



Oregon

Theodore R. Kubongski, 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

11/27/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Cave Junction Plan Amendment
DLCD File Number 003-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: Wednesday, December 09, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Helen Early, City of Cave Junction
Gloria Gardiner, DLCD Urban Planning Specialist
Chris Shirley, FEMA Specialist
John Renz, DLCD Regional Representative

<paa> YA

Notice of Adoption

DEPT OF LAND CONSERVATION AND DEVELOPMENT For DLCD Use Only DATE STAMP NOV 20 2009

THIS FORM MUST BE MAILED TO DLCD WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: City of Cave Junction

Local file number: Flood 2009

Date of Adoption: November 9, 2009

Date Mailed: November 18, 2009

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes Date: 9/3/09

Comprehensive Plan Text Amendment

x Comprehensive Plan Map Amendment

x Land Use Regulation Amendment

x Zoning Map Amendment

New Land Use Regulation

Other:

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

Adopted 2009 FIRM Maps, Flood Insurance Study and revised the City of Cave Junction Municipal Code Chapter 17.52 "Flood hazard Protection" to reflect the amendments required by the Federal Emergency Management Agency.

Does the Adoption differ from proposal? NO

Plan Map Changed from: N/A

to: N/A

Zone Map Changed from: N/A

to: N/A

Location: Citywide property subject to periodic flooding

Acres Involved: N/A

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
[x] [] [] [] [] [] [x] [] [] [] [] [] [] [x] [] [] [] [] []

Was an Exception Adopted? [] YES [x] NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

X 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:

Local Contact: Helen Early

Phone: (541) 592-2156 Extension:

Address: PO Box 1396

Fax Number: 541-592-6694

City: Cave Junction

Zip: 97523

E-mail Address: cjplanning@cavenet.com

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

**Before the Common Council
of the
City of Cave Junction**

Regarding: Adoption of 2009 FIRM Maps, Flood Insurance Study and amend the City of Cave Junction Municipal Code Chapter 17.52 "Flood Hazard Protection" for compliance with the standards for participation in the National Flood Insurance Program (Federal Emergency Management Agency)

Applicant: City of Cave Junction

This request came before the Common Council of the City of Cave Junction on November 9, 2009 for two public hearings at the request of the City of Cave Junction.

ADOPTION OF 2009 FIRM MAPS, FLOOD INSURANCE STUDY

There being no objection to the authority of the Council to hear the matter, the public hearing was opened.

1. CRITERIA FOR DECISION:

1.2 APPROVAL CRITERIA

- 1.2.1 National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973
- 1.2.2 City of Cave Junction Comprehensive Plan - *Goal 7 - Areas Subject to Natural Disasters and Hazards*

2.0 EVIDENCE AND FACTS: The Common Council considered the following evidence and testimony:

2.2 EVIDENCE:

- 2.1 *Flood Insurance Study (Josephine County, Oregon and incorporated Areas Volumes 1 and 2*
- 2.2 *Flood Insurance Rate Maps*

2.1 TESTIMONY:

- 1.1 Oral testimony from Steve Lucker, Floodplain/Natural Hazards Mapping Specialist, Oregon Department of Land Conservation and Development
- 2.1. Oral testimony from John Bowler, PO Box 3151, Kerby 97531 regarding language in Chapter 17.52 (Ordinance). Chair requested that testimony be restated during the public hearing on Chapter 17.52 (Ordinance).
- 2.2 Written testimony from the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office stating that the City of Cave Junction, Oregon, has until 12/3/09 to adopt the floodplain

measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.39(d) of the National Flood Insurance Program (NFIP) regulations, or be suspended from the NFIP program.

3.0 JUSTIFICATION: The Council accepted the following findings to justify the decision:

- 3.1 *Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office statement that the City of Cave Junction, Oregon, has until 12/3/09 to adopt the floodplain measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.39(d) of the National Flood Insurance Program (NFIP) regulations, or be suspended from the NFIP.*
- 3.2 *Flood Insurance Study (Josephine County, Oregon and incorporated Areas Volumes 1 and 2)*
- 3.3 *Flood Insurance Rate Maps*

4. CONCLUSION AND DECISION: Therefore based on the evidence submitted into the record and testimony from witnesses, the Common Council of the City of Cave Junction, upon a motion by Margaret Miller and a vote of 5-0, adopted the 2009 Flood Insurance Rate Maps and Flood Insurance Study, Volumes 1 and 2.

