

APRIL 11, 2018

PUBLIC HEARING TO CONSIDER AMENDMENTS TO BEACHES AND DUNES OVERLAY DISTRICT STANDARDS

The public hearing was called to order at 7:10 pm by Mayor Matt Brown. Present were Councilor Cockrum, Councilor Jesse, Councilor Lorain, Councilor Smith, Mayor Brown, City Attorney Peter Watts, City Administrator Chad Sweet, City Planner Carole Connell, Fire Chief Bill Eddy.

Mayor Brown opened the public hearing to consider file #17-005ZTA Article 3 Section 3.1240 (D) Beaches and Dunes Overlay District Standards to allow for removal of noxious weeds and a safety buffer along the Neacoxie Blvd right-of-way and fire road.

Watts presented the legal matters noting the criteria that must be addressed in the hearing are located in the Gearhart Zoning Ordinance Article 11.040 Amendment Criteria.

Watts asked if any member of the audience wished to challenge the jurisdiction of the City Council to hear the matter? Peter Hoffman expressed concerns because the public does not know what the ordinance says. Sweet said in accordance with the legal notice the ordinance was available at city hall, posted on the city website and blog.

STAFF PRESENTATION

Sweet presented the background of conversations that brought the subject of dune vegetation into the proposed ordinance amendments. Stating through research it was determined removal of noxious weeds was illegal, people were concerned with the growth of the trees for various safety reasons, others enjoyed the nature that comes with mature trees. The code is years old and does not reflect the current condition of the dunes, parts of the ordinance are inconsistent and unenforceable with regards to determining and enforcing the 50% limitation of trimming, resulting in development of simple code amendments. The initial amendments spurred lots of public involvement generating a town hall meeting with various experts, a Beach Dune Vegetation Committee was activated that met for many months coming up with the 4 recommendations which are the basis of the proposed amendments, council has had work sessions on the recommendations and made changes. The proposals are a culmination of 17 months work for an ordinance that the community can agree on. Sweet stressed the amendments are to clarify existing ambiguous language making the ordinance more understandable for citizens and more enforceable for staff. Sweet stressed it is not a dune management plan. The changes

are only related to the Beaches and Dunes Overlay Zone in some cases making it more permissive to remove noxious vegetation. State guidelines were used in the development of the changes.

Watts noted ambiguities in the current code the writer using different terms making it possible to make different interpretations and difficult for the city administrator to administer the code. The proposed amendments goal is to add certainty and clarity for the homeowner as well as administration.

Connell explained the perimeter of the Beaches and Dunes Zone running from the thin blue line on the map west to the high-water line and from north of Highlands to south of South Ocean Avenue. Amendments to the code are based on the Comprehensive Plan and public need. Connell stressed it is not a dune management plan, a wildlife habitat conservation plan or a coastal environmental protection plan. There was a lot of science involved in the process to develop the amendments. Connell reviewed each goal as it relates to the Beaches and Dunes Zone.

Sweet reviewed the recommendations and resulting code amendments.

PUBLIC TESTIMONY

The following correspondences were entered into the record:

Thad Clark, P O Box 2132, Gearhart, OR 97138 – member of vegetation committee – city needs to spend more time on *tree topping & tree pruning*, tree topping should not be allowed it seriously injures and kills trees and does not work, alternate to topping for view should be *windowing or crown raising*. Urged using National Accepted Standards and Recommendations for tree cutting to promote beautiful parkland, second trimming & pruning should not be done before previous prune has grown back. Clark submitted supporting documents from experts for tree care.

Nancy Clark, P O Box 2132, Gearhart, OR 97138 – the concept of view is a community value, *protecting views* verbiage needs to be deleted from the ordinance text, dune areas should be in a master park plan, Gearhart is a diverse community with different needs. Clark attached her previous letters of October 25, 2017, May 3, 2017 and November 6, 2016.

