



## **Staff Report**

For City Council Meeting - 7/7/2021

### ***Subject - New Business - Banta Partition Appeal***

**Synopsis:** On July 1, 2021 John Banta filed an appeal of the Planning Commission's decision of June 10, 2021 approving his 3-lot partition request on McCormick Gardens Road. See the attached Final Findings and Order of the Planning Commission. The appeal is in regards to a condition of approval requiring either an easement or dedication of 40 to 45-feet of public right-of-way on the west property line coinciding with the Railroad Avenue right-of-way in accordance with the Gearhart Transportation System Plan. The TSP Project #G3 plans for a street to provide north/south connectivity from Hillila Road to Pacific Way. Staff believes a road may not be possible at the north end adjoining the Banta property, but at a minimum a pedestrian connection is feasible.

The first step in an appeal is for the City Council to make a determination of the appeal procedure according to GZO Section 13.060 Appeals. The City Council may determine, at a non-public hearing that the scope of review will be either:

1. Restricted to the record made in the decision being appealed.
2. Limited to the presentation of additional evidence on such issues as the reviewing body determined necessary for a property (sp) resolution of the matter.
3. A de novo hearing.
4. A remand of the matter to the hearings body for additional consideration.

**Recommendation:** On July 7, *please determine the scope of review*. It is recommended the appeal be considered at your August 4 meeting due to the legal 120-day decision rule for the partition approval which expires August 2, 2021. The applicant asked the Planning Commission for 3 continuances beginning in March, was provided two time extensions but did not agree to an additional extension on the 3rd continuance request.

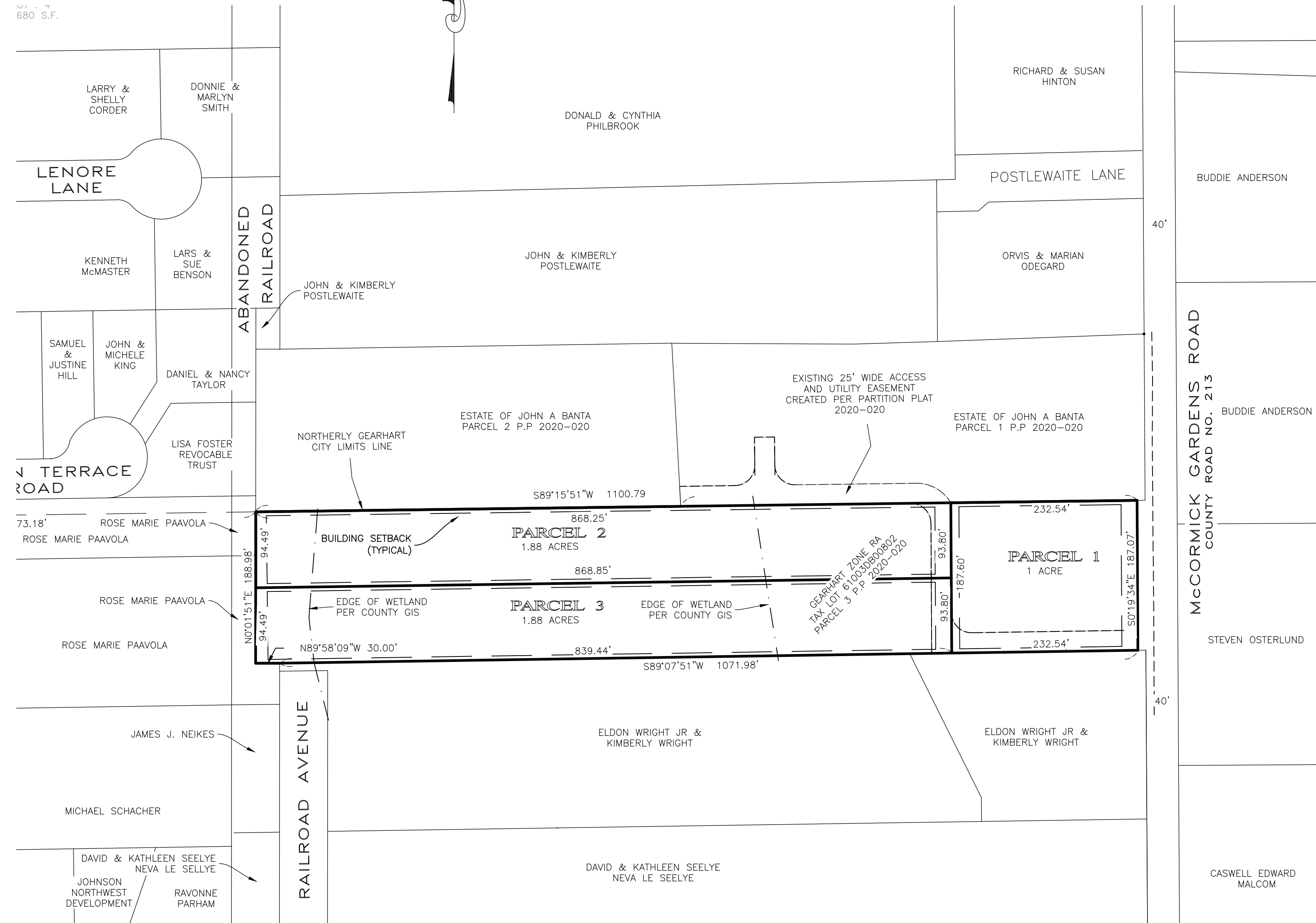
**Legal Analysis:** N/A

**Financial Analysis:** N/A

Respectfully submitted,  
Carole Connell, City Planner

TENTATIVE PARTITION PLAN

TAX LOT 61003DB00802  
CITY OF GEARHART  
CLATSOP COUNTY, OREGON

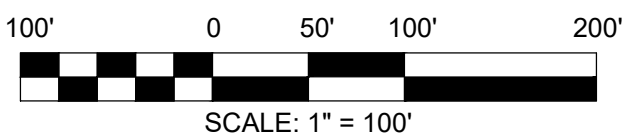


VICINITY MAP  
SCALE: 1" = 500'

**OWNER:**  
ESTATE OF JOHN A. BANTA, DECEASED

**PARTITIONER:**  
JOHN S. BANTA  
PO BOX 2134  
SEASIDE OR 97138  
503-717-2144

**LEGAL DESCRIPTION:**  
PARCEL 3 OF CLATSOP COUNTY PARTITION PLAT  
2020-020 INSTRUMENT NUMBER 202011384



PREPARED BY JACK L. WHITE II, PLS 91987



PORTLAND, VANCOUVER, BEND, SEASIDE

1725 N ROOSEVELT DR,  
STE B, SEASIDE, OR 97138  
(503) 738-3425

WWW.SFLANDS.COM	EMAIL: JACK.WHITE@SFLANDS.COM			
DATE	JOB NO.	FIELD	DRAWN	CHECKED
JAN 13, 2021	-	-	JLW	-

TENTATIVE PARTITION FOR:

JOHN S. BANTA

1060 McCORMICK GARDENS ROAD  
GEARHART, OREGON

SE1/4 SECTION 3, T6N, R10W, W.M.  
CLATSOP COUNTY, OREGON

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Jack L. White II*

OREGON  
SEPTEMBER 10, 2019  
JACK L WHITE II  
91987PLS

RENEWS 6/30/22



# 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 1<sup>ST</sup> WEDNESDAY, 7:00 PM  
PHONE (503)738-5501

**JURISDICTIONAL FILING FEES:**  
**ADMINISTRATIVE APPEAL \$300.00**  
**PLANNING COMMISSION APPEAL \$2,000.00**

APPLICANT John Banta  
MAILING ADDRESS PO Box 2134 Gearhart OR 97138  
PHONE 503 717 2144 EMAIL ADDRESS bantajojb@yahoo.com  
PROPERTY OWNER John A / Sally M Banta estate  
MAILING ADDRESS PO Box 2134 Gearhart OR 97138  
PHONE 503 717-2144 503 739-0368 503 738-4131  
RULING OR DECISION BEING APPEALED Gearhart Planning Commission #21-01P Banta

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 6/30/2021  
SIGNATURE (OWNER) [Signature] DATE 6/30/2021

APPEAL

**PALD**  
\$2000-

MARCH 2020

Check # 89319. 7/1/21  
[Signature]

Appeal to City of Gearhart

Banta Land Partition

July 2, 2021

The Banta Family is formally filing this appeal to oppose the decision of the Gearhart Planning Commission regarding the final partition plat application decision dated June 10, 2021. Please see below and attached for the rebuttals and concerns that we have regarding the requirements needed to meet before partition approval.

Final Findings and Order File: #21-01P Banta

Location: 4.76 acres located at 1060 McCormick Gardens Road, map 6-10-03DB Tax Lot 802 and Tax Lot 0900.

Page 12 of document, decision #3. "The final partition plat shall be modified to incorporate a portion of the planned Railroad Avenue pedestrian shared use path identified as TSP Project #G-3 located along the west boundary of the parcel. The path shall be an estimated 40-45' wide to connect to right-of-way to the south. The path may either be dedicated to the public or defined on the plat as a public access easement."

