

Rivergrove City Council Meeting Minutes
July 11, 2018

CALL TO ORDER AND ROLL CALL

The meeting was called to order at Lloyd Minor Park at 7:00 p.m.

Present: President Arne Nyberg and Councilors Carolyn Bahrman and Bill Tuttle were present. City Attorney Bill Kabeiseman also attended the meeting. City Recorder Leanne Moll declared a quorum.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Susie Lahsene, 5582 Dogwood Drive, spoke on behalf of several residents who live in the vicinity of the boat ramp to raise concerns about the safety and management of river access. The prior weekend, residents reported that they experienced an unsafe situation with the large amount of traffic to and from the boat ramp. Ms. Lahsene requested that Council consider revisiting the hours of operations of the boat ramp and the purpose of the boat ramp. The residents believe the deed or easement for the boat ramp stipulated that it should be a City park but are concerned that it is now more like a regional park. They are concerned about safety, including the interaction between paddle boards and large boats, unsupervised children, and waste. Ms. Lahsene requested that City Council limit the boat ramp hours from 9am to 6pm. Ms. Lahsene stated that the people who are present at the boat ramp at 9pm should not be there. She would also like City Council to limit the use of the boat ramp to river access only and limit the use to small crafts.

Marcel Lahsene, 5582 Dogwood Drive, cited an example of a 43-foot boat trailer attempting to access the boat ramp the prior weekend, effectively blocking the street for twenty minutes and creating a safety issue for the City.

Ms. Lahsene additionally requested that the City provide adequate signage with the hours of operation and the City's regulations clearly posted. She requested that there be enforcement of the rules and expressed concern that the neighbors who live near the boat ramp are forced to handle enforcement.

City Attorney Bill Kabeiseman responded that the boat ramp is owned by the City of Rivergrove and the City has the ability to regulate the boat ramp. Currently, Ordinance 80-2011 stipulates the hours of operations. From November to May, the hours are 8 AM to 8 PM and from May to October, the hours are 8 AM to 9 PM. The City could revisit this Ordinance and set other regulations. However, the City cannot discriminate by deciding who is and is not allowed to use the boat ramp. Mr. Kabeiseman gave the example of a case concerning use of the New Jersey shore where the City attempted to limit access to their beaches to only residents, but the regulation was struck down.

Councilor Brenda Ruble joined the table at 7:09 p.m.

Mr. Kabeiseman stated that the ramp was built with grant funding from Metro, which places restrictions on how public access can be regulated. Mr. Kabeiseman noted that the funding could have come from the Department of State Lands or the Oregon State Marine Board. Mr. Nyberg noted that the Oregon State Marine Board does not have the Stark Boat Ramp listed as a public boat launching ramp on their website or in their publications. Mr. Kabeiseman explained that where the City received the funding to build and maintain the boat ramp may limit the regulations the City can make.

Mr. Kabeiseman thought the City could limit the type of water craft or set other limits. However, he explained, the ongoing problem is the lack of enforcement. If the City does not have someone on site in uniform, it is challenging to enforce the regulations. Rivergrove has always had challenges funding an enforcement program.

Mr. Kabeiseman explained that the other question that arises surrounding the boat ramp is liability: What liability does the City have by allowing unsupervised activity. Generally, the City has discretionary immunity if it chooses to accept a certain risk due to budgetary or other reasons. City Council may express that they understand the risk but give the priorities and needs of the City, we choose to live with such risk. That type of decision can serve to limit the City's liability.

Therefore, the City can place limitations on the boat ramp. The City cannot restrict by discriminating among different types of people. You can limit the use and hours, and some other issues. Mr. Kabeiseman explained that the City can request that there be no unaccompanied minors at the boat ramp.

Councilor Tuttle asked if the City can restrict the size and type of boat that launches at the ramp.

Mr. Kabeiseman explained that the Oregon State Marine Board, the Department of State Lands, or the County Sheriff regulate the craft on the river, including the speeds of water craft.