Sharon Kloefer, P O Box 2512, Gearhart, OR 97138 – BAD Zone vegetation plan must make protecting the Necanicum estuary a priority, fire safety ‘building structure’ should be carefully detailed in any ordinance, urges a cautious plan for Scotch Broom removal. Kloefer submitted supporting documents.

John Green, P O Box 2597, Gearhart, OR 97138 – in support of the proposed ordinance, best practices should limit timing of activity in the zone, prohibit the use of pesticides and require removal of cut vegetation for fire suppression.

John Green, P O Box 2597, Gearhart, OR 97138 – North American birds have declined in numbers of 30% since 1966 due to habitat loss. He submitted a matrix of birds observed in the BAD zone.

Margaret Green, P O Box 2597, Gearhart, OR 97138 –thanked the council for enabling a full public process, encouraged the reduction of tree trimming and topping to 20%, dune and beach grass should have been addressed she advocates once yearly mowing to 12 inches from August 1 to March 1.

Richard & Margaret Marino, P O Box 2353, Gearhart, OR 97138 – asks the city to 1) review the proposed code with public and private experts from the Town Hall meeting 2) seek input from homeowners along Gearhart oceanfront on the code changes.

Melyssa Graeper, Necanicum Watershed Council, P O Box 474, Seaside, OR 97138 – provided documents on what to include in wildlife habitat conservation and management program.

Melyssa Graeper, Necanicum Watershed Council, P O Box 474, Seaside, OR 97138 – submitted questions on the proposed new text amendments, she is concerned none of the state or federal agencies have been consulted since the process began, guidelines for vegetation removal should be vetted before the code is adopted, was evidence from professionals in the field of wildlife habitat included in Dune Vegetation Committee recommendations, the reference wildlife habitat guidelines should be provided before the text amendments are approved.

Bill Berg, P O Box 2054, Gearhart, OR 97138 – the proposed ordinance has nothing to do with conserving the coastal environment but the enhancement of ocean view for a few, staff findings are often irrelevant and contradictory to the ordinance planner should be asked to redraw the findings, dune committee did not recommend an enhanced fire road, there should be enhanced tree planting in the dune for coastal tsunami protection.

Steward Schultz, 140 NW 20th Ave, Rockaway Beach, OR – recommends FINDINGS page four remove language “unsafe emergency access” not a recommendation of the dune committee, page five remove language “enhance native species growth” contradicted DAC recommendation, page six remove language “fire access vegetation removal” contradicted DAC recommendation, page six remove language “scenic view qualities” not referenced in economy and energy policy , page 6-7 finding

contradicts findings on Economy, page 7 findings related to fire 'road' widening should be eliminated not recommended by DAC, page 8 goal not met, page 9 eliminate language "emergency access road" no road would allow ambulance travel, "Fire road" should be replaced with "hiking trail" page 9 remove language "scenic ocean views" not recommended by DAC , page 9 and 10 fire hazard text should be removed language unnecessary and unsupported, RECOMMENDATIONS page 4 tree topping not recommended by DAC. Schultz submitted supporting documentation.

Lisa Cerveny & David Russell, P O Box 2368, Gearhart, OR 97138 – when referring to noxious weed removal wording should be changed from *permitted* to *required*, the trunk diameter for tree removal should be increased to eight inches, their concern is for safety and fire for citizens. She submitted her letter of May 1, 2017.

