

**AUGUST 11, 2021**

**A PUBLIC HEARING TO CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION FROM JOHN BANTA REGARDING FILE #21-01P LAND PARTITION**

The public hearing was called to order at 6:05 pm by Mayor Paulina Cockrum. Present were Councilor Jesse, Councilor Fackerell (online), Councilor Smith (online), Councilor Warren (online), City Attorney Peter Watts (online), City Administrator Chad Sweet, and City Planner Carole Connell.

Mayor Cockrum opened the public hearing to consider file #21-01P Banta Partition, Appeal of a Planning Commission Decision. Per prior decision the appeal will be heard *On the Record*. Cockrum read the hearings disclosure statement into the record. Cockrum asked if any Councilor had a conflict of interest, bias or exparte contact. None was declared. Cockrum said she did not think she had a conflict of interest but stated she was supervisor to Jo Banta about 30 years ago. Cockrum asked if the audience had any challenge to the Council being able to make an impartial decision. None was declared.

**STAFF PRESENTATION**

Connell reviewed the documents in the *record* and the history of the 2020 and 2021 partitions with regards to the County involvement. Banta clarified the county allowed for a north easement to the back piece on the county portion so they would no longer need to use the city side to get to the county back portion of the property. She summarized the Notice of Decision and staff report related to the requirements of the Transportation System Plan street improvements and shared-use path. Connell receiving correspondence from Clatsop County confirming McCormick Gardens Road is under jurisdiction of Clatsop County and has never been turned over to the city. In the future, if the road is given to the city then the city can decide how to develop it.

Watts clarified The Transportation System Plan is acknowledged by DLCD and is a component of the Comprehensive Plan. Another element of the process is a non-remonstrance agreement. A non-remonstrance agreement allows for nothing to happen until enough of the properties in the area are required to make the improvements, the agreement runs with the land not the owners. Once the property is turned over to the city and enough properties are required to make the improvements a LID (local improvement district) is formed, and property owners would not be able to argue against the improvements but be required to pay for their portion of the project. Should the council choose to deviate from the TSP requirements the council would need to provide really good findings to justify to DLCD staff why the improvements or waiver should not be required.

Connell noted the first condition the applicant is appealing is Condition #3 the planned Railroad Avenue pedestrian shared use path (TSP Project #G-3) because the applicant feels the width is too wide, 40 to 45 feet. Connell reported due to topography and no engineering when the TSP was developed it may not be possible for a road to be built in the area. But, due to the number of families with children living on the east side of the highway and their safety there is at least the possibility and a need for a path. She stated the site needs to be surveyed to know what is feasible and be able to come to a compromise. The 40–45-foot width is to allow for the alignment of a path to existing Railroad Avenue right of way. She suggests staff make a site visit with the applicant to refine the connection to a minimum width, possibly 10 feet and a jog to make a connection. Connell noted the partition process is not complete because the applicant will need to come back to the planning commission for final partition plat approval.

Condition #4 a. regarding McCormick Garden Road improvement. Following discussion with Clatsop County it was determined a deferral of future improvements to McCormick Gardens Road is appropriate at this time. In the future the county may turn the road over to the city and due to the substandard street and drainage issues future improvements would be appropriate. At this time it makes no sense to improve a small section of the substandard road adjoining the applicant's property now but rather to require a Waiver of Remonstrance to defer road improvements.

Connell recommends retaining Condition #4a. and amending Condition #3 as follows On the final partition plat the path shall be an estimated 40–45 feet wide alignment shall be refined and reduced by city staff to a minimum necessary to connect to existing right-or-way to the south. The path may either be dedicated to the public or defined on the plat as a public access easement.

#### APPLICANT PRESENTATION

John Banta, P O Box 2134, Gearhart, OR 97138 – speaking on behalf of the Banta family in the appeal of the City of Gearhart Planning Commission Decision. The Commission is requiring the family make improvements on 187 feet of McCormick Gardens Road consisting of sidewalks and curbs along the Banta frontage. They request the work be deferred by Waiver until time the TSP is adopted for the road improvements. By requesting the Waiver the city is requesting a blank check with time frame and dollar amount undetermined causing a restraint on the family to move forward with any improvements or developments. The TSP for McCormick Gardens Road is a city/county endeavor at a 2016 cost of \$3.2 million. Unless the city develops additional revenue streams the city cannot expect to have more than \$1.2 million to spend on local street improvements over the next 20 years. The finding fails to indicate

how the required improvements relate to and are compatible with the impact of the development as required by two landmark supreme court decision. (Nolan vs California Coastal Commission and Dolan vs City of Tigard) Per LUBA ruling the findings did not show how the applicant would contribute to the need and benefit from a LID. (Clark Test Land Use Law). As stated, McCormick Garden Road is outside the UGB and is a county road with the county plans for no more than chip sealing the road. If it's not owned by the city how can the city tell them what to do to it.

Regarding the shared path. The planning commission is demanding the Banta family donate 40-45 feet of tax lot 0900 for planned TSP shared-use path. The standard for this path is 14-16 feet. Property owners along this potential path are objecting to any foot traffic on their existing property, safety being the number one concern for all. The general concern is it will become safe haven for transients building encampments on the path and keeping homes and businesses safe. Other concerns consist of police patrol and keeping those using the path off private property, pressure placed on elk herds and one less place for safe habitat. The cost of the TSP planned path is \$3.3 million from Pacific Way to Hillila Road but Clatsop County has no intention of continuing projects on into county property. McCormick Gardens Road is a county road, the city cannot hold them responsible for improvements to a road that is not theirs. With regards to the Railroad Right of way there is no public support to patrol and monitor the area against vandalism and safety. He is concerned the family will be held accountable for years down the road for an expense they have no control of.

Watts confirmed the remonstrance runs with the land not the family, the owners at the time of the event would be responsible for payment to the local improvement district.

Connell corrected cost for street improvements and path is \$3.3 million, not just the path.

Cockrum asked if the county was requiring that type of waiver.

Connell asked what the county requirements were on the county portion of the property.

Banta – none as far as he knows, and it is a county road from the corner on down. He feels like the family is being held hostage if the property is handed down to his children.

There were no council questions for the Banta's.

The public hearing was closed at 7:00 pm.

Discussion followed on a shared use path the length of the railroad grade, a proposal to pay the property owner for land for the path, the width of the proposed path, encroachment on Railroad Avenue, the importance of walking paths and connectivity north and south.



On **MOTION** by Jesse, a motion was made to strike condition 4 a. from the requirements. Motion died for lack of second.

On **MOTION** by Smith, 2<sup>nd</sup> by Warren, a motion was made to affirm the Planning Commission decision to require a waiver of remonstrance for Condition 4a. Motion passed 4-1 Cockrum – aye, Fackerell – aye, Jesse -nay, Smith- aye, Warren – aye.

On **MOTION** by Jesse, 2<sup>nd</sup> by Smith, a motion was made to amend Condition #3, on the final plat the path alignment shall be refined and reduced by city staff to the minimum necessary to connect to existing right-of-way to the south, in the form of an easement with the petitioner compensated using procedures for a street vacation. Motion passed 4-1 Cockrum – aye, Fackerell – aye, Jesse – aye, Smith – nay, Warren – aye.

On **MOTION** by smith, 2<sup>nd</sup> by Jesse, the meeting was adjourned at 7:45 p.m.

  
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Mayor, Paulina Cockrum

  
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Chad Sweet, City Administrator