**REBUTTAL:** The City of Gearhart Planning Commission has stipulated that the Banta Family **must** donate or define a public access easement of 40-45' of their Tax Lot 0900 for the purpose of future creation of planned TSP project, Item #1A, of a shared use path that will extend from Pacific Way at the south, to Hillila Road to the north. This is essentially, blackmail.

This planned TSP is at a cost of \$3,030,000 for the extension from Pacific Way to Park Lane. The continued path from Park Lane to Hillila Road is Clatsop County property and as of the May 14, 2020 Staff Report, Clatsop County has no intention of continuing the path onto county properties.

In the attached numbered items, you will see on Item #1 that "The Standards" for this shared use path is 14-16' in width. Why is the Banta Family being required to donate 40-45' of Lot 0900 when the standards stated in the TSP is a much smaller width? Since the Banta Family only owns to the middle of the railroad right of way, rightfully acquired title to this land by quiet title Case No. 04-2085 as stated in Item #1C, isn't it only reasonable to assume that half of the needed 16' width would come from the west side properties?

As noted in Item #1B from the May 14, 2020 Staff Report, it is stated that “Although neighboring TL0900 falls into the City of Gearhart’s Transportation Systems Plan, neither the City nor the County can condition its dedicated to the public as a requirement.”

We have obtained signatures, Items #1D, from concerned citizens around the area that this pathway would affect. The main concern from everyone who has signed is the homeless population building encampments along the wooded areas that would border the pathway. This would create a great safety concern for the homeowners, business owners and for the future users of this pathway would be put in jeopardy. As you can see from the attached pictures, Items #1E, that several sections of the railroad ROW already have personal properties and businesses that are established on this ROW.

- Safety; the main concern from everyone who has signed is the homeless population building encampments along the wooded areas that would border the pathway. This would create a great safety concern for the homeowners, business owners and for the future users of this path being put in jeopardy.
- Funding; concerns also extend to this being an unfunded proposal. This will be at a great cost to taxpayers.
- Elk habitat; this is hot topic for the City of Gearhart and the pressures that have been put on the elk herds in town. We feel that this will have a direct impact on the elk herds in this area and one less safe place for elk to habitat. How will the dangerous elk vs. human interactions be controlled when the city already cannot control this issue?
- Liability to property owners bordering this pathway as well as to many others in the surrounding area; how do you keep citizens on the path and not wandering to private property where injuries, theft and loitering will occur if not heavily policed? How will the Gearhart Police be able to monitor this area in addition to their other duties?

Page 12 of document, decision #4. “Street improvements: No building permit may be issued until all required street and access easement improvements are in place and approved by the City Manager or designee, or other bonded, in conformance with the provisions of the Subdivision Ordinance.”

4a. “The Planning Commission decided to defer street improvements to McCormick Gardens Road adjoining Parcel 1. In lieu of the transportation improvement requirements identified in Section 4.040, the applicant shall sign a Waiver of Remonstrance to participate in a future Local Improvement District for road improvements to McCormick Gardens Road. The signed waiver shall be submitted to the City with the final plat approval request.”

**REBUTTAL:** The City of Gearhart Planning Commission has stipulated that the family must sign a “Waiver of Remonstrance” before final plat approval request. At this writing, a copy of said document was requested and a “example” of such was forwarded to us. By experience, it is usual to make a contract an example of what parties plan to demand later. It would be irresponsible for the family to agree to signing of such a form without having the document for us to review. In the example, Item 2, page 2, section 1, “That during OWNER’S ownership of the Parcel, or thereafter, and in accordance with all applicable street and building code provisions, OWNER agrees to pay upon request its pro-rata share of the Improvements. Such improvement costs shall be determined by the City Engineer and allocated to the Parcel based upon a street frontage or other allocation as shall be determined, at the discretion of the City Engineer, to be fair and equitable.” Page 2, section 2, “that the owner in possession of the Parcel will promptly, and within ninety days thereafter pay all costs associated with the Improvements constructed in accordance with building and other applicable ordinance codes, rules and regulations relating thereto, all as required by Section 1 above. In the event of a \_\_\_\_\_ may file a municipal lien against the Parcel for the actual and allocated engineering, construction and inspection costs thereof.”

In Item #2A, documentation from Clatsop County Public Works and Clatsop Development states that McCormick Gardens Road is a County road and there is no foreseeable future widening or improvements to it. There “may be some chip seals and maybe paving, but the road is currently constrained by wetland for most of its length.” To highlight the concerns of the neighbors on McCormick Gardens Road, there is wetlands directly east and west of the road that would require fill that would displace waterways, and there is already flooding issues annually on the roadway.

As a reminder, the Banta Family previously, May 14, 2020, had agreed to donate 10’ of the 187’ of frontage to McCormick Gardens Road for the possibility of any road improvements. As taxpayers of the property to the City of Gearhart and Clatsop County for road maintenance, it is mind boggling to the family and other property owners along McCormick Gardens Road, that we be held responsible for improving 187’ road frontage for projects that are tax funded for these improvements. This means the family will pay twice for these improvements, once by the paying of annual taxes and secondly paying in total for their section of road. So not only was the family willing to donate 10’ of the 187’ of frontage at that time, now the City of Gearhart is requiring us to pay for improvements, of which there is no idea of financial cost and/or impact to the family. This creates reasonable restraint on the family to move forward with any improvements or development of these lots due to the uncertainty of the financial burden that would lie ahead either for the heirs of John and Sally or the generations to follow.

Page 4

Please see Item #3 from Clatsop County Development regarding the 25' easement that will be placed on the north County property. Our surveyor, Jack White, has forwarded the required plat to them for final approval.

Lastly, please let us reiterate that John and Sally lived on this property for almost 50 years, paid taxes annually, raised their family and were proud to be citizens of Gearhart. This land is their legacy to their children, not a developer or someone who wants to make a fortune on this land. This is for the express purpose of their adult children to be able to have the same property ownership that they did. To live on it, not profit from it.

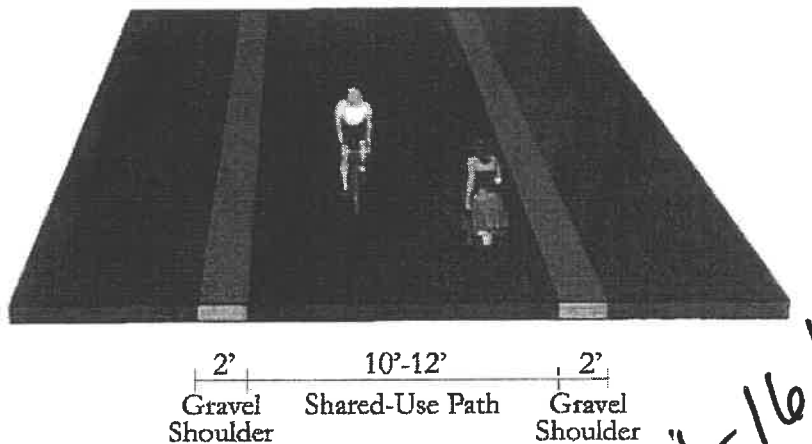
# The Standards

## Shared-Use Paths

Shared-use paths provide off-roadway facilities for walking and biking travel. Depending on their location, they can serve both recreational and transportation needs. Shared-use path designs vary in surface types and widths. Hard surfaces are generally better for bicycle travel. Widths need to provide ample space for both walking and biking and should be able to accommodate maintenance vehicles.

Gearhart requires that a paved shared-use path be 12 feet wide in areas with significant walking or biking demand; otherwise, it should be at least 10 feet wide (see Figure 13). The city may reduce the width of the typical paved shared-use path to a minimum of eight feet in constrained areas (e.g., steep, environmentally sensitive, historic, or previously developed areas). This design standard applies to newly constructed facilities and does not apply to existing shared-use paths (e.g., Ridge Path).

