

Pat Sherman
PO Box 1546
472 Quail Lane
Roseburg, OR 97470

Re: SB 452 testimony

March 2, 2011
Hearing Room A
State Capitol
Salem, OR

Chair Ginny Burdick and Members of the Committee:

Thank you for holding a hearing on this bill which would limit fees on appeals of land use decisions within local jurisdictions to \$1000.

I have lived in Oregon since 1975 – in Roseburg, Corvallis, Canby, Brookings and now again in Roseburg. When I lived in Brookings I served as mayor for over three years. During my term as mayor the City of Brookings increased fees for land use applications so the fees would cover costs. When we approved the increases, however, we made one exception to the cost recovery model: we kept the fee for appeals to the City Council at \$250 which we thought was high enough to deter frivolous appeals but low enough to allow citizen participation. That was in 2006. I resigned from the position of mayor in 2008.

In 2009 the City of Brookings raised its appeal fees to a prohibitive level by making the appeal fee equal to the initial application fee. For example:

| | |
|---------------------------|------|
| Detailed Development Plan | 7128 |
| Major Partition | 3000 |
| Conditional Use Permit | 2545 |
| Minor partition | 1960 |
| Planned Unit Development | 4200 |
| Variance | 2385 |
| Vacation | 2410 |

In addition, if costs exceed these base fees the city intends to bill the appellant for any additional costs. This is one unfortunate example of what current state law allows.

Compounding the problem is a complete lack of standards. For example, one planner may take one hour to perform a task while another may take three hours. One attorney's fee may be \$120/hour and another attorney's may be \$390/hour. Simply put, the local government has a free hand to run up its costs to an unlimited amount and send a bill to the appellant.

To my mind this is not only abusive, but also is contrary to Goal 1 of our land use law. By charging excessive fees for appeals, local governments can effectively shut down the appeal process for all but the wealthy.

Pat Sherman SB 452 testimony

Excessive appeal fees affect not only ordinary citizens but also developers. Some developers can afford high fees but most of our developers are smaller local businesses. I read a recent LUBA case, Alan Montgomery vs. City of Dunes City, in which the city charged the developer about \$22,000 for his appeal to the City Council. This outrageous bill was in spite of the fact that the appellant won when he appealed to LUBA and also prevailed when the city appealed LUBA's remand to the Court of Appeals. <http://www.oregon.gov/LUBA/docs/Opinions/2010/04-10/09125.pdf?ga=t>

To be sure SB 452 might cause foregone revenue for local governments. But when one considers the actual number of appeals in a given year (2 or 3?) and that this is only one of many fees, the loss is minor. Furthermore, if one balances the foregone revenue with the idea of making our land use process accessible to citizens and the notion of promoting trust in government, the bill is a win for local governments too.

In summary, I think SB 452 is a reasonable bill, limited in scope, which promotes good governance. I urge you to approve it.

Respectfully submitted,

A handwritten signature in cursive script that reads "Pat Sherman".

Pat Sherman

**CITY OF BROOKINGS
COMMON COUNCIL MEETING MINUTES
City Hall Council Chambers
898 Elk Drive, Brookings, OR 97415
June 26, 2006 - 7:00 p.m.**

Beginning at 5:00 p.m., before the regularly scheduled Common Council meeting, the Council met for a work/study session to discuss the status and needed improvements of the city water system. The Urban Renewal Agency Meeting met immediately following the Common Council meeting.

I. Call to Order

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

II. Pledge of Allegiance

Led by Peter Rice

III. Roll Call

Council Present: Mayor Pat Sherman, Council President Larry Anderson, Councilors Jan Willms, Craig Mickelson, and Dave Gordon; a quorum present.

Council Absent: None

Staff Present:

City Manager, Dale Shaddox,
City Planner, John Bischoff,
Fire Chief, William Sharp,
Finance Director, Paul Hughes,
Building Official, LauraLee Gray
Administrative Assistant, Donna Colby-Hanks, and
Incoming Administrative Assistant, Joyce Heffington

Media Present: Curry Coastal Pilot Reporter, Peter Rice

Other: approximately 15 citizens

IV. Ceremonies/Appointments/Announcements

A. Appointments

1. City Council Ex Officio

Mayor Pat Sherman recommended Ashley Gemmell be appointed to the vacant position of City Council Ex Officio.

Councilor Mickelson moved, a second followed, and the Council voted unanimously to appoint Ashley Gemmell as City Council Ex Officio.

V. Public Hearing

A. Amendments to Chapters 5, 6, 7, and 8 of the City's Transportation Systems Plan (TSP) continued from June 12, 2006.

John Bischoff clarified several tables in the amendments to the TSP.

