

NOVEMBER 7, 2018

PUBLIC HEARING TO CONSIDER MAP AMENDMENT FROM RA TO R2

The public hearing was called to order at 7:00 pm by Mayor Matt Brown. Present were Councilor Cockrum, Councilor Fackerell, Councilor Jesse, Councilor Smith, Mayor Brown, City Attorney Peter Watts, City Administrator Chad Sweet and City Planner Carole Connell.

Mayor Brown opened the public hearing to consider file #18-005ZMA map amendment to rezone 27 acres from RA, Rural Agricultural to R2, Medium Density Residential for property located east of Highway 101, north of Pacific Way and west of McCormack Gardens Rd. Brown read the disclosure statement into the record.

Watts presented the legal matters noting criteria that must be addressed are GZO Section 11.040 Amendment Criteria. Watts asked if any member of the council wish to declare a conflict of interest or bias. Jesse stated he was an abutting landowner to the proposal. Watts asked if there were any exparte contacts or site visits. None was declared. Watts asked if there were any audience challenges to the council hearing the matter. None was declared. Watts asked if there were any audience challenges to the impartiality or exparte disclosures of the council. None was voiced.

Connell summarized the staff report noting the commission made a recommendation of denial and that the staff report findings support the Planning Commission's recommendation. She stressed the concept plan submitted by the applicant is a concept only and not part of the zone change request. She reviewed documents submitted by the applicant. She said the property contains a lake, wetlands and flood plain noting only 28% of the property was not constrained leaving approximately 7.5 acres of developable land. She corrected the soil types on the property are sandy loam and silt, not mucky peat.

Watts clarified Councilor Jesse is in the area that received notice and is required to recuse himself from the proceedings. Jesse stepped away from the table.

Watts clarified the request before the council was just a zone change, should a change be granted it does not mean the property will be developed but there will be a difference in development options from the current zone to a new zone designation.

QUESTIONS FOR STAFF

Cockrum – in the buildable lots inventory she asked if the currently zoned 1 acre lots that could be developed at this time were in the calculations.

Connell said theoretically the current lots are listed in the calculations.

Smith asked about current calculations of 27 1-acre lots vs seven 1 acres lots.

Connell clarified if you have 27 acres you could have one house per acre or 27 houses. The zone also allows clustering ¼ acre each placing houses closer together to save the resources.

Watts state 1 acre minimum is an unusual zone and would not currently be approved by DLCD. Clustering was developed to keep development costs of utilities centrally located and the rest of the lots left open for open space.

Fackerell asked if the property owner was able to purchase more density rights would the property owner be able to put more houses there.

Connell said no, purchasing density rights is not an option in our zoning code. The option of clustering would allow for getting a bit more houses by the way they are arranged.

Smith asked about findings on page 6, calculations used to calculate buildable land adding up to 17 acres why the difference from 10 acres to 7.5 acres?

Connell said it was the wetland buffer of 50'.

APPLICANT PRESENTATION

Li Alligood, OTAK, Inc., 808 SW 3rd Ave, Suite 300, Portland, OR 97204 – introduced Heidi Palmberg Snidow, 2124 NE 57th Ave, Portland, OR 97213 – she spoke on behalf of the family. She thanked the council for their consideration for the Palmberg zone change, noting the family has been a part of the community for 60 years, raising their family and operating the business. The paving site operated until 1997, the family wants to see the best for the property and request the zone change to allow for development of the land consistent with growth that has been happening in Gearhart. She addressed concerns of the commission 1) traffic access through the Pacific Way traffic light would allow for homeowners to walk and bike to the beach and central business area of town, 2) concern for contaminants, DEQ deemed the property safe for residential building in 2006 with no other action necessary, 3) residents on McCormick Gardens Road don't want development to disrupt their quality of

life, development is not necessarily bad and any development will require improvements and vetting through the proper channels. She stressed the request is for a zone change only to provide an opportunity for future development options that would have to be reviewed and approved by the city.

Li Alligood – reviewed the proposal noting the property consists of 10 different tax lots. The zone change request is to allow for more flexibility in the areas that are not constrained by natural resources on the site, leaving approximate 7.5 acres of developable property. The zone change request is the first of many steps towards development. The conceptual plan provided shows 25 single family lots that is only one of many possible options for development. Property to the west is commercial, to the east is largely rural undeveloped partly due to the soil and wetlands. The development would provide a transition between the rural and the high-density commercial property. Traffic concerns will be bound by the new Gearhart Transportation System Plan, any required street improvements would be paid for by the developer and any improvements would most likely be within the existing right-of-way. Further review of the soils showed there is no mucky peat on the property and soils on the property can be made appropriate for single or multi family development. Alligood noted the Palmberg family has gone through voluntary soil cleanup on the property and has received a determination of *no further action*. She made a recent contact with DEQ and verified criteria has not changed and the *no further action* designation was still in effect. She noted the ORCA letter contains some incorrect statements with regards to the DEQ *no further action* statements and soils. With regards to the buildable lands inventory calculations are what is *allowed by right* on the site of 1 lot per acre for the unconstrained land or 7.