Figure 13: Design Standards for Shared-Use Paths



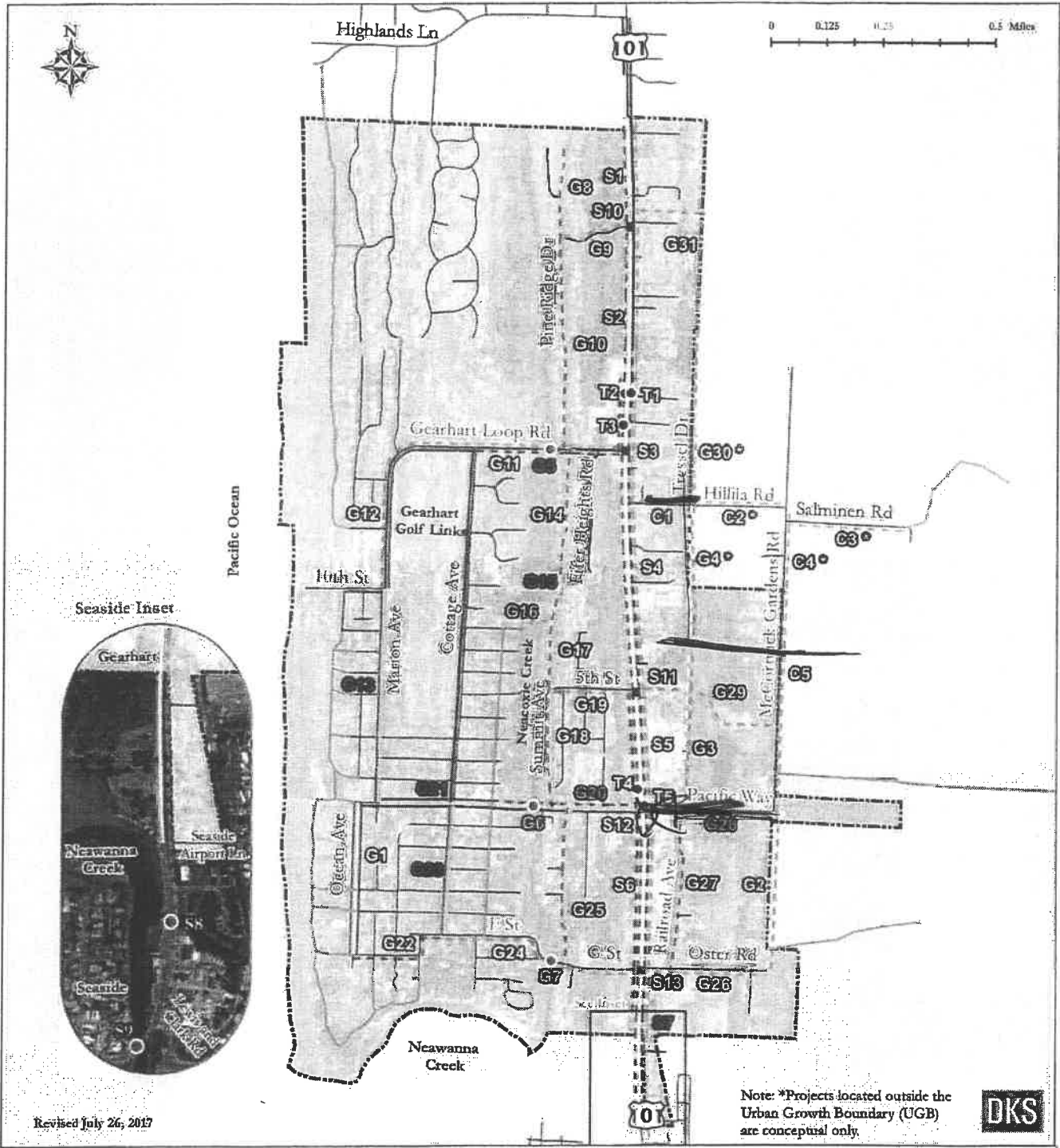
14-16'

Item #



# 7

## Planned TSP Investments



Revised July 26, 2017

**Legend:**

- Planned Street Improvement
- Planned Street Extension
- Planned Intersection Improvement or Study
- Planned Bus Stop Improvement
- Planned Bridge or Culvert Improvement

**Pedestrian and Bicycle Facilities:**

- | Existing | Planned |                       |
|----------|---------|-----------------------|
| —        | —       | Sidewalk              |
| —        | —       | Bike Lane or Shoulder |
| —        | —       | Bikeway (> 5 feet)    |
| —        | —       | Trails                |
| —        | —       | Planned Shared Street |

- Project included in the Financially Constrained Plan (Package 1)
- Priority project with additional funding (Package 2)
- Priority project with additional funding (Package 3)
- Project included in the Aspirational Plan (Package 4)

Item # 1A

30-wide x 392' parcel paralleling the rail right-of-way. In addition the City requests dedication of 15' x 392 feet on the west property line of Tax Lot 800 to the City for street right-of-way. The combined dedications of Tax Lot 900 and a portion of Tax lot 800 would be total of 45' x 392'. It is planned to connect both north and south to a future street or pedestrian trail. The final design shall be approved by the City prior to final plat approval.

The Gearhart TSP Project #C5 identifies the addition of a shared walking/biking/maintenance and tsunami evacuation path on the east side to McCormick Gardens Road from Pacific Way to near Salminen Road. The pathway specification adds 8-12' of surface, depending on location. Since the subject area adjoining McCormick Gardens Road is swampy lowlands an additional 8 feet would be adequate. Currently the road ROW is 40' wide and the pavement is narrow. The final design shall be approved by the City prior to final plat approval.

Thank you for the opportunity to comment."

**Staff Response:**

On May 14, 2020, County staff attended the virtual (GoTo Meeting platform) Gearhart Planning Commission public hearing for the Banta partition. The motion to approve the application with conditions was approved by the City Planning Commission. County approval is conditioned upon the property owner and the City of Gearhart agreeing to the resolution of those conditions. Although neighboring TL0900 falls into the City of Gearhart's Transportation Systems Plan, neither the City nor the County can condition its dedication to the public as a requirement. The applicant has been found to have removed the shed since the City of Gearhart provided this comment, satisfying this condition for both jurisdictions. Staff also concurs that a 25' easement providing access to Parcel 2 shall be required, as described in the staff findings above. This will be found as a condition of approval from the county in this application.

**Prior to recording the final plat, the property owner shall provide the county with documentation from the City of Gearhart that all conditions have been satisfied. (See Condition 3, Page 10)**

**PUBLIC COMMENT**

None.

**OVERALL CONCLUSION**

Based on the findings provided above, the application satisfies the applicable approval criteria. However, suitability of the site for the proposed use is based on the following and has not been considered in the approval of this partition.

- Water availability -  
The subject properties are within the Gearhart Water District. Proof of a water source is required by one of the methods specified in S2.400 of the Clatsop County Land and Water Development and Use Ordinance 80-14 BEFORE a building permit for a use requiring water (e.g. single-family dwelling or mobile home, commercial use) will be issued.
- Sewage district: None
- Fire protection district: Gearhart RFPD
- Soil classification (EFU, AF, F80): N/A
- Topography and Hazards:
  - Geologic Hazards N/A
  - Flood Hazards N/A
  - Shorelands Overlay N/A
  - Active Dune Overlay N/A
  - Other: Statewide Wetland Inventory (SWI)

Item # 1 B

Tillamook Office  
P.O. Box 220 - 309 Laurel  
Verified Correct Copy of Original 1/16/2020  
Telephone: (503) 842-2553

MOBERG, CANESSA, FABER & HOOLEY, P.C.  
Attorneys at Law

Seaside Office  
842 Broadway  
Seaside, Oregon 97138  
Telephone: (503) 738-6388

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EXHIBIT "A"

A thirty foot wide parcel of land lying on the Easterly side of the centerline of the Spokane, Portland, and Seattle Railroad located in the Philip Gearhardt Donation Land Claim #40, said parcel of land being further described as follows:

Commencing at the Southwest corner of that property described in that deed to John A. Banta and Sally M. Banta, husband and wife, recorded March, 1967 in Book 292, Page 31, Clatsop County Deed Records, said point being the true point of beginning of the parcel of land described herein;

Thence perpendicular to the centerline of said Railway North 89° 38' 25" West 30.00 feet to the centerline of said Railroad;

Thence North 00° 21' 35" East 392.10 feet along the centerline of said Railroad to a point that bears North 89° 38' 25" West 30.00 of the Northwest corner of said Banta property;

Thence perpendicular to the centerline of said Railroad South 89° 38' 25" East 30.00 feet to the Northwest corner of said Banta property;

Thence along the Easterly right of way line of said Railroad, South 00° 21' 35" West 392.10 feet to the point of beginning;

Said parcel of land containing 0.27 acres, more or less.

Situated in the Southeast quarter of Section 3, Township 6 North, Range 10 West, Willamette Meridian, County of Clatsop, State of Oregon.

Bearings are based on Partition Plat No. 1998-033, Clatsop County Survey Records.-----

Page

3 - GENERAL JUDGMENT TO QUIET TITLE

Item # 1C


Tillamook Office  
2020-06-16 16:20:20  
Verified Copy of Original  
Tillamook, Oregon 97141  
Telephone: (503) 842-2553

MOBERG, CANESSA, FABER & HOOLEY, P.C.  
Attorneys at Law

Seaside Office  
842 Broadway  
Seaside, Oregon 97138  
Telephone: (503) 738-6388

FILED  
CLATSOP CIRCUIT COURT  
04 JUN 28 PM 1:52  
CLERK OF COURT ADMINISTRATOR

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042085  
JGR  
Judgment - General  
12387889  


IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLATSOP

JOHN A. BANTA and SALLY M. BANTA, )  
 )  
 Plaintiff, ) Case No. 04-2085  
 )  
 vs. ) GENERAL  
 ) JUDGMENT TO  
 BURLINGTON NORTHERN RAILROAD ) QUIET TITLE  
 COMPANY, a Delaware corporation, )  
 )  
 Defendant. )

The above-entitled matter, having come on regularly before the above Court based upon the Plaintiff's Motion and order granting Plaintiff judgment on the pleadings;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

(1) Plaintiffs, John A. Banta and Sally M. Banta, are determined to be the owners and are entitled to possession of the real property set forth on Exhibit "A"

Item #1C

8/2/10  
10

Tillamook Office  
P.O. Box 720, 309 Laurel  
Tillamook, Oregon 97141  
Verified Copy of Original Filed 1/6/2020  
Telephone: (503) 842-2553

MOBERG, CANESSA, FABER & HOOLEY, P.C.  
Attorneys at Law

Seaside Office  
842 Broadway  
Seaside, Oregon 97138  
Telephone (503) 738-6388

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attached hereto, free and clear of any claim, estate, title or interest of said Defendant, and from any person claiming through or under said Defendant, except as hereinabove otherwise provided, and the title of Plaintiff, as to the said Defendant, is hereby quieted; and

(2) That said Defendant, be and hereby is enjoined, and all persons claiming through it, from asserting any estate, title or interest in said real property or any part thereof claimed by the Plaintiff in the Complaint (Quiet Title) on file herein; and

(3) That each party shall bear their own costs, disbursements and attorneys fees herein.

