

**TOWN OF DUNE ACRES
COUNCIL MINUTES
June 16, 2015**

The Town of Dune Acres Town Council met for its regular monthly meeting on Tuesday, June 16, 2015 at the Town Hall. Council President John Sullivan called the meeting to order at 7:00 p.m., with Council Members Rich Hawksworth and Lou Mellen and Clerk-Treasurer Carolyn Mellen and Attorney Dan Whitten in attendance. Council President Sullivan opened the meeting with the Pledge of Allegiance.

APPROVAL OF MINUTES:

Council Member Hawksworth moved that the minutes for the May 21, 2015 Town Council meeting be approved as presented. Council Member Mellen seconded, and the minutes passed unanimously.

FINANCIAL REPORT:

BANK BALANCES/29/2015

Porter State Bank	\$81,455.94
TrustIndiana	\$191,320.72
Any Adjustments	
Record Balance	\$272,776.66

**BREAK DOWN OF FINANCES AMONG FUNDS
As of June 1, 2015**

FUNDS	BALANCE	APP BAL.	% Left
GENERAL	\$24,058.19	\$ 240,177.10	66
MOTOR VEHICLE HIGHWAY	\$ 6,703.87	\$ 34,264.46	57
LOCAL ROAD & STREET	\$ 5,085.70	\$ 6,000.00	100
PARK & RECREATION	\$ 12,964.30	\$ 11,948.87	96
DONATIONS *	\$ 22,419.00		
RAINY DAY FUND*	\$ 131,930.78		
CCI	\$ 1,295.99	\$ 240.02	48
CCD	\$ 21,322.02	\$ 9,980.72	62
CEDIT	\$ 1,749.07	\$ 352.24	2
RIVERBOAT REVENUE SHARING	\$ 1,941.58	\$ 1,705.95	85
Clubhouse Dune Restor. Grant	\$ 15,000.00	\$15,000	100
Levy Excess Fund*	\$ 52.77		
Construction Security Dep*	\$ 25,000.00		
SalesTaxClubHouseRental*	\$ 143.45		
ClubHouseRentalDeposit*	\$ 1,150.00		
TOTAL FUNDS	\$270,816.72		

*Those funds marked with an asterisk are designated monies and can only be spent for the designated purchase.

The Clerk-Treasurer reported that the spring installment of tax revenue was received in the amount of \$179,192.89. She requested that all Commissioners prepare a list of projects or additional expenses that they would like to be considered for the 2016 budget.

Clerk-Treasurer Carolyn Mellen also announced that she has accepted a full time job but will remain doing the Clerk-Treasurer's job until a replacement is trained.

Town Council Member Mellen moved that the financial report be accepted. Town Council Member Hawksworth seconded, and the financial report was accepted.

PAYMENT OF CLAIMS:

Council Member Mellen moved the claims for the month of June 2015 in the amount of \$30,877.36* be approved. (Total of claim was changed to \$32,077.36 to include the final payment to Q & S Corp which was left off claims but discussed later in the meeting.) Council Member Hawksworth seconded and the motion passed unanimously.

CORRESPONDENCE RECEIVED:

Marathon Pipe Line is doing some local testing. Notice is on file at C/T office.

Resident Irene Newman has requested the use of the Town Hall on a Sunday in August for a jewelry sale with 25% of the proceeds from her handmade items to go to DACIF. The Town Council approved.

A letter, (enclosed in minutes) from Paul Labovitz, Superintendent of the National Park Service was read, in response to an application submitted by Council Member Mellen for a Special Use Permit (SUP) for a boat, a maintenance vehicle and an ATV on our beach. Council Member Mellen said that in Paul's response he had been told that our Beach Commissioner had resigned, which was not true and that that the Beach Commissioner had logos on his boat that were not authorized, that have been removed. Mellen also cited that the Superintendent was "happy to entertain a SUP request submitted on behalf of the town that emerges through the town's governing process." Mellen said that Labovitz's letter indicated that there was communication with the other members of the Town Council regarding jurisdiction and other matters that he was not included in and that his application for SUP was not supported by the other TC members. Mellen then moved to request a Special Use Permit from the NPS for the Town's mule, the Beach Commissioner's boat and ATV. There was no second on the motion, so the motion died. Member Mellen said there was a real danger of drowning in the lake without the Beach Commissioner having access to a boat.

