

**CITY COUNCIL CHAMBERS, CITY HALL
 29592 ELLENSBURG AVE
 GOLD BEACH OR 97444
 MONDAY, DECEMBER 15, 2008
 REGULAR MEETING: 6:30 P.M.**

CALLED TO ORDER BY MAYOR POPOFF AT 6:30 P.M.:

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
Mayor Karl Popoff	X	
Council Position #1 Sue Johnson	X	
Council Position #2		
Council Position #3 Peter Peterson	X	
Council Position #4		
Council Position #5 David Alexander	X	
City Administrator Don Flynn	X	

****NOTE:** If anyone wishes to address this Governing Body, please present a completed "Business from the Audience" request to the Mayor at this time. Your request will be added under the CITIZEN COMMENTS section of our agenda. Comments and participation from the audience shall be limited to 5 minutes without redundancy.

SPECIAL ORDERS OF BUSINESS:

Swearing in of new Mayor and Councilors by Mayor Popoff. (A)

Popoff thanked everyone for attending this important occasion. The last 8 years and 1 month serving as Mayor has been a distinct honor and privilege. The people of this city entrusted me with that honor and responsibility is indeed something that I am proud of and I want to thank everyone. Popoff also thanked the Council for the work they have accomplished. Johnson has been with me since day one and has always ensured that I stayed on the straight and narrow at times if I got off a little bit. I also want to thank Walker, who has saved my bacon more than once. I'm glad she was there for me. The time has gone by very quickly but I am pleased and happy to be able to do this tonight.

Popoff performed the "swearing in ceremony" and turned the gavel over to Wernicke, the new Mayor.

The new Mayor (Wernicke) and Councilors (Brennan and Truesdell) will conduct the remainder of the meeting.

The new Mayor and Councilors congratulated Popoff on the job he has done as Mayor for the past 8 years.

REQUEST FROM CHIEF MERKLEY TO APPLY FOR ODOT GRANT (B)

(Request to add to the agenda)

Johnson moved to add this item to the agenda, second by Peterson. Johnson, Brennan, Peterson, Brennan and Alexander voted "AYE". VOTE 5 AYES

Johnson moved to approve Chief Merkley's application for an ODOT grant up to \$3,600 for radar units, there is no city match required, second by Peterson.

Truesdell asked if there was any deadline on applying for the grant and would the grant be signed by the city administrator (yes).

Merkley replied no immediate deadline and the \$3,600 was the approximate amount for the radar units.

Johnson, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

CONSENT CALENDAR: (C)

Approval of Council Minutes of 11/17/08.

Review of bills paid in the amount of \$142,729.60.

MOTION-> Alexander moved to approve the Consent Calendar as presented, second by Johnson:

Peterson requested that item 6049, payment to vendor C0150 to be set aside for a special session. (Wernicke-Executive Session? (YES) Payment made to Chanti & Middleton, PC.

Discussion followed regarding pulling the whole review of the bills off the consent calendar or just the one item.

Alexander-this is simply a review of the bills, the spending authority is crafted in the budget itself. This wouldn't be a matter of removing something for approval, it is simply acknowledging that we, as a council, have reviewed these. Therefore to remove this particular line item for review doesn't make a whole lot of sense to me.

Wernicke-What if we approve the entire consent calendar and set an executive session to discuss the issue?

Alexander-Yes that would make more sense.

Johnson-Executive sessions are for very specific issues. I don't know of any executive session statute that lets you have an executive session over the consideration of a bill.

Further discussion followed regarding regular session vs. executive session:

CONSENT CALENDAR VOTE: Johnson, Brennan, Peterson, and Alexander moved to approve the consent calendar, Truesdell abstained because he wasn't a councilor at the last meeting.
VOTE 4 AYES 1 ABSTAIN

MOTION: Alexander moved to have the Council call an executive session, Wednesday, December 17, 2008 at 9:00 A.M. (To discuss Chianti's payment and the budget line item)

Johnson asked about changing it to "a meeting" instead of limiting it to an executive session, then we can have it under executive session, if possible.

Wernicke-Since the item we are discussing contains most likely confidential matters as well as attorney client matters, I believe it is almost necessary to have an executive session considering the subject matter.

Alexander's motion was seconded by Peterson, all present voted "AYE". Johnson, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

Wernicke-Rather than have citizen comments at prior to the discussion of agenda items, we thought it would be more appropriate to have citizen comments occurred at the time the item is being discussed. Even though it goes to a motion and a second, we will have people from the audience give their views prior to the vote.

CITIZEN AND/OR AGENCY REQUESTED AGENDA ITEMS:

PLANNING ISSUES - MAP 37-15-01AC TAX LOT 700 (D)

David Pratt, Planning Director presented a re-cap of the current situation.

The issue before you is really the conservation line and where it really is. Right now, the conservation line is a line that is drawn on the zoning map. It's not defined by a legal "meets and bounds" description. It is not a surveyed line. What we are asking is to go back and refer this matter of where this line actually is to the planning commission for further consideration.

There were 2 geological studies that were completed in 2003 and 2006, with specific recommendations as to where the

conservation line should really be. The recommendations were actually further to the west than where it is presently located. Keep in mind, this is the issue and it keeps coming up from time to time. What is before you is a code enforcement based on a complaint that was lodged by a property owner in Gold Beach. It involves Pacific Reef Motel and the Gold Beach Inn property and the managers of those two facilities.