Dated: June 28, 2004.

Philip T. Nelson  
CIRCUIT COURT JUDGE

Prepared by:  
William R. Canessa - OSB #72045  
Moberg, Canessa, Faber & Hooley, P.C.  
842 Broadway  
Seaside, OR 97138  
Telephone: (503) 738-6388

Item #1C

June 24, 2021

We the undersigned citizens of Gearhart Oregon, particularly McCormick Gardens Road, Hillila Road, Salminen Road, Park Avenue and other property owners along the planned Railroad Avenue Pedestrian/Shared Use Path development would like to share our concerns with the City of Gearhart regarding the implementation of this TSP project.

The Banta Family is requesting to divide a portion of their parents' land into 3 buildable lots. The City of Gearhart is requiring that a portion of their land, Tax Lot 0900, be dedicated to them before any final plat is determined. They are requesting 45' of this tax lot for this pathway.

The plan to create a walking/bike path on the old Railroad Avenue, from Pacific Way to Hillila Road would create many issues to the property owners in this area. The undersigned concerns include the taking of land for an unfunded mandate. Next, safety. We feel that having an area that is proposed, would create a public nuisance with homeless citizens as well as the setting up of encampments that some of us have already had on our properties bordering this area. There would be concerns for all with lighting, equipment safety, day and/or night usage. The liability that property owners who are adjacent to this pathway is of concern. How do you keep people on the pathway and not on private property? Will there be a fence installed to keep citizens away from private property? The lack of public safety enforcement availability for this area is also in question.

I am attaching the signatures of affected residents for your reference.

Name                                      Signature                                      Address                                      Phone                                      Email

Jane Newhouse	Jane Newhouse	McCormick Gardens Rd	503-738-9600	
Kathleen Seelye	Kathleen Seelye	"	503-738-6914	none
Kathleen M Hebert	Kathleen M Hebert	710 McCor	503-738-9109	
David Seelye	David Seelye	"	503-738-6191	none
Sharon Waddell	Sharon Waddell	1380 Pacific	503-741-1265	
STEVE D STERLINS		8311 MCCORMICK GARDEN RD	503-738-3424	
Javish Macomb		610 McCormick Gardens Rd	503-791-9127	
Cosma Alcala		272 McCormick Gardens	503-468-9795	
Christine Alcala		272 McCormick Gardens Rd	503-468-9590	
Bekah Macomb		120 McCormick Gardens Rd	503-717-3129	none
Kim Wright		710 McCormick Gardens Rd	Gearhart	
KLOR WRIGHT			503-440-7630	
Jane Banta	Jane Banta	1060 McCormick Gardens Rd	503-738-6692	

Item # 1 D

June 24, 2021

We the undersigned citizens of Gearhart Oregon, particularly McCormick Gardens Road, Hillila Road, Salminen Road, Park Avenue and other property owners along the planned Railroad Avenue Pedestrian/Shared Use Path development would like to share our concerns with the City of Gearhart regarding the implementation of this TSP project.

The Banta Family is requesting to divide a portion of their parents' land into 3 buildable lots. The City of Gearhart is requiring that a portion of their land, Tax Lot 0900, be dedicated to them before any final plat is determined. They are requesting 45' of this tax lot for this pathway.

The plan to create a walking/bike path on the old Railroad Avenue, from Pacific Way to Hillila Road would create many issues to the property owners in this area. The undersigned concerns include the taking of land for an unfunded mandate. Next, safety. We feel that having an area that is proposed, would create a public nuisance with homeless citizens as well as the setting up of encampments that some of us have already had on our properties bordering this area. There would be concerns for all with lighting, equipment safety, day and/or night usage. The liability that property owners who are adjacent to this pathway is of concern. How do you keep people on the pathway and not on private property? Will there be a fence installed to keep citizens away from private property? The lack of public safety enforcement availability for this area is also in question.

I am attaching the signatures of affected residents for your reference.

Name	Signature	Address	Phone	Email
P. Devereaux		196 McCormick Gardens Rd. 94062	503-440-6212	3ARLIZ@GMAIL.COM
MATT LADDIN		1799 PACIFIC WY GEARHART OR 97138	503-739-1943	MLADDIN@HOTMAIL.COM
Rebecca Hollingsworth		1799 PACIFIC WY GEARHART OR 97138	415-858-4071	rhollingsworth@outlook.com
S. Lemas		1714 Pacific Way Gearhart OR 97138	503-440-2915	srelde@yahoo.com
Martin Lemas		1714 Pacific Way Gearhart OR 97138	503-440-2915	strelde@yahoo.com
Gloria Edler		51 McCormick Gardens Rd SEASIDE	503-440-2913	grelde@yahoo.com
Kim Postlewaite		33706 Postlewaite Lane Gearhart	503-440-2153	ncutting@mon.com
John Postlewaite		33706 Postlewaite Lane Gearhart	503-717-2089	ncutting@mon.com
Denald Philbrook		1799 PACIFIC WY GEARHART OR 97138	503-738-5117	philbdob@gmail.com
Cynthia Philbrook		33706 Postlewaite LN	503-738-5117	philbdob@gmail.com

Item 1D

June 24, 2021


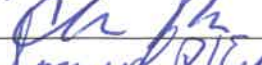

We the undersigned citizens of Gearhart Oregon, particularly McCormick Gardens Road, Hillila Road, Salminen Road, Park Avenue and other property owners along the planned Railroad Avenue Pedestrian/Shared Use Path development would like to share our concerns with the City of Gearhart regarding the implementation of this TSP project.

The Banta Family is requesting to divide a portion of their parents' land into 3 buildable lots. The City of Gearhart is requiring that a portion of their land, Tax Lot 0900, be dedicated to them before any final plat is determined. They are requesting 45' of this tax lot for this pathway.

The plan to create a walking/bike path on the old Railroad Avenue, from Pacific Way to Hillila Road would create many issues to the property owners in this area. The undersigned concerns include the taking of land for an unfunded mandate. Next, safety. We feel that having an area that is proposed, would create a public nuisance with homeless citizens as well as the setting up of encampments that some of us have already had on our properties bordering this area. There would be concerns for all with lighting, equipment safety, day and/or night usage. The liability that property owners who are adjacent to this pathway is of concern. How do you keep people on the pathway and not on private property? Will there be a fence installed to keep citizens away from private property? The lack of public safety enforcement availability for this area is also in question.

I am attaching the signatures of affected residents for your reference.

Name                      Signature                      Address                      Phone                      Email

Name	Signature	Address	Phone	Email
MIKE SCHACHER		3855 Hill 4101N	503-440-1185	mikeschacher@gmail.com
Chris Runds		1321 Park Ln Gearhart	907-315-0857	Chris Runds
Sam Hill		1368 Garden Terrace	503-717-3599	

Item ID



**John Banta**

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**From:** John Banta  
**Sent:** Sunday, June 27, 2021 8:57 AM  
**To:** John Banta