CAVE JUNCTION MUNICIPAL CODE CHAPTER 17.52 "FLOOD HAZARD PROTECTION" FOR COMPLIANCE WITH THE STANDARDS FOR PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM (FEDERAL EMERGENCY MANAGEMENT AGENCY)

There being no objection to the authority of the Council to hear the matter, the public hearing was opened.

1.0 CRITERIA FOR DECISION:

1.2 APPROVAL CRITERIA

- 1.2.1 Chapter 17.52 Flood Hazard Protection.
- 1.2.2 National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973
- 1.2.3 City of Cave Junction Comprehensive Plan - *Goal 7 - Areas Subject to Natural Disasters and Hazards*

2.0 EVIDENCE AND FACTS: The Common Council considered the following evidence and testimony:

2.1 EVIDENCE:

- 2.1.1 *Flood Insurance Study (Josephine County, Oregon and incorporated Areas Volumes 1 and 2)*
- 2.1.2 *Flood Insurance Rate Maps*

2.2 TESTIMONY: No oral or written testimony.

3.0 JUSTIFICATION: The Council accepted the following findings to justify the decision:

- 3.1 *Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office statement that the City of Cave Junction, Oregon, has until 12/3/09 to adopt the floodplain measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.39(d) of the National Flood Insurance Program (NFIP) regulations, or be suspended from the NFIP.*
- 3.2 *Flood Insurance Study (Josephine County, Oregon and incorporated Areas Volumes 1 and 2)*
- 3.3 *Flood Insurance Rate Maps*

4. CONCLUSION AND DECISION: Therefore based on the evidence submitted into the record, the Common Council of the City of Cave Junction, upon a motion by Dan Fiske and a vote of 5-0, Amended Municipal Code, Chapter 17.52, and declared an emergency.

Notice of Decision -List of Recipients:

NAME	ADDRESS
Steve Lucker	Floodplain/Natural Hazards Mapping Specialist, Oregon Department of Land Conservation and Development 635 Capitol St., NE, Suite 150 Salem, OR 97301-2540
Pat Kelly	City Attorney 717 NW 5 th St. Grants Pass, OR 97526
Dick Converse	Rogue Valley Council of Governments PO Box 3275 Central Point OR 97502
John Bowler	PO Box 3151 Kerby , OR 97531

Ordinance 529

AN ORDINANCE ADOPTING THE 2009 FLOOD INSURANCE RATE MAPS AND AMENDING MUNICIPAL CODE, CHAPTER 17.52.

WHEREAS, The National Flood Insurance Program under the authority of the Federal Emergency Management Agency updated the Flood Insurance Rate Maps and addressed changes to be made to the Flood Hazard Protection requirements; and

WHEREAS, it is in the best interest of the citizens to adopt the 2009 Flood Insurance Rate Maps and amend the Flood Hazard Protection chapter of the Municipal Code;

NOW THEREFORE the City of Cave Junction ordains as follows:

Section 1. The City Council hereby adopts the 2009 Flood Insurance Rate Maps.

Section 2. The Council hereby amends Municipal Code, Title 17, Chapter 17.52, replacing the existing text with Exhibit "A" attached hereto and incorporated herein.

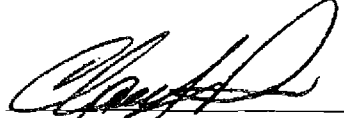
Section 3. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 4. Whereas, it is necessary and desirable that this action be completed as soon as possible and that this Ordinance be put into immediate effect to comply with the US Department of Homeland Security, Federal Emergency Management Agency, requirements, an emergency is hereby declared to exist in the interest of public safety and welfare of the City of Cave Junction, and the inhabitants thereof, and this Ordinance may be introduced and read first in full and then by title alone and placed upon its final passage at any one meeting of the Common Council and shall be in full force and effective from and after its passage by the Council and approval by the Mayor of the City of Cave Junction.