Council Member Hawksworth stated for the record that he feels this is a private use vs. municipal use issue and if a SUP were to be requested, in his opinion, it should be for a town owned and town regulated vehicle. Hawksworth said that the Superintendent emailed Sullivan and Hawksworth asking if the SUP that Mellen submitted was vetted by the Town Council. Hawksworth said that he did not respond and that he thought that Sullivan responded that no, it hadn't been vetted through the town council.

The audience was then allowed to share their personal opinions which included the subjects of the ordinary high water mark, SUP's, beach use and jurisdiction. During this conversation, it was disclosed that the Town has applied for a SUP with the NPS for our July 3, 2015 fireworks display. Council President Sullivan stated that we applied for a SUP for the fireworks so that when the NPS dispatcher receives phone calls about an ATV going up and down our beach (on July 3rd) he will know we have a permit.

COMMISSIONERS REPORTS:

BUILDING: Rich Hawksworth has approved a building permit for a deck at 6 West Rd. and moved that a deck costing \$17,200 be approved at 21 Hill Dr. Council President Sullivan seconded and the motion passed unanimously.

BEACH: Rob Carstens is concerned as to how the fireworks will be managed.

FIRE: Mark Bapst reported that electricity was lost at the Clubhouse two weeks ago.

MAINTENANCE: Dick Taylor suggested that one end of the basketball court be striped at the same time the tennis court is repaired. The town council approved that this cost be taken out of the parks budget.

ROADS: Mark Hull said that he plans to fill potholes next week when the weather is better.

SECURITY: A discussion about overlapping shifts at the security office so that there is someone in the office during the nightly patrol was revisited.

OLD BUSINESS: The Q & S contract repaying Sharon Snyder for a long term loan has been paid off by the Town. Thank you Sharon for your help.

NEW BUSINESS : Resolution 2015-3; Repayment of \$15,000 from the General Fund to CEDIT – was read by Town Council President Sullivan.

RESOLUTION 2015-3

A RESOLUTION TRANSFERRING FUNDS

BACK TO THE GENERAL FUND PER RESOLUTION 2015-2

WHEREAS, the June 2015 property tax payment has been received by the Town Council of the Town of Dune Acres, Porter County, Indiana and will be directly deposited in the Town bank account as of June 18, 2015; **WHEREAS**, in accord with Resolution 2015-2, the temporary transfer of \$15,000 from the CEDIT fund to the General fund can now be repaid;

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of Dune Acres, Indiana has authorized the transfer of monies from the General fund to the CEDIT fund in the amount of \$15,000.00.

Passed and adopted this 16th day of June 2015.

Council Member Mellen made a motion to accept the resolution with a second by Council Member Hawksworth and the motion passed unanimously.

A Wine & Canvas event is being held at the Clubhouse on Friday, June 19th.

Attorney Whitten is getting some legal opinions on holding dual offices per a request by resident Cheryl Evans. Attny. Whitten also said that the Town Council has to give him direction on what they want to do going forward with the NPS and town commissioners and urged for an Executive meeting.

With no other matters duly brought before the Town Council, the meeting was adjourned at 8:23 p.m.

