

Gearhart Planning Commission Minutes for April 20, 2023

MEMBERS: Virginia Dideum, Don Frank, Terry Graff, Sharon Kloepfer, Russ Taggard, Judy Schector, and John Mesberg

STAFF: Chad Sweet, Angoleana Brien, and Garrett Phillips

Minutes

The regular meeting of the Gearhart Planning Commission for Thursday, April 20, 2023, was called to order at 6:00 p.m. by President Virginia Dideum. *Members and staff were present.*

CONSENT AGENDA

On **MOTION** by Graff, 2nd by Taggard, the consent agenda for May 20, 2023, was approved by a unanimous motion. Said agenda approved Minutes for March 9, 2023 and the financial report for March 24, 2023, with the correction to remove Connell's name from staff being present. There was no correspondence.

STAFF REPORT

Sweet reported code enforcement has been going well, and no complaints for short-term rentals. The city had interviews for a new police officer today and had some good candidates for the position. In the second week in May, the city will be interviewing three candidates for police chief. Kloepfer and Sweet have been discussing planting some trees around town for the beautification process. The idea was talked about with the city council, and they are interested but would like some feedback on this process. Kloepfer and Sweet will be bringing it to the commission to give them an idea of what they are proposing, go over cost and maintenance, and come up with a way to get public feedback for this project.

COMMISSIONERS REPORT - None

GOALS LIST - No new additions, corrections, or concerns.

VISITORS COMMENTS - None

PUBLIC HEARINGS

File #23-03.ZMA - Zone change request submitted by SCOFI Gearhart, LLC, located at 1002 Pacific Way and further described as Assessors Plat 6.10.10BA, Taxlot 800 & 1500. Said request is to change the zone from Public and Semi-Public P/SP Section 3.8 Public & Semi-Public Zone to Medium Density Residential R-2 Section 3.2 Medium Residential Zone R-2, In order to develop and use the subject property for a single-family dwelling and, as allowed in the R-2 zone.

Dideum opened the public hearing for 23-03ZMA at 6:05 p.m. and read the disclosure statement.

Dideum asked if any Commissioners needed to declare an ex-parte conflict, a conflict of interest, or a personal bias.

Kloepfer said she asked several staff members questions, she has had citizens make comments to her, and she called Dideum to ask a procedural question.

All commissioners have visited the property.

Dideum asked the audience if there were any challenges to the commission's ability to make an impartial decision. There were none.

City Planner Phillips gave an overview of the staff report for 23-03ZMA.

Dideum asked the commission if they had any questions for city planner Phillips.

Graff asked why this project would be recommended for approval when the commission knows so little about the project and how would this be good planning. There are no reports, and testing for the septic has not been done; no reports for the wetlands, no scale or scope of the project, and they don't know how it would fit into the neighborhood.

Phillips said the staff report lays out sound reasons for approving the proposal. These decisions rely on a lot of judgments that are not made by staff in terms of interpreting the zoning code and comprehensive plan, and that is ultimately the commission and the city council's judgment and decision to make. Phillips explained the staff report goes through the different mechanisms in the subdivision ordinance and the zoning ordinance that will allow the city to ensure that the development that occurs there will be consistent with the code and the plan.

Watts stated he read through the application and through the comments; this is a quasi-judicial land use decision, which means the commissioners are essentially sitting as judges, weighing the evidence that is given. To the extent there is contrary evidence or disagreement, or if you find one argument more compelling than another, then you should identify that. The city council is relying on the commissions' judgment in order to help them identify issues so they are able to make a decision based on the record. Peter explained that the city does not require an applicant to submit certain reports, is because the city is not allowed to make that requirement. The statute for this is ORS227.178. The applicant is given a completeness letter, and at that time, a 120-day time clock starts. The city can request certain reports, but ultimately it is up to the applicant whether or not they will provide them. From that time, we have to process the application because we are on a clock. If that 120 days limit expires, the application is automatically approved. The staff report is written based on the finding from the information submitted by the applicant. There are some land decisions that we can make, but there are some that have to come to a conclusion. To the extent the commission finds some of the comments more compelling than others, to the extent that the commission finds expert testimony informative, and if there is contradictory testimony, the commission should flag that in this matter.

