

From: [Nathan J. Beard](#)
To: [Keith Scully](#); [Betsy Robertson](#); [Doris McConnell](#); [Laura Mork](#); [Eben Pobee](#); [John Ramsdell](#); [Chris Roberts](#)
Cc: [Debbie Tarry](#); [Margaret King](#)
Subject: [EXTERNAL] Ordinance No. 967
Date: Friday, May 20, 2022 1:42:23 PM
Attachments: [RBPA Letter.pdf](#)

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Good afternoon councilmembers,

I hope all is well with you. My name is Nathan Beard, and I am the President of the Richmond Beach Preservation Association, a non-profit representing the residents on 27th Ave NW.

Please see the attached letter for the Council's consideration and public comment on Ordinance No. 967 (agenda item 9(c) for the May 23, 2022, council meeting).

We urge the City Council to table a vote on Ordinance No. 967 so that the City and the affected stakeholders can address the variety of issues with the City acquiring the beach. In the alternative, we urge the City Council to reject the Ordinance outright.

If any of you would like to tour the street or beach in question to see the issues first hand, please let me know.

Very truly yours,

Nathan Beard, President
Richmond Beach Preservation Association
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(206) 818-9991

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May 20, 2022

VIA EMAIL TRANSMISSION

Shoreline City Council
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133

Re: Public comment for May 23, 2022, City Council Meeting

Agenda Item 9(c): Discussion of Ordinance No. 967 – Authorizing the Use of Eminent Domain for Acquisition of Certain Real Property identified as King County Tax Parcel No. 727810-0905 for Public Park Land

To the City Council:

I hope this letter finds you well. I write on behalf of the Richmond Beach Preservation Association, a non-profit organization representing property owners and residents of Apple Tree Lane (27th Ave Northwest) in Shoreline.

While we appreciate the City's goal to expand parks and shoreline access, the proposal to acquire the privately owned beach at the south end of our street has been hastily made without notice or engagement of the affected stakeholders or consideration for the costs and benefits of making the beach public. We urge the City Council to table a vote on Ordinance No. 967 so that the City and the affected stakeholders can address the variety of issues with the City acquiring the beach. In the alternative, we urge the City Council to reject the Ordinance outright.

Background: The beach in question is at the south end of 27th Avenue Northwest, a single lane road running west of BNSF's train tracks that is accessible via bridge over the train tracks. The beach can be accessed by crossing the bridge over the train tracks and heading south down 27th Avenue Northwest. There are fifteen homes south of the bridge on 27th Ave Northwest. Heading south of the bridge along 27th Avenue Northwest, the city street ends after four houses and there is a "End of City Street" sign. South of the "End of City Street" sign, the road leading to the remaining 11 homes on 27th Avenue Northwest and the beach in question is privately owned; the east side of the road is BNSF right-of-way and the west side of the road is owned by each adjacent homeowner. In other words, the beach that the City seeks to acquire is only accessible from 27th Avenue Northwest by a single lane road that is privately owned by BNSF on the east and the individual homeowners on the west. At the south end of 27th Ave Northwest near the beach the City seeks to acquire, there is no public parking, no turn-around, and scarce room for emergency vehicles. From the south, the beach in question is accessible

only through BNSF's train tracks or right-of-way or through tidelands from the Richmond Beach Saltwater Park accessible when the tide is down.

The beach the City seeks to acquire has been privately owned for over 120 years. For decades, the public has accessed the beach on the south side of the street via 27th Avenue Northwest. In the mid-1980s, a community group called "Richmond Beach Preservation Foundation" (not to be confused with our group, the Richmond Beach Preservation *Association*), filed a lawsuit in King County Superior Court against the former owner of the beach in question, BNSF, and the owners of some adjacent lots. In its lawsuit, the community group sought a prescriptive easement, claiming a public easement of use and enjoyment of the second class tidelands (*i.e.*, the beach the City seeks to acquire) and a public easement of access across the upland lots. The lawsuit was dismissed with prejudice as a matter of law.¹ In dismissing the claim for public access to the beach, the Court cited RCW 4.24.200 and 4.24.210 and found that the beach owner permitting the public to use the beach for outdoor recreation precluded any claim for adverse possession or prescriptive easement. In other words, the public has never had a prescriptive easement to or on the privately owned beach the City seeks to acquire; the public's use of the beach has been permitted by the owners of the beach. This type of neighborly concession and permissive use of the beach for recreation has continued for more than 35 years.

In 2020, the former owners of the beach in question placed the beach and adjacent home on the market. The City considered purchasing the property in March 2020, but ultimately decided against acquiring the property based on (1) lack of parking on narrow 27th Avenue Northwest; and (2) the fact that access to the beach from the Richmond Beach Salt Water is through BNSF right of way, "not a walk [the City] would encourage park visitors to make."²

The beach and adjacent home remained on the market for more than 14 months. In the summer of 2021, Peter Vitaliano purchased the house and beach. While the City declined to purchase the beach just a year prior citing the limited access, it now is considering condemning

¹ Attachment A: *Richmond Beach Preservation Foundation v. Larson et al.*, Order Dismissing Plaintiff's Complaint (King Co. Superior Court No. 84-2-11837, March 21, 1985).