Mr. Lahsene asked if the City can close the boat ramp outright. Mr. Kabeiseman responded that excepting the restrictions based on the funding of the ramp, that he cannot think of a reason that the boat ramp could not be closed. He explained again that the boat ramp cannot be limited to use by only Rivergrove residents, and the City cannot limit access to the boat ramp to neighbors who have a key to the gate.

Mr. Lahsene suggested that the City close the boat ramp for a period of time to allow the City to get a handle of the problematic behavior. He reiterated that the residents who live near the boat ramp want it to be used for accessing the river, not fishing, hanging out, and drinking. Mr. Lahsene explained that he can hear people on the boat ramp in his bedroom. Some of them spend all day on the ramp and stay into the night, smoking and drinking. He has suggested they leave to no avail. He expressed his high level of frustration.

Councilor Tuttle asked if the City can restrict the use of the boat ramp to loading or unloading only. Mr. Kabeiseman responded that the City can limit the purpose of the boat ramp (i.e., prohibit swimming), but the problem will be how to effectively enforce the regulations.

Councilor Bahrman expressed hesitation with Council taking action tonight and noted that the public comment should be strictly informational. She noted that the boat ramp was not on the agenda for tonight's meeting. She stated that any decision or action needs public notice and that Council needs to hear from all residents before making a decision. Councilor Nyberg disagreed stating that there was no reason that City Council could not take action. Councilor Bahrman noted that it is problematic to take action after hearing from only a small section of the City.

Councilor Nyberg noted that he sees the issue as a private citizen and as a publicly-elected official. Privately, he would like the boat ramp closed for a short period of time because of the ongoing problems. He explained that the City attempted to curtail the boat ramp's use last year by taking down signs, closing the gate, and removing the boat ramp from a river access listing that many people were using. He is concerned that the problems seem to continue despite the City's efforts.

Councilor Bahrman said that it would be appropriate to close the boat ramp temporarily since there is an urgent issue that needs to be addressed.

Councilor Ruble asked if the City can close the boat ramp for repairs or to investigate the impact of algae bloom or e-coli. She expressed that if the boat ramp were to be closed, City Council should do the appropriate research and make sure that Council has the authority to close it. Councilor Ruble cited Lake Oswego's swim easement as an example of a way of regulating water access. Mr. Kabeiseman warned

that Lake Oswego is a private lake and the Tualatin River is a public river. He continued that once someone is in the river, the City cannot regulate their behavior.

Mr. Lahsene asked the City to define what is "access" to the river and what is the purpose of the boat ramp. He reiterated that the boat ramp needs to allow only smaller water crafts and the hours must be limited and clearly posted. He noted that the boat ramp should not be a recreational park or a swimming hole. Mr. Lahsene requested that the City shut the boat ramp down briefly and reopen it with a professional sign and a plan for regulating the ramp. He requested that Council close the boat ramp for a week or two and then limit the hours and limit the usage.

Councilor Nyberg expressed interest in closing the boat ramp the following weekend, July 13-15, 2018.

Councilor Tuttle expressed concern about the potential legal consequences of closing the boat ramp, even for a short amount of time. City Attorney, Bill Kabeiseman stated that there are no legal ramifications. The City adopted the boat ramp hours via an ordinance, and there is no clause in that ordinance that allows the City to limit the hours. He said that a temporary closure is appropriate since the boat ramp is becoming a nuisance. The City should establish a task force that will work on reopening the ramp with new regulations.

Councilor Ruble expressed her concern that by closing the boat ramp, the City is causing a bigger problem. She wondered if people will trespass on private property to access the river. Councilor Ruble requested that river access options (Cook Park, Brown's Ferry Park) be clearly posted on the closed gate.

Councilor Bahrman explained that the Councilor can't change an ordinance without appropriate notice but expressed approval of a temporary closure if it has no legal ramifications.

Councilor Nyberg asked if the boat ramp can be closed temporarily until further notice.