PASSED by the Common Council of the City of Cave Junction this 9th day of November, 2009.

SUBMITTED TO AND APPROVED by the Mayor of the City of Cave Junction, this 10th day of November, 2009.

Signed: 
DONALD G. MOORE, Mayor

Attest: 
CHARLES J. POLK, Recorder

Chapter 17.52

FLOOD HAZARD PROTECTION

SECTION I. GENERAL PROVISIONS

- 17.52.010 Statutory authorization.
- 17.52.020 Definitions.
- 17.52.030 Lands to which this chapter applies.
- 17.52.040 Basis for establishing the areas of special flood hazard.
- 17.52.050 Compliance.
- 17.52.060 Abrogation and greater restrictions.
- 17.52.070 Interpretation.
- 17.52.080 Warning and disclaimer of liability.

SECTION II. ADMINISTRATION

- 17.52.090 Establishment of development permit.
- 17.52.100 Designation of the planning commission.
- 17.52.110 Duties and responsibilities of the planning commission.
- 17.52.120 Variance procedure.

SECTION III. PROVISIONS FOR FLOOD HAZARD PROTECTION

- 17.52.130 General standards.
- 17.52.140 Specific standards.
- 17.52.150 Floodways.

SECTION IV. PENALTIES

- 17.52.160 Violation—Penalty.
- 17.52.170 Recovery of costs by city.

SECTION I. GENERAL PROVISIONS

17.52.010 Statutory authorization. The legislature of the state has in the Oregon Revised Statutes, Chapter 227, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

117.52.020 Definitions. As used in this chapter:

“Appeal” means a request for a review of the planning commission’s interpretation of any provision of this chapter or a request for a variance.

“Area of shallow flooding” means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

“Area of special flooding hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

“Base flood@ means the flood having a one percent chance of being equaled or exceeded in any given year.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Below-Grade Crawl Space” means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

“Critical Facility= means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

“Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

“Elevated Building” means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Existing mobile home park or mobile home subdivision” means a manufactured home park subdivision for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood insurance study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

“Floodway” means the channel of river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements found at Section 17.52.140(B).

“Manufactured/mobile home” means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

“New construction” means structures for which the “start of construction” commenced on or after the effective date of this ordinance..

“Recreational vehicle” means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towed by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel or seasonal use.

“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“State Building Code” means the combined specialty codes adopted by the State of Oregon.

“Structure” means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure whereby

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this ordinance.

“Water Dependent” means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reasons of the intrinsic nature of its operations.

17.52.030 Lands to which this chapter applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

17.52.040 Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Josephine County, Oregon and Incorporated Areas”, dated December 3, 2009 with accompanying Flood Insurance Map (FIRM) is hereby adopted by reference and declared to be a part of this ordinance.

17.52.050 Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations

17.52.060 Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, state building code, easement, covenant, or deed restriction conflict or overlap, whichever imposed the more stringent restrictions shall prevail.

Severability. If any section clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

17.52.070 Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes and rules including the state building code.

17.52.080 Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

SECTION II. ADMINISTRATION

17.52.090 Establishment of development permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 17.52.040. The permit shall be for all structures including mobile homes, as set forth in Section 17.52.020, and for all other development including fill and other activities, also as set forth in Section 17.52.020.

Application for a development permit shall be made on forms furnished by the planning department and may include but not limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level of floodproofing in any structure;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 17.52.140(B);
- D. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

17.52.100 Designation of the planning commission. The planning commission is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. Development permits granted by the planning commission where the development is located in the floodway shall also be submitted to the council of the city for approval.

17.52.110 Duties and responsibilities of the planning commission. Duties of the planning commission, which may be delegated to the city recorder or planning commission secretary, shall include, but not be limited to:

A. Permit Review

1. Review all development permits to determine that the permit requirements and conditions of this ordinance have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 17.52.150(A) are met.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided (A and V Zones) in accordance with Chapter 17.52.040 *Basis for Establishing the Areas of Special Flood Hazard* the Planning Commission shall obtain review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to Administer Section 17.52.140 Specific Standards and Section 17.52.150 Floodways.