JOHN SULLIVAN, Town Council President

RICH HAWKSWORTH, Town Council Member

LOU MELLEN, Town Council Member

CAROLYN MELLEN, Clerk-Treasurer

CLAIMS FOR JUNE 2015

CLAIMANT	DESCRIPTION	AMOUNT
Atha W. Belsha	Security Pay- Pay period - 5/1/15-5/31/15	\$ 1,527.21
Carolyn S. Mellen	Clerk-Treasurer Office	\$ 1,053.88
Diane Bartley	Security Pay	\$ 677.32
Glenn Brown	Security Pay	\$ 706.44
Harold E. King	Security Pay	\$ 306.99
Bernie Olis	Security Pay	\$ 54.46
Mark J Taylor	Maintenance Pay	\$ 1,524.51
Philip A Lepley	Security Pay	\$ 1,674.54
Sean T Grubbs	Security Pay	\$ 1,222.44
Terry R Trout	Security Pay	\$ 919.50
Electronic Federal Tax Payment System	Payroll Liabilities for Pay Period	\$ 2,882.04
IN Tax	Payroll Liabilities for Pay Period	\$ 523.77
Republic Services - Able Disposal#715	Monthly collection	\$ 94.00
Nipsco	Gas & Elect. @ Mineral Springs & RT12	\$ 14.25
	Gas & Elect. @ 1 East Rd.	\$ 97.60
	Gas & Elect. @ Clubhouse	\$ 36.83
	Electricity @ Tennis Court	\$ 22.36
	Electricity @4 Shore Dr. Pump	\$ 33.88
	Gas & Elect. @ Gate House	\$ 107.91
	Gas & Elect. @ Pump House	\$ 114.65
Verizon Wireless	Monthly Service - Security Cell	\$ 43.72
Frontier	Monthly Service Security & Fire alarm	\$ 112.69
	Monthly Service Town Hall	\$ 88.39
	Monthly Service -Static IP 2 months	\$ 159.27
IAWC	Gate House	\$ 28.50
	Clubhouse	\$ 49.53
Pinkerton Fuels & Lubricants	Fuel for Town Vehicles	\$ 299.44
Hopkins' Ace Hardware	Wasp Killer - Town Hall	\$ 9.98
ABC Burglar & Fire Alarm Corp	Monthly monitoring	\$ 30.00
Menards Portage	Drilling hammer, wire - beaver dam	\$ 131.39
	4x4 - 6' for TH sign	\$ 24.90
Pride Toilet	monthly service May 2015	\$ 110.00
WAI Recycling	30 yrd. Dumpster for cleanup	\$ 350.00
Chase Credit Card	RapidFax	\$ 9.95
	YMLP - Email Blasts	\$ 108.00
Martin Security Systems, Inc.	Quarterly Monitoring of Electronic Fire System	\$ 75.00
Carolyn Mellen	SBOA call day 6/9/2015 - Indianapolis- mileage	\$ 142.56
Riggs Outdoor Power	4 hour chipper rental	\$ 195.00
Anton Insurance Agency	Workers' Compensation Premium Audit	\$ 774.00
Rogers Roofing	Replace all missing shingles on Clubhouse	\$ 400.00
Dean' Tire Pros	New Tires for Security Jeep	\$ 375.96
Digital Dolphin Supplies	3 extended use ink cartridges	\$ 287.00
South Shore Marina	install 13 existing & 2 new sets of buoys	\$ 3,215.00
Emcor Hyre Electric	Install camera cable under Mineral Springs Rd.	\$ 500.00
Dana Treister	Security Deposit Return for TH Rental	\$ 500.00
Heidi Studebaker	Security Deposit Return for TH Rental	\$500.00
Town of Porter	1st installment of 2015 Fire Contract	\$ 8,762.50
Q & S Corporation	FINAL hook up fee reimbursement of loan	\$ 1,200.00
TOTAL CLAIMS FOR JUNE 2015		\$ 32,077.36

Draft Letter from Paul Labovitz, Supervisor, Indiana Dunes National Lakeshore

From: John Sullivan [mailto:sullivanathome@hotmail.com]

Sent: Thursday, May 21, 2015 6:14 AM

To: richhawksworth@mac.com; loumellen@gmail.com; Carstens, Rob; whitten33@aol.com

Subject: NPS/Beach

All, below is a draft letter I received from Paul Labovitz. We do need to address and remedy. Thanks, John.