Mr. Kabeiseman advised the City to temporarily close the ramp over the following weekend, July 14-15, 2018.

Ms. Lahsene asked if City Council can close the boat ramp for the month and then Council could modify the ordinance at the August 13, 2018 meeting. Councilor Ruble noted that residents may be very upset if the ramp is closed for an entire month, until the next City Council meeting.

Councilor Nyberg asked if the City can close the boat ramp for two consecutive weekends.

Mr. Lahsene approved of the idea of closing the boat ramp on the weekends for a few weekends and expressed that nearby residents can help and be involved.

Councilor Ruble concurred that the boat ramp should be closed for the next two weekends, and asked Ms. Lahsene to check where the boat ramp funding came from. Councilor Ruble also commented that it is expensive to change an ordinance and residents should consider donating money to the giving program to offset the legal fees.

Bill Kabeiseman instructed City Recorder Leanne Moll to send an email out to everyone in community that the boat ramp will be closed on the following two weekends from Friday at 6pm to Monday at 9am. He explained that after the temporary closing over the next two weekends, the City can see what happened and see if the ramp needs to be closed again.

Motion: Councilor Bahrman **moved** to temporarily close the Stark Boat ramp on July 13-16, 2018 and July 20-23, 2018 from Friday 6pm until Monday 9am and that all citizens be notified by email. Councilor Ruble **seconded**.

The **motion passed 3-0**. Councilor Nyberg abstained.

Ms. Lahsene commented that she will research the funding of the boat ramp construction by contacting Metro and the Marine Board.

Councilor Tuttle asked if the City needs to have a draft ordinance ready for the August meeting. Mr. Kabeiseman suggested that instead of a draft ordinance, the City list proposed changes to the current ordinance in the notice.

Councilor Nyberg instructed Leanne Moll to make a sign with the temporary closure information and to coordinate with a neighbor to place the sign on the boat ramp gate and lock/unlock the gate.

Council President Arne Nyberg changed the order of the agenda to allow for the Planning Commission Report early in the meeting.

PLANNING COMMISSION REPORT

Commission Vice Chair Jonathan Sweet provided the Planning Commission report. He explained that the Planning Commission had voted 3-2 to deny the development permit application for the duplex at the corner of Pilkington and Childs. The Commissioners also approved two new single-family home to be built at Canal Park. The revised Tree Ordinance will also be sent to DLCD this month for state review prior to a September Planning Commission hearing.

NEW BUSINESS

1. Hearing on Appeal of approval of a subdivision at 5450 Childs Road (end of Lorna Lane).

City Attorney Bill Kabeiseman read the appeal hearing disclosure and instructions to the public. He asked the Councilors if they had any conflicts of interest, *ex-parte* conflicts, or bias to report? All Councilors replied no. Councilor Nyberg asked if any attendee wanted to claim the Councilors should not be on the table or decide the issue. There was no response.

Mr. Kabeiseman summarized the staff report, explaining that on June 4, 2018, the Planning Commission approved a Type III Development Permit, Subdivision and Area Accessory Development Permit based on the findings in the City Staff Report dated June 4, 2018. The Commission found the application met the applicable requirements of the RLDO subject to certain conditions. During the hearing, the applicant requested to not construct a City pathway through the property that would eventually connect the City parks. The Planning Commission agreed to postpone the building of the path; however, the Planning Commission did require the easement of the path be shown on the plat. City Council called up the decision on its own authority to review the requirement for a pathway connecting Dogwood Drive and the two City parks, Heritage Park and Lloyd Minor Park. Currently the path does not connect. Mr. Kabeiseman explained that City Council must decide if the path should be constructed now. If not, when shall the path be constructed and where will the funds come from? Mr. Kabeiseman explained that the easement does not yet exist, but it is a requirement that needs to be included with the current plat.

