as Chair of the Planning Commission, if Amy had any questions regarding her statements, to at least have made her letter available for review prior to mailing them. As the Road Commission understands the MRP, this was not a City Council to-be-involved matter. Additionally, the decisions in approving the permits were made by a totally involved, Road Commission and not personally by me. As you are aware, I have no voting rights as Chair.

Findings RE paragraph 5

- 12) The City Recorder wrote the stop work order letters based on the fact that requirements listed in the citations above had not been met and at the request of the Mayor. The City Recorder's understanding of the MRP Ordinance has been validated in the citations listed above.
- 13) The statement in the paragraph above "this was not to be a City Council to-be-involved matter" is not valid. The City Council would have been involved with the T.R.O.W.U. permit. This permit would have been required as shown in the ordinance cited earlier in the report.
- 14) The Roads Commission did not review and make a recommendation for the Middlestadt permit based on the required drawings. Roads Commissioner Dave Persons testifying at the 9/11/08 City Council meeting stated, "he was not shown the drawings". He stated, "He didn't know that the access permit supplied for the permit represented a parking lot in the riparian area". "He thought he was voting on an access permit" and he protested calling himself a "scapegoat."
- 15) The statement in the paragraph above "the decisions in approving the permits were made by a totally involved Roads Commission and not personally by me" is not valid. On the 8/18/08 Roads Commission Meeting tape recording, Councilor Petersdorf is heard announcing, "He will issue Stroud permit." There was no vote on the Stroud permit.

Councilor Petersdorf's Paragraph 6

Since Amy, as our City Recorder, seems interested in the workings of the Road Commission, I would like to extend to her the opportunity to come to all of our monthly road meetings to familiarize herself with not only the following information to be presented, but with our MRP as it currently stands.

Findings RE paragraph 6

- 16) The City Recorder's office is responsible for determining what permits are required and initiating the procedures required by ordinance as shown in the citations above. As a result the City Recorder's Office must be interested in the workings of all Committees, Commissions and the Council.
- 17) The City Recorder's understanding of the MRP as it relates to the issues in question has been validated by the ordinance cited above.

Councilor Petersdorf Citation #1

MRP CH1 SEC1 PG1:

In the event of a conflict between the Dunes City Master Road Plan and the Dunes City Code of Ordinances, the Master Road Plan shall prevail.

Findings RE Citation #1

- 18) The citation referenced above is unrelated given that the ordinance in question does not represent a conflict between Master Road Plan and Dunes City Code of Ordinance.

Councilor Petersdorf's Citation #2

MRP CH1 SEC2 PG 2:

32.41 (B): To provide long-range planning of street improvements, including but not limited to the laying out, widening, extending, and location of streets; the construction of sidewalks, boulevards, and storm drains; and the control of parking, street placement and use of street-rights-of-way;

Findings RE Citation #2

- 19) The citation referenced above is unrelated to the issues in question. It is the responsibility of the Roads Commission to provide "long range planning" in these areas.

Councilor Petersdorf's Citation #3

MRP CH1 SEC2 PG3:

32.48 Second sentence: The Road Commission has only those powers and duties as are now or hereafter granted and imposed on it by the City Charter, ordinances, and directives of the City Council.

Findings RE Citation #3

- 20) The citation referenced above is a segment of the Roads Commission Powers and Limitations Ordinance. The full statement describes the limitations of the Roads Commission authority. The full statement makes clear that the Roads Commission is only to play an advisory role.

“§ 32.48 POWERS AND LIMITATIONS.

Neither the Road Commission, as a whole, nor any member or members individually or collectively shall exercise authority to bind the City, its officers, or its agents to any financial commitment or obligation (except as specifically directed or authorized by the City Council). The Road Commission has only those powers and duties as are now or hereafter granted and imposed on it by the City Charter, ordinances, and directives of the City Council. All actions of the Road Commission shall be deemed advisory to the Mayor and City Council and shall have no legislative or judicial effect unless and until formally adopted by the City Council. (Ord. 149, passed 8-8-96)”

Councilor Petersdorf's Citation #4

MRP CH2 SEC3 PG3

F. Un-enumerated Nuisance Defined. Public Nuisances may be declared by the Road Commission as provided in Resolution 06-16-94. This is in regards to “structures” in the City ROW.

Findings RE Citation #4

- 21) The citation referenced above is unrelated to the issues in question.