Bonnie & Jack Delaney, P O box 2187, Gearhart, OR 97138 – (April 10, 2018 Jack Delaney) citizen committee did not represent adequate number of stakeholders, only one group member had any scientific credentials, public input between May 6, 2017 and April 4, 2018 is nonexistent, language for tree maintenance and removal is inadequate for 'scenic ocean view' with thinning the most efficient method of fuel reducing fuel load, concerns were expressed for wildlife habitat with no attempt to assess creatures that live in the dunes, question of changes in the dunes and impact on the elk herd were not addressed, there are inconsistencies between the city code and zoning ordinance in *permitting* nuisances vegetation removal vs *requiring* removal, he expressed concern as to how the new code will be fairly and realistically administered. (April 11, 2018 Bonnie Delaney) what is the purpose of redefining a tree 6" vs 12" at 4.5 feet?, language for the new code is still unclear and ambiguous, prohibiting all tree removal will not enhance fire safety, questioned whether councilors walked the dunes prior to preceding with the code development, she is concerned difficulty and cost of implementation will result in "no action" towards protection of open space and natural resources.

Tom & Alix Goodman and Laura Meier, 1910 SW Montgomery Dr. Portland, OR 97201 – supports efforts to improve dune management by controlling the spread of invasive plants.

Liz Kingery Warren, 2373 SW Madison St, Portland, OR 97205 – she is in support of restoring the dunes, trimming, thinning, removing some of the trees and waging war on noxious weeds. She has observed several fires in her vicinity and experienced presence of transients in the trees she is concerned for her safety and would like to see safe and accessible access to the ocean and preserve views.

Kathy Gatto, 5512 SW Dover Ct., Portland, OR 97225 – she has paid to have large trees removed off 6th street and pulled up thousands of small trees between 5th & 7th and could use help working in the dunes south of 5th.

Augie Gatto, 5512 SW Dover Ct., Portland, OR 97225 – he would hate to see Gearhart dune become a ‘briar patch’, blackberries have a hold in the dune - it is a disaster for the dunes.

Jim Furnish, P O Box 2013, Gearhart, OR 97138 – it is unrealistic to consider fire equipment can drive across the estuary. He submitted a copy of previously submitted letter from Stewart Schultz April 10, 2018.

Jeff Miller, 834 SW St Clair, Portland, OR 97205 – detractions from Gearhart’s connection to the shoreline would have a negative impact, the proposal to manage view impairing vegetation is inadequate, trees in the dune can grow to be from 50ft to 200ft blocking visual access to the ocean for both residents and visitors, a more comprehensive approach to management should be considered.

Susan Taylor, 27 Willow Street, Newport, RI 02840 – she has concerns about proposed controls on vegetation and the permitting process.

Anna Levin for Hayes family, 30 W 60th St #2A, New York, NY 10023 – submitted family letter of September 2017 – encourages dune restoration to more open grassland and the return of native wildflowers, grassland policy would be better for native species, public safety and views, the proposed ordinance goes too far in protection trees.

John Kingery, P O Box 5309, Bend, OR 97808 – surf pines and scotch broom were introduced to prevent dune erosion the dunes have expanded to the west consequences being wild growth of non-native pine forest and invasive scotch broom presenting fire and wildlife safety issues, asked a plan be created that would restore Gearhart dunes to their original conditions. Kingery submitted a photo of Gearhart Dunes from 1971.

Karyl Fox and Clark Cumpston, 7236 SE 133rd Pl., Portland, OR 97236 - encourages commission extend testimony into May or June allowing time for more Surfside and Highlands stakeholders to be present.

Mary Murphy, 1841 SW Montgomery Dr., Portland, OR 97201 – there is abundant scotch broom, blackberries and shore pines to the west, north and south of her property that will fuel fires and

threatened homes, the dense forest is populated by the elk, she is concerned for human safety if encountering the herd.

Ella & Truman Seely, 1020 Fairway Drive, Aberdeen, WA 98520 – submitted correspondence previously submitted July 17, 2017, October 29, 2016, July 20, 2017.

Susan Schnitzer, 345 NW Hilltop Rd, Portland, OR 97210 – maintenance plan should be updated to consider dunes changing landscape, overgrowth is a serious fire hazard, removing or thinning of pines will allow for keeping walking paths safe, scotch broom is a health hazard regular maintenance is a health exercise.