² See March 4, 2020, email between Park Director Eric Friedli to City Manager Debbie Tarry:

Debbie: I met this afternoon with a real estate agent representing the owners of 19415 27th Ave NW. I have attached a map of the property. It is located along Puget Sound at the southern end of 27th Ave NW. The owners are asking if the city is interesting in acquiring two parcels for \$2,000,000. One has a single family residence and the other is vacant beach property. It is at the end of a narrow road and parking would be greatly restricted. It does not have convenient pedestrian access. The property is a relatively short walk up the beach from Saltwater Park. However that path is through railroad right-of-way and not a walk we would encourage park visitors to make. This property may be eligible for a King County Conservation Futures Tax grant. The City would need to provide at least \$1,000,000 in match funds. I do not recommend purchasing this property. I believe we have higher priority properties identified for acquisition that would better serve a wider swath of Shoreline residents. I told him I would get back to him in the next week or so. Let me know if you would like me to pursue this opportunity.

See also March 4, 2020, email from City Manager Debbie Tarry to the City Council:
Council –

I agree with Eric's assessment and would not recommend pursuing acquisition of this property. Please let me know by Wednesday, March 11, if you disagree with this direction.

and acquiring the property through eminent domain and is fast-tracking the matter without input from stakeholders, a cost/benefits analysis, or a plan for addressing the variety of issues surrounding the city condemning and making the subject beach public.

The City's eminent domain process has been needlessly rushed: On Thursday, May 12, the City issued a letter to Mr. Vitaliano (via a real estate agent) offering to purchase the beach for \$110,000. The letter indicates that if Mr. Vitaliano does not sell the beach to the City, the City may use its right of eminent domain to acquire the property for public use. The appraisal evidently supporting the City's offer has not been made available to Mr. Vitaliano or the public. Evidently, earlier this year someone interested in converting Mr. Vitaliano's property into public land had King County change the legal description of the beach from "uplands with tidelands/shorelands" to "tidelands" without any photographs, survey, notice, or justification.

On Monday, May 16, the City updated its agenda for the May 23 City Council meeting to include an agenda item for discussion of the use of eminent domain to condemn and acquire the beach at the south end of our street to expand City public park and beach access. That same day, our organization emailed the City Manager and City Attorney and asked that discussion on this matter be postponed to provide the affected residents on our street a meaningful opportunity to review the proposed resolution and offer our comment. The City Manager declined.³ We also issued a public records request for any documents/correspondence related to the city or public acquiring the beach or any adjoining properties. As of this writing, our request is still pending.

While the City indicated it would publish notice of the condemnation action on May 16 in the Seattle Times, the City only published notice of the action on May 19, 2022—just two business days before the matter was scheduled for discussion before the Shoreline City Council.

The City's sudden about-face on its views concerning the beach's suitability as a park and apparent desire to fast track this issue with little evaluation, community input, or further planning seems without reason and is misguided. The use of the beach has remained unchanged for decades; there is no downside to maintaining the status quo while further evaluating the stakeholder concerns, costs and benefits, and other issues discussed below.

The City has not addressed or not considered issues with acquiring the beach: Ordinance No. 967 and the attendant report oversimplify the City's acquisition of the beach to a matter of expending \$110,000 from the City's general fund. In so doing, the City either fails to consider or fails to address a wide range of issues, including the following:

- Access. As previously acknowledged by the City in 2020, access to the beach is limited. From north of the beach, there is no city street or public access to the beach; the beach is only accessible from the north through BNSF property or

³ When the City Manager declined to postpone this matter at our request, we were at the same time encouraged to provide the City with any additional information that we would like to be considered in the City's decision making process. The limited time between the proposal of this ordinance and the date it is scheduled for a vote, however, does not provide a meaningful time to provide such information and comment.

through the property of the residents on the south end of 27th Avenue Northwest. From the west, the only access to the beach is over BNSF's fenced off train tracks and through the properties of the homeowners on the west side of Richmond Beach Drive Northwest. From the south, the beach is accessible from the Saltwater Park if the tide is out, but it otherwise only accessible over BNSF right-of-way or train tracks. The beach is obviously bordered by Puget Sound on the west.

The proposed ordinance does not address how the City intends the public to access the beach. Does the City intend to lease land from BNSF to secure access to the beach from the north or south? Is BNSF receptive? What are the terms? Does the City intend to acquire via eminent domain the property of the homeowners on the south end of 27th Avenue NW to secure access to the beach? Does the City intend to construct a footpath over the train tracks?