C. Information to be obtained and maintained.

1. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Chapter 17.52.110(B), obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basements and below-grade

crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement;

2. For all new or substantially improved floodproofed structures where elevation data is provided through the Flood Insurance Study, FIRM, or required as in Chapter 17.52.110(B):

a. Verify and record the actual elevation (in relation to mean sea level), to which the structure was floodproofed, and

b. Maintain the floodproofing certifications required in Section 17.52.090(C);

3. Maintain for public inspection all records pertaining to the provisions of this ordinance.

D. Alteration of Watercourses.

1. Notify adjacent communities, the Department of Land Conservation and Development and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of "FIRM" Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 17.52.120.

17.52.120 Variance procedure.

A. Appeal Board.

1. The council of the city shall hear and decide appeals and requests for variances from the requirements of this ordinance;

2. The council of the city shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the planning commission in the enforcement or administration of this ordinance;

3. Those aggrieved by the decision of the planning commission or any taxpayer, may appeal such decision to the council, as provided in ordinance.

4. In passing upon such applications, the council of the city shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

a. The danger that materials may be swept onto other lands to the injury of others,

b. The danger to life and property due to flooding or erosion damage,

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner,

d. The importance of the services provided by the proposed facility to the community,

e. The necessity to the facility of a waterfront location, where applicable,

f. The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage,

g. The compatibility of the proposed use with existing and anticipated development,

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area,

i. The safety of access to the property in times of flood for ordinary and emergency vehicles,

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site, and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;

5. Upon consideration of the factors of Section Chapter 17.52.120-4 and the purpose of this ordinance, the council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

6. The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administrator upon request.

7. Upon consideration of the factors of subsection (A)(3) of this section and purposes of this chapter, the council of the city may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance;

8. The planning commission shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Conditions for Variances.

1. Generally, the only condition under which a variance may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (A)(4)(a)-(k) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases;

2. Variances may be issued for the reconstruction or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section;

3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result;

4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

5. Variances shall only be issued upon:

a. A showing of good and sufficient cause,

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant,

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 17.52.120(A)(3), or conflict with existing local laws or ordinances.

6. Variances as interpreted in the National Flood insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to a structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Chapter 17.52.120(B)(1) and otherwise complies with Chapter 17.52.130 of the *General Standards*.

8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION III. PROVISIONS FOR FLOOD HAZARD PROTECTION

17.52.130 General standards. In all areas of special flood hazards, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;

2. All manufactured/mobile homes shall be anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Specific requirements shall be that:

a. Over-the-top ties be provided at each of the four corners of the manufactured/mobile home, with two additional ties per side at intermediate locations, with manufactured/mobile homes less than fifty feet long requiring one additional tie per side,

b. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured/mobile homes less than fifty feet long requiring four additional ties per side,

c. All components of the anchoring system be capable of carrying a force of four thousand eight hundred pounds, and

d. Any additions to the manufactured/mobile home be similarly anchored;

3. An alternative method of anchoring may involve a system designed to withstand a wind force of ninety miles per hour or greater. Certification must be provided to the planning commission that this standard has been met.

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;

3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters; and

3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

D. Subdivision Proposals.

1. All subdivision proposals shall be consistent with need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
4. Base flood elevation data shall be provided for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less).

E. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate the lowest floor at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

17.52.140 Specific Standards.

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one (1) foot above the base flood elevation.

2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities shall:

1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the planning commission;
4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 17.52.140(A);
5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below).

C. Manufactured Homes.

1. All Manufactured homes to be placed or substantially improved on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision, or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood; shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.
2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:
 - a. The finished floor of the manufactured home is elevated to a minimum of 18 inches (46cm) above the base flood elevation, or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

D. Recreational vehicles placed on sites are required to either:

1. Be on the site for fewer than one hundred eighty consecutive days,
2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, or
3. Meet the requirements of subsection (C)(2) and (3) of this section and the elevation and anchoring requirements for manufactured homes.