Richard Piacentini, 2001 Sixth Ave #2300, Seattle, WA 98121 – strongly opposed to any action that increases the amount of woody vegetation in the dunes, vegetation in the area was beach grass until about 20 years ago, dunes are continuing to increase in size, scotch broom is non-native and classed a noxious, invasive species by the State of Oregon which recommends removal, any policy limiting removal of woody vegetation can cause a monster fire when fueled by trees, woody vegetation in dunes decreases light making it unsafe, allowing vegetation to grow blocks public and private views, woody vegetation in the dunes provides minimal benefit and increases hazards such as fire, safety and possible liability for the city in the event of an incident. He urges the council not to take any action that maintains or increases woody vegetation in the dune area by limiting removal or trimming, requiring arborists to maintain vegetation or requiring replanting of woody vegetation, dunes should be allowed to return to native state of beach grass without trees.

Margaret Green, P O Box 2597, Gearhart, OR 97138 – original purpose of planting grasses in dunes was to protect human-made structures tinkering could change landscape back to one we regret.

TESTIMONY WAS OPEN TO OPPONENTS:

Bill Corti, 3963 SE Lake Rd., Milwaukie, OR 97222 –member of the dunes committee, opposed to everything that was submitted. (Submitted photographs of the area from 1989) Trees only seeded in the 1990s until the last 5 years there were no elk in the area, there is an elk problem, 3 weeks ago 70 elk in the yard, trees are bring elk into the area trees need to be removed, fire buffer zone should be 100 feet from property line, tree cutting should remain 12" at 4 ½ feet, he is concerned about fire load, currently trees abutting his property and Little Beach area are already too large to cut, reported police chief can no longer take his car along the edge of Little Beach.

Eric Johnson, P O Box 2268, Gearhart, OR 97138 – highlands homeowner/ board member, highlands has a view covenant with right to view ocean protected, would like to see change to vertical pruning so to maintain ocean views per covenants. (Submitted a copy of Highlands’s covenants.)

Peter Hoffman, 1132 SW 19th Ave, Portland, OR 97205 – would like the trail to the beach made accessible, public use of fire trail has destroyed all of the wildlife, all trees should be cut.

TESTIMONY WAS OPEN TO PROPONENTS:

Eric Halperin, P O Box 2864, Gearhart, OR 97138 – read letters into the record previously submitted from John Green, P O Box 2597, Gearhart, OR 97138.

TESTIMONY WAS OPEN TO NEUTRAL/MIXED:

Bebe Michel, P O Box 2864, Gearhart, OR 97138 – read letter into the record previously submitted by Margaret Green, P O Box 2597, Gearhart, OR 97138.

Thad Clark, P O Box 2132, Gearhart, OR 97138 – read letter into the record previously submitted.

Bebe Michel, P O Box 2864, Gearhart, OR 97138 – trek through the dunes provides views of grasses; birds and animals and ordinance development should consider the environment we have.

Bill Berg, P O Box 2054, Gearhart, OR 97138 – Berg quoted portions of his previously submitted letter.

Brown clarified with the planner the scope of the findings in the staff report noting findings were initiated in the report to the Planning Commission and encompassed broad explanation of the criteria.

Sharon Kloepfer, P O Box 2512, Gearhart, OR 97138 – reviewed points in her previously submitted letter; estuary protection, fire safety and best practices for scotch broom removal, referenced comments from Stewart Schultz, expressed concerns in the findings with emergency access, fire access, vegetation removal and fire road references and an attempt to go back to 2 sixty foot fire roads, and dune trees provide wave protection in case of tsunami.

Craig Weston, P O Box 2838, Gearhart, OR 97138 – expressed concerns for fire issues as a fireman he has put out many fires on the dunes, 1995 there were 5 dune fires in one day, pine trees are a weed with shallow roots system, he is concerned safety committee should have consulted Chief Eddy as to what should be done to protect citizens, he is concerned for safety people have camped in the dunes.

