

MINUTES
City of Brookings
Common Council Meeting
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon 97415
Monday, July 27, 2009

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, Planning Director Dianne Morris, Administrative Services Director Janell Howard, and City Recorder Joyce Heffington.

Other Present: Curry Coastal Pilot Reporter Arwyn Rice and approximately 4 public.

Councilor Gordon moved, a second followed and Council voted unanimously to change the order of items under Ceremonies, Appointments and Announcements.

Ceremonies/Appointments/Announcements

Councilor Gordon moved, a second followed and Council voted unanimously to accept the resignation of Jan Willms' from the Public Art Committee.

Mayor Anderson proclaimed the week of August 10-14 as Oregon Code Enforcement Officers Recognition Week.

Mayor Anderson announced the 10 year anniversary of LauraLee Gray, Building Official.

Public Hearings/Ordinances

Mayor Anderson opened the legislative public hearing at 7:08pm, in the matter of

File LDC-9-09, a proposed amendment to Chapter 17.136, Conditional Use Permits, of the Brookings Municipal Code, City initiated.

There were no ex parte or other declarations of personal bias, interest or conflict.

Hearing no objections as to jurisdiction, Director Morris reviewed the proposed changes as well as changes suggested by Councilor Hedenskog received after distribution of the material.

There was no public testimony and the hearing was closed at 7:23pm.

Mayor Anderson read the suggested changes made by Councilor Hedenskog pertaining to section 17.136.010, deleting the words, "with only staff review," and under section 17.136.010, changing it to read, "Require the applicant to record a deferred agreement to provide for sharing the cost of future development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City Standards. If the proposed use is no more intense use than what exists presently it's not lawful for the City to require improvements to the above listed infrastructure."

Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt proposed amendments to Chapter 17.136, Conditional Use Permits, Brookings Municipal Code, and changes as read tonight by the Mayor.

Mayor Anderson introduced Ordinance 09-O-641.

Mayor Anderson read the changes as approved during the hearing regarding additional provisions under Conditional Uses, striking the words, "with only staff review," and under 17.136.010.D.18, changing it to read, "Require the applicant to record a deferred improvement agreement to provide for sharing the cost of future development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City Standards. If the proposed use is no more intense use than what exists presently it's not lawful for the City to require improvements to the above listed infrastructure."

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a first reading by title only [of Ordinance 09-O-641 with the changes as read by the Mayor].

Mayor Anderson read the title.

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a second reading by title only of Ordinance 09-O-641.

Mayor Anderson read the title.

Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Ordinance 09-O-641, an ordinance amending Chapter 17.136, Conditional Use Permits, Title 17, Land Development Code, of the Brookings Municipal Code, in its entirety.

Mayor Anderson opened the legislative public hearing at 7:37pm, in the matter of File LDC-10-09, proposing amendments to Chapter 17.124, Specific Standards Applying to Conditional Uses of the Brookings Municipal Code, City initiated.

There were no ex parte, or other declarations of personal bias, interest or conflict.

Hearing no objections as to jurisdiction, Senior Planner Colby-Hanks reviewed the proposed changes.

After some discussion regarding the meaning and purpose of the wording in the second sentence in section 17.124.100, it was proposed to delete the last sentence.

There was no public testimony and the hearing was closed at 7:45pm.

Mayor Anderson read the proposed change to the wording, striking, under 17.124.120, the sentence, "There shall be no external evidence of any incidental commercial activities taking place within the building."

Councilor Hedenskog moved, a second followed and Council voted unanimously to approve revisions to Section 17.124.100, Churches, hospitals, other religious or charitable institutions, and Section 17.124.120, Community buildings, social halls, lodges, fraternal organizations, and clubs in an "R" district, including striking the sentence [under 17.124.120] as read by the Mayor.

Mayor Anderson introduced Ordinance 09-O-640 and read the changes approved under the hearing.

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a first reading of Ordinance 09-O-640 by title only [adding the change as read by the Mayor.]

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a first reading of Ordinance 09-O-640 by title only.

Mayor Anderson read the title.

Councilor Gordon moved, a second followed and Council voted unanimously to do a second reading of Ordinance 09-O-640 by title only.

Mayor Anderson read the title.