The first code enforcement letter went out October 1, 2008, followed by a second letter on October 28th, requesting additional information and a survey to be taken of the property. It involved a "deck" that is supposed to go into the conservation line on the west side of the line. A conservation line is a line that doesn't really prohibit development of occurring. The vegetation line, which is further to the west, is a surveyed line and it is a line where development is not to go beyond into - encroach into the dunes and into the beach area.

Between the conservation line and the vegetation line is an area that you can put certain uses, the underlines on this case it is has to be a commercial zone but you have to go through a conditional use process (CUP) which requires a public hearing before the planning commission in order to establish that use. The deck is at issue here. The deck is located on the Gold Beach Inn property. When the plans were submitted to the building department, it indicated that the deck was actually located 40 feet to east of the conservation line, as far as we could determine.

Wernicke-If the conservation line hasn't been surveyed, how do you know it is 40 feet to the east?

Pratt-This is our best guess-that the deck is to the east of the conservation line (inland). Going to the west, if you cross the conservation line, then it is in the conservation zone and subject to a CUP. We don't know if the deck is entirely within it, halfway in it, or just 4 feet. That is what makes it difficult to determine if there is a violation occurring.

Establishing a proper line with meets and bounds would require a public hearing process and re-examining and re-defining where that boundary is. It could be based on the vegetation line, which is a surveyed line, we could say "ok, the conservation line is going to be 50 feet from there, then we

have a boundary in which to work from. This recommendation requires a legislative change to the Gold Beach Zoning Ordinance.

Brennan-Questioned why the 2006 Terra Firma report recommended moving the line to the east of the 2003 line.

Fritts-The 2003 report that the planning commission made their recommendation on- and they did review both reports - the planning commission's recommendation to the city council was to move the line-there was a line defined on there and it was further west than were the original line is. This recommendation was made AFTER reviewing both of the reports (2003 & 2006) was to go with the line that was on the 2003 report. The basis of this is we are confusing the issue with the conservation line.

What is before you tonight is - we are referring this to you per the zoning ordinance - do you want to take action on the alleged violation-yes or no. Reexamining the conservation line is one way to do that or you can direct staff to enforce it.

We're not going to decide the conservation zone tonight. That is one of the ways this alleged violation could be resolved. At that time we can have a public hearing and discuss where it's at and what the city council would like to do. That line can't be changed without a legislative change. What we need to know tonight, from the city council is "how do you want us to proceed on this alleged violation"?

In response to questions by the council:

Fritts - We have a line that is scaled off a map currently. There is a conservation line that exists on the city's zoning map but it is ambiguous. The city has been taken to LUBA over this same situation and that would be one way to resolve it-that is why we had the original hearings back in January on this. Contrary to what has been said on several occasions, this has not been put forth by developers. This study was conducted in 2003 from grant funds from the State of Oregon because we had been taken to LUBA over this. The line is ambiguous and the state wanted to assist the city in defining that line better. It has nothing to do with allowing developers to have more of our beach land. The state wanted to help us have a better line. At this point we still have

the scaled line. Again, we need to know how you want us to proceed with this alleged violation.

WERNICKE-> David Pratt recommends that the City Council consider the following choices and make their decision this evening if possible.

Reconsider redefining the Conservation zoning boundary line; refer the matter to the Planning Commission for a public hearing and recommendation; and suspend code enforcement against the owners of the subject property (Curry County Tax Map 37-15-01AC Tax Lot 700) until the City Council either adopts or decides to retain the existing Conservation zoning boundary.

OR

Direct staff to enforce the zoning code by requiring The owners of the subject property to either:

- a. Remove the deck; OR
- b. Apply for a conditional use permit under the Provisions of (GB Zoning ORD) GBZO Section 2:720.

Wernicke asked for a better explanation of what option one would entail.

Fritts-Suspend the enforcement proceedings at this point and say "OK, we're going to suspend the alleged deck violation at this point, send it back to the planning commission, have the planning commission hold new public hearings on this. And the planning commission would make a recommendation to you. You would also have a public hearing. I would hope that we would come up with a definite line. This issue is going to keep coming up-not just with this property owner but any property owner between the fairgrounds and Sebastian Shores-that's the private ownership of the beach front property. We really need a definitive line instead of this poorly scaled line on our map. Whether that shows the deck is in violation or not in violation, at least we will have a line that we can say "ok, there it is". (That would be choice # 1)

Further discussion (questions & answers) followed.

When someone submits a building permit, they are required to submit a site plan indicating where they are going to be placing whatever it is they are applying for permit on. When they applied for the permit, the deck was, by our observation, based on our scaled map, within the commercial zone. But it has been alleged that "no it isn't", that it is actually

further out. The planning department has not been on the property, so we can't verify whether the deck is in the location that the site plan says it is. The neighbor alleges that it is built further out and based on the neighbors assertion, it does not match with the site plan that was submitted and that is how they obtain their building permit. The building permit isn't the issue. The validity of their building permit is not the issue. It was inspected properly, they got all the inspections they needed. The "rub" that we're having is "was the deck placed in the location that was shown on the map they submitted to obtain a building permit". The applicant submitted the map. The placement of the other structures on the property scale off on to the map correctly. We have aerial photographs and where the other buildings are located on the property match the scaling. So if you scale off where those locations are, which were correct, the deck should be about, by our estimation, about 70 feet east of where it currently is. And if it were, then it would be in the commercial zone and we wouldn't be here. Because we have not been on the property, we can't say for sure whether it is or it is not. It has been alleged that it is further west.

