

JUNE 5, 2019

**PUBLIC HEARING TO CONSIDER AMENDING THE COMPREHENSIVE PLAN AND ZONE CODE TO
ESTABLISH A TSUNAMI HAZARD OVERLAY ZONE**

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 #19-001CP.ZTA amending the Comprehensive Plan Background Report page 30 Tsunami section with an updated description of the geologic hazards, DOGAMI maps and resiliency protection; to consider amending the Comprehensive Plan Geology and Geologic Hazards Section Goal 7 page 9 by adding new plan policies and map references, and amending the Zone Code to create a Tsunami Hazard Overlay Zone over all of Gearhart with definitions, permitted and conditional uses, exceptions, route requirements and a flexible development option. Brown read the hearing procedures into the record.

Watts presented the legal matters noting criteria that must be addressed are Gearhart Zone Code Article 11 Amendment Criteria, Gearhart Comprehensive Plan and the Oregon Statewide Planning Goals. Watts asked if any member of the audience wish to challenge the jurisdiction of the City Council to hear this matter. None was declared.

STAFF PRESENTATIONS

Meg Reed, Coastal Shores Specialist, Department of Land Conservation and Development noted the department was successful in getting 2 grants from National Oceanic and Atmospheric Administration to do Tsunami Resiliency Land Use Planning including Gearhart. She has been working with the Planning Commission and city staff as the project advisory committee. The Tsunami Resilience Land Use measures come from the Tsunami Land Use Guidebook that was put together by DLCD as a model code to be tailored to each communities' acceptable level of risk. The model 1) prevents essential facilities from being built in the most hazardous zones, 2) would require evacuation route improvements for dense developments; possibly including new sidewalks, signage or vertical evacuation structure 3) provide flexible development options for those developments who want to go beyond what the code says. It does not affect single family dwellings, just critical and essential facilities in vulnerable areas and police, fire stations, and hospitals that are required to take care of people after an event.

Carole Connell, City Planner noted the Planning Commission held a public hearing on March 14 and April 11 recommending approval the amendments finding the amendments are important to the City of Gearhart, the amendments are in compliance with the Comprehensive Plan and there is a need to include community resiliency in the planning policies and development regulations. Connell noted receipt of a letter from Jack Zimmerman on behalf of GZG and Associates, 3095 Highway 101N, Suite 43-110 Gearhart, OR 97138. Zimmerman recommended a more rigorous disclosure statement at the time of development. Connell summarized the amendments as creating a Tsunami Hazard Overlay Zone that covers the entire city based on the worst case scenario of an extra, extra large tsunami, preventing the city from making zone amendments that would increase density over 10 units an acre in the "M" designation area, the purpose is to keep the most vulnerable group and most dense group uses out of the lowest elevation zone. The restrictions do not affect anything that is currently in place in town and does not make anything currently existing nonconforming. The Transportation System Plan works well with the amendments as it identifies all evacuation routes. This would kick in at a subdivision with the developer being partially responsible to build a connecting piece to get to an evacuation area safely. The plan policies are included as the plan is devoid of any reference to the tsunami hazard that covers the entire city. The Commission finds based upon a preponderance of scientific evidence that there is a need to plan for a Cascadia Subduction Zone earthquake and tsunami event. There is a need to increase awareness and provide standards to improve tsunami evacuation for the safety of Gearhart residents and visitors. There is a need to guide future development decisions in order reduce the loss of life, to reduce damage to private and public property, to reduce social, emotional and economic disruptions and to increase the opportunity for the city to respond and recover from hazardous tsunami event. Connell gave an overview of Exhibit "A" explaining the Comprehensive Plan Amendments, mapping amendments, and Zoning Ordinance Amendments she stressed there would be cross references throughout the zoning code to make it smoothly implementable.

PUBLIC TESTIMONY

There was no testimony in favor of or opposed to the amendments.

Testimony was open for Neutral comments.

Stuart Emmons, 107 Kensington, Astoria, OR 97103 – Emmons asked if everyone had a plan in case of an event. He believes many people do not have a plan and suggests mapping and maximizing saving lives gets sorted out before we talk about overlays and comp plans. The city has 5 assembly areas he believes everyone in Gearhart should have an option to go to 2 different locations and he does not believe we

are anywhere near there with the proposed map. The assembly areas should be in better locations and there should be supply containers at every location. The water tower assembly area is in a potential land slide area that he does not see surviving a 9.0 earthquake coupled with tsunami and debris field coming up McCormick Gardens Road and a chain link fence blocking the access road to the water tower making it impossible to access. He handed out a 9-point plan with recommendations towards saving lives and suggests backing up from comp plan and zoning amendments to focus on saving lives.

Jack Zimmerman, 408 W Kershul Circle, Gearhart, OR 97138 – he referenced the comments he sent in, noting the city has not done effective disclosure to people conveying the magnitude of what has been presented, greatly detailing a disclosure statement that then gets buried in city records and in contrast grant the city a hold harmless clause. He does not feel the public concerns are properly handled with no one entity in the real estate community or municipality that is requiring someone to give information to unaware buyers. The city should take greater steps to inform the public and put greater responsibility on the people that are going to profit the most. The city should demonstrate the magnitude of the problem on the website making it a priority, the conditions of approval should be on the final recorded plat, in the permitting process the disclosure presented to the person asking for the permit. Any purchasers from development through title should be given the disclosure statement. Zimmerman suggested the council develop impact fees to mitigate hazardous conditions and defer the taxpayer of Gearhart costs to support them.

Commissioner Cockrum asked if the disclosure was only aimed at new construction.