Councilor Petersdorf Citation #5

MRP CH2 SEC6 PG1

Transportation Policies Further to Policies F1 and F2 regarding Public Rights-of-Way, the regulations contained in Appendices D,E,F,H,J,K, and M shall be the responsibility of the Road Commission for permits and violation penalties.
Policy F7. Off-street parking must be provided as part of any land development.

Findings RE Citation #5

- 22) The policies contained in Appendices D, E, F, H, J, K and M either don't apply to the issues in question or were not followed.
- a) Appendix D is chapter 154 noted above. The procedures in chapter 154 were not followed as shown above in earlier ordinance citations.
 - b) Appendix E contains the permit form that was used and some that should have been used.
 - c) Appendix F is a schedule of fees.
 - d) Appendix H is related to public contracting and drug testing.
 - e) Appendix J is Equipment rental and Services agreement.
 - f) Appendix K defines certain un-enumerated nuisances
 - g) Appendix M is modifications and appeals of all matters pertaining to streets.
- 23) Policy F7 referenced above is unrelated to the issues in question. However when planning a development there is a requirement that off street parking must be provided.

Councilor Petersdorf's Citation #6

MRP CH2 SEC9 PG2

B. Parking on City Streets

#3 On-street parking exceeding the permitted time, shall require a Right-of-Way Use Permit. The Dunes City Road Commission shall evaluate such applications.

Findings RE Citation #6

24) An access permit was issued by the Roads Commission not a right of way use permit. However a right of way use permit would have been required if the proper procedure were followed. If the proper procedure were followed the Roads Commission would make a recommendation to the City Council as shown again in the ordinance below.

“ Roads Commision § 32.47 DUTIES.

(E) It shall consider citizen requests for temporary use of City street rights-of-way, removal of trees and vegetation from street rights-of-way and make recommendations thereon to the City Council. (Ord. 149, passed 8-8-96)”

Councilor Petersdorf's Citation #7

MRP CH2 SEC12 PG2

Master Road Plan Definitions

On-Street Parking. Parking in the street right-of-way, typically in parking lanes or bays. Parking may be “parallel” or “angled” in relation to the edge of the right-of-way curb.

Findings RE Citation #7

25) The citation referenced above is unrelated to the issues in question.

Councilor Petersdorf's Citation #8

MRP Appendix A PG1

Master Road Plan Ordinance

City of Dunes City, Oregon, Ordinance No. 171, Section 1, Title, Authority, Purpose

II. A. In the event of a conflict between the Dunes City Master Road Plan and the Dunes City Code of Ordinances, the Master Road Plan shall prevail.

Personal note: It is critical that the Planning Commission is made aware of any important issues relating to roads that could possibly impact their decisions. This is a regular happening at all monthly road meetings.

Findings RE Citation #8

26) The citation referenced above is unrelated given that the ordinance in question does not represent a conflict between Master Road Plan and Dunes City Code of Ordinance.

27) In reference to the personal note shown above. It is very necessary that the Planning Commission is made aware of any important issues that could impact their decisions.

Councilor Petersdorf's Citation #9

MRP Appendix C PG3

90.14 Enforcement of Regulations

If the Council determines that a violation of this subchapter may exist, it shall direct a member of the Road Commission to inspect the site and determine whether there is a violation. The member shall prepare a list of suggested steps necessary to correct the deficiency. If the member reports that a nuisance exists, the Road Commission may direct the applicant and contractor to abate the nuisance by taking action suggested by the inspector. If an agreement is not reached regarding the appropriate remedy of the situation, the nuisance may be abated pursuant to the city ordinance regarding nuisances.

? Personal note: Why did Amy, the mayor, or a city councilor not direct the Road Commission to inspect the site for a determination as listed in the enforcement of regulations above?

Findings RE Citation #9

28) Councilor Petersdorf did not follow the procedure shown in the ordinance below. The applicants were misled by Councilor Petersdorf into thinking this project was covered under an access permit as shown above. Councilor Petersdorf initiated the violations of chapter 90.

“§90.11 PERMITS AND RULES FOR EXCAVATIONS IN PUBLIC RIGHT-OF-WAY.

(A) Prior to excavating within a right-of-way dedicated to the public and situated within the city, a person shall obtain a permit from the City Recorder's Office.”

29) In regards to the personal note shown above the stop work order was a result of a complaint by citizens who reported a grading project in the shoreland protection zone. This was a clear violation of Dunes City Codes and required a prompt response from the Dunes City office.