DRAFT letter below....

As you are aware, in November of 2013 the United States of America concluded a criminal prosecution of the Dune Acres Beach Commissioner for several violations of the Code of Federal Regulations (CFR) related to activities on the beach. At trial, the defense asserted that the Town of Dune Acres, was confused regarding the authority of the National Park Service to make and enforce regulations on the beach. We were hopeful that the resolution of this case put that confusion to rest.

Unfortunately, activities we have observed along the beach as well as contact and questions from individuals seem to indicate that there are still some residual questions regarding acceptable activities. With the summer season quickly approaching, we are writing this letter in an effort to clear up these issues.

The National Park Service has the legal right to make and enforce regulations on areas of the beach within the park boundary that lie below the Ordinary High Water Mark of Lake Michigan. That authority also exists on lands where we own or hold a less than fee interest (such as nearby properties with a "walking easement"). This jurisdiction is supreme to authorities vested in state and local governments and exists regardless of who owns the land. This jurisdiction of the National Park Service was questioned and upheld in Federal court in the abovementioned case.

The overall policy of the National Park Service is to exercise its law enforcement authority as a tool to protect the public and park resources. This tool is used to a level necessary to remedy specific situations that pose a threat to the park or its users (including local residents). The decision to bring criminal charges is not taken lightly, but is used when other attempts to gain compliance prove fruitless. On several occasions, the park has attempted to avoid legal action by bringing violations to the attention of the Beach Commissioner and

town council members. Thus far, these efforts have proved ineffective. Some of the continuing violations include but are not limited to:

- Operating motorized vehicles (including those marked as belonging to the town) on the beach without authorization from the park
- Launching and recovering power boats and personal watercraft
- Operating a parasail operation
- Possessing glass on the beach
- Leaving property left on the beach for extended periods

Currently, the Town of Dune Acres continues to sell permits for the storage and launching of motorized watercraft (including personal watercraft) from the beach. The launching of motorized watercraft is a direct violation of park regulations. The National Park Service does not have the authority to limit the sales of these permits. However, the town is facilitating an unlawful activity. We would strongly encourage you to stop advertising and selling these permits.

Each year, the Beach Commissioner is observed using a Town of Dune Acres utility vehicle to tow powerboats across the beach to and from private residences. Not only is the driving of the vehicle unlawful but the subsequent launching of the boats is an additional violation. Effectively, a town official is involved in facilitating an unlawful activity.

In 2014, it came to our attention that the town has procured a parasail, similar to what is used to fly people in the air behind a towed boat at resort areas. We confirmed this by watching a video of children sitting unsecured in the harness of this parasail as they were lifted high into the air. To facilitate this, the ever present Dune Acres utility vehicle was moved to the beach and used as an anchor. Not only were there no safety measures in place for the children, but the use of the vehicle on the beach and the parasail in the park are additional violations.

In the late winter of 2015, rangers were approached by a contractor working for a town resident. The contractor was asking about the legality of driving on the beach. He stated that he was approached by a "town official" and asked to provide an estimate for constructing, launching and anchoring a swim platform in the lake. He stated that the town official admitted that driving on the beach was not permitted but was looking for someone to perform the work anyway. In this case, not only is the driving not allowed but anchoring a swim platform in park waters without a permit is also a violation.

The National Park Service has no interest in perpetuating ongoing legal issues with the Town of Dune Acres. However, we are obligated to safeguard the visiting public and park resources by upholding regulations equally across the system. We also recognize that there is occasionally legitimate town business that needs vehicular access to the beach. If a town official has a need to operate town owned equipment on the beach for public purposes, permission for the use must be granted by the park through the issuance of a Special Use Permit. Absent a permit, the operator of the equipment will be subject to prosecution. Information regarding obtaining a Special Use Permit is available on the park website at: www.nps.gov/indu/planyourvisit/permits.htm

Because this matter of park jurisdiction was and is settled law, we would like to move forward and develop lines of positive communication that will result in beach conditions that will accommodate legal and safe use of the waterfront while discouraging unsafe and unlawful behavior. It is important that we work jointly to develop a common understanding of beach use prior to the start of the 2015 season. To that end, we are available to meet with the town at a convenient time and place. If you are interested, please call Executive Assistant Dena Mourtos at 219-395-1699 to schedule a meeting.