Truesdell-Normally, in the building process, one of the earliest inspections ever done is usually a siting inspection, an inspection to verify from known corners, marks, parameters, existing buildings-wasn't this done by the building department?

Fritts-We don't require site inspections. When the building inspectors go out, they don't inspect for a zone line, they inspect for "is it far enough away from existing building next door, does it meet "separation".

Wernicke-We're one person shy on the planning commission-would this be presented now or would it wait until we have a 5-member commission again.

Fritts-This is a big issue, my advice would be to wait until we have 5 members again. The deck has been there for 4 years, there isn't any hurry on our part.

The Land Use Board of Appeals told us in 2002 that the conservation line is ambiguous. It continues to be ambiguous and will continue to be ambiguous until we come up with a survey line. Just for the record-I'm your staff-it doesn't matter to me if the line is east or west, I just want a line that we can hang our hat on.

Wernicke-It strikes me as pretty important if we've got a line that we're guessing on things-that isn't the way to conduct business. (Fritts agreed)

Brennan-So your intent to reconsider this line is to actually survey it and come up with a definitive line rather than the way it has been for the last 4 years?

Fritts-That's what we would like to see. The conservation line has been there since the current zoning map was adopted in approximately 1992. I believe siting the deck in a different location that was submitted on the map was probably an honest mistake. They probably wanted to keep the trees and decided to build the deck beyond the trees. I don't know this for a fact but I don't think they intentionally misrepresented the location of the deck.

Alexander-I agree. Looking at the documentation, I don't see any indication of an intent to deceive. (Fritts agreed-there was no intent to deceive) I see a major problem that we don't have a comprehensive definition for what we're doing. Not having a definite conservation line is the crux of the problem.

MOTION:-> Johnson moved to reconsider redefining the conservation zoning boundary line; refer the matter to the Planning Commission for a public hearing and recommendation; and suspend code enforcement against the owners of the subject property (Curry County Tax Map 37-15-01AC Tax Lot 700 until the City Council either adopts or decides to retain the existing conservation zoning boundary, second by Brennan.

Peterson-I agree with the motion but I think we need to exempt any present buildings that are there now.

Alexander-We could include that under our "reconsideration".

Truesdell-When things are submitted to the building department-I'm sorry the building department does not check siting. In my 20-year experience, that's with being a building contractor, that is a normal part of the process. But if all improvements were done per plans and specs that were submitted to the building department then I would certainly agree with that. If they were done outside of plans and specs, if they were done differently, whether it was

intentional or not, then I would not agree that that should be a grand fathered issue - but that's down the road.

AUDIENCE:

John Harper-120 N Chantrell, Gold Beach. Welcomed "new guys and old guys". Double Jeopardy for permit purchasing citizens and city and/or county liability. I'm the contractor that submitted those plans to the county. I was instructed by Mr. and Mrs. Don Swan to be as fastidious as possible to make sure every "t" was crossed and every "I" was dotted and I did my best to do that. Mr. Harper gave a recap of all the different processes he went through. I was never told by any government official in planning or building department anything about this beach conservation setback line. I know two people in this process that are totally innocent-Don and Cindy Swan and myself.

Jim Gardner-CONSERVATION ZONE-Gold Beach Property Owner and Attorney. I am not a citizen in the City of Gold Beach. I represent Pacific Reef Resort. I was also the city attorney when these first plannings were done back in the nineteen seventies. At the time the conservation zone was adopted, the city did not have the money to survey this line-that was one of the problems and has been a problem every since. Every square inch of ocean front property is valuable. Planning has stated the line continues to be ambiguous. We're asking you to follow the motion and the recommendation to establish this line for the benefit of not only these two property owners but this line should be established all the way from the city shops all the way to the end of the city. That is all private, developable land, much of it has been developed but there are two developments that are fairly recent. Sebastian Shores has developed clear to the ocean and probably to the vegetation line, with the permission of the city.

I would recommend to staff to seriously look at the vegetation line and how close they want to be to that because that is the only surveyed line at this time in that area that can be definitely followed under the Oregon Statutes without doing a new expensive survey. The biggest problem for these property owners is they don't know where they can develop to and their developments are the lifeblood financially under the financial goals of land use planning to this city. If you do not do this, then what is going to happen is these will come up again and again. This arbitrary and capricious line sets this city

in a liability problem because of the fact that you don't define something that is so valuable to planning and building in this city that if there is a problem, i.e. say the Swan deck is out, and it was not appropriately done under the laws, then the city may find themselves, along with the Swans, liable if someone is injured because it's in the conservation zone and nobody wants that. I don't think this matter should end up in court because only the attorneys benefit, not the city or the property owners. That's why we need to define the line.

Jon Younce-General Manger-Pacific Reef Resort-I reside at the resort at 29362 Ellensburg. The Swans indicated they wanted me to come up first and address you. At Pacific Reef Resort, yes, we would like to develop somewhat beyond the present conservation line. In that regard, we made it our business to know about where the line may be. It is certainly true that the line is ambiguous. Rather than do anything, we decided to wait until the line could be clearly defined.