Councilor Petersdorf's Citation #10

MRP Appendix 1 PG2

Over the years the City Council has given the Road Commission authority in numerous areas (made by consensus of council members).

Ordinance 168 Section 4 – Agreement

.... The Dunes City Council hereby delegates the Road Commission or Mayor the authority to sign and agreement for the City.

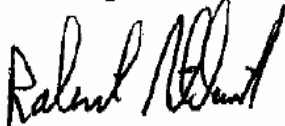
Findings RE Citation #10

30) The citation shown above is misleading. Ordinance 168 is a “No Brushing Agreement”. This agreement is an option for landowners abutting the city's right of way to decline the city's brushing efforts if they agree to maintain the brush in the right of way themselves. The Roads Commission has been given the authority to sign this agreement. The authority to sign this agreement does not transfer to any other agreements. A copy of Ordinance 168 is attached to the report for reference.

Councilor Petersdorf's Conclusion

In addition to Amy copying the Mayor, City Council and City Attorney, it would have been appropriate to have copied me, personally, as she wrote specifying my name in her letters, as well as copying the Road Commission, as it was their unanimous decision in approving the permits. As she referenced in the letter the planning commission, it also would have been appropriate to have copied Lee Reichel. As it stands now, she has placed residents in the middle. This should not have happened.

Best regards,



Bob Petersdorf
City Councilor
Chair, Road Commission

Findings RE Conclusion

- 31) Councilor Petersdorf is a member of the City Council and received the information along with the other members of the City Council.
- 32) The statement "as it was their unanimous decision in approving the permits" was shown to be invalid earlier in the report. There was no vote on the Stroud permit.
- 33) The City Recorder had performed her duties as required by Dunes City Ordinance. It is unfortunate that residents were placed in the middle.
- 34) The statement "This should not have happened" shown above, is valid.

September 9, 2008

The Mayor and Dunes City Council,

The following is in response to information in Amy Graham's August 26, 2008 letters to Eugene & Myrtle Stroud and to Dale Middlestadt. The subject is in regards to the Road Commission's authority, as provided by the Master Road Plan, in issuing a Temporary Right-of-Way Use Permit (MRP Appendix E Pg4).

I ask that the Mayor and City Council review the above mentioned form and note the bold typing that indicates, "If proposed use is a structure, this application requires City Council approval per 01-04-93 council action." The Road Commission made their determination upon the fact that there was no structure involved when the permits were taken out.

I ask that the Mayor and City Council review the Application for Driveway Permit (required before the actual construction of the driveway) Revision 07/07. Please refer to the bold print paragraph which indicates "The Road Commission will determine if an Excavation and Grading Permit is required." The Road Commission made their determination upon the fact that there was no grading or excavation required.

The Planning Commission Chair has been sitting in on all monthly Road Commission meetings for years in order to keep both commissions informed so as to make the best possible decisions to best serve Dunes City residents. At the time the Road Commissioners approved the two permits, the Planning Commission Chair had no objection. Contrary to Amy's letter, our two commission do work together.

It would have been a courtesy to me, as Chair of the Road Commission and to Lee Reichel as Chair of the Planning Commission, if Amy had any questions regarding her statements, to at least have made her letter available for review prior to mailing them. As the Road Commission understands the MRP, this was not a City Council to-be-involved matter. Additionally, the decisions in approving the permits were made by a totally involved, Road Commission and not personally by me. As you are aware, I have no voting rights as Chair.

Since Amy, as our City Recorder, seems interested in the workings of the Road Commission, I would like to extend to her the opportunity to come to all of our monthly road meetings to familiarize herself with not only the following information to be presented, but with our MRP as it currently stands.

MRP CH1 SEC1 PG1:

In the event of a conflict between the Dunes City Master Road Plan and the Dunes City Code of Ordinances, the Master Road Plan shall prevail.

MRP CH1 SEC2 PG 2:

32.41 (B): To provide long-range planning of street improvements, including but not limited to the laying out, widening, extending, and location of streets; the construction of sidewalks, boulevards, and storm drains; **and the control of parking, street placement and use of street-rights-of-way;**

MRP CH1 SEC2 PG3:

32.48 Second sentence: The Road Commission has only those powers and duties as are now or hereafter granted and imposed on it by the City Charter, ordinances, and directives of the City Council.

