

CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

APPLICATION BEFORE THE CITY OF GEARHART PLANNING COMMISSION

PLANNING COMMISSION
2ND THURSDAY, 6:00 PM

DATE RECEIVED 2/3/2017

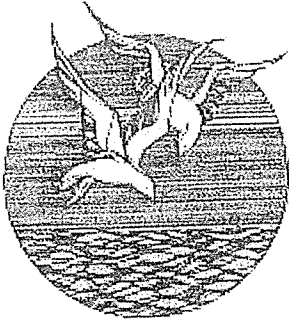
1. APPLICANT: Terry Lowenberg PHONE: 503-738-0453
MAILING ADDRESS: 3457 Hwy 101 Gearhart 97138
EMAIL ADDRESS: beachdevelopment@beachdev.com CELL PHONE: 503-440-4000
2. PROPERTY OWNER: Sum Properties LLC Terry + Molly PHONE: 503-738-0453
MAILING ADDRESS: 3457 Hwy 101 Gearhart 97138
EMAIL ADDRESS: beachdevelopment@beachdev.com CELL PHONE: 503-440-4000
3. SURVEYOR/ ENGINEER: Mark Mead Engineering PHONE: 503-738-6420
MAILING ADDRESS: 89643 Ocean DR Warrenton 97146
EMAIL ADDRESS: mark@meadeng.com CELL PHONE: _____
4. LEGAL COUNSEL: Jeremy Rust PHONE: 503-738-6380
MAILING ADDRESS: 872 Broadway Seaside 97138
EMAIL ADDRESS: jrust@seasideattorneys.com CELL PHONE: _____
5. PROPERTY LOCATION: 599 Pacific Inlay Gearhart
6. LEGAL DESCRIPTION OF PROPERTY:
(A) ASSESSORS PLAT AND TAX LOT: 6 10 09 AA 06200
(B) ADDITION, BLOCK, AND LOT: _____

PER SEC 13.080 OF THE GEARHART ZONING CODE ACTUAL EXPENSES INCURRED BY THE CITY DURING THE PROCESS OF TECHNICAL EVALUATION OF AN APPLICATION SHALL BE BORNE BY THE APPLICANT, IN ADDITION TO THE FILING FEES ESTABLISHED BY RESOLUTION. UNPAID PENALTIES, FINES OR INCUMBRANCERS OWED TO THE CITY OF GEARHART ARE GROUNDS FOR WITHHOLDING ISSUANCE OF A PERMIT. DO YOU OWE ANY MONEYS TO THE CITY OF GEARHART? (CIRCLE) YES NO

7. SIGNATURE (APPLICANT) [Signature] DATE: 2-3-17
PRINT TERRY LOWENBERG
8. SIGNATURE (OWNER) [Signature] DATE: 2-3-17
PRINT SAME

NOTICE: ALL ITEMS MUST BE COMPLETED IN ORDER FOR THE APPLICATION TO BE DEEMED COMPLETE AND READY FOR PROCESSING.

TO BE COMPLETED BY STAFF
DOES APPLICANT OWN ANY MONEY TO THE CITY? _____ IF SO, AMOUNT _____
FOR _____ ACCOUNT # _____ DEPARTMENT STAFF _____ (INITIAL)



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CITY OF GEARHART

APPEAL OF CITY ADMINISTRATOR/PLANNING COMMISSION DECISION

Appeal from Ruling of the City Administrator and/or Planning Commission. An action or ruling of the City Administrator may be appealed to the Planning Commission pursuant to the zoning ordinance. A legislative action or ruling of the City Administrator may be appealed to the City Council. An action or ruling of the Planning Commission may be appealed to the City Council. An appeal of the City Administrator shall be submitted within 15 days of the notice of the decision was mailed by the city. An appeal of the Planning Commission shall be submitted within 15 days of the date the final order is signed. If the appeal is not filed within the 15 day period, the decision shall be final. If the appeal is filed, the City Administrator or Planning Commission shall make a written report and recommendation to the City Council. The City Council shall hold a Public Hearing on the Appeal.

JURISDICTIONAL FILING FEE \$250.00

CITY OF GEARHART
CITY COUNCIL MEETS 1ST WEDNESDAY, 7:00 PM
PHONE (503)738-5501

APPLICANT Terry Lowenberg, Sum Properties, LLC.

MAILING ADDRESS 3457 Hwy 101 N. Gearhart, Oregon 97138

PHONE 503-738-0453 EMAIL ADDRESS beachdevelopment@beachdev.com

PROPERTY OWNER Sum Properties, LLC

MAILING ADDRESS 3457 Hwy 101 N. Gearhart, Oregon 97138

PHONE 503-738-0453 office 503-440-4000 cell

RULING OR DECISION BEING APPEALED
Final Findings and Order in City File #16-001CU

Re: Conditional use of Lottery machines

Issued January 19, 2017

Per Sec 13.080 of the Gearhart Zoning Code the filing fees established by the City Council shall not include the cost of preparing the record for appeals. Fees for preparation of the record shall not exceed the actual cost. Actual expenses incurred by the City during the process of technical evaluation of an application shall be borne by the applicant, in addition to the filing fees established by Resolution.

SIGNATURE (APPLICANT) [Signature] DATE 2-3-17

SIGNATURE (OWNER) [Signature] DATE 2-3-17

February 3, 2017

Gearhart City Council
City of Gearhart
PO Box 2510
Gearhart, OR 97138

RE: City File #16-001 CUP Sum Properties LLC/Lowenberg Neighborhood Cafe

Appeal of Final Order dated January 19, 2017

Statement of Interest

Sum Properties, LLC, by and through member, Terry Lowenberg, are the owners of the real property and business at interest and is the applicant herein. This appeal is based on the following:

- A. The requirement for a conditional use made by the City appears contrary to Oregon law.
- B. The denial does not appear to be based on any relevant fact, but rather on a prejudice against gaming and the people that participate in gaming.
- C. The installation of lottery machines is not contrary to the use applied for and approved by the City Council for the real property and business herein.