Yvonne Maitland, 15676 Oceanview Drive, read portions of a letter submitted earlier in the record from David Pratt questioning the hillside street standards and the criteria for variances.

John Bischoff clarified street standards for both the county and city in the Urban Growth Area (UGA).

The public hearing was closed at 7:21 p.m.

VI. Oral Requests and Communications from the Audience

- A. *Committee and Liaison reports*
1. *Chamber of Commerce*
None
 2. *Council Liaisons*

Councilor Gordon attended a Port Committee and CCCCCF meeting.
Councilor Mickelson attended an Economic Development meeting.
Mayor Sherman attended six meetings.
Councilor Anderson attended multiple meetings.
Councilor Willms attended a Park & Recreation Commission meeting.

- B. *Public Comment*
No public comment

VII. Regular Agenda

- A. *Discussion and possible acceptance of the City of Brookings Municipal Fee Study prepared by the Financial Consulting Solutions Group, Inc. (FCS Group) (Finance Department).*

Finance Director, Paul Hughes, reviewed the staff report. A letter, included in the supplemental packet, was received from David Pratt, Curry County Planning Director, commenting on the proposed fee to be charged for county referrals. Dale Shaddox, City Manager, explained the fees charged were to cover actual costs in reviewing and considering applications.

Steve Bismarck, 270 Allen Lane, spoke regarding doubling the fee required to appeal a decision to the Planning Commission and City Council.

Shaddox recommended holding with the fee recommended in the report as it represented a good balance between providing access to process and discouraging frivolous appeals.

Councilor Anderson moved, a second followed, and the Council voted unanimously to accept the City of Brookings Municipal Fee Study prepared by the Financial Consulting Solution Group, Inc.

MINUTES
City of Brookings
Common Council Meeting
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon 97415
Monday, January 12, 2009

Call to Order

Mayor Anderson called the meeting to order at 7:00pm.

Swearing in Ceremony

Municipal Court Judge Pro Tem swore in newly elected Mayor Larry Anderson, Councilor David Kitchen and re-elected Councilor Gordon.

Roll Call

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, Kitchen and Pieper; a quorum present.

Staff Present: City Manager Gary Milliman, Planning Director Dianne Morris, Public Works Director John Cowan, Chief Water Treatment Plants Operator Ray Page, City Attorney John Trew and City Recorder Joyce Heffington.

Other Present: Curry Coastal Pilot Reporter Arwyn Rice and approximately 17 public.

Mayor Anderson moved Ordinance 09-O-624 up on the agenda.

Public Hearings / Ordinances / Final Order

Public Works Director Cowan reviewed Ordinance 09-O-624 amending Chapter 12.10, Sidewalks, of Title 12, Streets, Sidewalks and Public Places, of the Brookings Municipal Code in its entirety.

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a first reading of Ordinance 09-O-624 by title only.

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a second reading of Ordinance 09-O-624 by title only.

City Attorney Trew read both titles.

Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt ordinance 09-O-624, amending Chapter 12.10, Sidewalks, of Title 12, Streets, Sidewalks and Public Places, of the Brookings Municipal Code, in its entirety.

Mayor Anderson opened the public hearing at 7:10pm in the matter of File #ANX-1-08; a request to annex a 9,610 square foot parcel of land; a portion of Tax Lot 1700 of Assessor's Map 40-13-31B; located at 97015 Park Lane; zoned R-2 (Curry County Residential), Robert & Michelle Lea, Applicants.

Hearing no ex parte, conflicts, or objections, City Attorney Trew reviewed the guidelines and Planning Director Morris briefly reviewed the staff report.

The applicant, Robert Lea, 97015 Park Lane, took the podium but provided no additional testimony. No other testimony was offered and the hearing was closed at 7:20pm.

Councilor Pieper moved, a second followed and Council voted unanimously to approve the application for ANX-1-08 based on the findings and conclusions, staff report analysis, and

Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Ordinance 09-O-627, Chapter 17.64, Industrial Park (IP) District, of the Brookings Municipal Code, in its entirety.

City Attorney Trew opened the continuation of the public hearing at 7:45pm in the matter of proposed amendments to the City's Comprehensive Plan and Public Facilities Plan to provide for adoption of the Storm and Surface Water Facilities Plan for Brookings Harbor Area begun on December 8, 2008 and announced that the public testimony portion of the hearing was closed.