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F. Un-enumerated Nuisance Defined. Public Nuisances may be declared by the Road Commission as provided in Resolution 06-16-94. This is in regards to "structures" in the City ROW.

MRP CH2 SEC6 PG1

Transportation Policies Further to Policies F1 and F2 regarding Public Rights-of-Way, the regulations contained in Appendices D,E,F,H,J,K, and M **shall be the responsibility of the Road Commission for permits and violation penalties.**

Policy F7. Off-street parking must be provided as part of any land development.

MRP CH2 SEC9 PG2

B. Parking on City Streets

#3 On-street parking exceeding the permitted time, shall require a Right-of-Way Use Permit. The Dunes City Road Commission shall evaluate such applications.

MRP CH2 SEC12 PG2

Master Road Plan Definitions

On-Street Parking. Parking in the street right-of-way, typically in parking lanes or bays. Parking may be "parallel" or "angled" in relation to the edge of the right-of-way curb.

MRP Appendix A PG1

Master Road Plan Ordinance

City of Dunes City, Oregon, Ordinance No. 171, Section 1, Title, Authority, Purpose

II. A. In the event of a conflict between the Dunes City Master Road Plan and the Dunes City Code of Ordinances, the Master Road Plan shall prevail.

Personal note: It is critical that the Planning Commission is made aware of any important issues relating to roads that could possibly impact their decisions. This is a regular happening at all monthly road meetings.

MRP Appendix C PG3

90.14 Enforcement of Regulations

If the Council determines that a violation of this subchapter may exist, it shall direct a member of the Road Commission to inspect the site and determine whether there is a violation. The member shall prepare a list of suggested steps necessary to correct the deficiency. If the member reports that a nuisance exists, the Road Commission may direct the applicant and contractor to abate the nuisance by taking action suggested by the inspector. If an agreement is not reached regarding the appropriate remedy of the situation, the nuisance may be abated pursuant to the city ordinance regarding nuisances.

? Personal note: Why did Amy, the mayor, or a city councilor not direct the Road Commission to inspect the site for a determination as listed in the enforcement of regulations above?

MRP Appendix 1 PG2

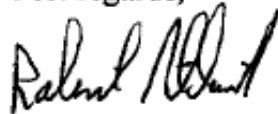
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Ordinance 168 Section 4 – Agreement

.... The Dunes City Council hereby delegates the Road Commission or Mayor the authority to sign and agreement for the City.

In addition to Amy copying the Mayor, City Council and City Attorney, it would have been appropriate to have copied me, personally, as she wrote specifying my name in her letters, as well as copying the Road Commission, as it was their unanimous decision in approving the permits. As she referenced in the letter the planning commission, it also would have been appropriate to have copied Lee Reichel. As it stands now, she has placed residents in the middle. This should not have happened.

Best regards,



Bob Petersdorf
City Councilor
Chair, Road Commission

DUNES CITY

P.O. Box 97 • Westlake, Oregon 97493 • (541) 997-3338 • Fax: (541) 997-5751

www.dunescity.com

August 26, 2008

Dale Middlestadt
27025 Weber Road
Brownsville, OR 97327

Dear Mr. Middlestadt:

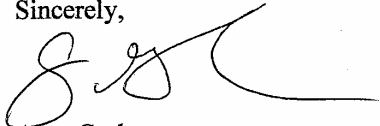
Dunes City would like to offer our sincere apology for any inconvenience you experienced due to the incorrect issuance of an Access Permit (Through the City Right-of Way), by Road Commissioner Mr. Bob Petersdorf.

There is a required process that follows the initial application to allow a variance for proposed use of the public right of way that must be adhered to by all. Commissioner Petersdorf should have been working with the planning commission on a permit of this nature and both committees making recommendations to the council for approval of permits for the city public right of way permit.

The City acknowledges the fact that you were misled by a city official and therefore, the City will bear reasonable costs incurred by you for the initial construction of the parking pad. The City will also bear the costs to bring the site back to its original condition; this will require a permit and an inspection that the City will provide following due process.

If you have any questions regarding this matter please feel free to call me.

Sincerely,



Amy Graham
City Recorder
Dunes City Hall

cc: Mayor; City Council; City Attorney

RECEIVED
OCT 02 2008
BY: _____

DUNES CITY

P.O. Box 97 • Westlake, Oregon 97493 • (541) 997-3338 • Fax: (541) 997-5751

www.dunescity.com

August 26, 2008

Eugene & Myrtle Stroud
P.O. Box 2780
Florence, OR 97439

Dear Mr. & Mrs. Stroud:

Dunes City would like to offer our sincere apology for any inconvenience you experienced due to the incorrect issuance of an Access Permit (Through the City Right-of Way), by Road Commissioner Mr. Bob Petersdorf.

