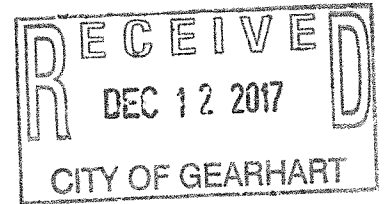




HATHAWAY LARSON

Koback Connors · Heth



3pm
CH

December 12, 2017

VIA HAND DELIVERY

Cheryl Lund
City of Gearhart Planning Commission
698 Pacific Way
Gearhart, OR 97138

Re: Appeal of Planning Commission Decision (File # 17-008P)

Dear Ms. Lund:

Enclosed for filing is Ray Romine's Appeal of the Planning Commission Decision in the above-referenced matter, along with the \$250 payment. Please notify me when the hearing on this Appeal will be held. Thank you.

Very truly yours,

HATHAWAY LARSON LLP

Gregory S. Hathaway

Gregory S. Hathaway
1331 NW Lovejoy St., Ste. 950
Portland, OR 97209
greg@hathawaylarson.com
(503) 303-3103 direct
(503) 303-3101 main



CITY OF GEARHART

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

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.

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

JURISDICTIONAL FILING FEE \$250.00

APPLICANT Ray Romine

MAILING ADDRESS 2170 Skyline Drive, Seaside, OR 97138

PHONE (503) 440-9561 EMAIL ADDRESS 42romine@gmail.com

PROPERTY OWNER Ray Romine

MAILING ADDRESS Same as above.

PHONE (503) 440-9561

RULING OR DECISION BEING APPEALED
Denial by Planning Commission for City approval of a two-lot land partition to create one new single family home site.

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)  DATE _____

SIGNATURE (OWNER)  DATE 12-12-17

APPEAL OF PLANNING COMMISSION DECISION

(Section 13.060)

1. Identification of the Decision sought to be reviewed and date of the Decision:

The denial by the Planning Commission of a request for a Tentative Land Partition to create one new single-family home site with access to Hillila Road (File No. 17-008P). The Decision was mailed by the City on November 27, 2017. An appeal of the Decision is due on December 12, 2017. This appeal was filed with the City on December 12, 2017 with the appropriate filing fee.

2. Statement of the interest of the person seeking review:

The person seeking review of the Decision is Ray Romine, the applicant ("Applicant") for the Tentative Land Partition.

3. Specific grounds for appeal:

The Planning Commission found that the Applicant "refused" to comply with the requirements of Section 5.1.4.2 of the City's Water Master Plan (regarding water mains) which required an 8-inch pipe extension of the main line east of the Applicant's property in order to meet water pressure for fire flow demands. The Planning Commission also found that the proposed Tentative Land Partition required a new fire hydrant under the Oregon Fire Code.

As a result, the Planning Commission denied the Applicant's Tentative Partition Plat on the basis that the Applicant was not willing to provide adequate water service to the proposed parcel and a fire hydrant as required by the City's Water Master Plan and Fire Code.

The Applicant submitted evidence from Wyatt Fire Protection, Inc. that a 3-inch main in the street would be adequate to provide water for a residential sprinkler system designed to meet the requirements of National Fire Protection Association (“NFPA”) 13D for two homes on the proposed parcels. Wyatt also indicated that sprinkler systems are routinely designed and installed where adequate hydrants are not available. See attached the October 24, 2017 letter from Wyatt Fire Protection, Inc.

The Planning Commission’s denial was unlawful for the following reasons:

- (a) The City did not conduct a rough proportionality analysis to determine if there was a *nexus* between the City’s requirements to provide an 8-inch pipe extension in order to meet water pressure for fire flow demands with the impacts from two homes. As a result, the City did not have the authority to deny Applicant’s Tentative Partition Plan on the basis that the Applicant would not agree to build an 8-inch line.

The City has the burden of conducting a rough proportionality analysis. *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Community*, 438 U.S. 825 (1987); and *Brown v. City of Medford*, Or App 42, 283 P3d 367 (2012). The evidence in the record demonstrates that a 3-inch pipe extension suffices in meeting water pressure for fire flow demands to provide water for residential sprinkler systems designed to meet the requirements of NFPA 13D for any houses on Parcel 2; and

- (b) The City did not conduct a rough proportionality analysis to determine if there was a *nexus* between the City’s requirements to provide a fire hydrant with the impacts from two homes. As a result, the City did not have the authority to deny Applicant’s Tentative Partition Plan on the basis that the Applicant would not agree to install a fire hydrant. The evidence in the record demonstrates that a residential sprinkler system designed to meet the requirements of NFPA 13D suffices in lieu of a fire hydrant.