17.52.150 Floodways. Located within areas of special flood hazard established in Section 17.52.040 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge;

B. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section;

C. Projects for stream habitat restoration may be permitted in the floodway provided;

1. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023);
2. A qualified professional (a Registered Professional Engineer, or staff of NRCS; the County; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100 year flood levels as close to zero as practically possible given the goals of the project;
3. No structures would be impacted by a potential rise in flood elevation;
4. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

D. New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

1. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public;

2. A new manufactured dwelling is replacing an existing manufactured whose original placement was permitted at the time of installation and the welfare of the public and it meets the following criteria:

- a. As required by 44CRF Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydro logic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge.
- b. The replacement manufactured dwelling and any accessory buildings or any accessory structures (encroachments) shall have the finished floor elevated minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;
- c. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction.
- d. The replacement manufactured dwelling, it's foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties.
- e. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances; and
- f. any other requirements deemed necessary by the authority having jurisdiction.

E. Critical Facility. Construction of new critical facilities shall be to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood proofing and sealing measures must be taken to ensure tht toxic substances will not be displaced by or released into floodgates. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

SECTION IV. PENALTIES

17.52.160 Violation--Penalty. Any person who violates this chapter or fails to comply with any of its requirements shall be punishable, upon conviction in a court of law by a fine of not more than five hundred dollars for a non-continuing offense and a fine of not more than one thousand dollars for a continuing offense.

17.52.170 Recovery of costs by city. In any action or suit authorized by this chapter, the city, if it prevails, shall recover a reasonable attorney=s fee to be set by the court, in addition to its costs and disbursements.

MINUTES
of
City Council Meeting
November 9, 2009

DRAFT

MEMBERS: Mayor Don Moore, Councilors Dan Fiske, Margaret Miller, Trisha Arias and Carl Jacobson met in a regular session. Recorder Jim Polk (Recorder and Clerk of the Council), Becky Patton (Clerk), Helen Early (Planning Clerk) and Patrick Kelly (Legal Counsel) were in attendance.

MINUTES: The minutes of the meeting of October 12, 2009 were presented. Margaret made a motion to approve the minutes as presented. The motion carried 5-0 on a roll-call vote with Dan, Margaret, Trisha, Carl and Don voting in assent.

COUNCIL UPDATES:

- - The update from October Planning was briefed by the Clerk to reflect two no charge clearances (one to repair fire damage and one for installation/remodel of a fire suppression system) and one zoning clearance for a new front porch.

- - The update from the October Municipal Court was briefed by the Clerk to include 39 defendants with 43 offenses; 12 individuals failed to appear and were found guilty by default. There were 22 guilty or no contest pleas and one individual plead not guilty and a trial date was set. Total fines assessed: \$7,1180.00; total fines collected for the month \$5004.00; total fines collected for the year \$18,288.50 with a total retained by the City of \$9,987.00. Impounds collected for the month: \$500.00 and for the year: \$2,200.00.

- - The Clerk announced that Deputy Gasperson was unable to attend the meeting but provided his patrol statistics for October which were briefed to include 61 traffic stops, issued 49 citations, completed 11 reports, issued 19 warnings, 2 trespasses, conducted 22 area checks, interviewed/contacted 14 individuals, 11 community-oriented policing stops, 2 assists to the public, and 7 arrests.

PUBLIC HEARING - TO ADOPT THE 2009 FLOOD RATE INSURANCE MAPS, FLOOD INSURANCE STUDY AND AMEND THE CAVE JUNCTION MUNICIPAL CODE, CHAPTER 17.52 (FLOOD HAZARD PROTECTION): The Clerk announced the public notice was published and issued to the DLCDD on the proposed changes. The request is for the city to adopt 2009 Flood Insurance Rate Maps, the Flood Insurance Study and amend the Cave Junction Municipal Code Chapter 17.52 Flood Hazard Protection. Criteria is the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973.

No one in attendance objected to council hearing this manner. No council member disclosed or abstained for any reason. There was no contact declared. The Clerk added that there was a reminder received from FEMA regarding the December 3, 2009 deadline for the city to adopt, and have the Department of Homeland Security's Federal Emergency Agency (FEMA) Regional Office, approve the flood plain management measures that satisfy 44 Code of the Federal Regulations Section 60.3(d) of the National Flood Insurance Program regulations. With that comment, the Clerk added there were two ordinance versions, one routine ordinance and one containing an emergency clause to make it effective immediately to be considered in a subsequent hearing. Copies of the current and modified flood plain maps were provided. Copies of the flood insurance study, Vol 1 & 2 as well as the maps were also available for review.

