

City of Brookings

CITY COUNCIL MEETING Minutes

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415
Monday, June 22, 2015

The City Council met in Executive Session at 6:00 PM in the City Manager's office under authority of ORS 192.660 (2)(e), "to conduct deliberations with persons designated by the governing body to negotiate real property transactions," under ORS 192.660(2)(f), "to consider information or records that are exempt by law, and under ORS 192.660(2)(h), "to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed."

Call to Order

Mayor Hedenskog called the meeting to order at 7:00 PM.

Roll Call

Council present: Mayor Ron Hedenskog, Councilors Jake Pieper, Brent Hodges and Bill Hamilton; a quorum present. Councilor Kelly McClain was absent.

Staff present: City Manager Gary Milliman, Finance & Human Resources Director Janell Howard, Public Works & Development Director LauraLee Snook, Planning Manager Donna Colby-Hanks, City Attorney Martha Rice and City Recorder Joyce Heffington.

Others Present: Curry Coastal Pilot Report Jane Stebbins and approximately 20 others.

Public Hearings

Legislative public hearing in the matter of LDC-2-15, approval to add provisions for amateur communication facilities to Brookings Municipal Code.

City Attorney Rice opened the hearing at 7:03 PM.

Under exparte, Mayor Hedenskog stated he had contact with two citizens with amateur and emergency services radio experience, Councilor Pieper stated that he had two casual conversations with Mr. Warren regarding the matter, and Councilor Hamilton stated that he had one casual conversation regarding the matter.

Hearing no declarations of conflict or personal interest, nor objections as to jurisdiction, City Attorney Rice reviewed the guidelines and Planning Manager Colby-Hanks reviewed the staff report and entered Exhibit E into the record.

Public Comments:

Bruce Warren, 96506 Susan Place, said radio towers had safety built in to them and he was unaware of any case of a tower falling over. The City's regulations, as written, he said, were restrictive and prohibitive. He said he had an approximate one-third acre lot and due to the set-backs he could not put a tower on his property; the only way it would happen was if LUBA decided to bring Brookings into compliance with state and federal law.

Mayor Hedenskog asked why the tower needed to be 70 feet tall and how far it could reach and Warren said a 70 feet tower provides the angle of propagation for distance in any direction and would be able to reach "the world."

Councilor Hodges asked why a 45 foot antenna wouldn't work and Warren said it wouldn't be tall enough. It would work to some extent, Warren said, but would be unreliable due to mountain ranges.

Councilor Pieper asked Warren to explain the differences between the reach of a 45 foot antenna as opposed to a 70 foot antenna and the dimensions of a 70 foot pole. Warren said a 45 foot antenna would reach anywhere in Oregon and many other states, but not reliably. He said the concrete base for a 70 foot tower was 10' x 10' x 5', the base diameter of the pole was 28 inches, and at the top, 18 to 20 inches.

Councilor Hamilton asked if a 45 foot antenna could reach all of Oregon in an emergency situation and Warren said it would likely reach Salem and Medford in an emergency, but not reliably.

Kathleen Knight, 17316 Holmes Drive, said having a 70 foot tower between your house and an ocean view would devalue the property. She said there were health and safety issues and there should be a reasonable inspection schedule and set back requirements to protect the health and safety of the neighbors. She said if the tower owner moved, and a new owner didn't want the tower, the tower should have to be taken down by the previous owner. She also said the tower owner should have strong ties to local emergency organizations.

Ron Sloniker, 17265 Garvin Court, said he doesn't want to look at a tower from his deck and asked if Warren could put footings in the easement and Colby-Hanks said, he could not.

Cindy Young, 17188 S. Passley Road, said towers should be kept as low as possible and she was concerned with sound and rust.

Jim Metcalfe, 17225 Garvin Court, expressed concerns regarding assurances Warren had made after moving into the house that he would not put in a 26 foot tower if the neighbors didn't want it.

Jim Brock, 17275 Garvin Court, said there were tentacles that would extrude from the antenna. He said a 70 foot antenna in a residential neighborhood was unreasonable and he wasn't clear as to the legal precedent requiring the City to accommodate that height. He suggested that a new code be created that addressed health, safety and aesthetics with a reasonable height.

Dave Bergmann, 96510 Susan Place, said he had nothing against amateur radio operators but of the 60 ham operators in the area, none had a 70 foot antenna. He said there were other things to consider besides having a larger antenna than anyone else.

Colby-Hanks said antennas are exempt from set-backs and it made sense to add scheduled maintenance as a requirement. She then pointed out that the will apply to everyone, not just Warren's property. She said the regulations stipulated that the owner of an amateur radio tower had to have a license and if it was not used in six months, the tower had to be removed.