Smith asked about wetlands and why some of the man-made wetlands that can be filled by permit were not represented on the map.

Alligood noted the site plan layout does assume the small man-made wetlands are removed as part of the buffer and cul-de-sac and some of the wetland could be filled, to show more options were require a higher detailed plan.

Connell asked about the comment that current zoning for cluster could only be 7 lots.

Alligood said no, that buildable land inventory is evaluated on what is permitted *by right* without special zoning approval, cluster housing is a conditional use process and not a right. The buildable land inventory added a layer for environmental constraints resulting in the addition of approximately 7 acres for the site. Infrastructure costs are the same regardless of the number of houses build on the site and are a big reason for cluster development or the proposed zone change.

TESTIMONY IN FAVOR

Heidi Palmberg (testimony presented as applicant)

TESTIMONY OPPOSED

Gloria Edler, 39 McCormick Gardens Road, Gearhart, OR 97138 – she owns property directly east of the Palmberg property, at the corner of McCormick Gardens Road and Pacific Way. The area is a very nice rural area, walking down the road water is often within 3 to 4 feet on both sides of the road, utility poles are right on the edge of the road leaving no room to expand. Cars and busses are unable to pass on the narrow road, adding 50 to 100 cars each day is unimaginable. Please consider the neighbors when making a decision, we like it the way it is.

Mary Chandler, 1060 McCormick Gardens Road, Gearhart, OR 97138 (parents address) – when widening the road, you need to look farther down the road and on to the highway everything would have to be widening and that would only be accomplished by taking property away, there is no buffer (right of way) in the area. The plans show possible filling of wetland she asks where the water is going to go, the results will be flooding everyone else's property. Traffic is enough as it is, drivers are traveling faster on the road. The addition of 50 up to 4 plex's will impact McCormick Gardens Road. If the zoning is changed the city loses control over the property. The majority of property owners don't want the zone change and majority should rule.

APPLICANT REBUTTAL

Alligood said if the zone changes there will be a number of city reviews built into the development process. Question for the hearing is not if the property can be developed but how much, the Palmbergs have agreed to the city setting a limit on the property as to the number of houses that could be built on the site.

Cockrum asked if there was ability to create access on Rail Road Avenue.

Alligood said yes, the development could take access from either McCormick Gardens Road or Rail Road Avenue but there would be more improvements required using Rail Road Avenue because you would be building a new road.

Fackerell questioned if the approach was through Rail Road Avenue there would be no need for any improvements on McCormick Gardens Road?

Alligood / Watts – appropriate access would need to be required. Requirements would be determined at the time a plan is brought in for development.

The public hearing was closed at 8:20 pm.

Discussion followed on placing manufactured homes on the site.

Commissioner Cockrum said she agrees access should be from Railroad Avenue if developed since it is in the TSP. She said she is uncomfortable with moving forward at this time with this plan based on the criteria; that the existing zoning for a Conditional Use for clustered houses or manufactured homes could be explored; that there are unknowns about the types of buildings that would be put up and whether they are affordable, an unknown at this time; that she has concerns about compatibility with the neighborhood, and suitability regarding existing floodplain and wetlands particularly as we learn more about resiliency, tsunamis, flooding, global warming and sea rise and their impacts on wetlands, and the last criteria of public service issues that Carole mentioned that have not been worked out. She said it is something that just has too many issues that are still unknowns that makes her uncomfortable. On **MOTION** by Cockrum, 2nd by Smith, by unanimous motion the request submitted by Li Alligood, OTAK, Inc. on behalf of Palmberg Paving Company to rezone 27 acres from RA to R2 was denied. (See Attached Order)

Mayor, Matt J. Brown

Chad Sweet, City Administrator

**BEFORE THE CITY COUNCIL
OF THE CITY OF GEARHART**

**IN THE MATTER OF AN APPLICATION) FINAL FINDINGS
FOR A ZONE CHANGE) AND ORDER**

A decision to **DENY** a quasi-judicial application for approval of a Comprehensive Plan and Zone Map Amendment to reclassify 10 tax lots on 27 acres from a Rural Agricultural RA Zone to a Medium Density R-2 Zone

City File #18-005ZMA

Property Owner: Palmberg Paving Company Inc.
 499 Ridge Drive
 Gearhart, OR 97138

Applicant: Li Alligood, AICP
 Otak Inc
 808 SW 3rd Avenue Suite 300
 Portland, Oregon 97204

Location: East of Highway 101, north of Pacific Way and west of
 McCormick Gardens Rd and further described as Assessors Plat
 61003DC Tax Lots 600, 700, 800, 900, 1000, 1100, 1200 and
 1300; and Assessors Plat 61010AB Tax Lots 1100 and 1201.

