

Minutes of the
CANNON BEACH CITY COUNCIL
Tuesday, February 2, 2010
Council Chambers

Present: Mayor Mike Morgan; Council President Sam Steidel; Councilors Nancy Giasson, Melissa Cadwallader and Wendy Higgins

Excused: None

Staff: City Manager Rich Mays, City Attorney Tamara Herdener, City Land Use Attorney Bill Kabeiseman, City Planner Rainmar Bartl, Public Works Director Mark See, Police Chief Gene Halliburton and Administrative Assistant Brandy Brien

CALL TO ORDER AND APPROVAL OF THE AGENDA.

Mayor Morgan called the meeting to order at 7:00 p.m.

Motion: Cadwallader moved to approve agenda as presented; Steidel seconded the motion.

Vote: Steidel, Giasson, Higgins, Cadwallader and Morgan voted AYE; the vote was 5/0 in favor and the motion passed unanimously.

INTRODUCTIONS AND PRESENTATIONS

(1) **New Accounting Clerk Jean White**

Mays introduced new Accounting Clerk Jean White. He reviewed her background and noted that she hails from Indiana and moved to the North Coast 10 years ago. She comes highly recommend, was previously at the Steve Putman Farmers Insurance and she has worked for Northwest by Northwest Gallery as well as the Coaster Theatre.

White thanked all for the opportunity serve the City of Cannon Beach and thanked City staff for the easy transition.

CONSENT AGENDA

(2) **Consideration of the Minutes of the Council Regular Meeting of January 5, 2010.**

Motion: Giasson moved to approve the minutes of the Council regular meeting and work session as amended; Cadwallader seconded the motion.

Vote: Steidel, Giasson, Higgins, Cadwallader and Morgan voted AYE; the vote was 5/0 in favor and the motion passed unanimously.

PUBLIC HEARINGS

(3) **Public Hearing and Consideration of APP 09-01, Paulson et al Appeal of the Planning Commission Approval of CU 09-03, City of Cannon Beach Request for a Conditional Use Permit to Construct a Pedestrian Trail from E. Second Street to E. Monroe Street, at Elm Street.**

Mayor Morgan introduced the item. Mayor Morgan, Council President Steidel and Councilor Cadwallader noted a conflict of interest since they own property within the notice area and stepped down from the dais.

Councilor Giasson became the Chair. Giasson asked if anyone objected to the jurisdiction of the City Council to

hear this matter at this time. She asked if any Council member believed he or she had a conflict of interest or personal bias. She stated that potential conflicts of interest and personal biases of herself and Councilor Higgins had been raised at the December 1, 2009 Council consideration of the type of appeal hearing that the Council would hold on this matter. Those issues were discussed fully and are already part of the record in this appeal. She stated that this issue will not be reargued unless someone has new information or arguments that were not previously presented.

Patty Paulson asked for recognition from the Chair. Giasson asked Ms. Paulson to identify herself.

Patty Paulson, 239 E Monroe, 1803 NW Cedar Ridge Drive, Portland, an appellant, asked for recognition by the Chair. Giasson did so. Paulson stated that this is a quasi-judicial public hearing and she is challenging whether the seating of individuals at the dais is appropriate. Giasson stated that all individuals seated at the dais are appropriately seated and noted that in addition to the usual City staff, Land Use Attorney Bill Kabeiseman, who represent the City on land use matters, is in attendance.

In response to comments made by Paulson regarding prohibiting City Manager Rich Mays from being seated at the dais, Giasson stated that he is seated as the City Manager not the applicant of the conditional use permit.

Giasson asked if any Council member had any ex-parte contacts or made a site visit. Higgins and Giasson both stated that they had made a site visit. Giasson stated that the issue of whether Councilor Higgins or she had any ex-parte contacts with regard to this matter was raised at the December 1, 2009 Council consideration of the type of appeal hearing that the Council would hold on this matter. Again, those issues were discussed fully and are already part of the record in this appeal; those issues will not be reargued unless someone has new information or arguments that were not previously presented.

Giasson asked if anyone has new arguments or evidence they wish to present regarding ex-parte contacts.