Your planning staff indicated that the city has been taken to LUBA over this issue. I can tell you there is a property just down the beach in front of the former Chives restaurant where DLCD actually had to be called in to look at the situation because of this question of ambiguity. After a lot of studying by a lot of people, LCDC decided that the clearest and best way to put the line was 50 feet of the State of Oregon vegetation line. Why? Because it didn't require much in the way of new survey work. Surveying a line and putting it someplace not in relationship to the vegetation line is going to be expensive. But it needs to be clearly set up. We made it our business to know about where that line might be. But the current problem is it is a line that has been marked on a map on an 800-scale map with particular writing instrument that was chosen to do that, I'm told by our surveyors that literally, the line on the map could be 50-75 feet wide.

The other problem with the current line is arbitrary. Someone decided well the line ought to be about out here somewhere. They didn't base that decision on any science whatsoever. This is another reason why DLCD came to the City of Gold Beach, provided some of the funding to examine this issue, strongly suggested that real life geologist, ecologists, land use planners and such be employed to look at the matter and

make some recommendations. They did. The Swans didn't like those recommendations very much, they got together and urged you not to accept that recommendation. This is where we ended up and I'm telling you that probably the City of Gold Beach will end up there over and over and over again.

Mr. Gardner mentioned economic issues and economic viability of this community are one of the criteria under which land use matters should be considered. We are proposing to build some structures down in that area and beyond the present conservation line that we believe will materially add to the economic viability of this community. We are in the process of putting a guiding company in place that will be inviting people from all over the world to come here and enjoy the really amazing resources that we have here. We are presently remodeling the old Spada's building to help make this happen. However, to accomplish this we need units with 2 and 3 bedrooms so people can come with their families and stay from several days to two or three weeks at a time. I recommend you have the planning commission re-examine this issue as to where the line ought to be and having the line clearly defined. I recommend you relate it to the vegetation line because it will certainly lower any survey costs or things of that nature that the city would have to undertake.

Wernicke-We're getting a little bit beyond the very narrow issue that's before the council right now. Our issue right now is what to do about the conservation line as it currently sits on the ground in a seemingly indecipherable for any practical purposes. That is why we're considering sending it back to have it drawn in a more reasonable and professional way. As for developments to go beyond that that isn't our issue here tonight. I appreciate your concern but I think you should save it for another day.

Fredrick Carlton-Bandon-I'm not trying to stroke your egos but I am heartened how quickly you grasped the technical issues and as the Mayor pointed out, the narrow focus of what the issue is now. One of the reasons we came tonight is because we didn't know what your focus would be and whether or not you were looking toward enforcement. You hit the nail on the head-how do you enforce something if you don't know where the line is? Tonight is not the night that we're going to make an argument as to where the line should be re-defined. I'm reduced down to telling what you already know, which my

clients are reputable people and we're not trying to pull a fast one, nor was the contractor. Without taking more of your time in trying to make a case for something which really isn't a case but in furtherance in preserving their reputation, I would contend that if we got into looking at the maps that were submitted, and each one of you having a ruler and doing a scale, with all due respect to staff, I would disagree with staff's conclusion. I would say that based on the staff's assumption where that line is-based on their measurements as they have described the process which is scaling out, probably our contractor's plans alerted staff to that fact. If you look at Mr. Harper's map, you would not see a conservation line on him. He didn't draw any boundaries but if you took it under our interpretation of how you scale out and put it against the known information I have now, you would have been alerted. I think you see the resolution is where should the line be and how should it be defined and go back to planning. I urge you to approve the motion that is on the floor.

Wernicke-Before you begin, I want the audience to know that most of us have received a phone call from you over the weekend and we have some material in our boxes that was placed in our boxes Friday afternoon.

Don Swan-I own the Gold Beach Inn and Ireland's Rustic Lodges. Swan handed out additional information including a map that shows my deck is "clearly" legal using any definition.

Mr. Swan read his letter (D-1) to the Mayor & Council into the record. Other documents provided by Mr. Swan are attached to these minutes. Mr. Swan stated he had followed all procedures and policies before his deck was constructed. Everything was done on the up and up.

Wernicke-This is a little late for the Council to be measuring on a map at this time. Frankly, that item would be better brought to the attention of the planning commission.

Swan-I don't want to go back to planning and zoning. The reason I don't want to go back to planning and zoning is it is going to cost me thousands and thousands of dollars. I didn't do anything wrong. They made two mistakes.

Wernicke-The City has the option of changing zoning when it wants to. Nobody has a vested interest in zoning changes.

Swan-I understand that but in 2004, I submitted a deck that was passed the 600' line which would have triggered a CUP, I would have applied for it, paid for it and it would have been given.

Wernicke-We're not considering enforcement action right now, we're considering perhaps defining a line that everyone understands is not well defined.

Swan-So you're not going to send my deck over to planning and zoning like I have to go back and reapply and all that?

Wernicke-No, that is not part of the motion.

Swan-Sorry, I misunderstood.

Alexander-I know your contractor and I know you and I do not believe you intentionally did anything incorrect. Your intentions were honorable throughout. Your deck may or may not be within the line. The point is we're not doing anything right now to send your deck back to planning.