Mesberg asked if the commission was to approve the R-2 designation, are there still barriers that the commission or city staff would have restrictions to, and whether that would include architectural reviews and the final layout of the property. Does it have to come back at some point for approval in a separate manner.

Watts explained that goes back to the Nolan and Dolan test. Nolan being that there has to be a nexus between what you're asking for and what they want to do, and the Dolan test being that the exactions that we ask for have to be roughly proportionate to the benefit that is received. So the letter that we got from the applicant is an example of a Dolan issue where they said, the mere fact of a rezone, we don't believe that it's enough to trigger rededication of that vacated road. And so, that letter helped inform us that there are limits to what the council can require in terms of aesthetics. While they can control minimum lot sizes and types of dwellings, they cannot require specific aesthetics like a mid-century modern look. The end projects would likely come back to the City Council for approval, and there are certain things the developers can do without approval while others would require it.

## APPLICANTS TESTIMONY

Eric Eisenman - 2554 Northeast 48th Avenue, Portland, Oregon. 97213 -

The speaker, Eric, is the owner of ESquared Land Use Planning Services, which consults with private and public entities in Oregon and Washington. He is accompanied by Mr. Bob Morey, the property owner, and Carrie Richter, the applicant's attorney. Eisman agrees with Mr. Phillips' report and the conclusion about the modified condition

number three and four, which pertains to the fence, gate, and access easement. He appreciates the role of Mr. Phillips and knows that it can be a stressful one sometimes. Eisman talks about desire, which is the reason for Mr. Morey's proposal to buy the old Gearhart Elementary School. Mr. Morey wants to keep the entrance to the community beautiful and attractive and save the school. The proposal is to rezone the property to a residential zone so that it can be used for residential purposes since no public entity or nonprofit organization stepped up to purchase the property when the school was eligible for sale. The question at hand is what is the appropriate zone for the property. Eisman suggests starting with the comprehensive plan, which states the general development goal of preserving low-density, semi-residential character Gearhead. They request the commission's approval of the recommendation of approval for the R-2 zone.

Graff stated what telling us tonight is that this R-2 is really the best use for this property.

Eisman replied with yes, given the need that the community has for housing. He doesn't think that R-3 works and doesn't think that R-1 gets you far.

Graff implied that that hasn't always been his decision.

Discussion over Eisman's letter to Penrod, saying, attached is Eric Eisman's memo dated August 24, which is a preliminary land use assessment. The elementary property, Eric's conclusion is that, quote, the school's property is not suitable for residential use. It goes on to say the land is best suited for use as a community park. Graff asked Eisman if he gave that opinion because he was negotiating with the school district, and they were relying on your opinion that this could not generate a profit. Graff wanted to know if that was a fair statement and, if not, how is he to reconcile what Eisman said then compared to what he is saying now.

Eisman disagreed and went on to say they were trying to find a way to use a property for community purposes, such as a park. However, when looking at maps of the area, they found several potential issues, such as wetlands, floodplains, and tsunami hazards. As a result, the speaker concluded that the property was not suitable for their intended use, but they still needed the evaluation of an expert in the field to confirm this.

Bob Morey - PO Box 2759, Gearhart, OR. 97138 -

Morey thanks Eisman and Ritcher for their work and explains that the school district did not write an analysis of a real estate transaction. The goal of the transaction was to save the school, preserve the entrance to the city, and create rental housing. Morey admits that they did not know all the details when they purchased the school, but their goal was to save it. The school needs a new roof and waterproofing, but it can be zoned for a single-family residence. The current request is to build a single house on eight-plus acres. Morey explains that they do not know what they will do with the school in the future, but they plan to spend money to save it. They suggest that there is a need for long-term rental housing and that they are open to changing their plans for the school if necessary. Morey also notes that the note about the transaction was not written for the school district and that they had suggested that the city buy the school, but there was no interest from anyone except the Bogners, who made an offer to purchase it.

Graff suggested that the applicant withdraw his application, continue the testing, and work with the community. He stated that if Morey's goal is to really save the school, he could get community support, and come up with a plan with the community, save the school, and accomplish what he wants to accomplish.

Frank mentioned rumors that there is asbestos and lead pipes and asked Morey if that was true.