Pre-App Conference: 10-12-17
Completeness: 08-09-18
Notice Mailed: 08-24-18; 10-18-18
Notice Published: 08-24-18; 10-18-18
Planning Commission
Hearings & Decision: 09-13-18, decision to deny on 10-11-18
120-day deadline: 12-07-18

Exhibits: Applicant's application & narrative; Sheet P1.0 Aerial Existing
 Conditions; Sheet P1.1 Proposed Zoning; Sheet P1.2 Conceptual
 Site Plan; Appendix A and Figure 6 Wetland Delineation,
 Appendix B Traffic Impact Analysis; Appendix C Geotechnical
 Report; Appendix D DEQ No further action & Preliminary Septic

Evaluation by Clatsop County Public Health; Appendix E FEMA
FIRM Map 2018

Additional exhibits: Applicant's Memo 10-2-18 in response to Goal 10 Findings including existing 1994 Gearhart Comp Plan housing data and the Draft Clatsop County Residential Lands Analysis; Applicant's 10-2-18 Memo in response to neighbor concerns; HGSI Supplemental Geo-tech report, 10-10-18; Clatsop County GIS Soils Map

Division of State Lands (DSL) Letter of Concurrence 7-26-18
ODOT email comment 9-4-18
G. Henricks, Clatsop County email comment 8-31-18
Fair Housing Council letter 9-12-18 and 10-04-18 email
Oregon Coast Alliance letters: 9-13-18 & Sean Malone 10-11-18
Jan Weiting letter 10-6-18
Julie Nichols letter 10-23-18
Jan Weiting 2nd letter with neighbor signatures 10-30-18
Sean Malone, OCA 2nd letter 11-06-18

Applicable Criteria:

- GZO Section 3.0 Low Density Rural Agricultural Residential Zone RA
- GZO Section 3.2 Medium Density Residential Zone R-2
- GZO Section 3.13 Freshwater Wetland and Lake Zone
- GZO Article 5 Flood Hazard Overlay Zone
- GZO Section 6.330 Transportation Impact Analysis
- GZO Article 11 Amendments
- GZO Article 13 Application, Notice and Hearing Procedures
- Gearhart Comprehensive Plan, 1994
- Gearhart Transportation System Plan, 2017

Agency Coordination: The application includes coordination with the Division of State Lands (DSL), the DEQ (2006-2007) and Clatsop County Public Health. The City also notified Clatsop County Planning, the ODOT, EPA, DSL, Oregon Dept. of Fish & Wildlife and the National Marine Fisheries Service

City Staff Comments:

- The Fire Chief letter dated 8-20-18 indicates no objection to the zone change. A detailed site plan will be required prior to approval of a proposed development to determine compliance with fire access and water supply requirements, and whether or not a secondary access is required.
- The City Manager email dated 9-4-18 said there is nearby water supply, a water system must be designed at the time of development and Pacific Way is in need of repair and widening to support extra traffic.
- The Police Chief letter dated 8-10-18 said the project is within walking distance of Dollar General. He said road improvements are needed on Pacific Way east of Railroad Avenue to McCormick Gardens Rd.
- The City Building Official email dated 8-21-18 indicates concurrence with the Fire Chief's comments.
- The City Public Works Director email dated 8-21-18 indicates no concerns at this time but will require approval of a water system when a development proposal is submitted.
- Clatsop County Planning email dated 8-31-18 indicated the existing RA zoning is intended to be a buffer between higher density to the west and lower density unincorporated lands to the east, and that this proposal is not consistent with that intent. Further, "what steps might the City require to limit the total amount of development on the 27 acres to 25 – 42 units?"

Clatsop County Public Health Dept.: Staff spoke to Mike McNichol about septic drain field system capacity at the site. Mr. McNichol said they would look at potentially hydric soil constraints at the time of development. He noted if there are problems they can usually be resolved with engineered plans.