Start of Pathway (access from DQ)  
Shop on RW  
Item #1E



Telley Lowenberg's business on land

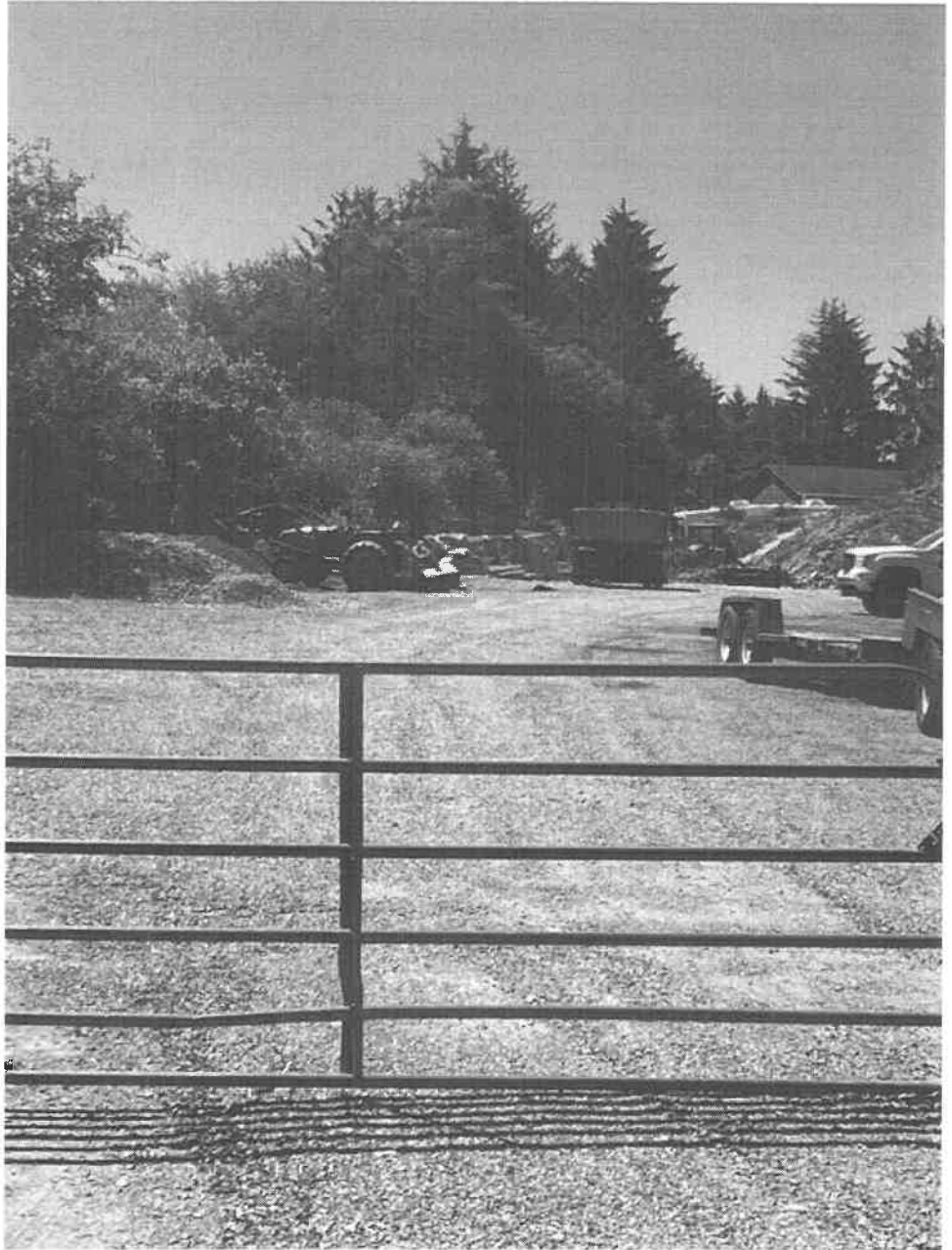
#1E



Terry Lowenberg's New Shop on Row

#1E

Sent from my iPhone



Landscaper on North End Hillside

#1E

**After recording, return to:**

Walter R. Gowell, Esq.  
P.O. Box 480  
McMinnville, OR 97128

**Send Tax Staements to:**

*No Change*

**IMPROVEMENTS DEFERRAL AGREEMENT**  
**AND-WAIVER-OF-RIGHT-TO-REMONSTRANCE**

**RECITALS:**

WHEREAS CCPN, LLC is the fee title owner and (hereafter called "OWNER") of real property located at 100 East Washington Street in the City of Carlton, also known as a portion of Yamhill County Tax Lot R3422CB-04600, and more particularly described as follows, to-wit:

**BLOCK 3 CLOVERLAWN ADDITION TO THE CITY OF CARLTON in YAMHILL COUNTY, OREGON (hereafter the "Parcel")**

located in the City of Carlton, which property is adjacent to Washington Street for which certain sidewalk, curb and gutter, 25 feet of pavement, an 8" sanitary sewer main extension to the end of Washington Street, and storm water improvements to Washington Street including approximately two catch basins and 100 feet of storm drainage pipe, (the "Improvements") have not been previously installed; and

WHEREAS, the approval of the present commercial winery development for the Parcel by OWNER is subject to the requirement for security for payment of and installation of specified public improvements to Washington Street; and

WHEREAS, OWNER has requested that such Improvements be deferred until Washington Street is further developed in conjunction with neighboring properties and

Item #2

WHEREAS, the City's approval of OWNER'S current commercial development requires that deferral of completion of required public improvements be memorialized by recordation of a written agreement to secure the eventual construction of the Improvements, and payment for the deferred Improvements by the owners of the Parcel.

**NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS,** that OWNER for and in consideration of the approval of the current commercial development of the Parcel, as the legal and equitable owners of the Parcel described herein, does hereby consent and agree as follows:

**Section 1.** That during OWNER'S ownership of the Parcel, or thereafter, and in accordance with all applicable street and building code provisions, OWNER agrees to pay upon request its pro-rata share of the Improvements. Such improvement costs shall be determined by the City Engineer and allocated to the Parcel based upon a street frontage or other allocation as shall be determined, at the discretion of the City Engineer, to be fair and equitable.

**Section 2.** That OWNER, as the sole legal and equitable owner of the real property described herein, does further consent and agree that the Parcel is presently held by OWNER and shall be transferred, sold or conveyed only upon the condition that in the event the Improvements are installed by the City, or undertaken by any third party with the approval of the City, that the owner in possession of the Parcel will promptly, and within ninety days thereafter pay all costs associated with the Improvements constructed in accordance with building and other applicable ordinances codes, rules and regulations relating thereto, all as required by Section 1 above. In the event of a failure to so make payment to the City or the

# 2

city's designee in a timely manner, the City of Carlton may file a municipal lien against the Parcel for the actual and allocated engineering, construction and inspection costs thereof.

**Section 3.** That OWNER on behalf of itself, and its successors and assigns, and any subsequent owners of the Parcel proclaim its support for the creation of any local improvement district created to undertake the sidewalk, curb and gutter, pavement and storm drainage improvements to Washington Street adjacent to the Parcel and that such constructed improvements will benefit the Parcel.

**Section 4.** That OWNER on behalf of itself, and its heirs, successors, assigns, and any subsequent owners of the Parcel voluntarily consents to the formation of a local improvement district or other local government financing method for the construction of future curb and gutter, storm drainage, pavement and sidewalk improvements to Washington Street in accordance with all then existing standards, specifications and construction requirements.

**Section 5.** It is understood and agreed that the foregoing covenants set forth in Sections 1 through 4 hereof are also subject to the following additional covenants and conditions:

(1) The obligations and covenants set forth in this agreement are not the personal obligation of OWNER but shall run with the land described above, and shall be a lien on said Parcel regardless of who may own said Parcel at the time of such required improvements. The lien hereby created may, in the event of a default by OWNER, or OWNER'S successors and assigns, be foreclosed pursuant to ORS Chapter 88 or other similar replacement statutes, or other applicable statutes allowing foreclosure of municipal liens generally.

(2). That this Agreement and waiver shall be binding upon OWNER, who is the legal and equitable owner of the parcel described above, and shall bind her successors, assigns and legal representatives forever.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

CCPN, LLC

By: \_\_\_\_\_  
Authorized Member or Manager

STATE OF \_\_\_\_\_, County of \_\_\_\_\_ ) ss. \_\_\_\_\_, 2020

Personally appeared the above-named \_\_\_\_\_ as the duly authorized \_\_\_\_\_ of CCPN, LLC and acknowledged the foregoing to be said company's voluntary act and deed.

Before me:

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

APPROVED and ACCEPTED:

This \_\_\_\_ day of \_\_\_\_\_, 2020.

BY: \_\_\_\_\_  
City Attorney



**From:** JOHN BANTA <bantajob@yahoo.com>  
**Sent:** Sunday, May 23, 2021 10:21 AM  
**To:** Clatsop Development <comdev@co.clatsop.or.us>  
**Subject:** Banta partition

Hello,

My name is John Banta and I am the executor of my parents estate. We have been trying to divide out their property in Gearhart located on McCormick Gardens Road. At the May 2020 meeting with the Gearhart planning commission it was indicated by Victoria Sage that no improvements were slated to be done to McCormick Gardens Road in any foreseeable future by Clatsop County in terms of widening, sidewalks and the establishment of a walking path on the old railroad right of way.

As the property is split down the middle, half county property and half city of Gearhart, it is our belief that the county has the authority to identify if any improvements are to be made to the road now or if any plans are scheduled to be done to the entirety of McCormick Gardens Road in the future plan for Clatsop County.

We would your input and knowledge about these improvements.

Thank you

John Banta

# 2A  
Item

I am forwarding your email to Clatsop County Public Works (copied on this response). Any improvements, and the scheduling of such, would be determined by that department.

Gail Henrikson, AICP, CFM, Director

Clatsop County Community Development

800 Exchange Street, Suite 100

Astoria, OR 97103

503.325.8611

503.338.3666 Fax

[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)

[www.co.clatsop.or.us](http://www.co.clatsop.or.us)

[Facebook](#)

**COVID-19 AND LAND USE PLANNING:** In order to protect the health of our employees, clients and the overall public, please be advised that **appointments are strongly encouraged**. Whenever possible **emails and virtual meetings are encouraged**. If you or anyone in your party is ill, coughing, or has a fever, please reschedule your meeting. We understand that this may be an inconvenience and we appreciate your cooperation in working to protect the health of our community.

Take our [customer satisfaction survey](#)

2A

**To:** Dean Keranen <[dkeranen@co.clatsop.or.us](mailto:dkeranen@co.clatsop.or.us)>; Terry Hendryx <[THendryx@co.clatsop.or.us](mailto:THendryx@co.clatsop.or.us)>  
**Subject:** FW: Banta partition

Are either of you aware of any near-term or long-term improvements that might be scheduled for McCormick Gardens Road?

Thanks.

**From:** JOHN BANTA <[bantajob@yahoo.com](mailto:bantajob@yahoo.com)>  
**Sent:** Tuesday, June 1, 2021 3:00 PM  
**To:** Gail Henrikson <[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)>  
**Subject:** Re: Banta partition

Has there been any response to this?