Morey stated that this is true and went on to say, in summary, the project started with a structural engineer evaluating the property and concluding that it could be saved. A structural waterproofing engineer was then brought in to address the waterproofing and roofing issues. The speaker prefers the property to be a single-family home to avoid the responsibility of having many people in a building with

asbestos and lead-based paint. The exterior of the building was repainted by a licensed firm that removed the lead-based paint.

Frank asked if it was Morey's plan to mitigate that.

Morey stated it was all done. The asbestos in their building is mostly in the tunnels and not in areas with a lot of mechanical activity. There are four bathrooms in the 1968 edition of the building, but the rest of the rooms do not have toilets or sinks. They do not need to mitigate the asbestos in classrooms; they just encapsulate it.

Frank asked Morey if he has ever done a cost analysis of repairing all this compared to tearing down.

Morey said he has never considered tearing down the building as they believe it can be saved and made habitable. The building was previously used by 300 kids and teachers. The asbestos is mainly in the tunnels, and they have no plans to disturb them. The boilers have been decommissioned, and there is still plenty of space available.

Frank asked Morey what is plans for the fence were.

Morey described plans to soften the fence along Pacific Way by planting an 8-10ft high synopsis and using Cnofus on the north-south fence on the east side of the entrance road. They also plan to plant 250 trees around the perimeter and remove any gating in case it becomes a community. However, they do not have a clear idea of the end result and are still deciding.

Commissioner President Dideum asked if there were any proponents.

Patricia Roberts - 366 N Ocean Ave, Gearhart, OR. 97138 -

She mentioned that someone asked her why my opponent when she previously supported a golf course project, but they see themselves as different and instead look at the physical improvements made to the school as a precedent. She states that she has professionally rehabbed old buildings in Portland and currently has a half block of 1930s CMU that needs fixing. She explained that getting involved in a project like this can be unpredictable, but it makes perfect sense to them. She points out that Gearhart lacks land for affordable housing and challenges the Commission to show another lot in the city where a duplex, triplex, or fourplex can be built. She believes that such housing is necessary for the city and sees the potential for it. She mentioned being a former county commissioner who recognized the need for affordable housing even eight years ago and believes it is even worse now.

Commissioner President Dideum asked if there were any opponents.

Susan Eddy - 707 F St, Gearhart, OR. 97138 -

She begins by thanking the planning commission for their work on the comprehensive plan and expresses confusion regarding the request to change from R-1 to R-2. She questions the need for this change when all surrounding neighborhoods are R-1 and expresses concern about the impact on the comprehensive plan. She is also confused about the use of the school building and the potential for it to become an R-3 zone in the future. She expressed concern about the wetlands and the Army Corps of Engineers' involvement as it pertains to the Clean Water Act. She feels there are many questions that need to be resolved before anything moves forward.

Susan Spring - PO Box 2728, 641 3rd St, Gearhart, OR. 97138 -

She expresses their dissatisfaction with the purchase of a property and the fence that was put up around it. She suggests that the area should be turned into a park instead. They also express doubts about the need for more housing in Gearhart and question whether two-bedroom apartments are the solution. They suggest that the property owner should go back to the drawing board and come up with a different plan that makes sense for the city.

Vicky Abrahamson - PO Box 2093, 207 N Cottage, Gearhart, OR. 97138 -

She shares the same thoughts as Susan Eddy as well, and she expressed confusion and concern about the proposed change from R1 to R3 zoning for the school property. They pointed out that neighboring properties are all zoned R-1 and questioned why this change is being requested. They also raised concerns about the impact on wetlands and the environment, as well as the suitability of the property for residential use. They referenced a letter from the developer expressing interest in buying the property as a park and questioned why this option is not being pursued. Overall, they expressed opposition to the proposed zoning change.

Jake Redekop - PO Boc 2061, 306 N Marion, Gearhart, OR. 97138 -

Redekop stated he previously petitioned for a walking path around the golf course in Gearhart to improve community health. This was successful and even became a popular bike path. Now he suggests that the proposed rezoning of this property could be turned into a multi-purpose athletic park for the benefit of the community's health. He urges the commission to consider this alternative option.

Tom Thies - Did not speak

Elizabeth Smith. - PO Box 2312, 236 N Cottage Ave, Gearhart, OR. 97138 -

She questions why the community should care about saving a school if the intended purpose was for the community, but the community is unable to use it.

