

CITY OF GEARHART
Worksession of the City Council
Tuesday, September 17, 2024
6:30 pm On-site and Virtual/Telephonic

A joint worksession of the Gearhart City Council and Planning Commission was held Tuesday, September 17, 2024. Council members, City staff, and the public were able to attend on-site, virtually, or by dialing in on a telephone.

Present were Mayor Kerry Smith, City Councilor Preston Devereaux, City Councilor Dana Gould, City Councilor Sharon Kloepfer, Planning Commissioner Gini Dideum, Planning Commissioner Eric Halperin, Planning Commissioner Don Frank, Planning Commissioner Jennifer Grey, Planning Commissioner Paulina Cockrum, Planning Commissioner Russ Taggard, Planning Commissioner John Mesberg, City Administrator Chad Sweet, City Planner Garrett Phillips, Executive Assistant Krysti Ficker, and City Treasurer Justine Hill. A quorum of the Council was present. City Councilor Reita Fackerell was absent.

Mayor Smith called the joint worksession of the Gearhart City Council and Planning Commission to order at 6:30 pm. He invited City Planner Phillips to share information.

City Planner Phillips explained that he would be giving an overview of the information and explaining the input needed from the Planning Commission and City Council. He referenced the distributed memo and attachments. He indicated that the Federal Emergency Management Agency (FEMA), which oversees the City's flood plain management activities, is requiring cities to make changes to their zoning ordinance in order to protect endangered species in the floodplains. FEMA is requiring by December 1, 2024, a decision on how the City is going to respond to implementing their requirements. The objectives would be to provide City Council and Planning Commission options, evaluate next steps, and gather any additional information required to make a decision.

City Planner Phillips explained that FEMA has identified three alternative approaches that Gearhart may use. These include: 1) prohibit all new development in the floodplain (simplest but not necessarily recommended); 2) adopt a model ordinance that achieves no net loss of habitat functions in floodplains; and 3) amend the floodplain ordinance to require a custom site specific analysis (Floodplain Habitat Assessment).

He reviewed three key aspects of the FEMA provided model ordinance, which looks at salmon habitat and simplifies development impacts. One, development cannot occupy any additional space in the floodplain without mitigation (*reference undeveloped/developed space - section 6.1 of model ordinance, which was not distributed at the meeting*). Councilor Gould requested clarification on what types of development he was

referencing (e.g., decks, building structures, pavers). City Planner Phillips said that the model ordinance does not address minimum thresholds, which would be inclusive of all types of development. Two, development cannot result in a net increase in impervious surfaces within the floodplain (*reference impervious surfaces - section 6.1.2 of model ordinance*) without mitigation. Third, development cannot result in no net loss of trees greater than 6-inches in diameter without mitigation (plant replacement trees). Councilor Kloepfer requested clarification about cutting old growth trees and being allowed to replace them with any size tree, which City Planner Phillips said would be accurate because the model ordinance does not differentiate the size of the tree removal (7 inch versus 100 inch); however, mitigation requirements may be different. He also mentioned that the model ordinance does include a riparian buffer zone and that mitigation requirements are greater within 170 feet of a stream. City Planner Phillips talked about special provisions; such as 6.2 Stormwater Management; 6.3 Activities Exempt from no Net Loss Standards; and 6.4 Riparian Buffer Zone (RBZ). He referenced a table at the end of the model ordinance (*Table 1 No Net Loss Standards*) that describes mitigation requirements. He suggested that the Gearhart area focus on the RBZ-Fringe section of the table.

He introduced the Habitat Assessment guideline approach which provides a process where an applicant and City staff can design a program, evaluate the impacts on the habitat, identify/mitigate those impacts, and approve/deny a permit. He explained that this is a site specific analysis instead of following the model ordinance. He feels the Habitat Assessment guidelines are very similar to a program that Washington State already has implemented. He indicated that both the model ordinance and the Habitat Assessment approach would require floodplain ordinance code amendments changes.

