

City of Brookings MEETING MINUTES

CITY COUNCIL

Monday, October 12, 2009

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

Call to Order

Mayor Anderson called the meeting to order at 7:00pm.

Roll Call

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, Kitchen and Pieper; a quorum present.

Staff Present: City Manager Gary Milliman, Public Works Director John Cowan, Administrative Services Director Janell Howard, and City Recorder Joyce Heffington.

Other Present: Curry Coastal Pilot Reporter Arwyn Rice and approximately 10 public.

Public Comments

Several residents commented on public access to the SeaCliff beach area, generally requesting that the City move toward securing permanent public access, as well as making the following additional comments:

- Pete Chasar, 935 Marina Heights, shared a 1998 photo showing the sign on the pedestrian gate, and commented that the Beach Bill guaranteed public access to our beaches. Chasar's written testimony is on file with the minutes.
- Steve Shannon, 239 Memory Lane, generally commented that he had also seen this sign and that public beach access was one of the reasons he had purchased property on Memory Lane. Shannon's written testimony is on file with the minutes.
- Paula Edwards, 240 Memory Lane, generally commented that there had been on-going advertisement of public beach access by realtors.
- James Benson, 315 Memory Lane, generally commented that he'd purchased property on Memory Lane because of the public beach access, that Oregon law protected SeaCliff Terrace residents against liability, and tax lot 116 was a "common roadway," listed as "no tax" on the County tax rolls. Benson's written testimony is on file with the minutes.
- Dom Petrucelli, PO Box 1277, Brookings, generally commented that access to the beach in the Seacliff area is available in three locations, two of which were deeded, and that he is against putting up a gate in the third location when new development goes in.
- Jan Krick, 1347 Chetco Avenue, generally commented that her property purchase on Cushing Court was based on the availability of public beach access.

Staff Reports

Fifth Street Improvement Project Addendum

Public Works Director Cowan reviewed the staff report.

Councilor Hedenskog asked about cross walks and Cowan stated that the cross walk would go in later.

Councilor Kitchen moved, a second followed and Council voted unanimously to authorize the City Manager to execute an addendum with Tidewater Contractors for sidewalk and retaining wall on Fifth Street in the amount not to exceed \$86,470.

Downtown Parking Implementation Plan Adoption

City Manager Milliman reviewed the staff report.

Councilor Kitchen moved, a second followed and Council voted unanimously to adopt the Downtown Parking Implementation Plan.

Audit Services Contract Amendment

City Manager Milliman reviewed the staff report and AS Director Howard generally stated that the annual increases were primarily cost of living increases.

Councilor Pieper moved, a second followed and Council voted unanimously to authorize the City Manager to execute an amendment to the agreement with Pauly, Rogers and Company for audit services to include services for fiscal years 2008-2009 and 2009-2010, consistent with their letter proposal dated June 19, 2008.

Water Intake Standby Power Upgrade Project Award

Public Works Director Cowan reviewed the staff report and generally stated that this project will complete the water system.

Councilor Kitchen moved, a second followed and Council voted unanimously to award the contract to Scott Partney Construction, Inc., of North Bend, the lowest responsive bidder for construction of the Water Intake Power Upgrade Project 145.11, in the amount of \$147,516.00.

Consent Calendar

1. Approval of September 28, 2009 City Council minutes.
2. Acceptance of July 23 and August 27, 2009 Parks & Recreation Commission minutes.
3. Acceptance of September, 2009 Vouchers in the amount of \$480,379.81.
4. Approve the cancellation of November 23rd & December 28th, 2009 City Council meetings.

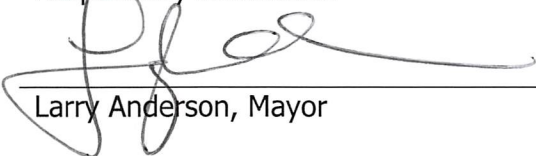
Councilor Hedenskog moved, a second followed and Council voted unanimously to approve the Consent Calendar as written.

Remarks from Mayor and Councilors

Adjournment

Councilor moved, a second followed and Council voted unanimously by voice vote to adjourn at 7:38pm.

Respectfully submitted:



Larry Anderson, Mayor

ATTESTED:
this 22nd day of October 2009:



Joyce Heffington, City Recorder

October 12, 2009

Mayor Anderson & City Council
City of Brookings
898 Elk Drive
Brookings, OR 97415

Dear Mayor Anderson and Councilors:

This is in support of continued public beach access through the Sea Cliff Terrace gated subdivision at Memory Lane and Del Norte.

Attached is a photo of the Sea Cliff gate as it appeared in November, 1998. Note that the sign at left clearly states: "PUBLIC BEACH ACCESS. Pedestrian Use Only." This sign was probably in place as early as 1977, when a former City Council first approved the subdivision.

Ironically, I photographed the gate in 1998 in order to say to officials in Arizona, "See, in Oregon they know how to develop gated communities and preserve public access, too." Sadly, with recent events at Sea Cliff Terrace, that statement — and more importantly, public access itself — now seems in jeopardy.

And yet in Oregon we have a Beach Bill, guaranteeing public access to our beaches. In the State of Rhode Island, which has no such beach bill, there's the very exclusive beach community of Newport. Despite the fact that the homes along Newport, Rhode Island's bluff are huge mansions belonging to the tycoons of America's gilded age, there's a public trail called Cliff Walk along that bluff.