Paulson read from correspondence, dated February 2, 2010, asserting that Councilor Higgins and Giasson are biased in favor of the trail and must be disqualified. She included three specific assertions with regard to the fact that Giasson is employed by the Cannon Beach Community Presbyterian Church and the Church has provided testimony on the trail.

Giasson responded to the specific assertions made by Paulson regarding her employment by the Church. She stated that because of her position on the Council she has not discussed this issue with her employer, or with the members of the Elder Board. The issue of the trail surfaced at a recent meeting and she left the room. She also stated that she did not participate in the preparation of the letter of support for the trail by the Church.

Kabeiseman stated that Higgins' potential conflict of interest and related assertions have already discussed, as were some of the assertions about Giasson.

Giasson made a statement about testimony addressing the applicable criteria.

Giasson asked for the staff report.

Bartl summarized his staff report. He noted this is an on-the-record appeal.

Bartl referred to correspondence from Martin and Chris Schmidt, dated January 5, 2010, and Michael Foggia, dated January 4, 2010, regarding testimony on potential health hazards associated with the operation of the City's wastewater treatment plant. Staff can find no evidence that this issue was raised at the August 27, 2009, Planning Commission hearing. There was only testimony referring to odors associated with a sewer manhole. This is a separate issue. Staff recommends that these letters be stricken from the record.

Bartl commented on a procedural issue. The City's Zoning Code states that the appellant has the burden of proof. However, this provision is no longer legally correct. Bartl cited a LUBA case in which it was determined that the

applicant retained the burden of proof throughout the local land use process, including appeals. In order to be in conformance with this standard the City must provide the applicant with the opportunity to make the final rebuttal statement.

In response to a question from Giasson, Higgins stated that she believes the letters referenced by Bartl should be excluded from the record and agrees that it is new evidence that is not permitted.

Motion: Higgins moved to exclude the written testimony from Martin and Chris Schmidt and Michael Foggia regarding the potential health hazard issues regarding the operation of the wastewater treatment plant. Giasson seconded the motion.

Vote: Giasson and Higgins voted AYE; the vote was 2/0 in favor and the motion passed unanimously.

Pam Foggia, 279 E Monroe, Cannon Beach, an appellant, challenged the exclusion of the Schmidt and Foggia letters. She summarized a February 2, 2010 letter to the Council on reasons why the letters should not have been excluded.

Giasson referred to staff. Bartl stated that the key argument seems to be that trail safety was raised as an issue at the August 27, 2009, Planning Commission hearing and that potential impacts of the operation of the wastewater treatment plant are one such safety issue. Bartl stated that this is an overly broad interpretation of the safety issues that were discussed. No mention was made of health hazards associated with the operation of the wastewater treatment plant. Giasson stated that Council has acted to exclude this evidence. Foggia stated that the letters do not raise new issues and the matter should be reconsidered; Kabeiseman suggested that if Council wished to do so, it could revisit this issue following other testimony.

Foggia continued by challenging 19 letters that were entered into the record in the re-opening of CU 09-03. She stated these letters raise no new issues which relate to material that was submitted at the August 27, 2009, Planning Commission hearing.

In response to Foggia, Bartl replied that the Pam Roberson letter of November 5, 2009, was removed from the record. Also in response to Foggia's question as to why she was not copied with the second letter from Roberson, Brien stated that the second letter from Roberson, dated January 15, 2010, was received in response to the notice of the appeal hearing and not the limited reopening of the Planning Commission record. The City was in receipt of the January 15, 2010, letter after Ms. Foggia's request for copies of all the correspondence.

Foggia referred to a letter by Gary Durheim, stating that it appears to not have been inappropriately received by the City and should be excluded. Bartl stated his concurrence.

Kabeiseman recommend that the Council proceed with the public testimony and then determine if any of the referenced letters should be stricken from the record, in which case the Council would disregard the testimony of those whose letters had been excluded. Councilors concurred.

Vera Vien, P.O. Box 1301, Cannon Beach, an appellant, challenged the staff position regarding the procedural change, permitting the applicant to make the final rebuttal statement. She referenced procedures followed by the City of Portland.