Councilor Hedenskog moved, a second followed and Council voted unanimously adopt the "Storm and Surface Water Facilities Plan for the Brookings-Harbor Area," the facts and findings of the staff report dated November 24, 2008 and December 8, 2008, making revisions as stated in the staff report to the Brookings Comprehensive Plan, Public Facilities Plan, and "Storm and Surface Water Facilities Plan for the Brookings-Harbor Area, and direct staff to prepare an adopting ordinance.

Councilor Gordon moved, a second followed and Council voted unanimously to do a first reading of Ordinance 09-O-626 by title only.

Councilor Hedenskog moved, a second followed and Council voted unanimously to do a second reading of Ordinance 09-O-626 by title only.

Mayor Anderson read both titles.

Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt revisions to the City of Brookings Comprehensive Plan and the Public Facilities Plan for Urban Growth Expansion for the Brookings and Harbor Study Areas and by adopting a New Storm and Surface Water Facilities Plan for Brookings-Harbor Area, and declaring an emergency.

Resolutions

City Manager Milliman presented the staff report regarding the adoption of a Master Fee Schedule.

James Benson, 315 Memory Lane, generally commented that copying fees are high and the proposed increase of the appeal fee is unreasonable and prohibitive and asked Council to replace the proposed fee with a reasonable one.

City Manager Milliman commented that Council had discussed the increase in the appeal fee as being something that should be recovered from the appellant. Planning Director Morris pointed out that the appellant would make a deposit, staff would then track actual costs and the appellant's fee would then be adjusted accordingly.

Councilor Kitchen moved, a second followed and Council voted unanimously to adopt 09-R-910, [the Brookings Master Fee Schedule and repeal 06-R-760 in its entirety].

Reports

Council accepted the Planning Commission's 2008 Annual Report as presented in the packet in the absence of the Chair being present.

Planning Director Morris briefly reviewed the Committee for Citizens Involvement 2008 Annual Report.

Councilor Kitchen moved, a second followed and Council voted unanimously to accept the Committee for Citizens Involvement Annual Report for 2008 and forward to the County Planning Coordinator and State's Citizen Involvement Advisory Committee as required by Resolution 399.

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON

**In the Matter of a Resolution Adopting
the Brookings Master Fee Schedule and
repealing Resolution 06-R-760 in its
entirety .**

Resolution 09-R-910

WHEREAS, Chapter 1.10, Fees and Charges, of the Brookings Municipal provides for the establishment of a schedule of a Master Fee resolution for Administrative and other City services not otherwise defined by ordinance; and

WHEREAS, the collection of fees is necessary to recover the cost of providing such services through rates, fees and charges; and

WHEREAS, it is necessary to adjust and/or establish certain fees from time to time to recover the cost of providing services; and

WHEREAS, the proposed fees do not exceed the actual cost of providing the service;

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Brookings, Curry County, Oregon, that effective upon adoption, the attached schedule of rates, fees and charges, hereto referred to as Exhibit A, is hereby adopted and shall be modified as necessary to include new fees and adjusted annually for inflation and other cost increases by the amount and percentage increase of the then latest available Consumer Price Index factor for the Brookings area, subject to approval by City Council; and

BE IT FURTHER RESOLVED that the City Manager shall have the authority to interpret the provisions of this Resolution for purposes of resolving ambiguities and that Resolution 06-R-760 is repealed in its entirety.

Passed and made effective this 12th day of January, 2009.



Mayor Larry Anderson

Attest:



City Recorder Joyce H. Hittington

ADMINISTRATIVE - GENERAL

FEE

Business Licenses

Annual fee based on total number of employees reported on Form 132

| | |
|---------|-----------|
| 0-10 | \$60.00 |
| 11-25 | \$100.00 |
| 26-50 | \$150.00 |
| 51-75 | \$300.00 |
| 76-100 | \$600.00 |
| 101-200 | \$1000.00 |
| > 200 | \$1500.00 |

Annual fee for businesses located outside City limits \$75.00

Carnival and circus/per day \$35.00

Temporary 90-Day \$25.00 or ¼ annual fee (whichever is greater)

Copying of City Records < 200 pages (per side) \$0.25

Copying City Records using off-site services (when necessary) Actual costs + staff time