There is a required process that follows the initial application to allow a variance for proposed use of the public right of way that must be adhered to by all. Commissioner Petersdorf should have been working with the planning commission on a permit of this nature and both committees making recommendations to the council for approval of permits for the city public right of way permit.

The City acknowledges the fact that you were misled by a city official and therefore, the City will bear reasonable costs incurred by you for the initial construction of the parking pad. The City will also bear the costs to bring the site back to its original condition; this will require a permit and an inspection that the City will provide following due process.


If you have any questions regarding this matter please feel free to call me.

Sincerely,



Amy Graham
City Recorder
Dunes City Hall

cc: Mayor; City Council; City Attorney

RECEIVED
OCT 2 2008
BY: 

ORDINANCE 168

AN ORDINANCE ESTABLISHING A POLICY TO PROVIDE A NO BRUSHING PLAN FOR PROPERTY OWNERS ABUTTING THE CITY RIGHT-OF-WAY

Dunes City ordains as follows:

SECTION 1 – PURPOSE

The purpose of this Ordinance is to establish a procedure whereby the property owners of Dunes City can choose the method of controlling vegetation on City road rights-of-way which abut their land.

SECTION 2 – DISCRETION

Maintenance of City Roads is at the sole discretion of Dunes City. The time, place and manner of roadside brush control are at the discretion of the Dunes City Road Commission. Entry into a “No Brushing” Agreement shall be at the discretion of the Dunes City Road Commission.

SECTION 3 – PROPERTY OWNER OPTION

When the right-of-way abutting a property owner’s land is included in a brushing program, the property owner may request the City not to brush the right-of-way abutting their property. Such a request must be made by agreement set out in Appendix A and by posting the right-of-way in accordance to Section 5 of this Ordinance.

SECTION 4 – AGREEMENT

The City shall approve a request for “No Brushing” if the property owner enters into an agreement to control the vegetation. The agreement shall be in the form set out in Appendix A, attached hereto and incorporated herein by this reference, and shall be signed by the property owner and returned to the Road Commission. The “No Brushing” agreement must be received by the Road Commission prior to March 1, of a given year. The Dunes City Council hereby delegates the Road Commission or Mayor the authority to sign the agreement for the City. The “No Brushing” agreement shall be effective only during the calendar year in which it was signed.

SECTION 5 – POSTING

A property owner, who abuts a City road right-of-way which is to be brushed and who entered into the agreement, must also post the abutting right-of-way as a “No Brushing” area. Such posting shall be by clearly visible signs provided by the Road Commission when the “No Brushing” agreement is returned to the Road Commission. Such signs shall be placed at the beginning and end of the “No Brushing” area respectively as directed by the Road Commission. Failure to adequately post the right-of-way as required by this Section will result in the brushing of the right-of-way as planned.

SECTION 6 – PROPERTY OWNER TO CONTROL VEGETATION

If the property owner posts the abutting right-of-way as a “No Brushing” area, the property owner shall be responsible for controlling the vegetation in the right-of-way to the satisfaction of the Road Commission. An information sheet regarding controlling vegetation and the requirements of posting shall be provided to property owners by the Road Commission when the “No Brushing” agreement is returned. Performance of the Agreement by property owners is at their own risk. The City shall not be liable to property owners or third parties for any claims connected with this Agreement.

SECTION 7 – FAILURE TO CONTROL VEGETATION

If the property owner fails to control the vegetation as required under Section 6 of this Ordinance, the

City shall cut the area. If the City returns to a posted “No Brushing” area to control vegetation, which the abutting property owner failed to control, the abutting property owner will be charged the full cost of controlling the vegetation. If the abutting property owner fails to pay this charge, the charge will become a lien on the property.

SECTION 8 – NOTICE

When the Road Commission determines that vegetation on a City road right-of-way is in need of control and that the brushing will be part of the control program, the Road Commission shall cause to be published a notice of brushing program for City of Dunes City.

SECTION 9 – NOTICE PUBLICATION

The notice required by Section 8 of this Ordinance shall be published the newspaper as designated by the Dunes City Council. The notice shall be published once a week for two (2) consecutive weeks ending not later than two (2) weeks prior to March 1st of a given year.