Councilor moved, a second followed and Council voted unanimously to adopt Ordinance 09-O-640, an ordinance amending Section 17.124.100, Churches, hospitals, other religious or charitable institutions, and Section 17.124.100, Community buildings, social halls, lodges, fraternal organizations, and clubs in an "R" district, of Chapter 17.124, Specific Standards Applying to Conditional Uses, Title 17, Land Development Code, of the Brookings Municipal Code.

Regular Agenda

Director Morris reviewed the staff report regarding the continuance of the appeal of the use of a recreational vehicle at 241 Chetco Avenue and responded to the appellant's most recent email correspondence. Generally, Morris stated that the appellant's use cannot be grandfathered in because the use was never legal; since 1958 it has been understood that this type of use has not been permitted in the City by both staff and citizens; staff did the research as requested, discussed it at the LDC level, considered how other cities handled it, and the Committee determined it would not be in keeping with the community vision to add exceptional language for certain parcels; the 2nd highest number of complaints received by Planning staff related to use of recreational vehicles; staff suggested the addition of the words "without a dwelling" to 8.15.087, to ensure that there was no future misinterpretation of the Code; Section 17.128.030 does not apply to this situation as it refers to an accessory use (for storing RVs) which first requires a main use; and if an appeal on the matter were to be filed under 17.128.030, it would be heard by the Planning Commission, and a fee charged, which the appellant did not want to pursue.

Director Morris reviewed an email from Councilor Pieper's email dated July 27, in which Pieper generally stated that staff had not responded to the Council's motion which, in part, said, "...request staff to prepare some wordsmithing on how to improve this ordinance and to look in to see if there is any exceptions for unique parcels, rural of nature, in this city that would get an exception to this ordinance." Director Morris generally stated that staff did respond by suggesting the addition of "without a dwelling," to the language; by researching what is being done in other cities; by conferring with the Land Development Committee, which, after considering the 50 year history of this section of the code, and the number of complaints received by City staff regarding the use of recreational vehicles on private property, found that allowing temporary uses of recreational vehicles on vacant property for a select few was inappropriate.

Lloyd Bendickson, 49 Jack Nicklaus Road, Medford, Oregon, generally stated that there is a difference between "development" and "developed property;" the definition of "developed property" is the issue; and definitions for "developed property" used by lending institutions included land with improved streets, water and sewer services. Bendickson also said, "Everyone that I have asked the question, including building inspectors, have the definition that undeveloped land has none of these improvements," and that Council can change the code to define developed to include a dwelling at which point their use can then be grandfathered in.

City Manager Milliman generally stated that in researching this use with other cities, no such use was found; interpretations of development in other cities were consistent with the City's; the definition has been clearly defined by the City for fifty years; and he was "at a loss to find a definition that favors the appellants." Milliman further stated that while Council can choose to change the law, it was his suggestion that Council suspend enforcement until an appropriate ordinance, establishing standards which currently do not exist, could be brought forward to

support this type of use as there were many questions that would need to be answered in order to set standards for this particular type of use.

Councilor Gordon generally stated that while he understood the appellant's confusion considering the various interpretations of "developed," the City had consistently applied its interpretation of "developed property." Moreover, Gordon expressed concern that if the definition were changed as requested by the appellant, everyone would want to have recreational vehicles (RV) use grandfathered in.

Councilor Hedenskog generally stated that Council's recent decision to limit the use of an RV as additional sleeping quarters on a residential property to 14 days per year had been intended to minimize the impact on the neighborhood; due to the unique setting of this parcel, which is isolated and rural in nature, there is no impact on the neighborhood and therefore if it were allowed within the restrictions set-forth in the ordinance, it would meet the intent of that decision; since an RV could be sited on vacant property with an active development permit, an exception already exists, and therefore Council should revisit the code and allow this type of use for this and other parcels with similar conditions.

Councilor Kitchen generally stated that the presence of infrastructure is not development; the intent of the code is clear and the addition of the word "dwelling," will clear up any misunderstanding about the meaning of "development;" the intent of the code was to not have RVs, travel trailers, etc, all over the community; if a property is in the City limits it cannot be rural; the City should not allow a difference of opinion to dictate changing the code to accommodate a single incident.

Councilor Pieper generally stated that an exception is worth it; there's an exception to every rule; there are lots like this one that don't fit the mold; and he would like to postpone the abatement process and see what can be done for parcels like this.