Giasson asked for clarification. Kabeiseman restated the reasons for his conclusion that the applicant and not the appellant have the burden of proof in an appeal hearing.

Bartl noted that this is an on-the-record appeal and reviewed the order of testimony. He stated that all parties will have an opportunity to address the Council, no matter how long it takes

Giasson asked for testimony by the appellants.

Vien restated her objection to the order of testimony. She summarized the key issues addressed in the appellants' appeal. She stated the burden of proof is on the applicant which is the appellant from her perspective in this case. The question before the Council is, did the Planning Commission make a correct decision based on the relevant criteria?

In response to Vien's comments regarding the relevant criteria and contents of the staff reports, Kabeiseman reviewed key elements of his memorandum to the Council dated November 18, 2009.

In response to Vien's comments, Higgins and Giasson confirmed that they had read both the Planning Commission minutes and listened to the entire audio file.

Giasson called for additional testimony of appellants. There was none.

Giasson called for additional testimony of proponents of the appeal. There was none.

Giasson called for testimony by opponents of the appeal.

Barb Knop, P.O. Box 658, Cannon Beach, OR, resident and member of the Parks and Community Services Committee, stated that she has lived in neighborhood of the proposed trail location for twenty plus years. She supports the trail and looks forward to utilizing it.

Jerome Arnold, P.O. Box 72, Cannon Beach, OR stated that he would like to rebut testimony provided regarding parking at Monroe Street. He said that Monroe Street is not a sensible place for trail users to park. Trail users will walk to the trail, not drive.

It was noted that Arnold's letter of January 5, 2010 may be removed from the record. However, that would not affect his testimony tonight since he was a party of record to the Planning Commission hearing prior to the reopening of the Planning Commission record.

Bob Reid, P.O. Box 100, Cannon Beach, OR, stated that there has been ample public participation in the determination of the need for the trail. He has heard many allegations about the impact of the trail, but no proof has been provided.

Doug Wood, P.O. Box 774, Cannon Beach, OR, stated that he and his wife, Judy, are residents of the north end of town. A section of the trail will be adjacent to their home and they welcome it. He stated that the City's Comprehensive Plan provides supportive statements for a trail and the Council has consistently identified trails as a priority for Cannon Beach.

Les Wierson, P.O. 543, 802 Oak Street, Cannon Beach, OR, stated that he is a member of the Planning Commission and was appointed as Trail Committee member. Regarding comments about odors from a manhole, odors are not going to harm trail users. He stated that the Little Pompey wetland and Sitka Spruce Reserve area should be utilized and the trail will provide for this. He stated that opponents agreed with the concept of a trail in the Spruce Reserve when they suggested alternative routes, other than Elm Street. He stated that Elm Street has historically provided pedestrian access to the Spruce Reserve. He also referenced other locations in Cannon Beach where unimproved rights-of-way have been improved for pedestrian use.

Ed Johnson, P.O. Box 241, 449 Elk Land Court, Cannon Beach, OR, stated that this is an opportunity to begin to implement what for many Cannon Beach residents has been a long held dream, that of a pedestrian trail connecting a large part of the community.

Tim Krupa, P.O. Box 1337, Cannon Beach, OR, stated that this is not the first walking trail in Cannon Beach, they are located in many areas of town and the trails have never been a problem. He lives on the north side of Cannon Beach, in the vicinity of a trail that parallels Ecola State Park Road. There have never been problems associated with this path. Some cars park in association with the use of the trail, but this has never been a

problem. He reviewed his positive experience with trails in other communities. He concluded by stating that the City should be encourage walking.

Bob Lundy's testimony was stricken from the record.

Molly Edison, P.O. Box 936, Cannon Beach, OR, stated that now that she is older, she walks mostly in the Presidential Streets area. She has seen people park and walk in this area and there has never been a problem.

Susanne Kinland's testimony was stricken from the record.

Susan Glarum, P.O. Box 108, Cannon Beach, OR, stated that she has been a resident for 30 years. She is in favor of trails, particularly this one, because it will provide a quick and pleasant route to downtown. She believes that the trail will not cause traffic congestion or any other problems.