Barrett Edgar-31774 Chantrelle Lane-I do not live in the City of Gold Beach. I attended the previous hearings on the conservation line. One of the worries that I have here, there appears to be some question on the ambiguity of the line. There was some talk about it might be expensive to survey it but this whole town depends on the beach and the river. That's why I'm here. We do need, as a community, to work towards surveying this line where there is no question about where it is. However, I would like to see the City of Gold Beach not move the development line to the furthest development that is already present that may or not have been done legally or illegally or by mistake because they didn't know. Don't move that development line further towards the ocean to the furthest development spot. That would be a disaster. What I think should happen is let's protect as much beach as we can and if there are a couple of little places that were issued permits in the past, let's exclude those from the line as an exception rather to move the whole line furthest to the ocean and destroy the natural beauty that we have here.

Wernicke-I think this is a matter that might be better presented to the planning commission when the issue comes back to them.

Johnson-Tell me if I'm right or wrong. All we're doing with #1 is redefining the conservation line-we're going to require (planning or somebody) to redefine that line down there so everyone knows where it is. No more ambiguity. Correct? (YES)

Brennan-I would like to see a requirement in there that the line be surveyed so there is no more question as to where it is.

Pratt-That is one way but you can also base it on the vegetation line which is a surveyed line. You can measure a certain distance to establish that.

Brennan-According to your recommendations of your study, your technical report, there are 31 points along the beach that can be measured from and they are based on science, they are based on the geology of the rivers and increased flow into the beach. Some of the lines are set back farther than other lines because of the erosion caused by the rivers and the creeks. I think the line is based on vegetation but at each different point of the 31 points, they are different distances. So I would think that those lines could be surveyed from the vegetation line back to the amount of feet that are recommended in this technical report.

Pratt-Absolutely-you are correct. I'm just outlining the alternatives that you have, not making a specific recommendation, that's for the City Council to decide.

Younce-Many of you on that dais know me personally and have known me for years and know me to be a person of integrity. I have not, as Mr. Swan asserts, in any way, attempted to go to LCDC and ask for their assistance, which will help the community in general, certainly as much as it will help me, my employer and anybody else in secret or behind anyone's back. When I wrote that letter, I provided a copy to the city manager (he can verify that) and assumed at the time, and I assume that he did, that a copy would be turned over to the planning department. It is all public record, nothing done behind anybody's back.

Wernicke-I understand. Let me say that comments like that attributing "behind the back moves of someone" don't carry any weight with the council, in fact it doesn't help anybody's argument and we're all aware of that. Sometimes emotions run high but they don't carry any weight with the council.

Mark Rasmussen-97137 North Bank Rogue-I do not live in Gold Beach, although we do own property in Gold Beach. I was also at the January meeting and we all discussed the fact that the vegetation meant something within the survey proper as far as lines of demarcation in the dune area. If you're taking that vegetation line as a point of demarcation for the other line-that is changing all the time. Some points in the beach get wiped out, so that vegetation goes away. It does all up and down the beach. We hiked that all the time and it was constantly changing. How do you really decide from that point where to put the line because that vegetation line is in flux all the time depending upon the weather and the erosion of the beach which has been considerable.

Wernicke-That would seem to be a question for the planners or the planning commission as opposed to the council.

Truesdell-As a matter of reference-what we refer to as the vegetation line is actually a line that was identified by the state many years ago and actually surveyed with meets and bounds. So when we refer to it here, you're absolutely right-we're not referring to existing vegetation vs. for-dune vs. other conditions, we're referring to a line that is actually surveyed with meets and bounds and that's all. It is a reference point to something the state did and therefore, has at least something that has no ambiguity to it. It is a surveyed line. Any conservation line would be back to the east would be up to the planning commission to recommend.

Rasmussen-So that would be a "constant" no matter how much the topo changed on the beach? (Correct)

Peterson-I would still like to have the wording put in the motion that present buildings are exempt.

Wernicke-You could make a motion but we currently have a motion on the floor. I would point out that we're not in a position to weigh all the facts up here because they haven't

all been presented to us and I hate jumping off without knowing all sides of an issue. I don't feel comfortable doing something unless or until I have a full picture of it.

Repeat of Johnson's Motion: Reconsider redefining the conservation zoning boundary line; refer the matter to the Planning Commission for a public hearing and recommendation; and suspend code enforcement against the owners of the subject property (Curry County Tax Map 37-15-01AC Tax Lot 700) until the City Council either adopts or decides to retain the existing Conservation zoning boundary.

VOTE ON JOHNSON'S MOTION:-> Johnson, Brennan, Truesdell and Alexander voted "AYE", Peterson voted "NAY". VOTE: 4 AYES 1 NAY

Paula Woodburn-29187 Kerber Drive. I'd like to know, earlier in the discussion, there was apparently a 2003 survey and a 2006. (Technical reports) Wouldn't the most recent technical report from Stuntzner, based on new technology and everything be more accurate and better focused? Could we ask the Planning Commission to only work from that document and not worry about from the 2003 or 1958 or something?

Fritts-The two are "in concert". The 2003 study was an in-depth study that was done by 2 geologists. The 2006 study was an addendum to that, so the two of them really need to be considered together. The Planning Commission may decide to give more weight to the 2006 study, I don't know but you really can't look at them separately.

