

CITY OF GEARHART PLANNING COMMISSION  
City Staff Report for J. Banta Land Partition  
City file# 21-01P  
Carole Connell, AICP Gearhart City Planner  
March 5, 2021

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APPLICATION DATA

REQUEST: John Banta requests approval to divide one parcel into three parcels for the three heirs of the land. The applicant received partition approval in 2020 to divide the city portion of the original parent parcel from the county portion. This request subsequently divides the newly created city parcel into three new parcels. The Subdivision ordinance permits dividing one parcel into 2 or 3 parcels within a calendar 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 attached with comments and conditions 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  
                          120-day decision due: 6-1-21

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 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). 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 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 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 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 20 – 40 feet dedicated to the city, or potentially by a public access easement.

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 50' wide with 18' of gravel.

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

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) above.

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. CONCLUSION

Based on the findings in this report, subject to additional information provided at the public hearing, Staff recommends approval of the Tentative Land Partition subject to the following conditions of approval, 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.

Provide with the Final Plat application:

2. A site-specific wetland determination or delineation by a qualified professional wetland scientist shall be provided to the City before or with the Final Partition Plat application. 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.
3. The final partition plat shall be modified to incorporate a portion of the Railroad Ave. pathway, an estimated 40 feet wide, either 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 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). Street improvement cross-section plans and cost estimates to McCormick Gardens Road shall be submitted to the City for approval prior to a final partition plat application. 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.
  - b). Provide evidence from the Clatsop County Planning Department that the private road easement plans comply with County road width and improvement requirements. 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.

- c.) Coordinate with the City staff a proposed road name that reflects the history, flora, fauna or geography of the area. Obtain city approval of the sign specifications and install the sign where the private 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. Coordinate with City staff regarding the McCormick Gardens Road improvement plans
    - a) 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.
    - b) Improvement work shall not be commenced until the City has been notified.
    - c) All required improvements shall be constructed under the inspection and to the satisfaction of the City.
    - d) All underground utilities shall be constructed prior to surfacing of the streets.
    - e) A map showing all public improvements as built shall be filed with the Building Official upon completion of the improvements.

## 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 # 21-01P) 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.