Kathleen Knight said the removal requirement would have to be disclosed in the real estate transaction so a new buyer would be aware of the additional cost, which is why she suggested it should be the sellers responsibility to remove it.

City Attorney Rice said FCC and ORS regulations stipulate that any restrictions to heights below 70 feet had to meet clearly defined objectives of health, safety and aesthetics and applications had to be considered on a case-by-case basis. The point of the regulations, she said, was to give the City some authority in dealing with applications of this nature.

David Bergman said there were a lot of unknowns regarding the effects of a tower and once it's in, it will be too late.

Mayor Hedenskog closed the public testimony portion of the hearing at 7:55 pm.

Councilor Hodges said he would not want a 70 foot tower in his back yard. He asked if all of the 1000 properties with the required set-backs could put up a 70 foot tower and Colby-Hanks said she believed there were 30 operators with the appropriate FCC license inside the City limits. Hodges then said the skyline would be pretty dismal with thirty, 70 foot towers in the City; the City had gone to great lengths to increase the scenic views by undergrounding power lines. On a farm in a rural area, if the neighbors didn't mind, he said he wouldn't have a problem, but he felt it would devalue property values.

Councilor Pieper said as he understood it, if the City had clearly defined aesthetics they could restrict tower height and if more clearly defined objectives were needed, then it would be a good idea to define them. He said he couldn't see having a 70 foot tower in his backyard.

City Attorney Rice said the City couldn't have a blanket "we don't want them" regulation; each application had to be considered on its own merits. She said they could provide better aesthetic provisions as guidance for considering each application.

Mayor Hedenskog asked about outright uses and Colby-Hanks said larger lots in the R-1-12 and SR zones, which are 12,000 square feet and 20,000 square feet respectively allow an outright use for a maximum height of 45 feet when conditions and restrictions were met.

Councilor Pieper asked how tall the City's emergency communications tower was and City Manager Milliman said 150 foot.

Mayor Hedenskog asked if the Planning Commission understood the regulation's goal and Colby-Hanks said each related criteria was in the Commission's staff report. Hedenskog then said he needed time to read through the materials again.

Councilor Hamilton said an amateur radio operator had told him about a type of antenna called a "big stick" that matches the color of the sky and doesn't need guidewires at 50 feet in height. He said he would also like more time to review the materials.

Mayor Hedenskog said he would like to see an outright use of 5 – 10 feet above a house's highest point and he would like to see it clearly defined in the code that the tower, if it were to fall, needed to be contained entirely within the property.

Councilor Pieper moved, a second followed and Council voted unanimously to continue the hearing [in the matter of LDC-2-15] to the August 10, 2015 City Council meeting.

Public Comments : Non - Agenda Items

Connie Hunter said that KCIW was scheduled to be up and running in August and Councilor Hamilton asked when and where the board met. Hunter said it would be meeting the next Monday at 3pm at 609A Chetco Avenue.

Staff Reports

Approval to halt action on the Airport Infrastructure Project until the issue of South Coast Lumber Company's access is resolved and direction to the City Attorney concerning possible recourse to protect the public's right to use Airport Road.

City Manager Milliman provided the staff report.

Commissioner Susan Brown said she appreciated the Council's frustration but the project was a go. FAA, she said, had affirmed, in writing, South Coast Lumber Company's (SCLC) use of the road. The hold up, Brown said, was because SCLC wanted more rights than the FAA would provide and the County could not guarantee any rights than FAA had not already provided.

Milliman asked Brown where the County's letter to SCLC and Brown said they could write a letter but it wouldn't say more than the FAA's letter said.

Mayor Hedenskog said the City has some blame in this, because we should have halted the project as soon as the issue regarding Airport Road came up and fixed that problem first and Brown said no one has stopped SCLC's use. Hedenskog said the County could fix this easily by declaring it a public road and Brown said she would ask County Counsel if it could be made a public road.

Milliman asked if the County had sent a letter to SCLC and Brown said SCLC already had the letter from the FAA; another letter was unnecessary.

City Attorney Rice said SCLC perceived the letter from FAA to say it wouldn't take away any access rights, "right now," but there is nothing that says FAA can't take away SCLC's rights. Brown said there was no reason why SCLC couldn't continue its existing use and their concern was that there may some additional use in the future.

Mayor Hedenskog said the County could write a letter granting the current use in perpetuity and include language denying any additional uses.

Brown said the County was dependent on FAA keeping the airport open and had to protect its rights.

Councilor Pieper said it was a shame that the City was joined with the County on this project. He said he couldn't believe it was this complicated and couldn't understand why the County wouldn't try harder to get this project going.