Barb Lynette, P.O. Box 205, Tolovana Park, OR, stated that she is a long time resident and trail lover. She concurred with Krupa, noting that she recently visited similar trail systems in the Gulf of Mexico and in Sedona and, as she testified previously, she has been involved in the development of trail systems and agrees that trails have many positive benefits. She read a list of ten reasons to support the trail.

Joyce Lincoln's testimony was stricken from the record.

Jan Siebert-Wahrmund, P.O. Box 778, Cannon Beach, OR, read a letter thanking City staff for its efforts to develop the trail proposal. She urged Council to uphold the Planning Commission's decision to proceed with trail. This trail will enhance the area and she believes that even the appellants will approve of the trail once it is developed.

It was noted that Siebert-Wahrmund's letter of January 5, 2010 may be removed from the record, however that would not have an effect on her testimony tonight since she is a party of record to the Planning Commission hearing prior to the reopening of the record.

Kate Volke, P.O. Box 253, Cannon Beach, OR, read from the elements of City's Comprehensive Plan that refer to trails. She made note of how trails can implement aspects of the community described in the vision statement of the Comprehensive Plan. She also referred to the Downtown Parking and Traffic Study and how the outcome of that study resulted in a decision to protect the Little Pompey Wetland area develop trails to interpret its environmental significance. She referenced the work that has been done on developing the concept of the Cannon Beach Natural History Park and how the proposed trail implements an element of that concept.

Michael Capper's testimony was stricken from the record.

There was no additional testimony. Giasson called for any staff summary.

In response to Giasson, Kabeiseman briefly reviewed some of the points made in his memo of November 18, 2009, including on the issue of the differences between statements made in the staff report and in the final findings that were adopted by the Planning Commission.

Giasson asked if the appellants wished to make any rebuttal statements.

Patty Paulson stated that it is wonderful that people are here to promote trails. The appellants also support trails. However, no matter how many meetings are held, they are irrelevant if the applicable criteria for this proposal are not met. The staff report has everything to do with this proposal, the criteria listed must be met and this has not occurred. She stated that the City has based this proposal on public opinion and this is not the same as demonstrating that there is a demand for the trail.

Vera Vien stated that she is proud to be a minority in this matter. She and her husband have owned a home in

Cannon Beach for 15 years. They have participated in the lifestyle of Cannon Beach and are both walkers. She noted that the issue before the Council is not about individuals, but whether relevant criteria have been met. The City has not met its burden of proof. She stated the City has done a poor job of involving her neighborhood in the trail development process, many specifics of which are still unclear to her.

Giasson asked if the applicant wished to make any final statements.

Rich Mays, City Manager, stated that Mark and Kristen Albrecht and Bill Bennett were unable to attend tonight and express their support for the trail. He provided some remarks on items that had not previously been addressed. Mays noted that the manhole odor issue has been remedied. He stated that if after implementation, if the trail results in traffic issues on E. Monroe Street, the City is committed to resolving them. He said that contrary to what the appellants have stated, the trail studies provided by the City document trails in a wide number and variety of communities and situations and provide more than ample evidence that the proposed trail will not have adverse impacts on property values and crime. He responded to statements about the City not adequately publicizing the development of the trail by reviewing key actions that were taken to inform the community of the evolving plan. Finally, with regard to demand for the trail, the extensive public testimony in support of the trail speaks directly to demand.

Giasson asked if anyone else had anything to say.

Vien stated that the appeal and the City's application speak for themselves. She said that the City's conduct in this matter has been inappropriate. The City Manager has made insinuating statements. His presence at the dais tonight and his demeanor has been inappropriate. Mr. Mays sat in the audience at the Planning Commission meeting; he should have done so tonight.

Mays apologized for any statements he may have made that may have been misconstrued. It has not been his intent to question the sincerity of the opponents concerns. They have raised legitimate issues and they are rightfully concerned about those issues.

Councilor Giasson closed the public hearing and called for a brief recess at 10:30 p.m. The meeting re-convened at 10:50 p.m.

Giasson and Higgins agreed that the general safety concerns raised at the Planning Commission hearing on August 27, 2009, were not the same as the specific potential health issues raised in the Schmidt and Foggia letters and thus they do not wish to revisit this issue.