City Planner Phillips said that there is an option of a hybrid model ordinance coupled with the Habitat Assessment approach. The City would adopt the model ordinance with modifications to allow applicants the option to follow the Habitat Assessment process as an alternative. Either approach will probably require an applicant to hire a third-party professional.

City Planner Phillips went over the December 1, 2024 deadline. He expressed concerns over the feasibility of meeting that deadline and discussed the potential impacts of not meeting it. One of the consequences would be to jeopardize the City's standing in the National Flood Insurance Program, which provides benefits to both property owners and City risk management. Mayor Smith is concerned that FEMA would not accept the hybrid alternative approach (model ordinance and Habitat Assessment). He has not seen anything except allowing the three standard FEMA approaches. Mayor Smith would like something in writing from FEMA before the City moves forward investing efforts in drafting a hybrid model approach. City Planner Phillips explained that he has heard FEMA say in a webinar that it is an option. He said that regardless of the approach that the City takes, he will be reaching out to FEMA to confirm compliance. He indicated that FEMA's communication has been vague and only verbal. He will keep very proactive communication with FEMA through the process.

Questions, Discussion, and Comments:

- Planning Commissioner Dideum requested clarification on the protection of endangered species, which seems to be specific to salmon. City Planner Phillips indicated that yes, the model ordinance and Habitat Assessment does seem to be focused on salmon habitat; however, any endangered species that may end up in the area would also be covered. She also asked a clarifying question on the map provided in the report distributed at the meeting (*figure 1: Gearhart Floodplain in blue, purple and pink, page 3 of 3*). City Planner Phillips indicated that the model ordinance and the Habitat Assessment approach applies to all the areas in blue and pink. Also, within the blue and pink areas, developing within 170 feet of the stream requires greater mitigation. There was follow-up discussion on the floodplain. In response to Planning Commissioner Frank's inquiry, City Planner Phillips responded that outside the floodplain the developed space, impervious surfaces, and net loss of trees does not apply.
- Planning Commissioner Mesberg requested clarification on if property owners were aware they were in the flood zone, which City Planner Phillips said they should because they probably are paying flood insurance. Planning Commissioner Mesberg clarified that both the model ordinance and the Habitat Assessment approach requires professionals to assist the applicant; however, he inquired about the City staff's qualifications and/or expertise required to approve the permit. City Planner Phillips explained that the applicant will probably have to hire a professional and that City staff will have to give a best effort of interpreting the professional's data. The government relies on an applicant's professional to do their due diligence and make their assessment. Keys to success for this are requiring specific information and listing specific types of professionals.
- Planning Commissioner Cockrum inquired if the City could personalize the model ordinance to designate specific requirements. Although City Planner Phillips is unsure of the limits of tolerance that FEMA would allow for modifications, he does feel that it may be feasible. He explained that the model ordinance does already require some specific City information to be inserted. He just cautioned that modifications should not make it easier for developing in the salmon protected areas. His goal is to have FEMA review the model ordinance before it is approved by the City.
- Planning Commissioner Grey inquired if there was any funds to recover the cost of extra staff time that will be required by the new mandates. City Planner Phillips responded that neither FEMA or DLCD have identified any financial support to assist cities. He indicated that they have offered technical assistance in the forms of workshops and comment review. He did say that the City does have the authority to establish reasonable fees to cover expenses and the City can recuperate costs from the applicant if the City needs to hire a professional to assist with the interpretation of their application.
- City Councilor Devereaux inquired about a specific area on the map, which is an area he feels does not represent salmon habitat and has even been dropped from the FEMA requirement of flood insurance. City Planner Phillips said that in FEMA's opinion the entire floodplain from time to time or occasionally may have salmon habitat. He mentioned that this scenario is one of the reasons the

Habitat Assessment approach could be worthwhile to demonstrate how infrequently salmon use the area, which could help the level of mitigation required.

