



CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

CITY OF GEARHART PLANNING COMMISSION

City Staff Report for J. Banta Land Partition
City file# 20-01P/County file #186-20-000090
Carole Connell, AICP Gearhart City Planner
May 7, 2020

APPLICATION DATA

REQUEST: John and Jo Banta request approval to divide one parcel into three parcels for the three heirs of the land. The north half of the parcel is outside the city limits. The request creates one parcel inside the city (Parcel 3) and two parcels outside the City/UGB (Parcel 1 & 2). The applicant also owns an abutting parcel to the west in the old railroad right-of-way (Tax Lot 900). Clatsop County has jurisdiction to decide on creating Parcels 1 and 2.

FILE NUMBER: File# 20-002P 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: 9.76 acres with a dwelling and accessory buildings, located at 1060 McCormick Gardens Road, map 6-10-3DB Tax Lot 800, adjoined by tax lot 900 under the same ownership

EXHIBITS: 1. Applicant's land partition application form; Tentative Partition, CKI 1-18-18
2. LWI Wetland Inventory identification
3. Gearhart Transportation System Plan (TSP) Figure 7, 8 & 9
4. Gearhart Police Chief: commented "Good" 3-16-20
5. Gearhart Fire Department: "No objections, meet Fire Code at time of construction" 3-16-20
6. Gearhart Public Works: letter indicating only Parcel 3 is eligible to receive city water 3-23-20
7. Gearhart Building Inspector: letter with no concerns 3-26-20

PROCEDURES: Application deemed complete: 3-15-20
30-day Waiver signed by applicant: 3-20-20
Clatsop County Public Notice sent: 1-18-20
City Notice published: 3-19-20
Initial Public Hearing: 5-14-20
120-day decision due: 8-12-20

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 Section 13.030 Application Information and Procedures

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 city portion of the site is zoned Rural Agricultural Residential RA. The minimum lot size is one (1) acre. Parcel 3 is in the city and is

proposed to be 4.68 acres. The county portion is zoned RA-1 Zone where the minimum lots size is 2 acres.

2. Access: Site street access is from McCormick Gardens Road.
3. Site Characteristics: The site is occupied by a single-family dwelling, a large garage/shop building and a standard garage. Wetlands exist on the west half of the parcel (see attached aerial). West of the wetlands is the abandoned rail right-of-way which has a patchwork of either public or private ownerships. The applicant's tax lot 900 was a segment of the prior railroad with its narrow, long dimension of 30' x 292'.
4. Agency comments: There are no objections by city department heads. The proposal is being coordinated with the Clatsop County Planning Dept.
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, the Gearhart Transportation System Plan (TSP)

III. FINDINGS FOR APPLICABLE ZONE AND SUBDIVISION STANDARDS

A. GZO Section 3.0 Rural Agricultural RA:

FINDINGS: The subject parcels are planned to be configured so that each parcel complies with the designated zone requirements for a new lot. The City RA Zone minimum lot size is one (1) acre. Parcel 3 is 4.68 acres. The county portion is zoned RA-1 Zone with a minimum lot size of 2 acres. Parcel 1 is 2.75 acres and Parcel 2 is 2.33 acres. The proposed parcels comply with city and county lot size requirements.

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 without the information.

FINDINGS: A wetland has been identified on the west half of the site. Specific wetland identification and protection requirements will apply if the land is rezoned and subdivided into homesites, or if a new home is proposed on Parcel 3. The

proposed partition does not impact the wetland therefore no additional information is required at this time.

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 the planned McCormick Gardens Road right-of-way width and the proposed Railroad Avenue/Tressel Drive planned shared street are to be considered in a partition request by above Section C. 1. b. (5) and c.in accordance with the Gearhart TSP and Subdivision Ordinance.

The above section is primarily applicable to site construction or building permits. There is no development, construction or building permit related to this partition. However, the Shared-use Path denoted in the TSP Figure 7 on the west side of the property is a relevant issue as stated in item 1. c. above, as is the substandard status of McCormick Gardens Road improvements.

Railroad Ave/Tressel Drive: On April 24, 2020 city staff traveled up and down the railroad right-of-way area to investigate the planned access improvements generally in

the railroad right-of-way vicinity. Staff found a patchwork of ownerships, significant wetlands, variable topography and building obstructions. Staff found a north south street improvement from Pacific Way to the Palmberg property is possible and would improve circulation in the area by reducing trips on and off the highway. Staff found the trail connection is possible in that location as well as further north to Hillila Road. Conditions were not inspected north of Hillila Road.

This is the first opportunity to enact the north/south access route envisioned by the TSP to improve connectivity on the east side of Hwy 101. Staff recommends in this case the applicant consider voluntarily donating their adjoining tax lot 900 (30' x 292') as city ROW to begin to piece together a north/south public access in this area. This recommendation is only to gain the ROW, not to construct a path,

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

FINDINGS: The City finds no new streets are proposed with this partition request therefore this section is not applicable.