Applicant:

Valerie Uskoski, Hayward, Uskoski & Associates, 1101 NE Broadway, Vancouver WA

Ms. Uskoski, who is representing the applicant, Lance Coffel, expressed her concerns that the City has no way of implementing, policing, or maintaining the pathway. She explained that until there is connection to the east, residents are provided a very limited section of improved pathway that will dead end and have 8-foot fencing around it. She stated that she is not attempting to stop the goal of park connectivity for the City but is trying to avoid creating a nuisance. Ms. Uskoski expressed that the applicant would like to maintain a certain quality of living for the City and for the subdivision. She noted that there is no cost benefit to construct such a short section of the pathway. She suggested that instead the City should take on the construction of the entire pathway all at one time.

Councilor Nyberg explained that the City has no System Development Charge and so funding such a project would be very difficult.

City Attorney Bill Kabeiseman cited the U.S. Supreme Court cases of *Nollan* and *Dolan* [*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994)] where the impacts of construction are proportional to the costs to construct. The questions that arise in this situation include who will maintain the pathway? What will be the liability of the homeowners who live on the lots with the easements?

Opponents:

Steven Crawford, Attorney Representing Ed Wolak, 5320 Childs Road, Lake Oswego, OR

Mr. Crawford explained that part of the proposed pathway would cut across Mr. Wolak's property and there is an existing condition for a proposed easement on a development permit that was submitted by the former owners of the lot. Mr. Crawford alleged that the development permit expired four years ago and Mr. Wolak does not intend to enact the permit. [The Rivergrove Land Development Ordinances (RLDO) have no such sunset or expiration clause.] Mr. Crawford stated that Mr. Wolak will not allow the easement at any time. He claimed that without Mr. Wolak's participation, the connected park pathway will not be completed for at least another forty years. Mr. Crawford submitted a letter into record requesting that the map on the City's website be corrected and the section that appears to run through Mr. Wolak's land be expunged.

Pauline Zagone, 5312 Childs Road, Lake Oswego, OR

Ms. Zagone noted that she lives on the so-called "Patterson Lane" and that her lot is a double lot where the proposed path would cut through the middle of the double lot. She noted that there are only five houses on the lane and fences extend all the way down to the river. Since the last part of her property is in the floodplain, she asked how a path can be constructed in the floodplain and questioned why the City would put a path in a flood zone where wildlife attempt to cross to Heritage Park.

Ed Wolak, 5320 Childs Road, Lake Oswego, OR

Mr. Wolak submitted a letter and petition to the City Recorder that had 34 signatures of residents who are opposed to the pathway. He noted that the area in question is a *de facto* wildlife corridor and connects to the I-5 underpass. He is concerned the pathway may curtail wildlife crossing. He also explained that the residents who border the proposed pathway will construct 6-8 feet high fences that will create a barrier and will interfere with the animals. He also cited concerns that the pathway was to be constructed in the flood zone and wetlands. Mr. Wolak cited a 2003 study where property values within 20 feet of city trails went down 7%. He was unable to name the study author or title. Mr. Wolak noted that his petition has Andrew Klossner's signature and that Mr. Klossner, who owns the property near Heritage Park, is not subdividing or selling his land. Mr. Wolak believes the Planning Commission dealt with the pathway in a reasonable manner and it is wrong to try to force building a trail at this time.

Denise Novosel, 19342 Lorna Lane, Lake Oswego, OR

Denise Novosel stated that there was no utility purpose for the trail. She noted that as a runner, she sees no need to cut through to Heritage Park when she can run on Childs Road. She also noted that as a homeowner she is concerned that she would have to support and maintain the trail. She is opposed to the pathway if the surrounding homeowners are responsible financially. She also stated that the pathway would be an unattractive, small path, bordered by large fences.

Dian Klein, 19331 Lorna Lane, Lake Oswego, OR

Dian Klein asked about liability in the event of an accident on the pathway. She was concerned that the residents of Lorna Lane would be financially liable.

Councilor Nyberg responded that the City would be liable first, then the developer, and finally, the property owner.