The public hearing was opened.

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Steve Lucker, Department of Land Conservation & Development, addressed the Council, stating that these maps are result of a year long review process. They were developed by West Consultants sponsored by FEMA and become effective December 3, 2009. There are about 20 counties and 130 communities going through this process. The effort was about a billion dollar project. There are three different ways for these maps to be developed. The general way for most communities was to re-digitization of existing maps or hydrological studies which no Josephine communities were using. The Cave Junction maps were primarily re-digitization, however, the southern part of the city that had better elevation data available, which provides a better refinement of zone lines from 40' contours to 1' contours providing better view of channelization in landscape. Steve provided various views/maps for the Council of the general overview and maps of area in detail of changes. The Mayor asked how elevations were derived and Steve responded that the changes were actually detailed surveys submitted by the city but often, it is satellite data and high altitude flights. Some of this data is 30 years old including the hydrological studies added to the aerial photos in background making them much more precise.

Margaret asked about the blue and green colored areas on the maps and Steve stated that the blue color is the newly added area and the green is the current, with the blue being effective next month. The Mayor noticed that south of town, the flood plan was raised there, which wasn't a big surprise. *Public testimony was requested.*

John Bowler, 1707 Holton Creek Rd., stated he was sure that everyone is aware that this change causes most of the IV Forks Estate to be within the 1% chance area as well as some parts of Pomeroy Park to be within the area. When the pump station was designed and developed, it was placed outside the 100 year flood plain where it is now inside the flood plain. The Ordinance changing Chapter 17.52 defines a critical facility as any facility which produces, uses or moves hazardous materials or hazardous waste. He didn't see any provision for modifying an existing facility or for planning how to deal with the possibility of flooding which would potentially leave 200 households unable to flush their waste. Pat Kelly responded that a preexisting use could be modified. He believes that it is on the edge and is already there and that nothing is required and problems will be dealt with as they arise. John asked if FEMA could confirm this response but then agreed to bring this issue up at the later agenda item #5 (public hearing on adoption of the ordinance).

No additional testimony was offered and the public hearing was closed.

Margaret stated that she believes there will be rate increases due to these changes. There was no further council comment.

Margaret made a motion to adopt the 2009 Flood Insurance Rate Maps. The motion carried 5-0 with Dan, Margaret, Trisha, Carl and Don voting in assent.

CONTINUED PUBLIC HEARING - ORDINANCE 528, CREATING AN ADVANCED

FINANCE DISTRICT: Ordinance 528, creating an advanced finance district, to be known as AFD 9001 - Schumacher Development, had two complete readings previously. The continued hearing was to allow legal counsel review and comment. Pat Kelly, Legal Counsel, stated he was unable to provide legal opinion at this time due to time restraints. Pat stated that the city was on its own and that he did not object to proceeding because modifications are always possible. The analysis was much larger than he thought it would be and after only recently acquiring the materials did not know the answer to the question yet.

The public hearing was opened.

John Bowler, 1707 Holton Creek Rd., asked the city attorney if there was an opportunity to read the text of the city ordinance itself, Title 3 Section 8. Pat read the sections as referred to by Mr. Bowler in his objections. John asked if the attorney would clarify his statement made that he sees no red flags here and Pat responded that he doesn't know if it is valid or invalid but he does know that if something is wrong it can be modified. He knows that the Council has studied this problem and if they want to proceed, he doesn't order them one way or the other. Even if all John's objections were 100% true, Pat does not see a great liability at this point. John asked that in the event the decision goes against CLL Investments, the alternative would be to take the matter to the appeals court. Pat said he could not advise John. John continued by stating that the problem is that for a citizen or someone who has an interest in standing in this case it would be necessary to engage in a very expensive court battle. John stated that his objections stand, that the first AFD is a joint venture and the city council has no authority in the law to levy the participants in the joint venture for the costs of the venture. John stated that on the second AFD, the application was made solely by CLL Investments, a poor application.

Kelly Hardisty, Westside Rd., asked the Mayor to continue the hearing to give Mr. Kelly time to come to an opinion.