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 because it is narrow (40' wide ROW) and unimproved as compared to its TSP classification as a collector street to serve the east side of the highway. The TSP Project #G2 plans an extension of McCormick Gardens Road to Oster Road to be constructed as a collector street. Further project # G3 extends Railroad Avenue from Pacific Way to

Park Lane as a collector street. Collector street standards include a 60' ROW and a 24' to 34' pavement and shared path improvement on the east side.

However, this request is not a proposed development. The impact of the partition does not create new development and therefore street improvements to adjoining McCormick Gardens Road are not proportional to the cost of a street improvement. In the future, Parcel 3 could be subdivided into four one-acre lots, at which time the city can require applicable street improvements to McCormick Gardens Road.

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 street improvements to adjoining McCormick Gardens Road cannot be required until a future development is proposed on Parcel 3.

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 from 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 required in Article 4 are not required unless there is new development, therefore a fee-in-lieu is not applicable. However, the Gearhart Subdivision Ordinance requires right-of-way dedication at the time of a land division request, as discussed below in Section 38 Streets.

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 development plan that affects the western boundary of the parcel proposing a trail and street connecting Railroad Ave. at Pacific Way to the Tressel Drive alignment from Hillila Road to Park Lane.
- The substandard 40-foot width on the adjoining McCormick Gardens Road plans to be widened to 60' of right-of-way, by a 10-foot dedication from each side of the road.

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 the existing 40-foot wide McCormick Gardens Road ROW is substandard in comparison to the road's 60-foot wide collector street designation identified in the TSP Figure 7 Planned Investments, Figure 8 Functional Street Classification and Figure 9 Evacuation Routes. As a condition of partition approval, a 10 deep by 187' wide portion of Parcel 3's street frontage shall be included on the final plat submittal.

- 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 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 900 west of the subject site. 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. If the Commission decides not to require pathway land dedication, the City requests the applicant consider donating Tax Lot 900 on the final plat to city right-of-way. It is currently an unusable parcel due to its dimensions (30' x 292') and is separated from applicant's tax lot 800 by a large wetland.

- 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 implements the pedestrian access and connectivity policies of the TSP to provide for safe, reasonably direct and convenient pedestrian access and circulation. The section requires that development shall conform to the pedestrian plan, such as a single-family dwelling or a future subdivision of Parcel 3. To avoid a future cost to the owner in order to make a dedication as a part of a home construction or subdivision of Parcel 3, City staff suggests the applicant consider donating Tax Lot 900 now to alleviate those complications. It is more convenient and less costly to technically and legally include the dedication on this partition plat.

F. Section 39 - Recreation and Utility Easements:

FINDINGS: The City finds there are no plans for recreation easements on the subject site.

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 Parcel 3 is appropriately sized and shaped. Street frontage is provided by 187 feet of frontage on McCormick Gardens Road. Exceeding the 25' minimum width.

Lot lines run at right angles to the street. There is a known wetland on the west side that is unsuitable for any development. A future dwelling on Parcel 3 can meet the 25-foot minimum setback from the wetland boundary.

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 at the time of a building permit request the applicant will be required to illustrate the location of roof drains and driveway drainage on Parcel 3.

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, waste or stumps.

FINDINGS: The City finds that the official Gearhart Local Wetland Inventory LWI map illustrates a wetland on the west side of the parcel. A site-specific wetland determination will be required to protect the wetland at the time of a subdivision or home construction proposal. The proposed partition provides future buildable area for Parcel 3 that is outside of the designated wetland.

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 finds that utility installations will not be considered until a land division or home construction is proposed.

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 that public and private utilities will be considered when a subdivision or home construction is proposed on Parcel 3.

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

FINDINGS: The above 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. CONCLUSION

Based on the findings in this report, subject to any additional information provided at the public hearing, Staff recommends approval of the Tentative Land Partition subject to the following conditions of approval recommended in the findings, as may be modified by the Commission:

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.
2. The final partition plat submittal shall be modified for Parcel 3 as follows:
 - a). In order to comply with the Gearhart TSP planned future street improvements to McCormick Gardens Road the final partition plat shall be modified to include a 10' x 187' dedication of Parcel 3 street frontage to the City for McCormick Gardens Road right-of-way.
 - b). The existing shed/garage structure on the proposed north property line of Parcel 3 shall be modified, re-located or removed to meet the required 5' building setback from the new north property line.
3. Prior to Final Plat approval the city requests that the partition plan be modified to dedicate Tax Lot 900 to the City of Gearhart for public access right-of-way in accordance with the Gearhart Transportation System Plan.

4. 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.
5. 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.
6. 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 approval. If necessary, the applicant may request that the City grant an extension to the one-year expiration.

V. DECISION OPTIONS

The Planning Commission has the following motion options:

1. Based on the Findings in the staff report, I move we approve the proposed Tentative Partition Plat (File # 20-001P) subject to the conditions of approval as presented and/or as modified by the Planning Commission; or
2. I move that we continue the public hearing for the Tentative Partition Plat to the next regular meeting; or,
3. Based on the testimony received and revised findings as directed by the Commission, I move that we deny the Tentative Partition Plat.