Thank you

Sent from Yahoo Mail on Android

On Mon, May 24, 2021 at 7:20 AM, Gail Henrikson

<[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)> wrote:

Good morning, Mr. Banta.

2A

Good morning, Mr. Banta.

See reply below from Public Works. Please let me know if you have any additional questions.

Thanks.

Gail

2A

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**From:** Terry Hendryx  
**Sent:** Tuesday, June 1, 2021 4:25 PM  
**To:** Gail Henrikson <[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)>; Dean Keranen <[dkeranen@co.clatsop.or.us](mailto:dkeranen@co.clatsop.or.us)>  
**Subject:** RE: Banta partition

Hi Gail,

No plans scheduled for widening or anything like that. Future chip seals will happen and maybe at some point we'll pave it, but the road is currently constrained by wetland for most of its' length.

TLH

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**From:** Gail Henrikson  
**Sent:** Tuesday, June 1, 2021 4:23 PM

As we discussed this afternoon, Both the City and County are amenable to having two driveways – one for the county parcels and one for the city parcels. However, because of state statute, Gearhart only has 120 days to complete the approval process for your partition. Those 120 days also include any appeal to the Gearhart City Council.

My suggestion is that you move forward with the plat that you have already submitted to Gearhart. Once that is approved, the County can work with you to revise the already recorded plat for the County parcels. I would expect that Gearhart also has a process to make revisions to an approved, but unrecorded plat as well. I will let Carole confirm that, however.

Please let me know if you have any questions or if you need any additional information.

Thanks.

Gail

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**From:** [connellpc@comcast.net](mailto:connellpc@comcast.net) <[connellpc@comcast.net](mailto:connellpc@comcast.net)>  
**Sent:** Wednesday, June 9, 2021 9:10 AM  
**To:** Gail Henrikson <[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)>  
**Subject:** RE: Banta partition

I'm fine with the 25' easement and 14' surface built to county standards in the original location. I assume you prefer the county road standard for the portion across the City parcels too, right? I don't believe Gearhart has a gravel surface construction standard, except the fire code is 14' and think it makes sense to use the same county standard from McCormick G Rd. to the other parcels. Fire chief wants "no parking" signs on the road, unless there is sufficient width to accommodate vehicles.

Clarification – only the county portion of the easement has been recorded -- right?

#3

Item

Thanks.

Carole

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**From:** Gail Henrikson <[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)>  
**Sent:** Tuesday, June 8, 2021 3:57 PM  
**To:** 'connellpc@comcast.net' <[connellpc@comcast.net](mailto:connellpc@comcast.net)>  
**Subject:** FW: Banta partition

OK. Which way do you want to go with this?

3

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**From:** Dean Keranen  
**Sent:** Tuesday, June 8, 2021 3:20 PM  
**To:** Gail Henrikson <[ghenrikson@co.clatsop.or.us](mailto:ghenrikson@co.clatsop.or.us)>  
**Cc:** [connellpc@comcast.net](mailto:connellpc@comcast.net)  
**Subject:** Re: Banta partition

Hi Gail,

That sounds good to me with keeping the current configuration and reducing to 14' for the back Parcel. I don't think we need a dedication for McCormick Gardens.

Thanks,

Dean

Sent from my iPhone

**BEFORE THE PLANNING COMMISSION  
OF THE CITY OF GEARHART**

<b>IN THE MATTER OF A PERMIT FOR A TENTATIVE PARTITION PLAN</b>	) ) )	<b>FINAL FINDINGS AND ORDER</b>
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**APPROVAL** of a Tentative Land Partition to divide one parcel into three parcels. The applicant is required to file for City approval of a Final Partition Plan within one year.

**FILE NUMBER:** File# 21-01P Banta

**OWNER:** John Banta  
P.O. Box 2134  
Seaside, Oregon 97138  
503-738-3425

**APPLICANT:** Same as above

**SURVEYOR:** S&F Land Services  
1725 N Roosevelt Drive Suite B  
Seaside, OR 97138

**LOCATION:** 4.76 acres located at 1060 McCormick Gardens Road, map 6-10-03DB Tax Lot 802

**EXHIBITS:**

1. Applicant's land partition application form; Tentative Partition sketch, S&F Land Services 1-13-21
2. LWI Wetland Inventory identification aerial
3. Gearhart Transportation System Plan (TSP) street x-sections
4. Gearhart City Administrator: Email 2-8-21 applicant to provide rear lot addresses visible from McCormick Gardens Road for emergency response.
5. Gearhart Police Chief: Email no comment 2-22-21
6. Gearhart Fire Department: Letter with comments and conditions dated 2-2-21 addressed in this report.
7. Gearhart Public Works: Email 2-18-21 said developer must extend new water lines for each parcel to McCormick Gardens Road.

8. Gearhart Building Inspector: Letter 2-8-21 no objections provided the parcels comply with the City and State Fire codes pertaining to access, fire flow and fire hydrants.
9. Clatsop County Planning Director Gail Hendrickson.: Letter 2-19-21, comments regarding road access requirements attached.
10. Road Maintenance Agreement for County Partition Plat PP2020 recorded 12-20-20 for three parcels including city portion.

PROCEDURES:      Application deemed complete: 2-1-21  
                         Public Notice published: 2-18-21  
                         Initial Public Hearing: 3-11-21; applicant continued 3 times  
                         120-day final decision due: 8-3-21 (GZO Section 13.070)

I.      **APPLICABLE REVIEW CRITERIA**

- GZO Section 3.0 Rural Agricultural RA
- GZO Section 3.13 Freshwater Wetland and Lake FW Zone
- GZO Section 4.040 Transportation Improvements
- GZO Article Administrative Provisions
- Gearhart Transportation System Plan (TSP)

Gearhart Subdivision Ordinance sections relevant to the application are:

- Sections 23 - 26 Land Partitioning
- Sections 37 - 46 General Regulation and Design Standards
- Sections 47 - 50 Improvements

Oregon Fire Code (OFC)

II.      **Site Information, Review and Procedures**

1. Plan & Zone designations: The site is zoned Rural Agricultural Residential RA. The minimum lot size is one (1) acre. The City finds Parcel 1 is 1.0 acre; Parcel 2 is 1.88 acres and Parcel 3 is 1.88 acres. The RA Zone minimum lot size is met.
2. Access: Parcel 1 has street access from McCormick Gardens Road. Parcels 2 & 3 are landlocked but have access from a private road by an easement across Parcel 1. The easement will also serve the two adjoining lots to the north within Clatsop County jurisdiction. A fire hydrant is required to be installed because the nearest hydrant is more than 600 feet away.



3. Site Characteristics: The parcel has no structures. Wetlands exist on a large portion of Parcels 2 & 3. West of the wetlands the land rises to the abandoned rail right-of-way.
4. Agency comments: The Clatsop County Planning Dept. provided comments to the City. In summary, the letter indicates the private driveway easement will now serve as the only access to a total of five parcels, versus the three parcels approved in 2020. Therefore, according to their standards, the easement must be widened to a minimum of 50 feet wide with an 18' wide gravel travel surface. The County's approval of the 2020 Banta partition required a recorded Road Maintenance Agreement (attached). The agreement includes the subject City parcel and is written to extend to subsequent owners if this partition is approved. The County required the road shall be constructed to county standards before issuance of any land use or building permits on any of the three parcels created in the 2020 decision. The City has the same requirement described herein.
5. Procedure: Approval of a land partition shall be in accordance with the application and procedural requirements of GZO Article 13 Administrative Provisions, the Gearhart Subdivision Ordinance, and the Gearhart Transportation System Plan (TSP). The City has followed the required application and hearing notice procedures to date. This report addresses the applicable Gearhart Subdivision and TSP provisions.

### III. FINDINGS FOR APPLICABLE ZONE AND SUBDIVISION STANDARDS

#### A. GZO Section 3.0 Rural Agricultural RA

FINDINGS: The subject parcel is planned to be configured so that each parcel complies with the designated zone requirements of the City RA Zone one-acre minimum lot size, described in Section II. 1. above.

#### B. GZO Section 3.1380 Development Standards in the Freshwater Wetlands FW Zone:

1. Development, construction, or alteration within the FW Zone or within 25 feet of the FW zone boundary requires approval of a development permit from the City. The application for development permit shall include a site plan drawn to a measurable scale and a narrative describing the proposed site work. A wetland determination or delineation by a qualified professional wetland scientist shall be required by the City if the wetland boundary cannot be determined.

FINDINGS: The Local Wetland Inventory (LWI) illustrates a general wetland boundary in the middle of Parcels 2 and 3. To the west the land rises above wetlands

to the RR ROW, and again at the east end of the parcels where they abut Parcel 1. Specific wetland identification and protection requirements apply when the land is proposed to be subdivided into homesites, or if a new home is proposed. The City finds the proposed partition and future structures may impact the wetland. Therefore, a site-specific wetland determination is required prior to final approval of the partition. If the determination finds home construction on Parcel 2 or 3 will be within 25' of the defined wetland a development permit for proposed construction will be required.