- ODOT email dated 9-4-18 said "the proposed path and fire access to US 101 will require an easement, a road approach application, and a permit from ODOT. Please work with Richard Kearns for the application and processing for a road approach permit for fire access."

I. FINDINGS

- A. Proposal: The purpose of the request is to approve a Comprehensive Plan and Zone Map Change for 10 parcels under the ownership of Palmberg Paving Company, changing the zone designation from Rural Agricultural RA to Medium Density Residential R-2.

This is a quasi-judicial zone change application for privately owned land. On October 11, 2018 the Planning Commission decided to recommend denial of the zone change application. The applicant's Conceptual Site Plan (Sheet P1.2) provides a layout for a 25-lot single family subdivision. The plan is conceptual only and is not a part of the zone change request. Future residential development of the site will require a land division application and Planning Commission approval.

- B. Site information: The ten contiguous parcels adjoin residential uses and commercial uses on the highway. The subject land adjoins Pacific Way on the south, McCormick Gardens Road on the east, rural residential land to the north and Railroad Avenue to the west. The site is vacant except for remnants of past paving business operations on the north end. Gearhart's eastern city limits and the UGB are coincident at McCormick Gardens Road, with the exception of a tax lot that extends east of McCormick Garden Road at the east terminus of Pacific Way.

The site is occupied by a four-acre man-made lake and nine wetlands. The lake is 15 feet deep and has warm water fish. The site is partially in the AE Zone of the 100-year floodplain and is subject to flooding. The elevation of the low lying site is 15 – 20' and is subject to significant inundation in the event of a Cascadia Subduction Zone earthquake caused tsunami. The area has a high water table with groundwater at 3 – 6 feet bgs. Soils on the site are a combination of Gearhart Fine Loamy Sand, Warrenton Loamy Fine Sand and Silt Loam. There has been historical evidence of soil contamination from a prior auto wrecking yard on Tax Lot 1000.

- C. Plan and Zone Standards: The site is designated Low Density Rural Agricultural RA by the Gearhart Plan and Zone Map. Surrounding property in the UGB is zoned RA to the north and south, and C-2 and R-2 to the west. Adjoining land outside the City and UGB is under Clatsop County jurisdiction and is zoned RA-1 by the county with additional Conservation and Rural Land designations.
- D. GZO Section 3.0 Rural Agricultural Zone: The existing RA zone permits a single family dwelling on a minimum one-acre lot, with a 30' building height limit. Accessory structures related to agricultural use are also permitted, as are a manufactured home park or subdivision. Several public or institutional uses are permitted as a Conditional Use in

the RA Zone. By Conditional Use Permit approval the zone also allows a cluster residential development for a parcel with natural resource constraints. The zone is limited to clustering single family homes, each on a minimum 10,000 square foot lot. If this option were chosen the existing zone may allow for an estimated 20 single family lots on the subject site.

E. GZO Section 3.2 R-2 Zone

The purpose of the Medium Density Residential R-2 zone is to provide housing consisting of a mixture of single-family and multiple family housing. The maximum allowable density shall be six (6) dwelling units per acre. Minimum lot sizes for single family are 7,500 square feet; duplex 10,000; tri-plex 12,500 and 4-plex 15,000 square feet. The building height limit is 30'.

FINDINGS: In an R-2 zone the 27 acre site could allow 162 dwellings (27 x 6 = 162). However the applicant finds environmental constraints reduce the actual buildable area to approximately 7.5 acres. The applicant's conceptual plan illustrates 25 single family dwelling lots on a 7.5 acre unconstrained area. Based on the Wetland Delineation an estimated 28% of the site is not constrained and is developable. The remaining 72% of the site may be restricted by state permitting, leaving a significant buffer on the north, west and south boundaries.

F. GZO Section 6.330 Traffic Impact Analysis

In summary, Section 6.330 2.A. requires a Traffic Impact Analysis (TIA) when a change in a zoning designation will generate more trip ends, more than 25 trips during the AM and PM peak hours or more than 300 daily trips; and has potential impacts to residential areas and local roadways.

FINDINGS: The applicant provided a TIA prepared by Access Engineering, 3-22-18 because the proposed zone change could result in development that will increase the trips to and from the site. The analysis describes the traffic impact based on the highest density development scenario of 20 duplex lots or 40 dwellings and 3 four-plex lots or 12 dwellings. Page 10 of the TIA report provides a summary of conclusions.

At the time of a proposed subdivision to divide the property the applicant will be required to comply with the transportation requirements of the Gearhart Transportation Plan, Zoning and Subdivision Ordinances.