Ed Waldin, West side Rd, thanked Pat Kelly for trying to explain this situation. Ed also suggested that council should allow time for legal counsel to continue his work.

With no additional testimony being offered, the public hearing was closed.

Pat reiterated that the decision can be made and modified later if necessary. Mayor Moore added that a lot of time has been invested to try and iron this out and with all the changes, legal counsel was the last step. Dan agreed that it needs to be taken care of and wondered how much cost and time would really be needed to answer these last few concerns. Margaret stated that this has dragged on, and that modifications could be done. She asked if a Section 10 would be added referencing modification and the Recorder responded that it would be done through an ordinance to amend the ordinance creating the district. Trisha asked if Pat would be willing to continue his review and was told yes if the city would like for him to continue. The Mayor added that a lot of money has already been spent by the city. Carl asked, in regards to Section 9, that a correction is possible if necessary. Dan asked what would be required to make a change and that there really wouldn't be a large legal expense to the city to make future changes. The Recorder stated it would be staff time.

Margaret made a motion to adopt Ordinance 528, creating a developer installed financing district for the Schumacher Developments. The motion carried 4-0-1 with Dan, Margaret, Trisha & Carl voting in assent. Mayor Moore abstained.

PUBLIC HEARING - ORDINANCE 529, ADOPTING THE 2009 FLOOD INSURANCE RATE MAPS AND AMENDING MUNICIPAL CODE, CHAPTER 17.52:

After a brief discussion on timing for adoption, Ordinance 529, adopting the 2009 Flood Insurance Rate Maps and Amending Municipal Code, Chapter 17.52, and declaring an emergency, was read once in full and once by number and title only.

The public hearing was opened.

No testimony was offered and the public hearing was closed.

Dan made a motion to adopt Ordinance 529 with the emergency clause. The motion carried 5-0 with Dan, Margaret, Trisha, Carl and Don voting in assent.

DR/17

NUISANCE DETERMINATION AND ABATEMENT DECISIONS: The Clerk briefed the following issues and requested the Council consider the next step in the process:

- FENCE HEIGHT - 250 MANZANITA LN (Dalegowski): A certified letter dated September 21 was sent to the property owner and was returned undelivered. A letter was also forwarded and received by the current tenant who contacted City Hall. The fence height still exceeds limits. Trisha excused herself from this discussion. Margaret and Dan asked for further details regarding the age of the fence (6+ years) located on the property line, obstructing vision clearance, a complaint was filed, the fence abuts county roads but the property itself is in city limits. Margaret stated it is difficult for her to claim a problem with a fence that has existed for over 6 years on an unimproved street. Dan agreed but stated that the rules needed to be followed. Some Council discussion followed. Dan made a motion to declare this fence a nuisance. 4-0-1 with Dan, Margaret, Carl and Don voting in assent. Trisha abstained.

- WEEDS AND UNGUARDED MACHINERY - 310 CAVES HWY (Rapid/PC One): A complaint was received about noxious weeds and an attractive nuisance of equipment located on the property. A letter was mailed but nothing has been done. The Fire District had declared the dishes and equipment to be dangerous and the overgrown weeds to be a fire hazard. Dan asked who the owner was and Jim responded that under the Assessor's records, it was Rapid Communications, however under the franchise agreement, the sale included land assets to PC One. Letters were sent to both Rapid Communications and PC One. The City requires that communication be provided to the owner of record under the Assessor's records which was Rapid Communication. Margaret made a motion to declare 310 Caves Hwy a nuisance issue. The motion carried 5-0 with Dan, Margaret, Trisha, Carl and Don voting in assent.

- VEHICLE AND DEBRIS ACCUMULATION - 223 MILLIE ST (Stafford): A combination of complaints to include tents, blankets, abandoned cars, etc, were received and notice letters were sent. Some of the items have been removed, however there is still a car remaining and debris still remains stacked along the fence line covered with tarps. Margaret stated that it looks like some effort was made but efforts needed to continue. Trisha made a motion to declare this a nuisance. The motion carried 5-0 with Dan, Margaret, Trisha, Carl, and Don voting in assent.