City Attorney Bill Kabeiseman responded that if someone trips, the City would be first in line to target for liability. He explained that there is recreational immunity for municipalities and the possibility of the City being held liable is unlikely. He continued to explain that residents who don't own the pathway can't be held liable unless they do something active to cause a problem. The likelihood of nearby property owners to be liable is very unlikely.

Ms. Klein continued by asking about the purpose of the pathway and why there is interest in creating the pathway. She expressed that there is no need to have a thorough way to the park when residents can walk on the pedway on Childs Road. She also expressed concern about safety and the pathway being used by lingering teenagers.

Neutral:

Michael Salch, 5255 Childs Road, Lake Oswego, OR

Mr. Salch asked if the park-to-park pathway was a goal in the City's Comprehensive Plan and is it an important element of the parks is to have the connectivity. Mr. Kabeiseman responded affirmatively.

Proponents:

None.

Applicant:

Ms. Uskoski responded to the testimony by reiterating that she is concerned with the safety issues on the isolated section of the path that is proposed to be build. She wondered if an improved pedway along Childs Road that still provides park connectivity could instead be a part of the Transportation Goal #12 in the Comprehensive Plan. Councilors Ruble and Bahrman expressed that there is no possibility that improvement on the Childs Road pedway will happen.

Ms. Uskoski noted that she is also concerned with liability and would like the tract to be shifted into City ownership.

Lance Coffel, the applicant, explained that he lived in Rivergrove for forty years and he feels it is unfair for the City to require him to build a path that does not go anywhere. He is concerned that the property owners could get sued. A dead-end path could become a bad situation. He would like City Council to provide assurance that they will take over and own the path so it's not an easement, but a tract owned by the City. He also questioned the fairness of the neighbors being asked to maintain the path.

Councilor Nyberg made a motion to close the public hearing.

The Councilors discussed their options, as outlined by Councilor Tuttle:

1. There is a requirement for an 8-foot easement. Leave the easement as it is.
2. Ask the developer to improve the pathway to the City's standards.
3. The City could acquire state or federal funding for the pathway improvement, but the easement would need to be significantly larger (10-feet to 12-feet wide).

Councilor Bahrman stated that if the path connection should ever happen, it should happen now.

Councilor Nyberg asked the Councilors to consider whether the easement was acceptable and reasonable.

Councilor Ruble said that she can see both sides. She noted that in a City without a tax base, there is no future funding for a path. She explained the difficulty the City has had in trying to improve the safety on Childs Road. The City doesn't have the funding to make those road improvements or to build a pathway.

Councilor Ruble also explained that there are several pathways in the surrounding neighborhoods that dead-end, including a path that leads to Bryant School. She noted that there were no safety issues at these paths.

Regarding the floodplain issue, Councilor Ruble asked if a pathway can be constructed in the floodway. She wondered if the path could be a wood chip path instead of paved.

Responding to the residents who gave testimony, Councilor Ruble noted that there was a problem with safety on Sycamore, which leads to Heritage Park. One day she saw twenty-three cars in a row run the stop sign. She explained that if residents have to walk down Sycamore to access Heritage Park, it is not a viable solution. Because the city can't make improvements on Childs Road, the park pathway became a viable solution.

Councilor Ruble continued that she understands the applicant's concerns and cited Portland paths that have become a place for the homeless. She asked if Council should distribute a survey and get a read on the whole community.

Mr. Kabeiseman responded that a pathway in the Water Quality Resource Area (WQRA) is allowed use per RLDO. He noted that there are wetlands on the property, but not in the area of the proposed path.

Councilor Bahrman stated that legally, City Council needs to require the path to be built, or City Council needs to amend the Comprehensive Plan.

The City Attorney noted that the Councilors could require a fee in lieu that's not a System Development Charge, but there needs to be ordinances set up to allow fees in lieu. The Councilors could require a condition to either develop a path or to provide funds to the City that are equal to that amount. The applicant needs to provide an estimate, and the City needs to specify if the path is paved or not paved.