C. GZO Article 4 Transportation Improvements and Access Requirements

1. Section 4.040 General Requirements.

- a. Purpose. The standards of this chapter implement the transportation policies of the City of Gearhart Transportation System Plan and Subdivision Ordinance.
- b. Applicability. The following types of development are required to construct transportation improvements in accordance with the standards and procedures of this chapter.
  - (1) New single-family dwelling or duplex, if the development fronts a street segment that is planned for a sidewalk or trail in the Transportation System Plan.
  - (2) New multi-family dwelling.
  - (3) New commercial development.
  - (4) Major expansion of a commercial development defined by an increase in the gross floor area of the use by at least 25 percent.
  - (5) All developments in the Residential Commercial Planned Development (RCPD) zone, and subdivisions or partitions are required to construct improvements in accordance with the Gearhart Subdivision Ordinance.
- c. Street, Shared-use Path, and Evacuation Route Design Standards. All transportation improvements, whether required as a condition of development or provided voluntarily, shall conform to the standards adopted within the City of Gearhart Transportation System Plan.
- d. Public Improvement Requirement. No building permit may be issued until all required street improvements are in place and approved by the City Manager or designee, or otherwise bonded, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional with the impact of development.

FINDINGS: The City finds this section to be applicable because the proposal is to divide the land for future dwellings on parcels that abut planned street improvements on both the east and the west sides of the parcel. The McCormick Gardens Road right-of-way was widened by 10-feet pursuant to the 2020 Banta partition in accordance with the city TSP and partition ordinance standards for the street. However, the proposed Railroad Ave. #G-3 improvement was not required to be dedicated in the 2020 decision.

The code requirement for the Shared-use Path denoted in the TSP Figure 7 on the west side of the property is now relevant by this land division because the is being divided for three new homesites. The dedication should necessarily occur before the land is divided and before building permits are requested. Staff recommends a condition of approval that the partition include a right-of-way dedication to provide a north-south connection of the planned path for public recreation and access in this area.

2. New Streets. All new streets shall conform to the standards and requirements of the Gearhart Subdivision Ordinance.

FINDINGS: The City finds a new city street is not proposed, but an access easement is proposed to serve Parcel 2 and 3, as well as the two adjoining parcels in county jurisdiction. Therefore, applicable improvements are required.

3. Improvements to Existing Streets.

a. Applicability. Except as provided by subsection 4, below, existing substandard streets within or abutting a proposed development shall be improved in accordance with the standards of this chapter as a condition of development approval. The City Manager or designee may waive or modify this requirement where the applicant demonstrates that the condition of existing streets to serve the development meet city standards and are in satisfactory condition to handle projected traffic loads.

- (1) Single-Family Dwellings and Duplexes. All single-family dwellings and duplexes that front an existing street segment that is planned for a sidewalk or trail in the Transportation System Plan shall construct sidewalk or trail improvements in accordance with the standards of that plan. The improvements may include but are not limited to sidewalks, trails, curbs, gutters, and planter strips.
- (2) Multi-Family Dwellings and Commercial Development. All multi-family dwelling and commercial development shall construct a minimum of half-street improvements to all existing streets adjacent to, within, or necessary to serve the development in accordance with the standards of the Gearhart Transportation System Plan. Where a development has frontage on both sides of an existing street, full street improvements shall be required.

FINDINGS: The City finds that McCormick Gardens Road is a substandard street based on its TSP classification as a collector street serving the neighborhood on the east side of the highway (TSP project # C5). The McCormick Gardens Road street standards require a 60' ROW with a 24'- 34' of pavement and a shared path improvement on the east side of the street for bikes, peds and tsunami evacuation. The applicant is required to make the improvement on their half of the road.

In addition, the TSP figure 7 project #G-3 extends Railroad Avenue from Pacific Way to UGB as a collector street and/or a shared use path. The subject parcel can facilitate an important pedestrian connection for the area by extending a portion of the planned

improvement from the existing terminus of Railroad Ave. north to the applicant's north property line.

The 2020 partition approval by the Commission determined the impact of the partition did not create new development opportunity without further land division, therefore street improvement costs were not proportional to or required by the request. It was determined the city parcel could later be subdivided into one-acre lots, at which time the city can require applicable street improvements to McCormick Gardens Road and the proposed two new landlocked parcels in the rear. The Planning Commission also found a portion of the high ground at the west end of the parcel is required to be dedicated when the site is divided as proposed by this request in accordance with the Gearhart TSP and Subdivision Ordinance.

In accordance with the City Subdivision ordinance the City finds the creation of three new homesites now requires the McCormick Gardens Road to be partially improved and a portion of the Railroad Ave. path is at least required to be dedicated to the city.

#### 4. Waivers and Deferrals.

The City Manager or designee may waive or allow deferral of standard street improvements, including sidewalk, roadway, bicycle lane, undergrounding of utilities, and landscaping, as applicable, where one or more of the following conditions in (A) through (D) is met. Deferrals of sidewalk improvements are not permitted when there is an existing curb along the frontage of the site, or the site is abutting an existing curb or sidewalk. Where the City Manager or designee agrees to defer a street improvement, it shall do so only where the property owner agrees not to remonstrate against the formation of a local improvement district in the future.

- a. The standard improvements conflict with an adopted capital improvement plan.
- b. The standard improvements would create a safety hazard.
- c. The improvement is not likely to be extended during the planning horizon of the adopted TSP due to topography or committed development on adjacent property, and the improvement under consideration does not by itself significantly improve transportation operations or safety.
- d. The improvements are deemed more appropriate as part of a larger project in the future.

**FINDINGS:** The City finds planned drainage and widening street improvements to the west side of McCormick Gardens Road, and dedication of adequate area to connect Railroad Avenue do not (a.) conflict with an adopted capital improvement plan; (b.) will not create a safety hazard; (c.) McCormick Gardens Road and the Railroad Ave path are likely to be improved in the planning horizon of the TSP and (d.) the road improvements and path dedication cannot be accomplished as a part of a future, larger project on the subject site because of site constraints.

#### 5. Fee-in-Lieu Option.

In lieu of the transportation improvement requirements identified in Section 4.040, the City Manager or designee may elect to accept from the applicant monies to be placed in a fund dedicated to the future public construction of the improvements.

a. The amount of monies deposited with the city shall be at least 100 percent of the estimated cost of the required street improvements and may include more than 100 percent of the cost as required for inflation. Cost estimates shall be based on a preliminary design of the reconstructed street provided by the applicant's engineer and shall be approved by the city engineer or designee.

b. If the City Manager or designee elects to accept these monies in lieu of the street improvements, the applicant shall also record against all lots or parcels a "construction deferral agreement and waiver of rights to remonstrance for street and storm drainage improvements" approved by the city attorney. The agreement should be worded such that the subject properties are responsible for paying the full cost of required street improvements along their unimproved street frontages. The agreement shall also state that the city has the right to collect money owed for the actual construction costs, if actual costs exceed the amount deposited, and that the city will reimburse the property owner(s) if the actual costs are less than anticipated.

FINDINGS: The City finds that transportation improvements in Article 4 and right-of-way dedications for a land partition in Subdivision Ordinance Section 38 Streets are required when creating three new home sites. A fee-in-lieu of the McCormick Gardens Road improvements may be applicable, as determined by the City Administrator.

Gearhart Subdivision Ordinance November 2017

D. Subdivision Ordinance Sections 23 – 36 Land Partitioning: These sections describe technical partition plat submittal requirements, review procedures and final plat filing requirements.

FINDINGS: The City finds that the relevant data has been provided on the tentative plat and final platting requirements shall be made a condition of approval for this request.

E. Subdivision Ordinance Sections 37-46 General Regulation and Design Standards  
A land division either by a subdivision, creation of a street, or a partitioning, shall conform to any development plans, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the design standards established by this ordinance.

FINDINGS: The City finds the Gearhart TSP includes two identified improvement plans that affect the proposal:

- A street and shared pathway plan that affects the western boundary of the parcel proposing a trail and street connecting Railroad Ave. at Pacific Way to the north to the UGB.
- The substandard street condition of McCormick Gardens Road, a planned collector street with needed safety and pedestrian improvements.

Section 38 - Streets: A land partition shall conform to the relevant city street design standards.

- 1) Existing Streets: Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of a land division.

FINDINGS: The City finds in the 2020 partition approval the applicant dedicated 10' of additional right-of-way to the existing 40-foot-wide McCormick Gardens Road ROW. The dedication completes the west side ROW width for the 60-foot-wide collector street designation identified in the TSP Figure 7 Planned Investments, Figure 8 Functional Street Classification and Figure 9 Evacuation Routes.

With this subsequent requested partitioning of the parcel, improvements to McCormick Gardens Road is required. The finished improvement shall be designed collector street specifications including drainage and pedestrian improvements and a minimum half-street of pavement.

## 2) Shared-use paths

The Planning Commission, in approving a land use application with conditions, may require a developer to provide non-motorized access where the creation of a cul-de-sac or dead-end street is unavoidable, and a shared-use path is needed to connect the end of the street to another street, a park, or a public access way. Where a shared-use path is required, it shall be not less than 10 feet wide and shall contain a minimum eight-foot-wide paved surface or other all-weather surface approved by the Planning Commission. Shared-use paths shall be contained within a public right-of-way or public access easement, as required by the City.