Certified copies of City records

First page – (per side) \$1.00

Each additional page (per side) \$.50

Driver's License Sanctions \$15.00

Duplication of City audio/visual recordings

Personal Copy \$32.00

Certified Copy \$40.00

Fax - per page (single sided) \$1.00

GIS Maps – Regular \$12.00

GIS Maps – Ortho Background \$25.00

GIS Mapping Research/Reports \$475.00

Legal review of public records for exempt determination (2) Actual legal costs

Lien Search \$12.50

Liquor License Application – New/Annual Renewal \$25.00

Monitoring of public review of City files \$35/hour

Notary Services – each signature \$5.00

Payment Agreement- Set-up

Set-Up Fee \$100.00

Late Fee \$35/mth

Loan Rate 9%

Annual Maintenance Fee \$50.00

Records Search \$35/hour

Returned (NSF) Check \$35.00

Taxicab Driver's Permit/ Bi-Annual \$30.00

Taxicab License/ Per Vehicle, Annual \$65.00

Taxicab Photo Update \$10.00

FIRE

FEE

Insurance Company Report \$100.00

Roadway Washdown \$100.00

PARKS/DAILY USE FEE (3)(4)

FEE

| | |
|---|----------|
| Bandshell/Stage Use/City Resident: <i>non-resident add 50%, non-profit subtract 50%</i> | \$40.00 |
| Concession Stand w/restrooms | \$75.00 |
| Concession Restrooms Only | \$25.00 |
| Folding Picnic Table / each, per event (8) | \$20.00 |
| Key replacement | \$25.00 |
| Park Use/Commercial | |
| City Resident | |
| 1-100 | \$40.00 |
| >Each additional 100 | \$40.00 |
| Non-City Resident | |
| 1-5 | \$100.00 |
| 6-30 | \$150.00 |
| 31-60 | \$300.00 |
| 61-100 | \$400.00 |
| >Each additional 100 | \$50.00 |
| Park Use/Standard | |
| City Residents; <i>non-resident add 50%, non-profit subtract 50%</i> | |
| 0-200 | \$40.00 |
| 201-400 | \$75.00 |
| 401-600 | \$150.00 |
| 601-1000 | \$250.00 |
| > Each additional 100 | \$40.00 |

PLANNING

FEE

Equal to Application Fee

| | |
|--|--------|
| Annexation (5) | \$5000 |
| Appeal to City Council (9) | |
| (Appeal to Planning Commission) | \$150 |
| Comprehensive Plan Amendment (5) | \$3590 |
| Conditional Use Permit | \$2545 |
| Detailed Development Plan (5) | \$7128 |
| Extension of Time SUB/CUP | \$245 |
| Final Map Approval | \$515 |
| Lot Line Adjustment | \$140 |
| LU Compatibility Statements | \$40 |
| Major Partition/Subdivision (5) | \$3000 |
| Master Plan Development (5) | \$8400 |
| Minor Change | \$980 |
| Minor Partition | \$1960 |
| Mural Application | \$130 |
| Permit Clearance Review | \$165 |
| Planned Unit Development (5) | \$4200 |
| Pre-Application Services (6) | \$515 |
| Re-Notification | \$135 |
| Sign Approval | \$130 |
| Variance | \$2385 |
| Vacation | \$2410 |
| Zone Change (without Comp. Plan Amendment) | \$2690 |

POLICE

| | <u>FEE</u> |
|---------------------------|------------|
| Fingerprinting – per card | \$10.00 |
| Intoxilizer | \$5.00 |
| Police Reports/per report | \$10.00 |
| Urinalysis | \$5.00 |

PUBLIC WORKS

| | <u>FEE</u> |
|--------------------------|---------------------|
| Inspection (7) | 3% of project value |
| Public Works Plan Review | 2% of project value |

SWIMMING POOL USE

Established annually by City Manager or designee.

- (1) Large copying projects (>200 single sided pages or >100 double sided) will be charged a minimum \$25.00 fee, plus standard per side copy charges, or actual copying and labor costs, whichever is greater, with prior notification to, and acknowledgement of, the requestor.
- (2) Determination of need for legal review must be made by the City Manager.
- (3) A refundable deposit will be charged equaling the total daily use fee, per application.
- (4) Non-profit groups holding events in City Parks during City wide events fully supported by Public Works staff and or considered a City sponsored event, such as the Azalea Festival, American Music Festival and Natures Coastal Holiday, will have the standard park use, concession stand, and bandshell fees waived.
- (5) Base fee. If the City cost for processing the application exceeds the base fee, the applicant will be liable for, and billed monthly, for staff and/or consultant's time and other associated costs incurred with processing the application (including but not limited to planning, public works, engineering, City administration, legal and inspection services).
- (6) Fee for the first meeting is applied to the application fee. Each pre-application meeting increases the application fee by \$515.00.
- (7) Fee is collected at time of permit issuance.
- (8) Tables may be rented at a reduced 50% rate with a minimum of 5 tables when both pick-up and delivery are handled by the applicant.
- (9) Appeal fee will be equal to the applicable application fee and adjusted, up or down, based on final cost recovery.