- Parking. Like access, the City has not addressed the lack of parking near the beach. There is no public street leading to the beach, and the private road is one lane with no turn around.
- Seawall. The parcel the city seeks to condemn includes an aging seawall protecting the adjoining home from the tide. The seawall is currently Waterfront Residential Environment under the Department of Ecology's Shoreline Master Program. Has the City accounted for the necessary repairs for the seawall required to preserve the adjoining residential properties? Has it contacted the Department of Ecology?
- Neighbors' quiet enjoyment. If the City acquires the beach, it has an obligation to not permit the beach to become a nuisance to the neighbors nearby. If the city intends for the beach to be accessed from Saltwater Park from the south at low tide, what does the City intend to do to prevent the single lane road owned by the residents and BNSF on 27th Avenue Northwest from becoming a thoroughfare? How does the City intend to ensure access by emergency vehicles to the beach and homes on 27th Avenue Northwest? How does the city intend to prevent turning all of 27th Avenue Northwest into a parking lot? What will prevent users of the beach from accessing the immediately adjoining privately owned tidelands to the north? Or prevent people from being stranded to the north in between tides?
- Restrictions. What types of restrictions does the City intend to impose on the beach? Will it, like other parks, be closed and gated at dusk? Will there be permitted bonfires? Leash laws? Camping? How will any such restrictions be enforced?
- Costs. Has the City considered costs beyond the \$110,000 its appraiser believes the beach is worth? Has it factored in the diminution in value and loss of enjoyment to the adjoining homeowners? Has it factored in making access

May 20, 2022

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improvements, seawall repairs, signs, security, leasing or acquiring easements over adjoining properties, or a traffic analysis?

The City should table any discussion of acquiring the subject beach pending further discussion with stakeholders: Needless to say, there are a variety of concerns with the City obtaining the beach south of 27th Avenue Northwest for parkland that have not been addressed. The City has not formulated or communicated its plan for the beach beyond its acquisition, making it impossible for our neighbors to meaningfully comment or discuss the issues with the City. Accordingly, we urge the Council to table any vote on the ordinance until after the City discloses what exactly it intends to do with the beach. We suspect there is a solution that strikes a mutually agreeable balance between the interests of the affected property owners, the community, and the City. Such a mutually agreeable solution is not possible if the Ordinance is pushed through with little notice and no meaningful input from stakeholders.

Please feel free to contact me for a tour our street and beach to see firsthand the issues that would need to be addressed if the City acquires the beach. If you have any questions or if there is anything you would like to discuss, please let me know.

Very truly yours,

Richmond Beach Preservation Association

A handwritten signature in black ink, appearing to read "Nathan J. Beard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nathan J. Beard
President

cc: Debbie Tarry / City Manager, City of Shoreline
Margaret King / City Attorney, City of Shoreline

Attachment A

Richmond Beach Preservation Foundation v. Larson et al.

Order Dismissing Plaintiff's Complaint

King Co. Superior Court No. 84-2-11837

March 21, 1985

MAR 21 1985

FILED
MAR 14 11:12
SUPERIOR COURT
KING COUNTY

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85-9-03825-3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RICHMOND BEACH PRESERVATION
FOUNDATION, a nonprofit
corporation,

Plaintiff,

vs.

ROBERT C. LARSON, et ux.,
ROBERT W. FORO, et ux.,
GUS COUROUTES & RENEE
COUROUTES, single persons,
BURLINGTON NORTHERN and
HERBERT O. LANDON, and
BANK OF CALIFORNIA, et al.

NO. 84-2-11837-7

ORDER DISMISSING PLAINTIFF'S
COMPLAINT

THIS MATTER came on for hearing before the Honorable
Richard M. Ishikawa on March 5, 1985, upon Defendants' motion to
dismiss or in the alternative for summary judgment of dismissal.
The Court considered the memoranda of law and affidavits filed by
both sides, and the arguments of counsel for each of the parties,
and is fully advised in the matter.

The Court finds and concludes:

1. That there is no genuine issue of material fact
and the Defendants are entitled to a judgment of dismissal with
prejudice as a matter of law.

2. Alternatively, as a matter of law, viewing all of

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	BOOK	19
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	CR-M	23
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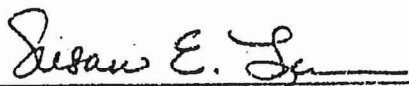
1 the facts in a light most favorable to the nonmoving party, RCW
2 4.24.200 and .210 establish a conclusive presumption that precludes
3 a claim/ for adverse possession or prescriptive easement and Defen-
4 dants are entitled to a judgment of dismissal with prejudice.

5 NOW, THEREFORE, IT IS ORDERED, ADJUGED AND DECREED that
6 Plaintiff's Complaint be and it hereby is dismissed in its entirety
7 with prejudice, and Defendants are awarded their statutory costs.

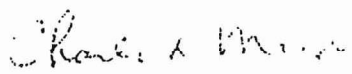
8 DONE IN OPEN COURT this 4 day of March, 1985.

9
10 
11 Judge Richard M. Ishikawa

12 Prepared and presented by:
13 BOGLE & GATES

14 
15 Susan E. Lehr
16 Attorneys for Defendants Herbert
17 O. Landon, Individually and as
18 Trustee of the Verah W. Landon
Trust, and The Bank of California,
Co-Trustee of the Verah W. Landon
Trust

19
20 Approved as to form;
21 notice of presentation
22 waived by:
WECKWORTH, BAKER & MEYER

23 
24 Charles L. Meyer
25 Attorneys for Defendants
Larson, Foro and Courounes