ORDINANCES AND RESOLUTIONS:

A. RESOLUTION NO. R0809-8 - Councilor Alexander (E)
A RESOLUTION TO REFER TO THE VOTERS A CHARTER AMENDMENT
CHANGING THE APPOINTMENT PROCEDURE FOR FILLING VACANT CITY
OFFICES (Short Break)

Wernicke-I read through his charter proposal a couple of times. I've been Mayor for about an hour and 40 minutes and I see that it is directed at limiting some of the powers of the Mayor. I personally don't think the amendment is a good one, I think it is a little too broad for what it is intended to do. I am fully aware of the circumstances that brought this amendment or this resolution to the forefront here but I think it can be handled in a far less severe way. The Charter indicates the Mayor has no veto authority and I don't believe

his conduct or his refusal to act should be permitted to operate as a virtual veto of the City Council's decisions. However, the solution, in my mind, can be brought about in a far simpler and fair manner than I believe what Mr. Alexander is presently proposing. I also want to point out that the end of our agenda today, we have a number of items for purposes of re-vising, re-organizing a number of different things affecting the City, including the City Charter which hasn't been modified since 1986. It deserves a good close look for potential revision. In that respect, those revisions wouldn't be available to the voters probably November at the earliest. I think that would be a more appropriate time to raise your amendment to amend the Charter because then we could all have an opportunity to address alternatives to your resolution that may accomplish the same thing. With that being said, the floor is yours Mr. Alexander.

ALEXANDER STATED-> 1. The amendments proposed by this referendum conform to the requirements of Chapter XII, Section 44 of the Charter in that each proposed amendment relates directly to the single subject of appointment of city officers and/or employees or matters directly connected therewith. As you all know, we had a vacant council position open here for over a year. I like to look at situations, not from a personal perspective or an interpersonal perspective, rather from a systemic approach. I did look carefully at the Charter. I did note several points in the Charter, which in my view, conflict with the overall intent of the Charter. So that was the genesis of this resolution.

1. This referendum seeks to conform the wording of the affected sections to the overall intent of the Charter that all powers of the City be vested in the City Council and eliminate a defacto Mayoral veto power which conflicts with Chapter IV Section 18 of the Charter.
2. This referendum further seeks to insure that the above-described appointments are made in a timely manner.
3. This referendum seeks to ensure that such appointments are made in a manner consistent with the best and highest practices of democratic government.

MOTION-> Alexander moved to approve Resolution R0809-8, second by Johnson.

Brennan-I read the proposal and I also read over the Charter sections. I don't know that I've had time to study the Charter and come up with other possible revisions in this

short of time. I would like to see perhaps a postponement of this motion so that we could review the entire Charter and maybe only have one election this year instead of two. I understand there is a cost to the City for special elections if it were in March or May, perhaps in November it would be less expensive. That way it would give us time to review the entire Charter and do the changes all at one time.

Johnson-What other changes?

Brennan-I don't know but after 20 years I would imagine there are some updates and revisions that should be made. I would like to do it and have it on the November ballot.

Johnson-If I was going to wait till November I would just as soon wait till the next year and have it on the ballot at no charge. Every other year (even years) any measures on the November ballot are at no cost.

Truesdell-I was appalled, I don't know what they call it, by the occurrences that kept a vacant council seat for almost a year and a half. My problem with doing something this quickly is there several other things in the Charter that have not been addressed that do need to be brought current, for example, Section 29: Commencement of Terms-At a voters election last May, I believe the City of Gold Beach voted to change the office that we all take date from November 15th to December 15th. That's not part of this resolution.

Alexander-Chapter 12, Section 44 requires each item in a Charter amendment conform to each other item. That really was not conforming so any changes we might make in the Charter "need to conform to each other". We cannot do, by my reading of the Charter, a blanket resolution to cover multiple changes and multiple areas of the Charter. Each resolutions and the sections contained therein must relate to each other as a separate resolution. If we went with this, we could have multiple resolutions on a single ballot, however it would entail additional expense if we didn't do it all in a general election year. By general election year it is which by general election year that is a rough definition on determining every 2 years (even years). So if we were to do it that way, we would have to put together multiple resolutions to cover multiple changes on multiple issues or sections of the Charter.

Wernicke-That would be the way to go if you're going to make changes in the Charter. As it has been pointed out, the Charter is outdated.

Alexander-Let me make something very clear. I did not write this proposed resolution and I did not retain it from going before the public simply to wait until you got into office. Primarily it was withheld to time period because, as was pointed out earlier, the May election is a lot less expensive than the March election. Had I submitted it in September or November at the Council meetings-because there is a segment of state law that requires that any Charter amendment type resolution that must go before the voters must go before the voters at the first election following 90 days after its introduction. It would have hit the March election and it would have been more expensive. So this was basically an attempt to bring this to the voters in the most cost effective manner. Our City attorney vetted this and it meets state law and US law. It was not held back waiting for you (Wernicke) to take office. This was simply a cost cutting timing on my part.

Wernicke-There is of course my concern that I haven't even got my feet wet as Mayor and we have two new Councilors who haven't really had a chance to experience the job either and to make such a drastic change in the Charter at the very first session...I understand your wanting to do it the least expensive way but it's kind of a bitter pill.

Alexander-It was certainly not meant as any kind of a front. The timing of how it has to hit in order to reach the May election is indeed unfortunate. I assure, it is absolutely unintentional. It is absolutely no reflection on how I believe you would ??(couldn't hear) both professionally or ethically, that's definitely not the thrust of this resolution proposal. It was, in my opinion, the language in the original Charter is flawed (Johnson agreed) and when I crafted this - and I crafted this before you ever entered the race for the office - I started working on this in March of this year. Long before the race for your positions went into the primary stage. It was an attempt to correct, what I consider to be inaccurate language and language which not reflect the overall intent of the Charter.

