

MIRROR POND

Closed meeting on silt options

By Hillary Borrud
The Bulletin

After months of public outreach, Bend officials met behind closed doors Tuesday to begin deciding the fate of Mirror Pond, potentially violating Oregon's public meetings law.

The Bend City Council and park district board voted last month to create a new Mirror Pond ad hoc committee and assigned its members a specific job: to select and refine a final plan for the future of Mirror Pond. Officials have been discussing how to manage the buildup of silt in the Mirror Pond section of the Deschutes River for years. Cost estimates for the four options that remain under consideration range from no expense, if officials decide to do nothing, to \$10.9 million to remove a dam, alter the river channel to keep water flowing past homes on the north side of Mirror Pond and prevent the growth of riparian vegetation that would block their views. The committee met for the first time on Tuesday.

However, the Bend Park & Recreation District and city of Bend never published notice of the 3 p.m. Tuesday meeting. They also never provided an agenda.

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Park district employees told members of the media they could not attend the meeting.

“The ad hoc committee was set up to identify a preferred option, and to bring that back to the other political decision makers and to the public, and that’s what I expect will happen,” said Mirror Pond Project Manager Jim Figurski, a park district employee. “Decisions do need to be made about what that final preferred option might look like, before we can bring it to anybody.”

Figurski said governments do not need to publicize the meetings or post agendas “because these are work sessions, they’re not public meetings.”

However, by late Tuesday afternoon, committee members came forward with a new version of what they will do in future closed-door meetings.

“We’re just a working group that has been assigned the task of getting answers on some of the outstanding questions on the project,” said City Councilor Mark Capell, a member of the committee. Capell said the committee needs to meet privately to discuss options with Pacific Power, the utility that owns the Newport Avenue dam that created Mirror Pond.

Park board member Ted Schoenborn is also on the committee. “We’re not going to pick out an alternative (for Mirror Pond),” Schoenborn said.

Nathan Rietmann, an attorney in Salem, said it does not matter whether the committee meets to deliberate toward a decision, or simply gathers information. Either way, Rietmann said the private meetings would appear to violate Oregon public meetings law. Rietmann represented plaintiffs who sued

Lane County, alleging three county commissioners violated public meetings law by getting together in private to line up votes to create new government jobs. A judge ruled in 2011 that two commissioners violated state law, and in a subsequent settlement the county commission admitted it violated the law and paid \$350,000 to the plaintiffs, The Register-Guard reported. Two commissioners each paid the county \$20,000 in reimbursement for their legal defense.

Under state law, all meetings of governing bodies must be open to the public, except where a specific exemption applies, and subcommittees and advisory committees qualify as governing bodies. Rietmann wrote in an email that committees that engage in information-gathering are also subject to public meetings law because of the Oregon law that states, “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made.”

Lawyer Neil Bryant, who represents the park district, said after the meeting that he would look into whether the committee can legally prevent the public and press from attending its meetings.

The Mirror Pond ad hoc committee includes two Bend city councilors, two park board members, parks Executive Director Don Horton, Bend Community Development Director Mel Oberst, and as many as three citizens who have not yet been selected.

Bend City Councilor Victor Chudowsky is a member of the committee, but declined to comment Tuesday because he was on vacation and did not attend the meeting. Capell said he and Chu-

dowsky “will report back to council, so everything we do will eventually become public.”

Park board Chairman Scott Wallace said before the meeting that he did not know it would be closed to the public, and was unsure whether he agreed with that decision. “I don’t know if I could even comment on that,” Wallace said. “We want obviously the process to be as transparent as we can. But the reason we formed this committee was so we could engage in some discussions with decision-makers and Pacificorp as well.”

Park board member Schoenborn said when contacted by The Bulletin Tuesday morning that he did not know about the meeting. After the meeting, Schoenborn said “our attorney tells us this does not have to be a public meeting.”

Figurski said the committee needs to meet in private in order to discuss issues such as real estate transactions. Under Oregon public meeting law, public bodies can meet behind closed doors to discuss real estate and other specific matters, but members of the press can attend. The press is prohibited from reporting what is discussed in these executive sessions.

If these conversations take place in public meetings, it “could create confusion” and “could get people working at odds to this process,” Figurski said. “It could hurt the process seriously at this point.”

Figurski declined to comment on whether the committee might negotiate real estate deals that would commit local governments to a specific Mirror Pond project, before that decision is made public. “That’s all conjecture and I really can’t comment on that,” Figurski said.

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