Cheryl Newman - 258 W Kershul Circle, Gearhart, OR. 97138 - 16635 SW Estuary Dr, Beaverton, OR. 97006 -

She expressed a vested interest in the school property adjacent to their own, having put up a fence to define their property. Her concern was about the proposed long-term plan for rental cottages on the property, with two bedrooms and one bathroom, and questions the appeal of such rentals to families. She raised the issues of health and safety, including asbestos and lead pipes in the school building, and questions the viability of turning the school classrooms into senior apartments or the library into a community library. Her suggestion are that the property should not be rezoned until questions about septic concerns are addressed and further information is obtained about the feasibility of rental units on the property.

Commissioner President Dideum asked if there were any neutral. There none.

#### APPLICANTS REBUTTAL

Carrie Richter - 1000 SW Broadway St, Suite 1910, Portland, OR. 97204 - Applicants Attorney -

She thanked the Planning Commission for taking the time to hear testimony regarding the application for the zone change. Her argument is that much of the testimony heard is not relevant to the task at hand and that the Commission should only consider whether this particular application satisfies the criteria set forth in the Zoning Ordinance. She notes that R-2 is the appropriate zone for this property, as it serves as a suitable transition between the R-1 zoning on the west and the commercial zoning on the east and is consistent with the city's housing needs inventory. She responds to concerns raised in Mr. Brown's testimony and argues that the question before the Planning Commission is not to decide the right zone but to determine whether this application shows that the criteria are satisfied for the R-2 zone and whether the amendment is consistent with the comprehensive plan, and suggests a condition of approval that would require a type three review for any dwelling units beyond one. She argues that the property is not suitable for an open space zone as it is not identified on the city's master plan as

suitable for parkland, and concludes that the question of need has come up, but this application satisfies the criteria for the R-2 zone, and the Commission should approve it.

Dideum asked if any of the commissioners had any questions for Richter.

Mesberg addressed the condition offered that would allow the use of the property for only one single-family home, unless it was brought back to the commission for a type three review. He requested that either Watts or Phillips provide further explanation on this condition to clarify it.

Watts explained that in the past the issue of previous developers in Gearhart subdividing parcels multiple times without meeting subdivision standards was discussed. The proposed solution is to allow a single-family home to be built on the second parcel by right, but any further residential development would require a type three application with all subdivision rules. This would prevent the parcel from being subdivided multiple times in a non-subdivision subdivision.

Richter replied yes, offering the use of the elementary school as a house with the condition that no other houses will be built.

Watts asked Richter if they know when they will have the septic data.

Richter replied with 2025.

Dideum closed the public hearing at 8:19 p.m.

Frank expressed his concerns about making a significant jump by approving a zone change without having a viable plan and answers to questions about septic, wetlands, and subdivision. He mentioned the importance of considering the conditional use and noted that Matt Brown's letter pointed out the word "before" in relation to the approval of an amendment to the zoning ordinance and concluded that the application seems incomplete and should not be approved at this time.

Graff disagrees with the conditional agreement proposed by Richter and believes the community is against rezoning the property to R-2. He suggests that the only way forward is for Morey to continue his due diligence, do testing, and outreach to the community to find a solution that works for everyone, pointing out that there is precedent for not rezoning public land to private and that Morey work with the community to find a solution. He suggests that Morey withdraw his application to avoid being denied and having to wait a year before reapplying because he will be making a motion to deny the application.

Kloepfer discussed her concerns about the proposed R-2 zone for Lot 800 and how it goes against the goals outlined in the Gerhard Comprehensive Plan, such as preserving the low density, the semi-rural character of the area, conserving open space, supporting tsunami preparedness, maintaining present residential density levels, and wetlands protection. She also expressed concerns about the increased strain on public services, including the understaffed police department and the potential negative impact on the surrounding neighborhoods, and suggested that an R-1 zone would be more appropriate. She would also like to see a septic evaluation and a completed groundwater evaluation before any decision is made. She also mentioned the importance of the public's point of view in the decision-making process.

Schector agrees with many of the points made by others and doesn't want to repeat them. She appreciates Kloepfer for pointing out conflicts in the comprehensive plan related to the proposal and had a question about whether not approving the zone change would prevent Mr. Morey from continuing his work on the school.