FINDINGS: The City finds the TSP Figure 7 Planned TSP Investments identifies both a street and a planned non-motorized shared use path improvement in the vicinity of the old railroad right-of-way from Oster Road to Park Lane adjoining the applicant's tax lot's west boundary. The purpose is to provide an alternative north/south public access route for homeowners living on the east side of Hwy 101.

The Planning Commission may require the applicant to meet the planned path connection requirement when the land is proposed to be divided. The final partition plat should include an estimated 40 – 45 feet dedicated to the city, or potentially by a public access easement to align with existing ROW to the south.

The TSP also identifies a shared use path for safe pedestrian and bicycle use on the east side of the planned McCormick Gardens Road collector street. The subject partition is on the west side and therefore not required to be included in their street improvement plan.

### 3) Pedestrian Access and Circulation

In addition to the access and connectivity standards required by subsection (9) Cul-de-sac and (10) Shared-use Paths, any individual site in the subdivision or partition shall meet the pedestrian access and circulation standards of Section 4.080 Transportation Improvements of the Gearhart Zoning Ordinance.

**FINDINGS:** The City finds this section of the Subdivision Ordinance also implements the pedestrian access and connectivity policies of the TSP to provide for safe, reasonably direct and convenient pedestrian access and circulation at the time of a partition of the subject parcel. The City will determine the need for a standard 5' sidewalk improvement on the west side of the street.

### F. Section 39 - Recreation and Utility Easements:

**FINDINGS:** The City finds the pedestrian trail on the west boundary of the parcel defined by the TSP will provide a safe public pathway for families living on the east side of the highway to recreate and walk to nearby services.

G. Section 40 - Building Sites: Each lot shall be appropriate for the location, environmental features and for the type of development proposed. Each lot shall abut a street for a width of at least 25 feet. Through lots shall be avoided. Lot lines shall run at right angles to the street. Land which the Commission finds unsuitable for partitioning for reasons including flooding, improper drainage, wetlands or other concerns shall be set aside for a use which does not pose a danger or a negative impact.

**FINDINGS:** The City finds the proposed Parcels 1, 2 & 3 are appropriately sized and shaped based on the constraints of lot depth and wetlands. Street frontage is provided by 187 feet of frontage on McCormick Gardens Road, and a private access easement for at least three landlocked parcels that will not have direct road frontage. The county road easement requirement shall be met because the easement also serves

adjoining parcels in the county. The access easement shall be 25' wide with 14' of gravel constructed to county road standards.

Easement Road Name: The City requests determination of a road name that reflects the history, flora, fauna or geography of this area of Gearhart.

As required parcel lot lines run at right angles to the street. There is a known wetland on the west side that is unsuitable for any development. To assure a future dwelling on Parcel 2 & 3 can meet the 25-foot minimum setback from the wetland boundary, a site-specific wetland determination shall be provided with this request, or with a final partition plat submittal.

H. Section 43 – Water Courses: The land divider shall dedicate a right-of-way for storm drainage purposes, conforming to the lines of any natural water course or channel, stream or creek that traverses the partition, or find an alternative method to dispose of storm water.

FINDINGS: The City finds the necessary right-of-way was dedicated by the 2020 recorded partition. At the time of a building permit request the applicant will be required to illustrate the location of roof drains and driveway drainage.

I. Section 46 – Wetlands and Areas Subject to Inundation: The Planning Commission may prohibit the partition of any portion of property which lies within the floodplain or wetlands of any stream or drainage course. These areas shall be preserved from damage or destruction resulting from clearing, grading or dumping of earth, waster materials or stumps except as may be permitted by state or federal agencies with appropriate mitigation.

FINDINGS: The City finds that the official Gearhart Local Wetland Inventory LWI map illustrates a wetland on the west side of Parcels 2 & 3. A site-specific wetland determination and approval is required prior to submittal of a final partition plat. This will assure that future structures proposed on Parcels 2 and 3 can be maintain a 25-setback from the wetland if necessary.

J. Subdivision Ordinance Sections 47 – 50 Improvements  
The following four subsections apply to land division improvement standards, approval and construction requirements.

Section 47 Improvement Standards and Approval



- 1) Improvements shall not be commenced until plans have been approved by the city. Some plans may be required prior to approval by the Planning Commission.
- 2) Improvement work shall not be commenced until the City has been notified.
- 3) All required improvements shall be constructed under the inspection and to the satisfaction of the City.
- 4) All underground utilities shall be constructed prior to surfacing of the streets.
- 5) A map showing all public improvements as built shall be filed with the Building Official upon completion of the improvements.

FINDINGS: The City and County find that road improvements, fire hydrant and utility installations are required to be constructed and approved by the Planning Commission prior to final plat approval per City specifications of Section 47 (1 – 5).

Section 48 Improvement Requirements:

- 1) Public streets shall be improved.
- 2) Structures necessary for drainage, access and public safety shall be installed.
- 3) Storm water facilities or ground water recharge facilities shall be installed per city specifications.
- 4) Water mains and fire hydrants shall be installed per city specifications.
- 5) Underground utilities shall be installed.
- 6) Street lighting per city specifications shall be installed.
- 7) Street signs shall be installed per city specifications.
- 8) If necessary, a drainage easement shall be installed for the safety of the adjoining property.
- 9) Damage to public streets related to the development shall be restored to existing conditions before the damage.

FINDINGS: The City finds the above public and private utilities shall be installed prior to any building permits, including a fire hydrant.

Section 49 – Monuments: Surveyed monuments shall be set according to ORS 92.060 and city specifications outlined in Section 49 - Monuments

FINDINGS: The monumentation requirement should be a condition of approval.

Section 50 – Survey Requirements: The surveyed plat shall be set according to ORS 92 and city specifications outlined in Section 50 – Survey Requirements.

FINDINGS: The above requirement should be a condition of approval.

#### IV. DECISION

On June 10, 2021, The Gearhart Planning Commission approved the three-parcel tentative partition plan request subject to the following conditions of approval:

1. Within one year of this tentative approval the Final Partition Plat shall be submitted to the City for Planning Commission approval. If necessary, the applicant may request a one-year extension of the approval.

Provide with the Final Partition Plat application:

2. With the final plat submittal to the city, or subsequently prior to approval of a building permit request on parcel 2 or 3, a site-specific wetland determination by the Division of State Lands (DSL) shall be provided to the City. Development, construction, or alteration within the Fresh Water (FW) Zone or within 25 feet of the FW zone boundary requires approval of a development permit from the City. The application for development permit shall include a site plan drawn to a measurable scale and a narrative describing the proposed site work.
3. The final partition plat shall be modified to incorporate a portion of the planned Railroad Ave. pedestrian shared use path identified as TSP Project # G-3 located along the west boundary of the parcel. The path shall be an estimated 40 - 45 feet wide to connect to existing right-of-way to the south. The path may either be dedicated to the public or defined on the plat as a public access easement.
4. Street improvements: No building permit may be issued until all required street and access easement improvements are in place and approved by the City Manager or designee, or otherwise bonded, in conformance with the provisions of the Subdivision Ordinance.
  - a). The Planning Commission decided to defer street improvements to McCormick Gardens Road adjoining Parcel 1. In lieu of the transportation improvement requirements identified in Section 4.040, the applicant shall sign a Waiver of Remonstrance to participate in a future Local Improvement District for road improvements to McCormick Gardens Road. The signed waiver shall be submitted to the City with the final plat approval request.
  - b). Provide evidence from the Clatsop County Planning Department that the private road easement plans comply with the county's 25' wide road easement and 14' fire code improvement requirements. The access road shall be constructed to code standards

before issuance of any land use or building permits on any of the three parcels created in the city. The County's approval of the 2020 Banta partition included a Road Maintenance Agreement that has been recorded. The agreement applies to the subject City parcels and is written to extend to subsequent owners with approval of the final partition plan.

c.) The rear parcels shall obtain a McCormick Gardens Road address. After final plat approval and in conjunction with a building permit request obtain city approval for the house numbers, sign specifications and installation of the sign where the private access road intersects with McCormick Gardens Road.

5. If more than 5 trees are planned to be removed, the applicant shall first obtain a tree removal permit from the City. Removal of more than 1,000 SF of vegetation or excavation of more than 50 cubic yards on Parcel 1 shall first require a tree removal, excavation and fill permit from the City Administrator.
6. Surveyed monuments shall be set according to ORS 92.060 and city specifications outlined in Section 49 – Monuments. The surveyed plat of the partition shall be set according to ORS 92.060 and city specifications outlined in Section 50 – Survey Requirements.
7. The applicant shall install a city fire hydrant to serve the new parcels, in a location and per hydrant specifications approved by the Gearhart Fire Department prior to issuance of any building permits. Unless there is sufficient width to accommodate parking vehicles on the easement, "No Parking" signs shall be installed along the easement per fire code specifications.

This approval is valid for one year from the date this final decision was signed. Within that one year the Final Partition Plat shall be submitted to the City for Planning Commission approval. If necessary, the applicant may request that the City grant an extension to the one-year approval.

Signed: Virginia Dideum  
Virginia Dideum, Planning Commission President

Date: 6/18/21

Date Mailed: 06/21/21

#### APPEAL

In accordance with the Gearhart Zoning Code Section 13.060 Appeals, the decision of the Planning Commission may be appealed to the City Council within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in Section 13.060(3).