

Should property owners be liable for accidents on trails?

COMMENTARY

By Lee Perlman
The Southwest Portland Post

Legal liability – what happens if someone gets hurt – has been a thorn in the side of many enterprises. In recent months, it has become a direct threat to the existence of one of southwest Portland's major volunteer accomplishments – its trail network.

Under the leadership of Don Baack, the Southwest Neighborhoods, Inc. Trails Committee has mapped seven trails through southwest Portland, and gone a long way toward making them a reality through physical volunteer labor.

They have drawn admiration from pedestrian advocates throughout the city and beyond, and they are a particularly important asset in hilly terrain without a grid street system where amenities such as sidewalks often don't exist.

The trails go along or across streets at points, through parks or other public property, and along the edges of private property where there is a legal easement for a road that doesn't exist and probably never will.

But what happens if someone is hurt while walking on the trail?

Justifiably or not, on the trail? Current law gives them the right to sue for damages, and as things stand they would sue the adjacent property owners. This has given pause even to people otherwise okay with the trail system. Multnomah Presbyterian Church, which has been asked to allow part of a trail to extend through its property, has balked specifically because of the

liability issue.

Baack thinks the City of Portland should assume liability for the trails. The City, as represented by the Portland Bureau of Transportation, has historically resisted this; at the least, they want assurances that the trails will be built to City standards.

Baack agrees to this, although he has at times taken issue with public agencies over proper standards for public rights of way. As to trail maintenance, he said the Trails Committee would take care of that, and has done so except lately, when they have been faced with the prospect that their work would be for naught.

Baack would expect the City to step in to deal with a major problem, such as a landslide or a large tree fall.

According to Baack, years ago an aide to then City Commissioner Jim Francesconi, Michael Harrison (not the planner of the same name) sought and received approval for the City to assume trail liability, but Francesconi left office before it could be implemented. "The City is speaking with two voices," Baack complained.

There may be a way around the issue. A measure currently before the legislature, House Bill 2003, exempts owners of land from liability if others are injured while gardening there; an amendment makes the measure applicable to trails and people who walk on them.

At a recent SWNI board meeting, Jim Thayer of the Southwest Hills Residential League, a trail supporter, said of this measure, "The Bill seems like a viable vehicle to bring closure on this. It's not perfect, but it's workable." At the same meeting, Lee Buhler of South Portland said, "Liability is a red herring; some homeowners don't like people walking

near their property."

This is certainly true, although it is not a universal sentiment. Several trail neighbors contacted by *The Post* declined to be quoted on the issue, in one case out of fear of retribution. One neighbor of Trail Six commented, "I think a lot of people would prefer that so many people weren't walking past their property regularly, but the people who use trails generally aren't the sort of people you have to worry about. At least it means that they're not driving."

Others find the experience less benign, and object to the loss of a privacy they thought they had the right to expect.

In one case, on Council Crest, a homeowner purchased the easement to prevent people from walking past his property; in that case Baack was able to find an alternate route for that section of the trail.

Baack notifies property owners of intent to build a trail next to them, and he makes some effort to accommodate them, but he takes the position that they have no right to refuse to have a trail next to them. Easements are either public property or agreed to by owners when the property was subdivided.

To give neighbors a say in this matter, he said, would mean that the City "by default is giving use of the land to adjacent property owners who don't own it and don't pay taxes on it." It would also almost certainly make it impossible to retain the trail network as currently constructed, as a continuous public right of way.

Note: HB 2003 was eventually adopted, but not before specific reference to "trails"



Don Baack and his dog Tasha hike on a trail near their home in Hillsdale. (Post file photo by Polina Olsen)

had been deleted from it; the bill was intended to deal with liability related to community gardens. Is it still relevant to the use, maintenance, etc. of trails? There was some confusion on this point.

At last month's meeting the SWNI board adopted a letter drafted by Don Baack to City of Portland officials that set out the following points: The City should assume liability for all trails on public right of ways. All trails built on built rights of way will have appropriate permits "as determined by the proper authority."

Additionally, all permitted trails will be inspected. Such trails will be maintained by the City "with the support of volunteer organizations where such exist or can be recruited."

The vote was 6-5 with four abstentions. Some of those dissenting and abstaining felt the letter as drafted was too vague. Others felt it would be tactically better at this time to pursue informal discussions rather than issue a formal letter.

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