Foggia asked to be recognized. Kabeiseman recommended that the Council not grant the request. Giasson stated that the public hearing is closed and that the Council will continue with its deliberations.

Giasson and Higgins agreed that the Gary Durham letter should be excluded from the record since the date it was received at the City is unclear.

Motion: Higgins moves to exclude the Durham letter. Giasson seconded the motion.

Vote: Higgins and Giasson voted AYE; the vote was 2/0 in favor and the motion passed unanimously.

Giasson stated that the Council will determine, based on the standard for additional testimony regarding the new evidence presented at the August 27, 2009, Planning Commission hearing, which of the challenged nineteen letters will be excluded from the record

Council concluded that the Jerome Arnold correspondence should be excluded.

Council concluded that the Joyce Lincoln correspondence should be excluded.

Council concluded that the Robert Lundy correspondence should be excluded.

Council concluded that the Mark Piscitelli correspondence should be excluded.

Council concluded that the Kristin Frost Albrecht correspondence should be excluded.

Council concluded that the Michael Capper correspondence should be excluded.

Council concluded that the Mark Albrecht correspondence should be excluded.

Council concluded that the Duane and Cheryl Johnson correspondence should be included.

Council concluded that the Molly Hering Edison correspondence should be included.

Council concluded that the Debbie and Keith Workman correspondence should be excluded.

Council concluded that the Suzanne Kindland correspondence should be excluded

Council concluded that the Robert Reid correspondence should be included.

Council concluded that the Darrin Peters correspondence should be included.

Council concluded that the Tom Oxwang correspondence should be included.

Council concluded that the Barb Knob correspondence should be excluded.

Council concluded that the Keyaho Rohlf's correspondence should be excluded.

Council concluded that the Jim Scheller correspondence should be excluded.

Council concluded that Dawn Krupa's correspondence should be included.

Council concluded that the Jan Siebert-Wahrmund correspondence should be excluded.

Motion: Higgins moved to exclude from the record the letters that Council has identified to be excluded.
Giasson seconded the motion.

Vote: Higgins and Giasson voted AYE; the vote was 2/0 in favor and the motion passed unanimously.

It was noted that Jerome Arnold and Jan Siebert Wahrmund, were already parties of record and their testimony will remain, however the testimony from Joyce Lincoln, Bob Lundy, Michael Capper, and Susanne Kindland will be stricken from the record.

Higgins stated that she came to the hearing tonight with an open mind. She stated that where procedural errors were made, she is satisfied that they have been appropriately remedied. She stated that her role is to determine if the criteria have been met.

Giasson stated that from a general perspective, in her role as a Councilor, it is important to view the City as a whole and then bring this view to bear on a specific situation such as the proposed trail.

Giasson noted that this is not a popularity contest; this is not a legislative matter. It is about meeting the relevant criteria. She has reviewed the criteria and the evidence submitted and she will base her decision on that analysis.

With regard to the demand criterion, she is satisfied that there is evidence of a demand for the trail at that proposed location.

Giasson and Higgins continued through the procedural and substantive errors listed in the appeal and concluded that all criteria had been met and all procedures had been followed.

Giasson noted that Council will continue to strive to do a better job of communication with the City's residents and property owners. She thanked everyone for their participation.

Higgins concurred and stated that because of the extensive testimony she has a clear sense of the issues at hand.

Motion: Higgins moved to uphold the Planning Commission's decision to approve the conditional use permit, subject to the final findings of fact and an order.

Vote: Higgins and Giasson voted AYE; the vote was 2/0 in favor and the motion passed unanimously.

Councilor Giasson excused herself from the meeting at 11:30 p.m.

Mayor Morgan asked that the agenda be amended to move up the social gaming.

Motion: Steidel moved to amend the agenda. Cadwallader seconded the motion.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

(4) Consideration of Ordinance 10-02, for the Purpose of Amending the Cannon Beach Municipal Code Chapter 5, Business Taxes, Licenses and Regulations to Add Section 5.14 Social Gaming Allowing Social Gaming in the City Of Cannon Beach in Charitable, Fraternal, And Religious Organizations.