Connell reported it was for new and substantial improvement that increased the value by 50%.

Traci Williams, 567 Pacific Way, P O Box 2337, Gearhart, OR 97138 – she employs 9 people that live in Gearhart and has a heavy investment in a business that contributes to the community, she wants to have a safe community with a good evacuation plan and she wants to make sure any overlay does not dramatically impact her ability to get insurance, rebuild if there is a problem or make improvements, to make sure the overlay does not have a negative unforeseen impact on any future development in Gearhart and request someone that writes grants, makes SBA loans or does insurances or underwriters look at this and makes sure the city is not creating a safety plan that could impact the ability for quality improvements in the future.

Mayor Brown asked if there was any request to continue the public hearing. None was noted.

CLARIFICATIONS FROM STAFF

Connell stated the value of establishing policy that will allow the city to apply for grants to build the things we need to really make the city resilient; vertical evacuation structure, signage. If we keep talking the city will still need to go back and develop the policies to support the projects, policies support the work that needs to be done. The overlay says what cannot be built in the most vulnerable areas not effecting everyday activity and not affect current structures.

Watts said if there was a request for a comprehensive map amendment or zone change to allow a higher density than is allowed if the higher density is over 10 dwelling units per acre a developer could be required to engage in mitigation to keep people safe, it does not affect current zoning.

Connell said the disclosure statement kicks in at the building department where an improvement increases the values by more than 50%.

Reed said the statement is from the model code as suggested language. There is an ORS (105.464) that requires disclosure from the seller to the home buyer in the real estate transaction, but tsunami is not on the list to disclose.

Connell said the disclosure statement could be kept front and center on the city website and with the forms. The city does not have any control over realtors, the city has no control over those transactions.

Watts said the city can control what is on the website, notice given when a permit is pulled or when filing a recorded plat, in real estate it would be hard to enforce because real estate transactions are recorded with the county and do not come back to the city. The city would not be in the best position to determine compliance. The city could check with the county recorder and get their comments on whether they would be willing to do enforcement. The proposed amendments are minimum requirements, as the process develops there could be changes through code amendments.

Reed clarified FEMA offers flood insurance beyond what is required in a special flood hazard area and is much cheaper than mandatory insurance. A review of insurance companies' properties in a tsunami zone are not prevented from purchasing home or business insurance. Tsunamis are also not taken into account in FEMA flood mapping. With earthquake and tsunami scale in the hundreds to thousands of year intervals it is difficult to create actuarial tables. Land use planning is only one facet of preparing for a Cascadia Subduction Zone earthquake and tsunami. This process does not affect commercial businesses but prohibits critical and essential facilities in dangerous areas, there is a use exception process.

QUESTIONS OF STAFF

Smith said there is no guarantee SBA would give a loan if this was made a tsunami overlay zone and he asks for a continuance to next month to allow contact with SBA to verify if it would not preclude any business from getting an SBA loan.

Reed / Connell said the regulations don't affect businesses at all and the mapping information is not new it has existed since 2013, if SBA was going to prevent issuing loans it would have done so by now.

Williams said the SBA loan process polls all zoning stuff, her loan did not qualify for a regular loan because of attached housing units the SBA loan is used more in Gearhart due to mixed use than a straight commercial loan.

Watts clarified the requirements only come into play if someone applies for a zone amendment or comprehensive map amendment, there is already a state statute for the exception process this puts the code hand in hand with existing state law.

Emmons is concerned about the fire station not being sited yet and feels the station should be sited before the process is tied up with the new statute because it is an essential service.

Brown stressed this is the beginning, so the city is eligible for grants so we can be better with signage, evacuation routes and infrastructure.

Cockrum asked about restrictions in the M zone.

Connell reviewed the prohibited uses from Exhibit A Part 2 in the L and M zone noting it is a very narrow list, also limited would be high density residential uses in the M zone. She did point out non-conforming structures such as Gearhart House have 2 years to rebuild exactly what was existing.

Brown asked for confirmation that if when adopted something was not working as expected it could be updated to make it better, or if there is hidden loophole that has a negative impact it can be changed.

Connell said yes to both noting it happens all the time in planning.

Smith asked if they would be required to hold another hearing if they want to make changes.

Connell said not for minor changes. First council would request staff to prepare an ordinance for the next meeting for the first reading.

Brown clarified they were not agreeing to an ordinance this evening but draft up a final ordinance.

On **MOTION** by Cockrum, 2nd by Smith, by unanimous motion the public testimony and public hearing were closed.

DELIBERATIONS

On **MOTION** by Jesse, 2nd by Fackerell, staff was asked to prepare an ordinance.

Discussion followed on the following changes:

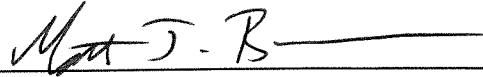
Page 12 e. – add the language *except single family dwelling on existing lots.*

Page 12 #9 Hazard Acknowledgement add the language *the city will promote communication via, website, paper material, city blog and Facebook.*

Do without the slash on the map between XL and XXL to be consistent.

On **MOTION** by Jesse, 2nd by Fackerell, staff was asked to prepare the ordinance as amended. Motion passed 4-1. Fackerell – aye, Jesse – aye, Cockrum – nay, Smith – aye, Brown – aye.

Mayor Brown thanked those who participated in the process. The public hearing was closed at 8:25 pm.

A handwritten signature in black ink, appearing to read "Matt J. Brown", written over a horizontal line.

Mayor, Matt J. Brown

A handwritten signature in black ink, appearing to read "Chad Sweet", written over a horizontal line.

Chad Sweet, City Administrator