G. GZO Section 6.300 Transportation Improvements

All new residential development is required to build streets internal to a development project, as well as improvements to existing abutting streets based on the street

classification of the Gearhart Transportation System Plan. The City Manager has the authority to waive the requirements if warranted based on specific criteria, or require a fee-in-lieu for 100 % of the estimated street improvement costs. The monies would be placed in a fund dedicated to the future construction of the improvements.

FINDINGS: Pacific Way and McCormick Gardens Road are designated collector streets. The TSP indicates the streets are in fair condition, are substandard in right-of-way width and pavement width. The TSP plans for street widening, paving and a pedestrian trail on these two streets, either by development of abutting land or by a city capital improvement project.

H. GZO Section 3.13 Freshwater Wetland and Lake Overlay Zone

The purpose of this zone is to conserve significant freshwater wetlands and lakes. The zone overlays and restricts the use on identified wetlands. Low intensity uses which do not result in major alterations are appropriate, such as low intensity recreation, passive restoration measures, wetland rehabilitation activities, enhancement of native vegetation, removal and replacement of invasive non-native vegetation. Conditional uses include active restoration, docks, walkways and paths. Removal of vegetation is prohibited unless approved by permit in accordance with the zone standards. Development, construction or alteration within the FW Zone or within 25' of the zone requires approval of a development permit from the City.

FINDINGS: The Freshwater and Lake Overlay Zone does not permit housing on an identified wetland. The applicant has provided a certified Wetland Delineation from Pacific Habitat Services. The wetlands are identified on Figure 6 of the applicant's report. Of the 27 acre study boundary, 10.34 acres are wetland, while 4.69 acres are waters of the State/US. At the time of a specific development proposal the applicant's concept plan provides an example of a developable area boundary that complies with protection of most of the wetlands, and a 50-foot buffer.

The Division of State Lands (DSL) Letter of Concurrence finds nine identified wetlands. Wetlands A, B & H and the pond are subject to state Removal-Fill Law which requires a permit for cumulative fill or annual excavation of 50 cubic yards or more. Any filling of wetlands will require permitting and approval from DSL. Further, permitting by the Corps of Engineers for purposes of the Clean Water Act is required prior to a future land use development approval.

The applicant's conceptual plan illustrates a 50-foot buffer from each wetland and considered undevelopable. The 50-foot buffer is a commonly applied distance that complies with LCDC Goal 5 "safe harbor" natural resource regulations. The applicant

indicates the City and the County will determine the appropriate buffer width at the time of development.

Gearhart Zoning Ordinance Section 3.1380 restricts wetland development by requiring a 25-foot wide development buffer from a designated wetland. In addition Section 6.175 Riparian Vegetation requires a 25' buffer from the "unnamed lake" on the property. If the proposed buffer can be reduced from 50' to 25' the amount of developable area may increase.

II. ARTICLE 11 AMENDMENTS

AMENDMENT APPROVAL CRITERIA

A decision must be based on adequate findings demonstrating compliance with each of the following Zone Map Amendment approval criteria, A - E.

A. The amendment shall be consistent with the Comprehensive Plan.

FINDINGS: The subject land is inside the Gearhart Urban Growth Boundary therefore is planned for future development. Comprehensive Plan policies relevant to this zone change request are:

Residential Plan Policies:

1. *The City will preserve and maintain the predominantly residential character of Gearhart through appropriate zoning and land use development regulations.*
2. *The City will not designate additional property for commercial development.*
3. *The City, through provisions in its Zoning Ordinance shall allow for needed housing types such as manufactured dwellings, duplexes, multi-family dwellings, and residential care facilities and residential homes.*
4. *The City will cooperate with efforts of the Clatsop County Regional Housing Authority, the Northwest Housing Association, the Area Agency on Aging, the Oregon Housing and Community Services Agency and other entities in their efforts to ensure decent affordable housing and housing rehabilitation in the Gearhart Area.*
5. *The City will not tolerate discriminatory housing practices.*

FINDINGS: In response to the above Comprehensive Plan policies:

- The zone change to residential R-2 maintains the predominantly residential character of Gearhart, but Council found that an increase in density may not maintain the rural agricultural character of the subject area and vicinity;
- The zone change does not add commercial development opportunities;
- The zone change to R-2 allows for several housing types, excluding vacation rentals, but the Council found more dense housing cannot be mandated on the site;

- The zone change provides an opportunity, but not a guarantee for development of more affordable housing units such as duplexes, tri-plexes and multi-family that would support city housing and non-discrimination goals.
- The Council found the applicant has not demonstrated that the amendment will meet a land use need, and, if the need is established the applicant has not demonstrated that it will satisfy that need.