Mays reviewed his staff report, earlier this month, City staff was informed of an investigation by the Oregon State Police into our local American Legion's practice of conducting "Texas Hold'em" tournaments". He noted that the City of Cannon Beach Municipal Code does not authorize such events, only lotto and bingo. State law does allow "charitable, fraternal, and religious organizations" to engage in "social games" as long as the applicable municipality passes an appropriate ordinance.

Sandi Fitzpatrick, 702, Tolovana Park, OR, reviewed that the American Legion has held "Texas Hold'em" tournaments" on Friday nights for a number of years and provides entertainment for locals as well as tourists. She urged that Council to consider allowing the Legion to continue the tradition and camaraderie.

Council discussed legalities with Herdener and determined that it was not necessary to include additional language for an appeal process.

Motion: Steidel moved to read Ordinance 10-02 twice by title only. Higgins seconded the motion.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

Herdener read the ordinance twice by title only.

Motion: Steidel moved to adopt Ordinance 10-02. Higgins seconded the motion.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

(5) **Public Hearing and Consideration of ZO 10-01, City of Cannon Beach, Zoning Code Text Amendment, Permitting Governmental or Municipal Structures in the Park Management Zone.**

Mayor Morgan opened the public hearing and stated that this is a legislative matter. No one objected to the jurisdiction of the City Council to hear this matter at this time. No Councilor stated a conflict of interest. Bartl reviewed his staff report. He noted that staff proposed that governmental or municipal structures be an outright use. However, following public testimony, the Planning Commission is recommending that the Council make governmental or municipal structures a conditional use in the Park Zone. It was noted that there was additional correspondence on the dais with regard to this matter.

Steidel stated a concerned by Johnson's comment that the Parks and Community Services Committee was not informed of the development of the emergency cache on a park site. Mays stated that the Parks and Community Services Committee should have been informed and this was an oversight on his part.

Mayor Morgan stated that the pertinent criteria to be considered regarding this request are in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Mayor Morgan called for a presentation by the applicant, presentations by proponents of the request, and presentations by opponents of the request. There was no testimony.

Mayor Morgan called for a staff summary or response. There was none.

Mayor Morgan called for any additional presentations. There were none.

Mayor Morgan closed the public hearing

Motion: Steidel moved to tentatively approve the proposed zoning text amendment, subject to the preparation of final findings and an ordinance.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

ORDINANCES

(6) **Consideration of Ordinance 10-01, for the Purpose of Amending Chapter 15.04, Building Codes, to add Sections 15.04.130, 15.04.140, 15.04.150 and 15.04.160; and Amend Section 15.12.100, Demolition Standards, Violations-Penalty.**

Mayor Morgan stated that this item is open for public comment. No one objected to the jurisdiction of the City Council to hear this matter at this time. No Councilor stated a conflict of interest.

Brien summarized his staff report, noting that as a result of the enactment of Senate Bill 915, the City of Cannon Beach must amend its ordinance to comply with provisions and requirements of the Bill. The most significant impact of this Bill is that the City can no longer use the Cannon Beach Municipal Court to enforce the payment of building code violation fines.

In response to a question from Higgins, Brien stated the fines will now be issued and enforced through an

administrative process, through the Building Department, rather than through the municipal court, as done in the past.

Motion: Steidel moved to read Ordinance 10-01 twice by title only. Cadwallader seconded the motion.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

Herdener read the ordinance twice by title only.

Motion: Steidel moved to adopt Ordinance 10-01. Cadwallader seconded the motion.

Vote: Steidel, Higgins, Cadwallader and Morgan voted AYE; the vote was 4/0 in favor and the motion passed unanimously.

DISCUSSION / INFORMATIONAL ITEMS

(7) **Monthly Status Report**

There was none.

(8) **Councilor Communications**

Mays reviewed upcoming Council work sessions.

(9) **Good of the Order/Public Comment**

There was none.

ADJOURNMENT.

The meeting was adjourned at 12:15 a.m.

Brandy Brien, Administrative Assistant

ATTEST:

Mike Morgan, Mayor