Truesdell-I found several sections that I found could use some modernizing, upgrading into the 21st century. I find it to be prudent, when changing extremely important documents, to look

long and hard to get the best advise we can. I don't know if the League of Oregon Cities might have some recommended upgrades that they might recommend for modern day Charters. I recognize that each change requires its own resolution. I would rather look at this as a "whole" since the issue that caused that horrible problem that the City of Gold Beach has been suffering from for the past year and a half, has been resolved by a will of the voters. We don't have that problem right now. We have no urgency of an immediate resolution. We have the luxury of time to perhaps look at this entire document and come up with some very important modernization that could then be put on the November ballot, which probably wouldn't be any more expensive than the May ballot. There would be no reason to rush this in my eyes and there are many reasons to take a long and crafted look and get the best advice from as many people as we can, including this entire body.

Johnson-I am in favor of the change and that's certainly not to say that I'm not in favor of any other changes. I've read that Charter quite thoroughly and studied it and studied it but not really with the idea of looking to see what I could find that might need to be changed EXCEPT the duties of the Mayor and I'm right up on those. That's why; I think when we (or David) first started to do this, that was the only thing we had in mind that we needed to change. I think he did a wonderful job of writing it up. I don't mind if you guys want to wait and consider some other things. I do want this done but I wouldn't be opposed to waiting until other things are put with it. What do you think David? What about your "will" that is important to me?

Alexander-I will bow to the will of the council. It's important to me that systemic flaws are corrected. Simply because I created the wording to correct these perceived flaws is not where I'm putting my ego. My ego is not into this. What is important to me is how to best provide democratic quality governance for this City because that's the responsibility voters vested in me when they elected me. Should the Council decide they would prefer not to address this at this time, and they can do that by a "NAY" vote. It's not going to make me feel bad, it's not going to make me feel anything other than the timing does not work with the majority (will) of the Council. However, I do intend to insure that these changes are looked at. I think they indicate a systemic flaw in the body of the Charter that goes beyond any specific individuals. Obviously I do not feel the current Mayor and

the current Councilors will have any desire to create that kind of situation. But that's not what I'm looking to fix. I am looking to fix a flaw that would allow the next Mayor to fall back into that pattern, or any future Mayor to see the loophole to create what did become a virtual veto, which should not be allowed within the way we need to provide direction and policy for the City.

All agreed with Alexander's thoughts.

Alexander-If we approve this tonight, it would have to go on the May election. The only way to prevent it from going to the voters at the May election is to vote "NAY" on the motion or withdraw the motion which I'm not sure I am willing to do.

Johnson-When this comes time to vote, I am going to vote "NAY" but I don't want this lost in the dirt somewhere.

Wernicke-The whole Council, including the Mayor, agree that this has to be done in some manner to prevent that very circumstance that put the City in turmoil.

Consensus of the Council is everyone agrees with what Alexander has stated but they prefer to wait to allow time to review the Charter for further changes.

Alexander-At this time I formally withdraw my motion to approve Resolution R0809-8, Johnson withdrew her second.

MISCELLANEOUS ITEMS:

A. ACCEPT OFFICIAL CANVASS OF VOTES CAST IN THE 11/4/08 GENERAL ELECTION (F)

WERNICKE->The total number of voters in the Curry County General Election on November 4, 2008 was 12,449 (87.55 %):
The number of District Voters was 1,144 of 1,319 (86.73%)
MAYOR POSITION: WERNICKE = 619 (60.99%) POPOFF = 388 (38.23%)
COUNCIL POS #2: BRENNAN = 456 (52.66%) WHITMORE = 400 (46.19%)
COUNCIL POS #4: TRUESDELL=544 (60.44%) MCVEY = 349 (38.78%)
The above percentages do not include "over or under votes" or write-ins.

MOTION-> Alexander moved to accept the official canvass of votes as certified by the Clerks Office, second by Peterson. Johnson, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE: 5 AYES

B. DISCUSSION REGARDING COUNCIL MEETING START TIMES

WERNICKE-> Is the Council interested in changing the starting time of our council meetings, and if so, what time do you suggest?

The consensus of the Council was to leave the starting time at 6:30 p.m.

WERNICKE-> We have several items on our agenda to update and revise several City policies and rules that haven't been updated in a long time.

All Councilors will have input and ultimately vote on these revisions and updates but we should really have one lead official to coordinate each project. When any of you have an idea or suggestion, contact the lead official of that particular project.

Alexander-Gave a recap of the circumstances leading up to compiling all the "policies and directives" into one book with a 6 month review requirement. Revise & re-organizing the policy book is a great step to bring the book up to the most understandable and effective use.

REVISE AND RE-ORGANIZE THE CITY POLICY BOOK

1. Choose a "lead official" to coordinate the Project

Wernicke-Since Brennan has 32 years in police work and since a good portion of the book has to do with police, I thought he would make a good "lead official" for the police portion of the policy book and Alexander would be the "lead official" for the remainder of the policy book if the two of you are willing. Brennan and Alexander both agreed.

REVISE AND RE-ORGANIZE THE COUNCIL RULES

2. Choose a "lead official" to coordinate the Project

Wernicke-Asked Truesdell if he would volunteer to be the "lead official" for the revision and re-organization of the council rules. Truesdell agreed.