Natural Resource Policies

6. *The City will protect identified freshwater wetlands from conflicting uses and activities such as filling, drainage and tree removal through the application of a Freshwater Wetland Zone designation.*

FINDINGS: The Freshwater Wetland and Lake Overlay Zone designation applies to a significant amount of the site, but City Council found the applicant has not shown the wetlands will be protected simply because there will be no development on the wetlands themselves. They found significant residential development in conjunction with roads, utilities and septic systems has not been shown to be consistent with the purpose of the zone and the listed passive uses.

Flood Hazard Plan Policies

7. *The City will rely on the requirements of its Flood Hazard Overlay Zone to regulate development in flood hazard areas to ensure that provisions of the National Flood Insurance Program are met.*

FINDINGS: The applicant's Appendix B is the current FEMA FIRM Map 2018 for the area. The map indicates the property is included in FIRM Zone A and AE. A future development proposal would be required to comply with GZO Article 5 Flood Hazard Overlay Zone standards and provisions. The base floor of a new structure will be required to be at least one-foot above the base flood elevation (BFE). The applicant's geotechnical engineer indicated dwellings may require the first floor to be elevated above ground level to meet flood hazard standards in this area. The Council found the low density RA zone minimizes the number of future homes that would be susceptible to the hazards of flooding.

Transportation Plan Policies

8. *Improve connectivity for people walking or biking by completing gaps in the current network of pedestrian and bicycle facilities.*
9. *Protect the function of existing and planned roadways as identified in the adopted Transportation System Plan (TSP) by ensuring that all development proposals, plan amendments, and zone changes are consistent with the planned transportation system.*
10. *Consider the impacts on existing or planned transportation facilities in all discretionary land use decisions and require applicable development proposals,*

as defined in the Zoning Ordinance to prepare a traffic impact analysis unless a waiver is granted by the City Manager or designee.

FINDINGS: The subject zone change applies a new land use designation to the 10 parcels, but does not approve a development. In the future, a development proposal shall comply with Gearhart TSP plans and policies. The site has frontage on Railroad Avenue (60' ROW), McCormick Garden Road (40' ROW) and Pacific Way (40'ROW). Roadway dedications, road and pedestrian improvements and connections and a secondary access will be carefully considered in accordance with the TSP requirements for new development.

The applicant's Concept Plan illustrates a single access from McCormick Gardens Road via an 800' cul-de-sac street with two half cul-de-sacs, and a 25' wide shared use path from the cul-de-sac terminus west to Railroad Avenue.

The applicant provided a Traffic Impact Analysis (TIA), Appendix B by Access Engineering LLC that analyses impacts of the maximum R-2 development possible on the constrained site. Maximum development consists of 20 duplex lots and three four-plex lots for a total of 40 duplex dwellings and 12 apartments. At this density the scenario would generate 70 peak hour trips, compare to the RA zone development potential. The transportation engineer concludes "the worst-case high density scenario where all trips are assigned to reach Hwy 101 and Pacific Way found the intersection will still function well above the ODOT mobility standard and the Gearhart mobility standard through the Gearhart TSP horizon year of 2040." See Traffic Impact Analysis Conclusions and Recommendations on page 10.

The TIF report addresses traffic impact at the intersection of Pacific Way and Highway 101. The report does not address conditions of abutting city streets. Residents that use the abutting streets testified the streets are narrow, often flooded and unsafe and that additional vehicle trips will negatively impact and further degrade existing substandard road conditions.

Additional Findings regarding Comprehensive Plan Compliance

11. Following the initial public hearing before the Planning Commission, the applicant, agencies and staff prepared additional findings to address concerns raised by neighbors, The Fair Housing Council and The Oregon Coast Alliance.
 - a. State Goal 10 Housing
Goal 10 Housing & ORS 197.175(2) (a) requires a jurisdiction to prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission (LCDC). The Fair Housing Council and ORCA said the proposal does not consider the Goal 10 requirements.

Subsequently, the applicant addressed the Buildable Lands Inventory. See applicant's memo dated 10-2-18. In summary, the Goal 10 compliance checklist provided by the FHC indicates the City is required to comply with Goal 10; that the City has a Housing Needs Analysis (HNA) and Buildable Lands Inventory (BLI) adopted in 1994 indicate 91% of the 1990 dwelling units were single family; and that based on the draft 2018 Clatsop County Affordable Housing Analysis there is an adequate supply to meet housing demand, but more than half of current Gearhart households cannot afford to purchase or rent homes in Gearhart. The analysis does not evaluate the housing need by dwelling type.