The Cliff Walk website describes it as:
a public right of way over private property owned by the waterfront property owners.

It also says:
Cliff Walk was protected by the combination of long term public use, the "Fisherman's Rights" granted by the Colonial Charter of King Charles II, and a passage in the Rhode Island Constitution that granted the public "rights of fishery and the privileges of the shore to which they have heretofore been entitled." Now centuries of prior use have guaranteed the legal right of people to walk on the cliffs.

That was done without a Beach Bill. We have a Beach Bill in Oregon. Surely, we can do something immediately to keep access open — and then establish, once and for all, public access in perpetuity.

Sincerely,



Pete Chasar
Encls.

October 12, 2009

Mayor Anderson & City Council
City of Berkeley
500 Gir Drive
Berkeley, CA 94712

Dear Mayor Anderson and Council:

This is in support of continued public beach access through the City of Berkeley's public beach division in Marina Park and Old Marina.

Attached is a photo of the 2002 City sign that appeared in December 1999 along the sign that the sign itself clearly states "PUBLIC BEACH ACCESS RESTRICTED TO USE ONLY". This sign was installed in place in early 1997 when the former City Council had approved the subdivision.

Historically, I photographed the sign in 1997 in order to try to identify in a report "Sign in Oregon that indicates how to develop great communities and preserve public access to the beach" with recent events at the City of Berkeley that statement -- and more importantly public access itself -- now seems to have been.

And yet in Oregon we have a beach bill guaranteeing public access to our beaches in the state of Oregon. Instead, which has no such beach bill, thereby the very restrictive of community of Berkeley. Despite the fact that the former report "Public Beach Access" that are public beaches belonging to the citizens of America's public beaches a public bill would be a public bill along the way.

The City's website describes it as a public right of way and public property owned by the various city departments.

It also says:

City's bill was protected by the combination of long-term public use. The "Public's Right" signed by the Coastal Charter of King County. It and it states in the Rhode Island Constitution that granted the public "right of access" and the privilege of the view to which they have been granted. "New" citizens of Berkeley have shown that the legal right of people to walk on the beach.

This was done without a beach bill in Oregon. Since we can do something immediately to keep access open -- and the public access in Berkeley.

Sincerely,

Peter Chavez
Berkeley



(Tell for the record your name, address and length of time in Brookings.)

My husband, Bob Edwards, and I have been residents of Brookings for 10 years and have enjoyed the use of the beach below our area for that length of time without incident. I am here tonight to speak to the issue of advertising of this access as public beach access. The realtors in Brookings as well as the property management companies have, for many years, sold property in our area as having the added benefit of public beach access near the particular property a client was considering buying. Many of our neighbors and some from further down the road have all been told this was the case and have subsequently used this public access to the beach for their enjoyment and beach experience.

As an example, Carina Reeves Blank, one of the realtors who lives on Memory Lane and near the jetty, gave Donna in the planning department copies of some of her listings which stated "beach access" on the information MLS sheets. Our immediate neighbor on Memory Lane now has a vacation rental (you may remember this story) and advertises his property as having beach access, and indeed, his renters have all used this access to the beach and jetty. Anything other than a positive outcome for the public's right to continue using this access could put the Realtor and Property Managers in some jeopardy from their buyers.

This common access easement has a long history of providing access to the residents of Brookings and beyond. People born and raised in Brookings recall stories of how they used to drive down to the beach for picnics and beachcombing. We are talking all the way back to the 50's here. Continuous, uninterrupted use by the public as access to this beach and jetty is a key component to benefiting the people of Brookings and vacationers alike to the ongoing continuous use from here on out. I would like ~~to cite what Pete~~ ~~Clas~~ requested from you, the City Council, to cement the public's right of access by virtue of an easement in perpetuity given to the public and a stay of construction of any further work on the pedestrian gate until all of this has been legally completed and recorded.

Thank you for your time and consideration.

Brookings City Council Oct 12, 2009

My name is James Benson of 315 Memory Lane, Brookings Or 97415.

I wish to comment on Access to North Jetty beach via public pedestrian walk way at corner of Memory Lane and Del Norte St through what is know as Sea Cliff Terrace. My wife and I have lived in our current home since June 1997 when we used such access to reach North Jetty beach. We had visited Brookings in 1994 and were interested in the same property we eventually purchased. One reason for purchasing the property was the public access to the North Jetty beach. via the Seal Cliff Terrace road.

One of the concerns expressed by property owners of Sea Cliffs Terrace is Liability. However I believe this was foreseen by the original developer when the tax lot 116 was plotted showing the "common roadway". which was then listed as "no tax" on Curry Co tax rolls.

Oregon legislature established in 1963, OR law Chapter 524 for immunity for landowners which allow access across their property for recreational purposes. This was updated in OR law of 1973 chapter 780 and OR law 1995 chapter 456. And has been confirmed by several appellate court rulings. The property owners of Sea Cliff Terrace have also confirmed the public access policy by not changing tax lot 116 with no tax to a taxable lot since the development was constructed..

Thus the concerns of a possible lawsuit by people using the common roadway as a public access to the North Jetty beach and the jetty itself are covered by ORS 105.682 which codifies the above laws.

I urge the City Council to request the City staff to clarify with Sea Cliff Terrace owners an easement establishing in perpetuity the public access to the North Jetty beach via the "common Road tax lot 116 " of their development.

Thank you

James Benson
315 Memory Lane
412-0497