REVISE THE CITY CHARTER IN PREPARATION OF SUBMITTING IT TO THE VOTERS

3. Choose a "lead official" to coordinate the Revisions

Johnson-Even though the Mayor is not obliged to take on any of these duties, that with your background, you would be the

perfect "lead person" in reviewing and revising the City Charter. Wernicke agreed.

Wernicke-I would like to see these projects completed by this time next year preferably sooner.

DISCUSSION REGARDING APPOINTING LIAISONS TO DIFFERENT AGENCIES

Wernicke-I think it is really important that we have a representative attend the volunteer agencies and official commissions. They can ask questions of the City representative, and the City representative can also bring questions or information back to the Council:

Port:	Johnson volunteered.
Chamber & Rotary:	Peterson volunteered.
Oasis House:	Alexander volunteered.
Library:	Brennan volunteered.
Planning:	Truesdell volunteered.
County:	Wernicke volunteered.
Marketing:	Truesdell volunteered.

CITY ADMINISTRATOR'S REPORT:

Activity is continuing on the Wastewater Treatment Plant. The detailed Progress Report from Kerbo is attached as Exhibit G.

Truesdell-I have been asked these questions:

The approximate start date: The approximate finish date:
Does the City have an analysis completed as to what the payback on these loans will do to our sewer bills.

Wernicke-Would like to have a comprehensive progress report on the status of the Wastewater Treatment Plant for the monthly Council meetings.

MAYOR AND COUNCIL COMMENTS:

COUNCILORS:

Johnson-Thanked Karl Popoff for the years of service to the City of Gold Beach. He did a good job and worked hard.

Larry Brennan-Thanked the voters of Gold Beach that supported him for this position. We've had some communication from the Del Norte County Regional Authority-I think that is kind of exciting and would like to see us get involved in that at some point in the future.

Peterson-I received an invitation from Kelly Sevey, GB Police Officer, he has recently finished training in what they call the MILO Range-he is now an instructor. (Exhibit H) The MILO

Range is a realistic use of force training tool, which uses a computer along with a projector and large screen. The computer contains over 250 different scenarios, which are projected onto the screen. The scenarios are two-dimensional and are interactive with the Officer through the use of special training weapons and tools. This is at no cost to the City.

Sevey is going to invite the Mayor and all the Council to attend and take part in this training, which will be scheduled after the first of the year.

Truesdell-Thanked all the GB citizens for "putting me here". I encourage all of you to stay in close contact with all of us on a regular basis. I did resign from the GB Planning Commission on December 1st. That seat is now vacant and needs to be filled as soon as possible-hopefully within the next 20-30 days. If you have an interest in helping to shape the city's future, please pick up an application at the business office.

Alexander-Very impressed with what the Council did tonight in terms of my proposed Charter amendment. The discussions, decisions - what you witnessed was the best and highest democratic process of City government I have seen. This is the kind of cooperation from you Mr. Mayor and from my fellow Councilors that I have been seeking for a long time that is based within the format of democratic government.

Alexander stated some statistics regarding domestic violence and the importance of doing whatever we can do to stop it. No excuse for domestic violence in our community or anywhere on this planet.

Wernicke-It is my attention that the meetings run in this City for the benefit of and large measure of the citizens. I want them to have every opportunity to speak at our hearings, I want their input at all times. If you want to talk to me, my phone number is in the book. All of us want your input. We want you to have a part in this role.

Wernicke explained the reason for the Executive Session that was scheduled earlier in the meeting. There are certain issues that the law requires them to be held in Executive Session. Unless an Executive Session is required and scheduled, I will try and make everything this Council does open and apparent to all of the citizens.

CITIZEN COMMENTS:

Margie Roberts-95350 Tutuni Hollow Drive-I'm outside the City limits but we own property in the City limits. I don't come to a lot of your meetings and when I have come I have spoken about things that are controversial. But I want to commend you because this is the first time, (I've kept up on all of your meetings even if I don't come) I have seen such an organized, professional meeting where I'm very very impressed and helpful. Kudos to all of you. Mr. Mayor I am very impressed. You really seem to be addressing things to the citizens of Gold Beach, which is perfect.

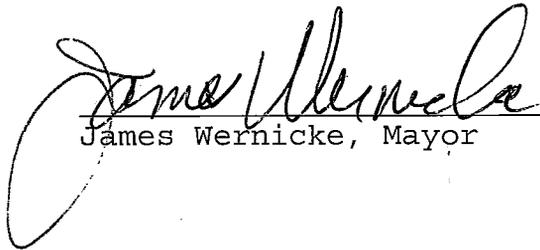
ANNOUNCEMENTS

The next regular meeting for the Gold Beach City Council is scheduled for Monday evening, JANUARY 12, 2009 in the Council Chambers of City Hall, 29592 Ellensburg Ave., at 6:30 P.M.

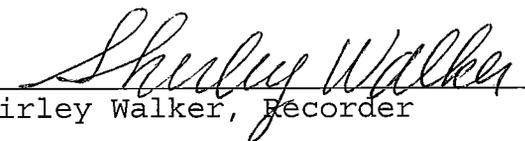
MERRY CHRISTMAS AND HAPPY NEW YEAR!

ADJOURNED at 8:48 P.M.:

Passed by the Gold Beach City Council on January 12, 2009.


James Wernicke, Mayor

ATTEST:


Shirley Walker, Recorder