Councilor Ruble asked if the ramp needs to be wheelchair accessible. Mr. Kabeiseman responded that it must be accessible if the City is building it.

Councilor Tuttle asked if fences will not be built until the pathway goes all the way through.

At Councilor Ruble's request, Councilor Nyberg reopened the public hearing.

Councilor Ruble asked the residents why they would build a tall fence bordering the pathway.

Peggy Morton, 19484 Lorna Lane, Lake Oswego, OR 97035 noted that she is the last house on Lorna Lane and if the City constructs the path, she will put up a tall fence. She said she doesn't want people to look in her yard and in their home.

Councilor Nyberg asked Ms. Morton if she will install a fence with the new home will be built on the subdivision. She said yes. She said she would build the fence for privacy even if the path dead ends.

Mr. Coffel interjected that it does not matter if there is a new home or the pathway. There will be an eight-foot space between two tall fences and a dead-end that does not go anywhere.

Mr. Tuttle asked if all the houses have fences. Mr. Coffel and Mr. Nyberg replied yes, the houses all have fences.

Councilor Nyberg moved to close the public hearing again.

Councilor Nyberg cited the Comprehensive Plan as the determining factor in his decision. The easement is already a requirement and should remain. He questioned if the pathway should be paved now or should there be another surface treatment. The other option is for nothing to happen now. He noted that he thinks it would be appropriate for the path to remain natural if the path is “going nowhere.” He also explained that an 8-foot ROW is not large enough for a bicycle path and is only large enough for pedestrians. He cited the 10-foot path easement through Luscher Farms in Lake Oswego that is not large enough for both pedestrians and bikes.

Council discussed potential changes to the Comprehensive Plan that would ensure the easement would go back to the adjacent property owner if the path will not be built. Councilor Ruble expressed that Council must honor the Comprehensive Plan that is currently in place. She noted that she prefers a bark chip path over a paved path.

Councilor Tuttle asked that if Council does not want a paved path, should Council require some kind of development, or leave it natural.

Mr. Kabeisman responded that it could be a condition of approval to allow the applicant the leave the path as it is and provide a fee in lieu with funds sufficient to eventually construct a six-foot wide bark chip path at the site.

Councilor Bahrman expressed that she believed the path should be wide enough for someone to walk a dog, walk with a child, or walk with a stroller.

Mr. Kabeiseman noted that with an eight-foot easement, the path would not be built edge-to-edge. Instead, there would be a one-foot section on either side with a six-foot path.

Councilor Ruble said that she thinks it is not necessary to improve the pathway now. She was concerned that requiring improvements now would cause more harm. She would prefer the City have funding set aside to build the path. She also explained that with the current Americans with Disability Act requirements, the City won't have the funds to construct a path.

Motion: Councilor Bahrman **moved** that the applicant shall provide to the City funds sufficient to meet the engineering cost estimate for the construction of a six-foot wide bark chip covered pathway the length of the easement (minus the width of the driveway). The costs shall include all costs necessary to construct such a pathway, including the necessary grading and preparation, coverage with playground quality cedar chips at a depth of six inches, and all other requirements for such a pathway.

Councilor Tuttle **seconded**.

The **motion passed 4-0**.

Due to time constraints, the Councilors agreed to continue the following items to the August 13, 2018 City Council meeting.

CONSENT AGENDA

1. Minutes – June 11, 2018.

Continued to the August 13, 2018 meeting.

2. Financials – June 2018 (Brenda Ruble)

Continued to the August 13, 2018 meeting.

OLD BUSINESS

1. Discuss results of short-term rental survey

Continued to the August 13, 2018 meeting.

COMMITTEE REPORTS

Continued to the August 13, 2018 meeting.

COUNCILORS' REPORTS

Continued to the August 13, 2018 meeting.

ADJOURNMENT

Motion: Councilor Tuttle moved to adjourn the meeting.

The **motion passed 4-0.**

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Leanne Moll
City Manager/City Recorder