The applicant's memo responding to Goal 10 requirements was forwarded to the Fair Housing Council. On October 4, 2018 Jennifer Bragar, the President of the Fair Housing Council (FHC) in collaboration with the Housing Land Advocates (HLA) provided a second response to the Palmberg Zone Change that appears to rescind their initial objections.

b. Soils

The 1979 Background Report of the Gearhart Comprehensive Plan on page 3 & 9 describes three "mucky peat" soil types in the area east of the railroad as "generally not suitable for urban development because of the high water table and the low load supporting capacity subject to subsidence. Peat and organic soil are extremely compressible and generally considered entirely unsuitable for supporting structural foundations."

The applicant provided a site specific Preliminary Geotechnical Engineering Report, prepared by HGSI Hardman Geotechnical Services Inc., June 7, 2018, to evaluate the subsurface conditions at the site. Eight (8) test pits were dug in the upland area identified for potential development.

In conclusive remarks the report identifies "the primary constraints of localized and unpredictable undocumented fills, and relatively shallow groundwater with the potential of caving sands in trench excavations". However, their results indicate the proposed development is geo-technically feasible provided the recommendations in the report are followed. The proposed residential structures may be supported on shallow foundations bearing on competent undisturbed native soils, and/or engineered fill, designed and constructed as recommended in the report. The report assumes residential structures will have raised floors and crawlspaces. The report recommends consulting HGSI during the preparation of the grading plan to ensure that geotechnical issues are addressed and to assist in optimizing the grading plan to minimize the amount of undocumented fill removal needed.

HGIS provided a subsequent memo to clarify the site is capable of supporting multi-family as well as single family structures.

c. Oregon Coast Alliance (ORCA)

ORCA sent two letters in opposition to the zone change. They allege the applicant has not demonstrated the housing will be affordable, they allege that wetland protection has not been shown, that adequate buffer to the vicinity around the site has not been shown, and that the site is not suitable due to unaccounted for contaminated soils and unknown septic capacity.

- (1) Contaminated Soils: The application indicates DEQ studied the site and the Independent Cleanup Final Report and found in 2006 that residual petroleum impacts in the plant area were at or below risk-level standards, but that the auto wrecking yard area on tax lot 1000 needed more sampling. Additional investigation in 2007 concluded a No Further Action (NFA) determination is also warranted for tax lot 1000. They said localized areas of soil contamination must be managed accordingly. Soil that is excavated or moved on-site during development must be managed according to County, State and Federal regulations. DEQ issued the NFA determination.

It is City of Gearhart policy that, "City actions shall be consistent with State and Federal hazardous waste regulations"; Comprehensive Plan page 9 policy #5.

- (2) Buffer: The applicant purports the buffer is largely accomplished by protection of the site's natural resource constraints, whereby a significant portion of the site is unbuildable and provides a buffer on three sides of the site.
- (3) Affordable Housing: The current zoning allows single-family dwellings on lots that range from 10,000 square feet to 1 acre. The current zone allows an estimated maximum of 20 single family dwellings on the 27 acre site.

The proposed zoning could accommodate single-family, duplex, tri-plex and four-plex dwellings ranging from 25 – 52 dwellings or more. The zone change request increases the number of dwellings permitted, especially attached units that could be rented or sold for less than single-family dwellings on large lots required by the current zone. It is not guaranteed how a future owner will develop the site, but the zone change provides several options for various types and tenures of homes.

The "Clatsop County Housing Study" includes preliminary housing data for the county and each of its cities. The study is financially supported by the City of Gearhart. Preliminary results for Gearhart have been provided to the City for this application review (attached). The applicant provided

additional findings in a memo dated 10-2-18 to address the preliminary data.

The draft Clatsop County Comprehensive Housing Analysis indicates a capacity for 701 housing units in the Gearhart UGB, and a projected growth need for 94 new households by the year 2038. Therefore an increase in density to create more lots is not needed. The Planning Commission and City Council Commission agree there is an affordability problem but finds there is no guarantee that affordable housing can or will be constructed on the site.

- (4) City purchase 27 acres for public park: The Parks and Recreation section of the Comprehensive Plan Background Report (page 34) indicates a desire to retain a focus on passive recreation in the city, with two goals 1) to extend the Ridge Path to Gun Club Road and 2) to provide a central city park including a children's park and a covered bandstand and low intensity uses. The report has not been updated in about 40 years. At this time the City does not have a Parks Master Plan to identify future park locations and estimated park costs. The City does not have funding to buy the land for a public park.

