

Staff Report

For City Council Meeting - 8/11/2021

Subject - New Business – John Banta Partition Appeal of Planning Commission’s Approval Decision

Synopsis: On June 10, 2021 the Gearhart Planning Commission approved a 3-lot Land Partition on McCormick Gardens Road proposed by the Banta Family. A year earlier the city and the county each approved a partition separating the Banta’s original 9.76-acre parcel in the city limits from the land outside the city. Then the applicant requested additional partitioning in each jurisdiction. From the original Banta parcel that straddled the city limits line, a total of five parcels have now been created, two in the county and three in the city. The City’s second approval was subject to seven (7) conditions to be satisfied before being recorded.

Mr. Banta is appealing two Planning Commission conditions of approval:

Condition #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 (in order to) 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.

Staff Response: The City has an obligation to comply with its TSP which designates both a future road and a path in the Railroad Ave/Tressel Drive alignment. Staff site analysis finds a road may be difficult to achieve the entire length, but a trail is a possible in this location. It would provide a good connection for the east-side neighborhood which houses many permanent residents and children. It’s a long-range plan, that would function like the Ridge Path, connecting city residents of all ages to multiple neighborhoods now only accessible by car via the highway. Staff would like to work with the applicant to reduce and refine the final alignment on the Banta parcel for their final plat submittal.

Condition #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 (or deferred), in conformance with the provisions of the (TSP) and Subdivision Ordinance.

4.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 (GZO) 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.

Staff Response: On July 28 Carole Connell communicated with County Assistant Public Works Director Terry Hendryx, PLS regarding his letter (dated 7-15-21 & attached) which was received about a month after the Planning Commission hearing. He said the road improvements cannot be made now because McCormick Gardens Road is outside the Gearhart UGB and subject to Clatsop County “Rural Local” road standards. But he did agree by phone a *deferral for possible future improvements to McCormick Gardens Road* is appropriate because the county may give the road to the city in the future, as has been done in the past. The City finds the road could be improved by the City, or by formation of a Local Improvement District (LID) if agreed to by a majority of the property owners affected. A “Waiver of Remonstrance” to defer road improvements is a common solution used in cities all over the state. Formation of an LID is not common in small cities. See attached waiver.

The Council hearing on this matter is to be based only on the Planning Commission record of their decision. At the Commission hearing John Banta was the only person who testified. He may testify before Council regarding what he previously argued, but he, or others may not provide new testimony that is not already in the Planning Commission record.

Recommendation: It is recommended that Council make a decision because the 120-day rule deadline ends on August 20, 2021, unless extended by the applicant. The applicant said the property estate has an August 30 closing date.

Motion: In accordance with GZO Section 13.060 Council may affirm, reverse, or modify in whole or in part, a determination or requirement of the Planning Commission decision related to the applicant’s appeal of two conditions of approval.

Staff recommends City Council affirm the Planning Commission’s Notice of Decision retaining Condition #4a. and amending Condition #3 as follows:

1. Condition #3: Re-write the last sentence in the condition as: *On the final plat the path shall be an estimated 40–45-foot-wide alignment shall be refined and reduced by city staff to the minimum necessary 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.*

Legal Analysis: Not determined to be necessary

Financial Analysis: Not determined to be necessary

Respectfully Submitted,
Carole Connell, Gearhart City Planner



Clatsop County
Public Works

1100 Olney Ave.
Astoria, OR 97103
(503) 325-8631 phone / (503) 325-9312 fax
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July 15, 2021

RE: Banta Partition Requirements as per Section III (C)(3) & (4)

TO: City of Gearhart Planning Commission
Carole Connell, AICP Gearhart City Planner

Clatsop County Public Works staff recently reviewed the City Staff Report (City file #21-01P), for the J. Banta Land Partition, dated March 5, 2021. Based on that report we believe the City needs to reconsider the following:

“3. Improvements to Existing Streets.

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). McCormick Gardens Road street standards require a 60' ROW with a 24'-34' of pavement and a shared path improvement on the east side for bikes, peds and tsunami evacuation. The applicant is required to make the improvement on their half of the road.”

REBUTTAL: The City’s TSP classifies McCormick Gardens Road as a “collector”. While that may be true, the County must assume the TSP bases that classification of the City expanding their UGB in the future to include the road, which does not lie within the City’s current UGB. Currently the City’s UGB only extends to the west edge of the County Road. Unlike the City’s classification, McCormick Gardens County Road is classified in the County’s TSP as Rural Local. At this point in time there has been no formal discussion between the County and the City to relinquish control of McCormick Gardens Road.

The County Planning Department was asked as to whether it would require additional right-of-way to come into compliance the current minimum right-of-way width of sixty feet (60')? After consulting with Public Works, it was determined that additional right-of-way would not help the issues faced with wetland and drainage within the McCormick Gardens corridor. Due to the drainage issues that occur every winter and the inability to effectively raise the road due to the proximity of existing wetlands, Clatsop County has no intent to widen and improve McCormick Gardens Road in its' current 5-Year Plan. To require the applicant to make an improvement on their half of the road over the length of Parcel #3 (187 feet more or less), seems unwarranted given it is the only such improvement on the road. There appears to be no mention in the decision as to what those improvements need to be. Those improvements, being the only parcel so improved may actually create some liability for the City, as they are the ones requiring them.

Sincerely,

A handwritten signature in blue ink that reads "Terry Hendryx". The signature is written in a cursive style with a long horizontal stroke at the end.

Terry Hendryx, PLS
Assistant Director,
Clatsop County Public Works
1100 Olney Avenue
Astoria, Oregon 97103
Office #503-325-8631 Ext. 2509
Cell #971-704-4295
Fax 503-325-9312

cc: Chad Sweet, City Administrator

After recording, return to:

Peter O. Watts P.C.
1969 Willamette Falls Dr
Suite 260
West Linn, OR 97068

Send Tax Statements to:

No Change

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

RECITALS:

WHEREAS _____ is the fee title owner and (hereafter called "OWNER") of real property located at _____ in the City of Gearhart, also known as a portion of _____ (Tax Lot map #) and more particularly described as follows, to-wit:

(SUBDIVISION NAME OR PARTITION #) TO THE CITY OF GEARHART in CLATSOP COUNTY, OREGON (hereafter the "Parcel")

located in the City of Gearhart, which property is adjacent to _____ for which certain public improvements _____, (the "Improvements") have not been previously installed; and;

WHEREAS, the approval of the present _____ development for the Parcel by OWNER is subject to the requirement for security for payment of and installation of specified public improvements to-----street; and

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

WHEREAS, the City's approval of OWNER'S current _____ 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 _____ 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

city's designee in a timely manner, the City of Gearhart 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 street improvements to _____ 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 does consent to the formation of a local improvement district or other local government financing method for the construction of future street improvements to _____ 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 _____, 2021.

OWNER

By: _____
Authorized Member or Manager

STATE OF _____, County of _____) ss. _____, 2021

Personally appeared the above-named _____ as the duly authorized (agent, owner or _____) 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 _____, 2021.

BY: _____
City Attorney