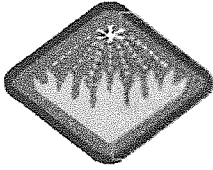
4. Request for partial de novo review:

Applicant understands that the Letter from Wyatt Fire Protection, Inc. is part of the City's record (attached). If not, Applicant respectfully requests that the Wyatt letter be made part of the record, as it is relevant to the City Council's consideration of this appeal. Applicant requests the right to present additional evidence that a 3-inch pipe extension is adequate to provide water for a residential sprinkler system for any houses on Parcel 2, and that a fire hydrant is unnecessary. This additional evidence will be helpful for the City Council's review of the issues presented in this appeal.

5. Requested action of City Council:

The Applicant respectfully requests the City Council reverse the decision of the Planning Commission and approve the Tentative Partition Plan subject to the following conditions:

- (a) The Applicant shall install a 3-inch water line in the street to provide water for a residential sprinkler system designed to meet the requirements of National Fire Protection Association ("NFPA") 13D for any houses on the Parcel; and
- (b) The Applicant shall comply with the conditions of approval recommended by City Staff in its report to the Planning Commission dated August 3, 2017 except for any reference of providing an 8-inch water line extension and a fire hydrant. See pages 9-11 of the August 3, 2017 Staff Report.



WYATT
FIRE PROTECTION, INC.
9095 S.W. Burnham
Tigard, OR 97223

Ray Romine
Romine Construction, LLC
2170 Skyline Drive
Seaside, Oregon 97138

October 24, 2017

Re: Hillila Water Line Extension

Dear Mr. Ray Romine:

After reviewing the plans for the Hillila Water Line Extension that you provided, it is my opinion that a 3" main in the street will be adequate to provide water for residential sprinkler systems designed to meet the requirements of NFPA 13D for any houses on Parcel 2.

It should also be noted that NFPA 13D does not require an outside hose flow, normally from a fire hydrant, and systems are routinely designed and installed in areas where there are no fire hydrants available.

Please do not hesitate to contact me if you have any questions or need additional information.

Thank you,

Ashley Nishihara, EIT
Fire Protection Designer

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Romine Construction LLC
 2170 Skyline Dr
 Seaside OR 97138
 503-440-9561

U.S. Bank National Association
 Seaside OR 97138
 24-22/1230

3540

Date 12/12/2017


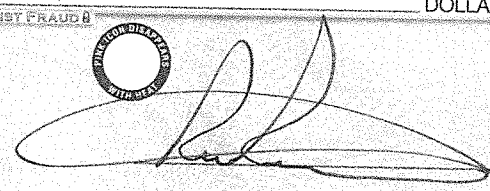
PAY TO THE ORDER OF City Of Gearhart \$**250.00

Two Hundred Fifty and 00/100 ***** DOLLARS

City Of Gearhart
 PO Box 2510
 Gearhart OR 97138

Memo Appeal File #17-008P

PROTECTED AGAINST FRAUD

⑆ 123000220⑆ 153691330192⑈3540

Intuit® CheckLock™ Secure Check

City of Gearhart

RECEIPT

DATE 12/12/17 No. 052558

RECEIVED FROM Romine Construction \$ 250.00

Two hundred fifty 00/100 DOLLARS

FOR RENT Appeal of PC. decision

FOR _____

| | | | |
|----------|------------|----------|-----------------------------------|
| ACCOUNT | <u>550</u> | <u>-</u> | <input type="radio"/> CASH |
| PAYMENT | <u>550</u> | <u>-</u> | <input type="radio"/> CHECK |
| BAL. DUE | <u>0</u> | <u>-</u> | <input type="radio"/> MONEY ORDER |
| | | | <input type="radio"/> CREDIT CARD |

FROM _____ TO _____

BY C. Lund

A-2701
T-46800/46802



HATHAWAY LARSON

Koback · Connors · Heth

January 26, 2018

VIA EMAIL

Chad Sweet, City Manager
Peter Watts, City Attorney
City of Gearhart
698 Pacific Way
Gearhart, OR 97138
chadsweet@cityofgearhart.com
peter.watts@jordanramis.com

Re: Ray Romine Appeal

Dear Chad and Peter:

We appreciate the City's willingness to consider ways the parties can reach an agreement that will allow the City to approve Mr. Romine's Partition application on appeal to the City Council, and allow Mr. Romine to complete the construction of his partially built house. The purpose of this letter is to outline the terms that would be acceptable to Mr. Romine based on my conversation with Peter and Mr. Romine.

Mr. Romine will agree to the following:

Terms of Settlement Proposal

1. Mr. Romine accepts the City's willingness to install a fire hydrant at its own cost.

Gregory S. Hathaway
1331 NW Lovejoy St., Ste. 950
Portland, OR 97209
greg@hathawaylarson.com
(503) 303-3103 direct
(503) 303-3101 main

Comment: As you know, Wyatt Fire Protection has evaluated Mr. Romine's plans for providing adequate water for fire protection to his proposed house. It is Wyatt's opinion that a 3" main in the street will be adequate to provide water for residential sprinkler systems designed to meet the requirements of NFPA 13D for any house on Parcel 2, and that a fire hydrant is not necessary. However, Mr. Romine does not object to the placement of a fire hydrant if the City is willing to pay for it.