- Planning Commissioner Halperin referenced the FEMA letter to Mayor Smith acknowledging the 143 flood insurance policies in our community and wondered if these people were exempt moving forward. City Planner Phillips said that this new mandate is irrelevant to whether there is a flood insurance policy or not because the focus is on any development in the floodplain area.
- Planning Commissioner Cockrum inquired about compliance and the impacts on Gearhart landowners in terms of FEMA protected insurance if the City does not become compliant. City Planner Phillips explained that not coming into compliance does jeopardize property owners ability to access the FEMA flood insurance program; as well as, restricts eligibility for Gearhart to get assistance after a flood.
- Planning Commissioner Cockrum also wanted to know how much of this process was related to the model floodplain tool process that the Planning Commission has already been working on. City Planner Phillips explained they were different, but related. He briefly talked about the differences and explained that addressing the model ordinance addresses both issues. He would like to see both issues addressed by combining requirements.
- Planning Commissioner Taggard requested clarification on the burden of decision making with the model ordinance on City staff (specifically City Planner Phillips). City Planner Phillips said that both the model ordinance and the Habitat Assessment approach would probably require the applicant to hire a professional and that the burden of decision making will fall on City staff.
- City Councilor Kloepfer inquired about the feasibility of FEMA having some type of audit system in place for staff decisions. City Planner Phillips responded that they have systems in place.
- City Councilor Gould thanked City Planner Phillips. She has concerns. She is especially concerned for property owners who did not have to get a permit for certain types of development before the FEMA floodplain process changes. She used an example of property owners along the Neacoxie creek. She inquired how abundant are professionals that can assist applicants with the new floodplain permit process. City Planner Phillips said there is an abundance of professionals with the skills that are needed and Washington State has already been requiring these types professionals. City Councilor Gould inquired on what types of issues would result if people were developing without proper permitting. City Planner Phillips explained there will always be some level of development that requires the City to monitor (code enforcement). Issues that will be created if the City is not monitoring and implementing the requirements may include a community assist visit and jeopardizing access to the National Flood Insurance Program. Councilor Gould feels regardless of which implementation approach the City decisions on, communication to the public will be essential. He agreed that there will be extra staff time and clear communication will be important.
- Planning Commissioner Halperin inquired on the ability to achieve a no net loss of habitat function when developing. City Planner Phillips said it will be challenging. He gave an example of the

impervious surfaces requirement and talked about the options for mitigation (e.g., treat stormwater, bioswales, removal somewhere else). He feels that the developed space requirements will be harder for people to meet and feels that the Habitat Assessment options may have more flexibility.

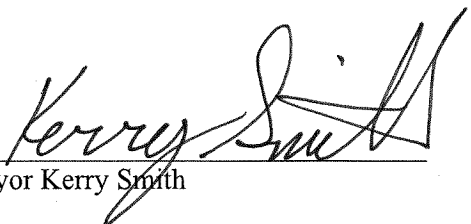
Planning Commissioner Didium suggested that the City Council direct the Planning Commission on how to proceed with amending the Gearhart Zoning Ordinance.

Administrator Sweet went over maps available on the City of Gearhart's website. He suggested going under the Catalog tab and selecting the FEMA Flood Zone Area overlay to view floodplain areas in Gearhart. There was discussion on mitigation requirements and the distance requirements from the floodplain areas. It was also pointed out that the current fire station property is not in the FEMA flood zone area; the old school property has some areas in the flood zone; and the Ordway property is not designated in the flood zone area.

Planning Commissioner Frank had a question regarding the definition of a fence in terms of being considered development. City Planner Phillips said that technically a fence would meet the requirements; however, he hopes that practical minimum thresholds will be established by FEMA that will provide exemptions.

City Planner Phillips was given direction to provide more discussion at the next City Council meeting in October.

Mayor Smith adjourned the worksession meeting at 7:46 pm.



Mayor Kerry Smith



Chad Sweet, City Administrator