Mayor Anderson generally stated that the City needs to review this particular section of the code and bring it in line to cover this type of situations to alleviate any doubt as to what is meant; with the exception of an RV park, RVs, travel trailers, etc., are not allowed to hook up to City services; it's important to keep in mind that the allowed use was to meet the need for temporary sleeping quarters for guests; and he would like to be consistent with this practice.

Councilor Hedenskog made a motion to 1) extend the abatement notice for this hearing to the end of the year, December 31, 2009, 2) revise our codes then to make a clear definition of what a developed lot is, and 3) write into this RV code some provision for flexibility for parcels that are rural in nature, larger than ordinary in size, unique, private, remote, [with] no impact on the neighborhood. Councilor Pieper seconded, and after some discussion, the second was withdrawn and Councilor Hedenskog amended the 3rd part of the motion adding that we would write in the flexibility to the code for parcels rural in nature, include in the number of RVs, the size of the lot, sanitation of the RVs, i.e., self contained, not connecting to city services, must be self contained, and fit a one (1) acre lot, or possibly smaller. Councilor Pieper seconded, and the vote failed to pass with Councilors Hedenskog and Pieper voting "Aye," and Mayor Anderson, Councilor Kitchen and Councilor Gordon voting "No."

During the preceding discussion, Director Morris requested further clarification as to the criteria to be used in drafting language for an ordinance. Councilor Hedenskog generally stated that the parcel did not have to be remote but should be secluded; the same 14 day time limit provided in the code would apply; there needed to be some paving or a hard surface; a lot size of one acre would be acceptable; the number of RVs could be restricted to two; and there should be no impact on the neighborhood. City Manager Milliman pointed out that there were other

development standards that would also need to be discussed, since whatever was determined to apply for this parcel would have to apply to all other parcels of this type. Mayor Anderson expressed concern regarding sanitary facilities on the property where no dwelling unit exists. Councilor Pieper stated that you could pitch a tent in the forest for 14 days, to which Mayor Anderson pointed out that this is not the forest, but rather inside the City limits, and sanitary facilities needed to be addressed for health reasons. Director Morris pointed out that this particular property is not a single parcel, but may be three or even four parcels comprising a total of approximately 2.4 acres.

Councilor Kitchen moved to adopt or uphold the staff's interpretation of BMC [Brookings Municipal Code] 8.15.087, Councilor Gordon seconded, and the vote passed, 4 to 1, with Mayor Anderson, and Councilors Gordon, Kitchen and Pieper voting "Aye," and Councilor Hedenskog voting "No."

City Manager Milliman reviewed the project to install pedestrian signs at six City locations.

Councilor Gordon moved, a second followed and Council voted unanimously to authorize the Public Works Department to proceed with the project to install [signs] at six locations as outlined in the staff report.

City Manager Milliman reviewed the staff report regarding the Tower Lease Site Management Service agreement with Day Wireless.

Councilor Kitchen moved, Councilor Pieper seconded, and Council voted unanimously to authorize the City Manager to execute agreement with Day Wireless for tower lease marketing and management services.

Consent Calendar

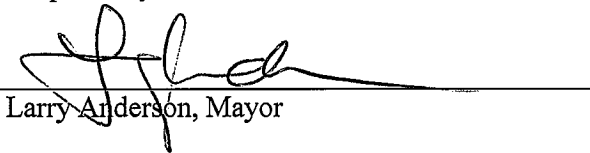
Approval of Council Minutes for June 29 and July 13, 2009.

Councilor Hedenskog moved, Councilor Gordon seconded, and Council voted unanimously to approve the Consent Calendar as written.

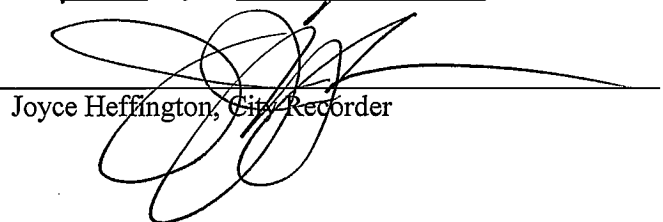
Adjournment

Councilor Kitchen moved, a second followed and Council voted unanimously by voice vote to adjourn at 8:57pm.

Respectfully submitted:


Larry Anderson, Mayor

ATTESTED:
this 11th day of August 2009:


Joyce Heffington, City Recorder