(Continuation of approval criteria)

B. The amendment will meet a land use need.

FINDINGS: City housing plan policies on page 6 of this report intend to ensure affordable housing opportunities will be provided. The County's Comprehensive Housing Study Memorandum dated 10-2-18 summarizes the methodology and initial results of the county's draft analysis. On page 3 of the memo Table 1 indicates Gearhart's R-2 and R-3 zones combined have a capacity for 42 multi-family housing units. The study has not yet determined city housing needs by dwelling type.

Local housing authorities and preliminary study results indicate there is a need for more affordable housing in the north coast region. The graph on page 7 of the report illustrates that 60% to 72% of current Gearhart households cannot afford median rent, average rent or median home prices.

The City of Gearhart is not a social service provider, nor does the city have the resources to directly develop affordable housing projects. But the city can work to plan for increased housing, help developers find the means to create housing and bring partners to the table to facilitate the provision of needed housing.

The subject property is not being developed at this time. However, if the zone is changed to R-2 a developer will have the option to build a variety of dwelling types on the site that are currently not permitted. Subject to wetland and flood plain protection and appropriately engineered excavation and septic system capacity, it is estimated the 7.5 acre area may accommodate up to 52 dwellings including 40 duplex dwellings and 12 apartment dwellings.

The property owner has made it clear their intent is that the site will be developed for single family dwellings. Therefore, the zone change may or may not result in the development of new affordable housing opportunities in Gearhart. The City Council found the applicant has not demonstrated there is a need or that the amendment will meet a land use need for more affordable housing.

C. The uses permitted by the amendment are compatible with the land use development pattern in the vicinity of the request.

FINDINGS: Residential uses allowed by the R-2 zone are compatible with the residential and highway commercial development pattern established west of the site, illustrated on applicant's sheet P1.1. All other sides of the property are currently zoned RA. The significant acreage prohibited from development on the subject site as conceptually shown by the applicant may maintain a buffer on the north, east and south sides, but not on the east side. Existing development in the vicinity is accessed by McCormick Gardens Road, which is on the east side of the site. The Council found the applicant has not demonstrated the zone change is compatible with the large-lot rural development pattern in the vicinity and that the area can withstand the impact of higher density housing. Clatsop County Planning indicated the current RA zoning provides a buffer to existing resource lands. The City Council found there was not enough evidence to indicate higher density housing would be compatible with the large-lot and uniquely rural agricultural residential character and development pattern of the neighborhood. The adjoining McCormick Gardens Road and Pacific Way are substandard roads that are narrow, poorly drained and often flooded. The Council found traffic impacts on adjoining roads would not necessarily be resolved by a developer of the site.

D. The land is physically suitable for the uses to be allowed in terms of slope, soils, flood hazards and other relevant considerations.

FINDINGS: The application materials indicate nearly 20 acres of the 27 acre parcel is undevelopable due to environmental constraints such as wetlands, a large pond and floodplain. The applicant's geotechnical engineer concludes that

development of the upland portion can be accomplished for new single and multi-family dwellings, subject to controlled excavation with oversight and in accordance with recommended practices. But the City Council found the current zoning should not be changed because the increased density impact of new development cannot be justified in an area with possible unpredictable documented fills, shallow groundwater, numerous wetlands and a very low elevation prone to flooding, tsunami inundation and poor drainage. The Council found the zone change is not compatible with the large-lot and uniquely rural agricultural residential character and development pattern of the neighborhood. The Council found there was not enough evidence indicating the site is suitable for a higher density housing development that would put more households at risk than that allowed in the existing RA Zone.

E. Public facilities and services, including transportation systems and access, are available to accommodate the uses proposed.

FINDINGS: The subject property has access to three public streets, city water and city fire services. A future development plan may be required to provide a secondary fire access, pedestrian easements and public street improvements, a water improvement plan, a drainage plan and septic system approval by Clatsop County Health. The adjoining McCormick Gardens Road and Pacific Way are substandard roads that are narrow, poorly drained and often flooded. The Council found that traffic impacts will increase but substandard roads and poor drainage on the east side would not necessarily be improved by a developer of the site. Furthermore, the applicant has not shown the impacts of multiple septic systems on the site will protect adjoining wetlands.

DECISION

Based on the findings herein, on November 7, 2018 the Gearhart City Council decided to DENY the Palmberg Zone Change application request, City File #18-005ZMA.

Signed: Matt J. Brown
Matt Brown, Mayor

Date: 11/20/18

DATE MAILED: 11/21/2018

APPEAL: In accordance with the Gearhart Zoning Code Section 13.060 (7) the decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days of the date this final order is signed. The complete case, including this final order is available for review at the City.