Dideum responded no.

Mesberg came into the meeting with different expectations and appreciates Mr. Morey's efforts to improve the property. However, he shares most of the concerns of the planning commission but is also worried that if they turn down the request, Mr. Morey's motivation to maintain and beautify the property may decrease. He encourages Mr. Morey to rethink his approach and collaborate with the community to achieve his goal of improving the property.

Dideum believes there may have been previous errors made regarding the application, and it seems that Phillips included his own findings, which accurately recounted the April 15, 2022 meeting with Carol Connell. She mentioned that in order for the zoning to be for the applicant, a city-approved lot consolidation or subdivision replat of the site's current tax lot configuration was needed. However, Dideum didn't see that in the application. Under point two, Connell mentioned a current vacant and buildable residential land inventory. She quoted a 2018 finding, which we have, and it stated that they needed eight additional multifamily units in R-2 and R-3. We have since added those units. The zoning change on Pine Ridge, where Carrie Johnson is building, is not related to this application. It was correcting an error made in the 80s. Each request is looked at individually, and a decision made in March does not set precedent for a decision made in the future. However, there are some issues with the application. While you have done the specific wetland delineation, the traffic impact analysis specified by GCO article four transportation improvements and access management, based on the worst-case impact scenario of a maximum density permitted by the active zone or other zone designation requested, is missing. This is point number five of Connell's concerns, and it renders the application incomplete. Additionally, she stated there were concerns raised about the impact on the Parks and Recreation Master plan, as the private land that was fenced off, had four baseball fields that were used by Seaside kids. The Facebook page for Seaside kids provides free sports for children, and the church on 101 is putting in a baseball field because they are still short of fields. It appears that Connell had requested the necessary information back in April, and while I can see that you have been working on the application since then, the requested information should have been included. Even though Connell is no longer with us, her concerns are still valid. The proposed development appears to be hotels, not housing, at the entrance to Gearhart, and this is another concern. In summary, the application is incomplete and needs to be updated to address these concerns.

Sweet clarified one issue for Graff, saying they discussed the restriction on reapplying, and read it out. "No application for a property owner's request for a map amendment, text amendment to an ordinance, or zoning variance shall be considered by the Planning Commission within a one-year period immediately following a previous denial. Such request may be considered only if, in the opinion of the Planning Commission, substantial evidence or changed circumstances warrant reconsideration." Sweet just wanted to confirm that he has it correct.

Watts and Richter discussed the limitation of reapplication. According to the code, any request for an amendment, ordinance, or zone change that has been denied by the Planning Commission cannot be considered again within one year. However, the Planning Commission may permit a new application if they believe that there is substantial evidence or a change in circumstances that warrants reconsideration. Regarding the current situation, both Watts and Richter agree that this is a recommendation to the city council and not a decision. The clock for reapplication would start with the city council's decision if they reject the recommendation. However, his interpretation is that the one year clock would not stop until there is a final adjudication, including any appeals. Richter disagrees, and Watts would like to seek clarification from the city council on this matter. If the Planning

Commission approves the recommendation, it will automatically go to the city council for review. The city council is the entity that makes the final decision, and the Planning Commission's reasoning and evidence will inform their decision.

ON MOTION by Graff, 2nd by Taggared make a recommendation to deny the zone change.  
All In favor - 7, Dideum, Frank, Graff, Kloepfer, Taggard, Schector, Mesberg - All Opposed - 0

UNFINISHED BUSINESS - None

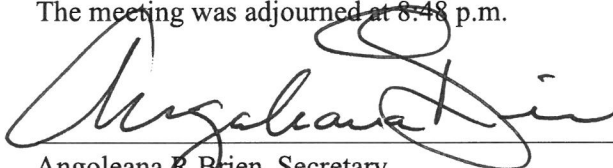
NEW BUSINESS - None

CONCERNS OF THE COMMISSION

- Kloepfer asked everybody to read through the tree ordinances that were included in this paperwork.
- Dideum stated that she would be gone for the May meeting and Taggard will be in charge of running it.

QUESTIONS FOR LAND USE ATTORNEY - None

The meeting was adjourned at 8:48 p.m.

  
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Angoleana R Brien, Secretary,

7/13/23  
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Approved