- RESIDENTIAL USE OF TRAVEL TRAILER - 209 SHADOWBROOK (Blind): The complaint is that residents are living in travel trailer on the property. The issue was first reported in April with a follow up letter in June. It was reported that they are still residing in the travel trailer. Dan made a motion to declare 209 Shadowbrook Drive a nuisance. The motion carried 5-0 with Dan, Margaret, Trisha, Carl and Don voting in assent.

- FOLLOW-UP TO PREVIOUS NUISANCE ISSUES:

-- RESIDENTIAL USE OF TRAVEL TRAILER/SHED - 410 SCHUMACHER (Roberts): At a previous September hearing, the Council declared 410 Schumacher a nuisance. Property owner was present at this meeting. Abatement notice was sent to owner giving her 10 days to correct it. The use of the shed and outside quarters is still carrying on. The clerk recommended this go to Pat Kelly for legal action and by consensus, the Council agreed.

-- WEEDS AND APPLIANCES - 122 S JUNCTION (Winton): Heard by the Council in September. Certified mail sent to property owner and received but nothing has been done in over than 1 month. Refrigerators are still present. This was already forwarded to legal counsel. The Mayor had some concern that this was an elderly gentlemen but Carl confirmed that the man is in his late forties. By consensus, the Council agreed for legal counsel action.

DR/17

-- BARKING DOGS - 570 W RIVER ST (Van Tassel): The history includes barking dogs with extension after extension to build a kennel. As of this afternoon, it was reported that the dogs are not being kept in the kennel and the barking continues. A documented list of days of barking dogs is on record. The Council provided approval to forward this issue to legal counsel for continued action. The Mayor has visited the site, saw a kennel and stated that the owner believes there are other barking dogs that should be dealt with instead. Dan believes there has been enough time allowed and more time should not be wasted when the owner does not show any sign of wanting to cooperate. Dan stated they have had plenty of time. The Council, by consensus, agreed to continue with the nuisance abatement process.

EXECUTIVE SESSION - ORS 192.660 (2-h): The Council entered an executive session under ORS 192.660 (2-h) to consult with Legal Counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Upon returning to regular session, the Clerk announced that no decision was reached during the executive session.

Margaret made a motion that the Council instruct legal counsel to proceed in the Copeland litigation as discussed. The motion carried 5-0 with Dan, Margaret, Trisha, Carl and Don voting in assent.

COMMENTS:

- **General Information:** The Clerk briefed the members on the following:

- - With resolution of Ordinance 528, the proposed ordinance to amend the LID and AFD chapters of the municipal code will be added to the agenda for a January council meeting.
- - Email from Senator Wyden's office stating that the town hall in Josephine County scheduled for November 13 has been moved to the gym at Grants Pass High School. Doors open at 9:00am.

- **Comments from the Public:** None.

- **Comments from Legal Counsel:**

- - Pat requested, that due to recent events in his office, rather than putting work off further, he would ask the council if they would consider using Jason Hayward, an attorney and friend, as an assisting legal counsel to handle the overload to avoid delays due to time limitations. The Council had no objections to this idea and the Recorder agreed to resolve contracting issues.

- **Comments from the Council:**

- -Margaret stated that she and the Mayor met with the County Commissioners regarding issues on Old Stage Road, recent accidents, four-way stops, etc, adding the county would consider turning the road over to the city however improvements and upgrades would have to be completed, and that the city probably will not take this over at this time.

- **Comments from the Mayor: Don addressed the following:**

- - Commissioner Toler contacted the Mayor and stated that it is possible that the county could bring Old Stage Rd up to the city specifications at which point the city would consider taking responsibility for the road. The Recorder stated his concern about the county bringing the road up to full city specifications.

DRAFT

- - The Mayor thanked the Council for their efforts in getting through this difficult session to include the Schumacher AFD.

ADJOURNMENT: Margaret made a motion and the meeting adjourned at 8:17 p.m.

Signed: _____
DONALD G. MOORE, Mayor

Attest: _____
CHARLES J. POLK, Recorder

City of Cave Junction
P.O. Box 1396
Cave Junction, OR 97523

Attention: Pam Amundson Specialist
Dept of Land Conservation & Development
635 Capital St. NE, Suite 150
Salem, OR 97301-2540



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