Issues and Grounds for Review

The following is a breakdown of those items in the Staff Report for the proposed application that we feel were based on personal opinion of the Planner rather than providing an unbiased analysis of the data at hand and should be reviewed:

- Section 1.030 Definition #122 Neighborhood Cafe. This section defines neighborhood cafe. The Planner writes, "*The narrow definition of a neighborhood cafe does not include or allude to lottery machines, gambling or gaming.*" While this is true, it also does not exclude any of the items. Nor does the code refer to or exclude lottery machines, gambling or gaming in any section.

It states later in the report that there are Lottery machines at the Great Wall Restaurant and the bowling alley. The definition of a bowling alley in the code is "*A commercial establishment where bowling is the principal activity*" and the definition of a restaurant is, "*A commercial establishment serving food and drink*". These definitions also do not include or exclude Lottery machines, gambling or gaming.

This would indicate that these items need not to be mentioned in a definition in order to be allowed yet the Planner took the exact opposite stance when there was evidence in the code to the contrary.

- Citing Existing Plan Policies and 8.040(1) and the Comprehensive Plan, the Planner stated:

"a. *The City will limit commercial activity in the City, in terms of both land developed to commercial uses and the types of the uses permitted in commercial zones, to a level that is compatible with Gearhart's residential character.*" As Lottery machines are allowed at two other similarly zoned locations in Gearhart, they are a type of use that is permitted in the commercial zones and compatible with the character of Gearhart.

The Planner under this section writes, in part, *"Lottery machines in a bar environment condone gambling and drinking. According to several studies, gambling and alcohol additions [sic] are on the rise.***The City finds gambling stations that encourage alcohol consumption do not coincide with the intent of a neighborhood cafe as defined."*

This is clearly a highly-biased opinion from someone who is adamantly against the proposed use rather than independent reviewer of an application. It also fails to provide any supporting evidence, other than "several studies", and characterizes the Oregon Lottery as something other than the entertainment the Lottery is.

- Citing Existing Plan Policies 8.040(1) and the Comprehensive Plan, the Planner writes:

"There is no evidence that adult-only gambling and drinking is a use that Gearhart resident's need."

The definition of a Neighborhood Cafe states that it "may include the sale of wine and malt beverages" meaning the "drinking" is allowed under the code. Further, this approval was for a pub, a place where people gather to socialize and share a beverage. Again, it seems the Planner is trying to find arguments against the Lottery machines by linking "gambling and drinking." The Planner also adds the phrase "adult only" when only a small screened off room and any place designated by OLCC will be off limits to minors.

- Citing Existing Plan Policies 8.040(1) and the Comprehensive Plan, the Planner writes:

"c. The City will establish Zoning ordinance standards to protect residential areas from adjacent commercial development."

Under this section the Planner adds another paragraph of findings related to "adult-only gambling" and asserts infers that this conflicts with a family-friendly café and community gathering place. However, the bowling alley is "family-friendly" and has Lottery.

The Planner also states, *"The City finds the lottery machines are not a use "devoted to the serving of food while customers are seated at tables."* This is simply untrue. The State of Oregon has determined that Lottery is entertainment. Lottery dollars support many resources in Oregon, and locally, and if customers want to participate in Lottery while waiting on a meal, this is good for Gearhart and good for Oregon.

- In the Proposed Findings under 8.040 and Comprehensive Plan goal 2, the Planner mentions that there are machines at the Great Wall and bowling alley in the C-2 zone. The Planner goes on to state, *"The Sandtrap bar and restaurant adjoining the golf course, also zoned C-2 does not have gambling machines, an amenity that no McMenamins restaurant or bar provides. Multiple McMenamins establishments in the state are advertised as family-friendly and are regularly filled with multiple family events."*

Biased statements such as these are irrelevant to the proposed application and are extremely inappropriate. They also do not give the applicant a chance for a fair review by the Planning Commission or City Council. This statement in particular seems to suggest that the Great Wall and bowling alley cannot be family friendly because of alcohol and gambling. I disagree.

Also under this section it states, "*The City finds there is no evidence of demand for additional gambling machines***.*" However, the Planner provides no findings in support of the statement. In direct refute of this statement is the fact that there were additional Lottery machines located in the Gearhart Junction Cafe that was located at the intersection of Highway 101 and Pacific Way. This location is now closed which would indicate that there could actually be a need since these machines are no longer available.

- In the Proposed Findings under 8.040 and Comprehensive Plan goal 3, the Planner states:

"The machines encourage drinking and conflict with the family friendly character described in the original proposal".

There is no evidence provided in the report that supports the statement that the machines encourage drinking. There is also evidence as set forth above, that it is expected alcohol will be served in a neighborhood café.

Further in this section it states in part, "*The machines conflict with definition of a neighborhood café.*" This is simply not true. Nowhere in the code are Lottery machines, gambling or gaming addressed.

- Lastly, I find it concerning that the Planner mentions the loss of a Grocery Store in the report. This is absolutely irrelevant to the current application and is obviously intended to put a negative light on the proposed application. The Staff Report does not appear to be done by an unbiased professional planner. It appears like it was written by an angry citizen firmly against Lottery machines. I would encourage the City Council to recognize not only the facts stated above in support of the proposal but to also consider future reports that are unduly biased. For any applicant to get a fair hearing the City staff should be following and applying the City's Codes and Policies and not personal opinions.

Request for Review

We request this application be reviewed and new evidence be submitted in writing by interested parties.