Councilor Hodges said when someone says "at this time," they can change the restrictions at will and are protecting themselves. And if County owns the property, he said, he just couldn't understand why the County couldn't write the letter to SCLC.

Councilor Hamilton said the concern with "at this time" would be that 5 or 10 years down the road there's a new commission that doesn't see it the same way this one does. He also said if he were SCLC he would also want a letter from the County.

Mayor Hedenskog said he'd had an issue with the County's bizarre behavior which included charging for the City for the easements, when the project was going to benefit

its own property. He said he contended that it all came down to a long-standing vendetta on the part of a couple of commissioners, one who is no longer on the board. City Manager Milliman said the project cannot go forward without the easements from SCLC, and the County, as the property owner, needed to resolve the issues with SCLC.

Councilor Hodges asked what was holding up the letter from the County if the project was a "go?" Brown said the letter the City had asked the County to sign wasn't penned by the County, and the letter wanted more than what than SCLC now had. She said they were asking for the access without limitations or restrictions and they didn't have that now.

Rice said SCLC was not asking for more, just the same access they've had in the past, and FAA wasn't going to guarantee that access for the future. Milliman said there was nothing in the proposed letter provided to the County that expanded SCLC's use. Brown said that was the way it was perceived by the County.

Brown asked if there was a way to write the letter that would make a difference and Hedenskog asked if she needed help. Brown said, "Always," and Hedenskog suggested that they sit down with Rice and work something out.

Councilor Hamilton asked Brown if the County's was concerned or feared that FAA might retaliate if the letter were sent and Brown said the concern was that the FAA could change their restrictions which would change the terms in the letter and then the County would be liable if they'd given SCLC a guarantee.

Milliman pointed out that they had a congressional delegation willing to back up the County's action with the FAA and Brown asked if they would put that in writing. Milliman said, "Maybe you should ask them. You're the County."

Councilor Pieper moved, a second followed and Council voted unanimously to take no further action on this project until: 1) The access issue between Curry County and South Coast Lumber Company is resolved and/or 2) Curry County has secured written clarification from the FAA on the use of Airport Road for access to the industrial site located northeast of the airport operations area and restrictions on the County's ability to lease the subject property for private development.

Councilor Pieper moved, a second followed and Council voted unanimously to direct the City Attorney to look into possible [legal] recourse to protect the public's right to use Airport Road.

Resolutions

Resolution 15-R-1062 approving appropriation transfers for insurance proceeds received in the Wastewater Fund.

Director Howard gave the staff report.

Councilor Pieper moved, a second followed and Council voted unanimously to adopt Resolution 15-R-1062 approving appropriation transfers for insurance proceeds received in the Wastewater Fund.

Resolution 15-R-1063 transferring appropriations from contingency to Legislative/Administration in the General Fund.

Director Howard presented the staff report.

Councilor Pieper moved, a second followed and Council voted unanimously to adopt Resolution 15-R-1063 transferring appropriations from contingency to Legislative/Administration in the General Fund.

Resolution 15-R-1064 approving appropriation transfers in Water, Water Loan, Water System Replacement, Wastewater System Replacement and Stormwater System Replacement Funds.

Director Howard delivered the staff report.

Councilor Pieper moved, a second followed and Council voted unanimously to adopt Resolution 15-R-1064 approving appropriation transfers in the Water Fund, Water Loan Fund, Water System Replacement Fund, Wastewater System Replacement Fund, and the Stormwater System Replacement Fund.

Resolution 15-R-1066 approving appropriation transfers in the Streets Fund, Water Fund, and Wastewater Fund.

Director Howard provided the staff report.

Councilor Pieper moved, a second followed and Council voted unanimously to adopt Resolution 15-R-1066 approving appropriation transfers in the Streets Fund, Water Fund, and Wastewater Fund.

Consent Calendar

1. Approve Council minutes for June 8, 2015.
2. Accept Parks & Recreation Commission minutes for March 19, 2015.
3. Receive monthly financial report for May 2015.

Councilor Hodges moved, a second followed and Council voted unanimously to approve the Consent Calendar as written.

Remarks from Mayor and Councilors

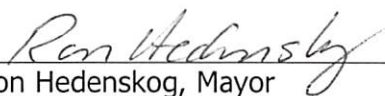
Councilor Hamilton complimented Dan Palicki on the work he's done with Safety City, which, he said, was getting better every year. He thanked the public for supporting the no-cost program.

Adjournment

Mayor Hedenskog moved, a second followed and Council voted unanimously by voice vote to adjourn at 9:26 PM.

A meeting of the Urban Renewal Agency immediately followed.

Respectfully submitted:



Ron Hedenskog, Mayor

ATTESTED:
this 15th day of July 2015:



Joyce Heffington, City Recorder