SECTION 10 – NOTICE CONTENTS

The notice required by Section 8 of this Ordinance shall be in the form set out in Resolution 03-11-04.

SECTION 11—SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

ADOPTED BY THE DUNES CITY COUNCIL THIS 11TH DAY OF MARCH, 2004.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 1

/s/ Robert B. Ward Jr., Mayor Robert B. Ward Jr., Mayor /s/ Joanne Hickey, City Recorder
Joanne Hickey, City Recorder

APPLICATION FOR ACCESS PERMIT

(Through the City Right-of-Way)

Name: Dale Maddestad Telephone 541-936-2798

Address: 27025 WEBER RD, BROWNSVILLE OR 97327

Site Address/Legal Description: 82820 OCEAN BLVD WEST LAKE.

Date of Completion: IN PROCESS

- ◆ Access onto a city street must be paved prior to the issuance of a building permit.
- ◆ Before driveway permit is issued, property corners, parallel to the road, must be staked out with white polyvinylchloride (pvc) markers.

Name of access road OCEAN BLVD.
If proposed access is to a county or state road, do you have the required access permits?
NA.

Driveway Access: New driveway approaches to any improved Dunes City street shall be a minimum of 12' wide and have an asphalt or concrete surfaced apron from street to lot boundary line (minimum length of 8'). Said approach to be constructed to prevent the flow of surface water from the driveway onto said street. Driveway approach will require a culvert at the discretion of the Road Commission. If it is determined that a culvert is required, the size and location is to be determined by the Road Commission and the culvert is to be installed by the property owner with the understanding that the owner is responsible for keeping the culvert unobstructed and in good operating condition. (Chapter 2, Section 9 of the Master Road Plan).

Applicant, by signing this access permit understands that all provisions of Dunes City ordinances governing will be complied with whether specified herein or not.

Applicant's Acknowledgement & Signature: [Signature]
have read and agree to the conditions of this permit, dated 7-7-08

FAX 541-466-3104

Fee due upon submission of this permit: \$50.00

Received by _____
City Staff Signature Date

Date to be completed: END of SEPT. 2008

Approved by Road Commission: [Signature] Date 7-31-08

Road Commission Comments: ROAD MINUTES OF JULY 21, 2008 PAGES 3-4

Final Inspection Performed by: _____ Date _____

Rcv: 07/07

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BY: [Signature] BY: [Signature]

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APPLICATION FOR ACCESS PERMIT

(Through the City Right-of-Way)

Name: EUGENE MYRTLE STROUD Telephone 997-7161

Address: P.O. Box 2780 FLORENCE, OR 97439

Site Address/Legal Description: TAYLOR 19-12-34-21-08200-906

Date of Completion: END OF AUG 2008

- ◆ Access onto a city street must be paved prior to the issuance of a building permit.
- ◆ Before driveway permit is issued, property corners, parallel to the road, must be staked out with white polyvinylchloride (pvc) markers.

Name of access road: OCEAN BLVD.
If proposed access is to a county or state road, do you have the required access permits?
N/A

Driveway Access: New driveway approaches to any improved Dunes City street shall be a minimum of 12' wide and have an asphalt or concrete surfaced apron from street to lot boundary line (minimum length of 8'). Said approach to be constructed to prevent the flow of surface water from the driveway onto said street. Driveway approach will require a culvert at the discretion of the Road Commission. If it is determined that a culvert is required, the size and location is to be determined by the Road Commission and the culvert is to be installed by the property owner with the understanding that the owner is responsible for keeping the culvert unobstructed and in good operating condition. (Chapter 2, Section 9 of the Master Road Plan).

Applicant, by signing this access permit understands that all provisions of Dunes City ordinances governing will be complied with whether specified herein or not.

Applicant's Acknowledgement & Signature: I Eugene C Stroud
have read and agree to the conditions of this permit, dated 8-19-08

RECEIVED

Fee due upon submission of this permit: \$50.00
Received by Bob CHECK NO. 10301 \$50.00 8-19-08 AUG 21 2008
City Staff Signature Date

DUNES CITY HALL

Date to be completed: END OF AUG 2008

Approved by Road Commission: [Signature] Date 8/18/08
Road Commission Comments: NO CULVERT REQUIRE RP.
Final Inspection Performed by: _____ Date _____

Rev: 07/07

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OCT 08 2008
BY: [Signature]