Eric Halperin, P O Box 2864, Gearhart, OR 97138 – supports Thad Clark’s comments on thinning and topping trees and also referenced Stewart Schultz, science is clear tree topping should not be allowed and trimming should be done as recommended by the International Society of Arboriculture, by this method city will meet goal of maintain scenic views and not compromise wildlife habitat and vegetation.

Jeff Gage, 3080 Westview Circle, Lake Oswego, OR 97034 – lives in Highlands, houses in highlands are built right at the building line, property has been managed through tree topping for 30 years no tree has ever died, Highlands has a strict covenant and high priority for view protection which has been maintained by tree toping and continual maintenance for quarter century resulting in no dead trees.

Public testimony was closed at 8:45pm.

QUESTIONS FOR STAFF

Cockrum asked for clarification in Recommendation No. 4, references to Section 6.195.5C should be Section 6.195.6C.

Per staff Cockrum is correct, numbering difference occurs with the addition of a new *Applicability* section.

Brown asked for clarification regarding the 1’ tree limitation and the relationship to the BAD Zone, regular tree ordinance vs BAD zone regulations.

Watts said the general rule is the city wide standard; Section 6.195 is general rules for tree removal and preservation. Watts said the council decision is to decide if the general rules should apply to the BAD zone or they want a heightened standard to apply because of the characteristics of the zone.

Lorain clarified regulations made in the BAD zone supersedes the general tree regulations but does not affect the rest of the city also asked the connection with Section 6.195 (6) (c) page 6 language removal.

Watts noted the new *Applicability* section notices people of the differing rules in the BAD Overlay zone and the need to take an additional step. Section 6.195 (6) (c) further clarifies the ambiguous language in the ordinance. Watts stated the council has the options of adopting any or all of the amendments as presented, amend the proposed amendments, take no action, or interpret the existing code to allow the administrator clarification in administering the code.

Smith asked about interpreting the code with regards to a LUBA challenge.

Watts stated in a LUBA challenge the standards are high and the challenge would need to prove the interpretation wrong.

Jesse had questions for Chief Eddy – per public testimony he asked if the risk of fire in the dune was not as great as in a stand of trees elsewhere in Gearhart.

Eddy said the fire risk in the dunes is much greater than within the city limits because of the amount of fuel in the dune and the type of trees.

Jesse asked if other fire chiefs in the area would have a similar opinion.

Eddy yes. Seaside is trying to deal with overgrowth at the south end of their beach that has turned into trying to control what they have now.

Jesse asked if the proposed 100 feet clearance from a structure is a good number.

Eddy said there is new science every day, testimony presented was from 30 year old science, and climate change has come into play, fire wise talks about 100-200 feet in that area as the defensible space before fire gets to a house.

Jesse asked if the fire road was important to maintain or improve.

Eddy said definitely. He referenced a letter from Neal Bond; ODF district fire forester from Clatsop County stated at least a 14' road with a 20' clearance area per code, a 14' road with 3' clearance on each side for the 20'.

Cockrum to Chief Eddy asked about multiple ways of egress when fighting fires in the dunes.

Eddy due to recent dune change you cannot get a fire apparatus from the dunes to the beach, there is some egress north of Pacific Way, when in dune grass (lighter fuels) it is easier to create a safety barrier than in trees and brush, small walking trails are fire breaks.

Smith to Chief Eddy asked if the 20' statement for a fire road from Mr. Bond was a comfortable statement.

Eddy yes. It depends on the trees, once a complete forest is created you are driving through a tunnel and there is no way to escape.

Cockrum to Watts asked about writing policy for interpretation if there is a level when writing a new policy becomes writing an ordinance.

Watts noted the purpose is to give residence clear understanding of what they could do with a permit and to insulate staff from liability. Council has the options to adopt any or all of the amendments as presented, amend the proposed amendments, take no action, or interpret the existing code.