2. **Mr. Romine accepts the City's willingness to install an 8" line, five feet past his property line within the public right of way.**

Comment: As stated above, it is Mr. Romine's opinion that a 3" line is sufficient to provide water service to his proposed house. However, Mr. Romine does not object to the City installing an 8" line, five feet past his property line within the public right of way.

3. **Mr. Romine agrees to pay the City the cost of installing a 3" line, five feet past his property line within the public right of way as an offset for the City installing an 8" line. Mr. Romine estimates that installing a 3" line would cost approximately \$2,250.**

Comment: At issue in this appeal, is whether a 3" line is sufficient to provide water service to Mr. Romine's proposed house. The Planning Commission denied Mr. Romine's Partition application on the basis that he was not willing to provide adequate water service to the proposed parcel and a fire hydrant as presumably required by the City's Water Master Plan and Fire Code by providing an 8" pipe extension. Mr. Romine claims in his appeal that the Planning Commission's denial was unlawful.

In short, the City claims that an 8" line is necessary, and Mr. Romine claims that a 3" line is necessary. Mr. Romine, as stated above, does not object to the City installing an 8" line, five feet past his property line within the public right of way. Because of this difference of opinion, it is reasonable that Mr. Romine pay the City the cost of installing a 3" line estimated to be \$2,250 to offset the cost of the City installing an 8" line.

4. Mr. Romine requests the City to reimburse him for a portion of the cost he expended for the OTAK study (regarding the installation of an 8" line) by crediting him the estimated cost for installing a 3" line (\$2,250) and waiving any fees associated with the processing of the Partition application and his appeal of the Planning Commission's decision, including City attorney fees. The City would be responsible for paying the unpaid balance of the OTAK invoice of approximately \$1,650.

Comment: The OTAK study provided the necessary engineering for the placement of an 8" line. The City desires to build an 8" line, although Mr. Romine disagrees that it is necessary. The OTAK invoice is for \$7,000 and Mr. Romine has paid approximately \$5,350 leaving a balance of \$1,650.

The City's Building Inspector advised Mr. Romine that the City would be willing to consider paying a portion of the OTAK invoice.

It is reasonable that the City reimburse Mr. Romine for a portion of the OTAK study since the City desires to build an 8" line and benefits from the engineering provided by OTAK. Mr. Romine believes the City has the study, but will provide it if not.

Based on this settlement term, as stated above, the City would pay for the entire cost of the 8" line; the City would pay \$1,650

of the OTAK study that supports its 8" line; the City would waive any fees associated with the processing of the Partition application and Mr. Romine's appeal, including City Attorney fees; and Mr. Romine ends up paying \$5,350 of the OTAK study that benefits the City.

5. **The City will immediately conduct the necessary inspections of Mr. Romine's partially completed house.**

Comment: Mr. Romine has a valid building permit from the City. The City, however, has chosen not to conduct the necessary inspections of Mr. Romine's partially completed house due to the party's disagreement regarding water service to the house. There is no connection between the water service issue and the City conducting an inspection.

The City has not issued a Stop Work Order on the construction but simply chosen not to inspect the house preventing Mr. Romine from completing it. The City's failure to conduct the required inspection has damaged Mr. Romine.

Mr. Romine requests the City to conduct the inspection so he can proceed to complete his partially completed house.

6. **The City agrees to construct the 8" line, five feet past his property line within the public right of way no later than June 1, 2018 so the City can issue a Certificate of Occupancy for his house.**

Comment: Mr. Romine expects to complete the house by June 1, 2018 assuming the City will immediately conduct the aforementioned inspection allowing him to proceed with construction. The City needs to complete the installation of the 8" line by that date so that the City can issue a Certificate of Occupancy.

January 26, 2018

Page 5

7. The terms of settlement can be adopted by City Council as part of its review and decision regarding Mr. Romine's appeal of the Planning Commission's decision at its February 28th meeting.

Comment: The City Council will consider Mr. Romine's appeal at its February 28th hearing. The City Council has the authority to approve Mr. Romine's Partition based on conditions of approval that implement agreed upon terms of settlement.

We believe that Mr. Romine's proposal is reasonable under the circumstances and avoids the expense of unnecessary litigation. Thank you and the City Council for your consideration.

Very truly yours,

HATHAWAY LARSON LLP



Gregory S. Hathaway

GSH/pl

cc: Ray Romine

Cheryl Lund, Planning court@cityofgearhart.com