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National Park Service

EXPERIENCE YOUR AMERICA

Paul Labovitz, Superintendent

Acting Superintendent

Indiana Dunes National Lakeshore

Pullman National Monument

1100 North Mineral Springs Road

11141 S. Cottage Grove Ave.

Porter, IN 46304-1299

Chicago, IL 60628

Lou Mellen Letter to Labovitz, 5/29/2015

Dear Paul;

In response to your draft letter from last week, we appreciate the opportunity to discuss our recreational, maintenance and safety activities on the beach. As you mentioned, there is confusion as to the line of jurisdiction being that the ordinary high water mark has changed significantly since 2013. Last summer we had a \$10,000 instrument mark the OHWM and surprisingly to us it was roughly 5 feet from the water's edge. This has probably changed again this year as the lake level is up.

So to start any discussions about beach activities we need to reestablish the point of reference, where the OHWM is and the NPS jurisdiction begins, thus we have called a professional to designate this line. If, in fact, the OHWM is at the water's edge, many of the activities you have identified could well be moot. Then it would seem that only the launching of motorized boats and the swim platform would fall within the NPS jurisdiction – at least this is what we have been led to believe.

Since the court decision of November 2013, the Town Council of Dune Acres and the Beach Commissioner have completely discontinued permission for any Personal Watercraft use from DA beach. We don't know of any resident using a PWC in Dune Acres nor have we sold any permits for any motorized watercraft. The Town Council is currently in discussion ending the sale of permits for motorized vehicles but this is a work in progress. However, we are one of those little towns that for whatever reason doesn't make a big deal about some of these lesser issues like boat stickers.

About the use of town ATV's, we are seriously concerned specifically about two; the town mule, a maintenance 4x4, used weekly to clean the beach, remove dead animals such as a dead deer last summer, and secondly the Beach Commissioner's side by side ATV used for safety patrol, maintenance, transportation of the elderly and security patrol. These two vehicles are important to the town functioning on the beach. As no other governing body maintains the beach, our town park, we consider it our responsibility and feel strongly about the town's continued usage by our maintenance staff during the week, and Beach Commissioner on the weekend.

In our opinion, the most difficult issue here is the use of small hand launched motorized boats like Zodiacs and small 15' type of aluminum open fishing boats. What is perplexing and illogical about not allowing launch of these very small watercraft by residents is that any boat can pull up to our beach, come and go completely legally all day. Where the rule really gets absurd is that the CFR states you can launch a motorized boat – just walk it out 300 feet, start it and come and go all day. We just don't understand that thinking. I think the lawyers sum it up pretty well calling it arbitrary and capricious.

And then there's boaters beach, one half mile west of our beach, where 50 foot yachts party all weekend with jet skis in tow – not to mention the cigarette boats that fly by our beach at 150 decibels. And then of course, the DNR patrol

regularly on jet skis. It's not as if there are no motors used in the area, or that our little boats are disturbing anything in comparison to water recreation as it currently exists.

At this time, of utmost importance to the town is the two ATV's and the Beach Commissioner's Zodiac, for which we would ask your acceptance of the attached special use permit. Without the Zodiac, lives are at stake. Our Beach Commissioner has indeed saved lives from this boat and we believe that safety on our beach is paramount. Perhaps this would best be performed at a designated launch site, about which we are very happy to reach an agreement.

As you have requested, we would like to move forward with positive lines of discussion. To accurately address the jurisdiction, we need to get an understanding of where the OHWM is as soon as possible. From there, I am confident the NPS and Dune Acres can reach mutually agreeable conclusions.