Lorain understands the fire road is important; the process has been to get something quickly to clean up the language in the code, can the council make an amendment to address the fire road. She also feels contrary to testimony the council has been as transparent as possible in the process.

Brown said the road is extremely important and could be put on a future agenda. He further affirmed the process was slowed down in part to allow the public to be part of the process and see for themselves there was no conspiracy theory. He further stated the public has a responsibility to fact check and not to stop a process with unfounded comments.

Eddy said he has no clue where reported comments that he wanted 2 fire roads came from; he is trying to protect the one road to protect life and property.

Cockrum asked where the fire road was in relation to Neacoxie.

Eddy said the fire road does not follow Neacoxie, portions of private properties between Pacific Way and G Street that own to the high water line have allowed the fire road to cross. The department drives the road 2 to 4 times a year to know the road.

The public hearing was closed at 9:35pm.

On **MOTION** by Jesse, 2nd by Smith, clarify existing ordinance to allow 1) noxious weeds defined by the state list of noxious weeds are not considered to be vegetation in interpreting the existing code, 2) the dune grass may be mowed once a year to 50% of overall height as long as it is not during nesting season and they have the approval of the land owner, 3) at the cities discretion the existing fire road may be maintained to a 20' width.

On **MOTION** by Cockrum, 2nd by Lorain, **AMEND** motion to include "On private land motorized mowers, brush hogs, and other similar motorized equipment are permitted within the BAD Overlay District lying within 100 feet of the building edge of any house, garage, or attached decking." Motion failed 4-1.

Lorain – nay, Jesse – nay, Smith – nay, Cockrum – aye, Brown – nay

Original **MOTION** failed 4-1. Lorain – nay, Jesse – aye, Smith – nay, Cockrum – nay, Brown – nay.

On **MOTION** by Brown, 2nd by Cockrum, adopt all recommendations from staff except for Recommendation 3 (3), and have a work session in May to create an interpretation or policy of the existing language in the ordinance in reference to trees, also delete from the findings paragraph 4 page 7 Public Facilities and Services.

On **MOTION** by Smith, 2nd by Cockrum, **AMEND** the motion to include removal of Section 6.195 (6) C. Motion unanimously failed.

Original **MOTION** failed 4-1. Lorain – nay, Jesse – nay, Smith – nay, Cockrum – aye, Brown – nay

On **MOTION** by Lorain, 2nd by Brown, except exhibit A, deleting Section 6.195(5) C, and delete paragraph 4 Public Facilities and Services page 7 of the findings.

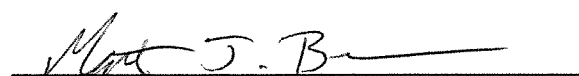
On **MOTION** by Smith, (**NO SECOND**) **AMEND** the motion with regards to trees Recommendation 3 (3) paragraph 2 to read “Each Such property owner is also permitted to prune and trim any tree located on the property owner’s own property which has a diameter exceeding six inches, measured at a height of four and one-half feet above ground level, but any such pruning or trimming of such larger trees shall be limited to allow 30% trimming or thinning of spruce and other varieties but no vertical trimming. Also to allow a one-time 25% vertical trimming of shore pines and 30% trimming and thinning, trees over 6 inches in diameter may only be trimmed, or thinned once per calendar year. Vertical trimming is defined as cutting the main trunk near the top to reduce the height of a tree. “

MOTION by Lorain, 2nd by Jesse, to call for a question. Motion unanimously approved.


Original **MOTION** passed 4-1. Lorain – aye, Jesse – nay, Smith – aye, Cockrum – aye, Brown – aye.

On **MOTION** by Smith, 2nd by Lorain, staff was directed to draft an ordinance based on recommendations. Motion unanimously approved.

On **MOTION** by Jesse, 2nd by Lorain, the meeting was adjourned at 10:50pm.



Mayor Matt J. Brown



Chad Sweet, City Administrator