Thank you. We appreciate the opportunity to meet and discuss these issues.

Lou Mellen
Dune Acres Town Council

Lou Mellen letter to Dune Acres Residents

Dear residents of Dune Acres;

Below is a letter the town received from Paul Labovitz, Supt of NPS, three weeks ago. Attached is my response.

We have someone in town that is complaining about our usual and typical activities on the beach. We think this person or persons have complained years past. Problem is in initial discussions a year ago, with Paul, he had NO interest in using the CFR (code of federal regulations as Dillon had) to enforce laws not allowing motor boats, that (in Paul's own words) really didn't apply to "urban parks, like we are" but are really meant for Yellowstone type parks.

What's at stake here is our ability to launch small motor boats, and much more than that depending on where the ordinary high water mark moves to.

So, trying to be brief, we are again looking at the NPS taking control of our beaches, and not even offering maintenance, security or lifesaving ability, just citations.

My position is to argue for our rights to exist as we have.

After a lengthy discussion with the town attorney Dan Whitten, he has agreed with me to inform our residents of these developments, especially because the two other town councilmen appear to be just giving in to the NPS. I believe it's of utmost importance to gather the opinion of the town with a questionnaire and from there determine by majority, on how to proceed.

Our next Town Council meeting is Tuesday the 16th because the NPS could change how we live on our beach, please plan to attend.

Best regards,

Lou Mellen

Referring to Mellen's previous letter to Labovitz dated
5/29/15

Rich Hawksworth Letter

Friends and Neighbors,

I'm writing in response to the email distributed last week regarding the current situation with the National Lakeshore.

First, and most important, this is not a crisis situation. The NPS does not seek to take control of our beach. Rather, Superintendent Labovitz has brought to our attention several narrowly focused concerns and asked that we remedy them. Their concerns relate almost exclusively to the use of a town-marked vehicle on the beach. Several of the specific issues (e.g. ATVs and glass on the beach) are prohibited by Dune Acres ordinances or policies. Others (e.g. the parasail operation) were done without the knowledge or consent of the town. Still others, such as launching and retrieving power boats, involve the use of Lake Michigan, over which the Town has no jurisdiction.

For those who aren't familiar with the regulatory situation, it's important to understand that the NPS has the legal authority to regulate activities on some portions of our beach regardless of ownership. That said, they have never sought to do so. For fifty years, we have enjoyed peaceful coexistence with the National Lakeshore. They have been content to "look the other way" as long as DA kept a low profile and didn't egregiously disrespect their regulations. When that unspoken agreement was breached in 2012 (the well-publicized tickets that were issued on the beach) the NPS stepped in and said, in essence, "You've gone too far." We are dealing with a superintendent who has demonstrated his willingness to be reasonable and who will, I am confident, overlook minor technical violations in order to promote cooperation with the town. But there are limits.

At Tuesday's town council meeting, a proposal will be introduced to apply for a Special Use Permit to operate the town-owned mule on the beach for municipal purposes. For several years, the beach commissioner has generously donated the use of his personal vehicle and vessel for town use. However, we have reached a point where it makes more sense for the town to own these resources and manage how, when and where they are used. The superintendent has assured me that the NPS will not be an obstacle to town maintenance and safety activities. They simply want the assurance that any necessary vehicles are used for specific town-sanctioned purposes and not personal use. The use of a boat for rescue and lifesaving presents more complex issues that will need to be resolved, such as assessing liability and securing the appropriate certifications. If the town council concludes that a vessel of this type is necessary, we will procure one and get permission to operate it as a town-owned and managed vessel.

We hope you can attend Tuesday's meeting. The council will discuss the issues I have addressed here and hopefully reach consensus about our next steps with regard to responding to the National Park Service. The NPS raised the matters at hand in order to promote positive communication and foster a constructive working relationship. We will respond in kind, and move forward with solutions.

Respectfully,
Richard Hawksworth - Member Town Council