

CITY OF GEARHART  
Public Hearing and Regular Meeting of the City Council  
Wednesday, March 6, 2024  
6:00 pm On-site and Virtual/Telephonic

A public hearing and regular meeting of the Gearhart City Council was held Wednesday, March 6, 2024. Council members, City staff, and the public were able to attend on-site, virtually, or by dialing in on a telephone.

Present were Mayor Kerry Smith, Councilor Preston Devereaux, Councilor Reita Fackerell, Councilor Dana Gould, Councilor Sharon Kloepfer, City Administrator Chad Sweet, City Attorney Peter Watts, Fire Chief Josh Como, City Planner Garrett Phillips, Executive Assistant Krysti Ficker, and City Treasurer Justine Hill. A quorum of the Council was present.

Mayor Smith called the meeting of the City Council to order at 6:00 pm.

Mayor Smith opened the public hearing for an application by an owner for a zoning text amendment regarding the R-2 medium density residential zone at 6:03 pm. There were no conflicts of interest declared by any member of the Council; however, Councilor Devereaux noted he knew the owners of the property.

After hearing no challenges to the Council's ability to make an impartial decision by the audience, City Planner Phillips gave a brief overview of the proposed text amendment regarding the R-2 medium density residential zone. He explained that the Drifhaven Inn is a hotel; is zoned R-2 medium density residential; and is the only established hotel in an R-2 zone prior to 1994. Currently, the R-2 zone does not permit hotels as permitted use or as a conditional use. The Drifhaven Inn is a nonconforming use, subject to the limitations of Gearhart's zoning ordinance. He talked about the Planning Commission process and their recommended approval to move the proposed amendment to the City Council for final approval. He explained that the proposed amendment is consistent with the City's Comprehensive Plan; as well as, adequately demonstrates a public need.

During the applicant's testimony, Matt Cole (415 NW 11th, Portland, OR) and Brian Varricchione (1515 SE Water Ave, Portland OR) spoke.

- Matt Cole (415 NW 11th, Portland, OR), owner, explained that it will assist with continuing to upgrade and maintain the hotel; as well as provide more favorable financing options.
- Brian Varricchione (1515 SE Water Ave, Portland OR), planner at Mackenzie, thanked City Planner Phillips. He went over other alternative zoning options they explored before presenting the proposed mutually beneficial zoning amendment option. He invited questions.
- Councilor Devereaux felt this was just a zoning housekeeping issue. Mayor Smith commented that it should have been made an exemption in 1994 when there was action on the zoning ordinance. Councilor

Fackerell was interested in future expansions, which the owner indicated there were no current plans. Councilor Kloepfer requested clarification on the process if the Drifhaven did pursue any changes. Attorney Watts clarified that the Drifhaven would still have a conforming use, which would require them to get City approval before making any changes. City Planner Phillips mentioned that conditional usage is a Planning Commission decision that can be appealed to the City Council. Councilor Kloepfer complimented the Drifhaven on the adjacent lawn area and wondered if they had any plans, which they indicated there were no current plans. Councilor Fackerell asked if there had been any complaints by surrounding residents in terms of traffic or noise and Administrator Sweet indicated there had been no complaints.

Mayor Smith asked if there were any proponents, which there were none.

Mayor Smith asked if there were any opponents, which there were none.

Mayor Smith asked if there were any neutral comments, which there were none.

Mayor Smith closed the public hearing for a zoning text amendment change at 6:20 pm after approving a motion.

- ON MOTION by Councilor Devereaux, 2nd by Councilor Gould to approve the application by the Drifhaven Inn for a Zoning Text Amendment regarding the R-2 Medium Density Residential Zone, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Approve Minutes. Treasurer Hill requested a modification to the February 7, 2024 regular meeting. The last paragraph on page one, under the Councilor's Report, should be deleted. Councilor Kloepfer requested a word correction on page 3, the last sentence under the City Administrator Report to the February 7, 2024 regular meeting. Mayor Smith requested a time change to the February 28, 2024 regular meeting.

- ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to approve the minutes of the January 30, 2024 worksession of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Fackerell, 2nd by Councilor Gould to approve the amended minutes of the February 7, 2024 regular meeting of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Gould, 2nd by Councilor Fackerell to approve the minutes of the February 13, 2024 worksession of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

- ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to approve the amended minutes of the February 28, 2024 special meeting of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Mayor Smith again called the regular meeting of the City Council to order at 6:22 pm.

There were no conflicts of interest declared by any member of the Council.

There were no questions on the Planning Commission report in the Councilors' packets.

Mayor's Report. Mayor Smith reported participating in a lot of meetings last month. He also went to Pacific Ridge Elementary School to talk with four classes of fourth graders about the "If I were Mayor Poster" contest in hopes of encouraging more participation.

Councilor's Reports. Mayor Smith opened discussion for each Council member's report.

- Councilor Gould talked about an incident in Astoria last month regarding a house fire her son experienced. She feels the incident demonstrates the collaborative effort between fire districts. Astoria may have been the lead; however, our fire department (Como, Park, La Londe, Brooks) was also there assisting. Both Fire Chief Como and Division Chief Park worked the fire, but also were in attendance at a work meeting later in the morning back at Gearhart City Hall. After expressing her gratitude in writing to the Astoria Fire Department, she received back an email, which she read out loud. She gave a shout-out to the firefighters who assisted. Councilor Gould has been continuing to gather information for the preliminary needs assessment for the public safety facility. The Town Halls have provided good feedback, which includes focusing on structural needs. She stressed how sometimes implementing smaller changes can lead to bigger issues (e.g., ADA). She asked for patience as information is gathered. She also talked about two legislative bills related to potential funding sources for the new public safety facility. She also mentioned talking with citizens regarding the tree removal ordinance; continuing discussions with Oregon State Parks on improving July 4th; and attending the LOC Community Vision and Strategic Planning training in April.
- Councilor Kloepfer has been reviewing the City's A-2 Aquatic Zone area and has learned that it goes all the way up the Neacoxie to seventh street. She has been receiving information from a local resident on the A-2 zone and wetland areas, which she will eventually share. Councilor Kloepfer and several other residents were interviewed by KGW regarding the elk situation, which she believed had not yet been aired. She has also been going back through City Council meetings looking for items that were discussed, but not resolved.
- Councilor Fackerell had no new information to report.

- Councilor Devereaux had no new information to report.

#### City Officer Reports.

- Chief of Police. No staff from the police department was in attendance; however, the department's February data report was available.
- Fire Chief. Fire Chief Como went over the department's February data report, including a call breakdown, mutual aid, and comparisons to last year.
- City Treasurer. Financial reports were submitted in the Councilors' packets. Treasurer Hill said that in a comparison between February 2023 to February 2024, overall revenues are 3.1% higher and expenditures are 6.3% higher. Also provided for comparison were some revenue highlights (pacific power; marijuana; and transient room tax). For the regular monthly financials, she mentioned noteworthy revenues (e.g., franchise fees, state revenue sharing) and expenditures (e.g, debt service; water billing software rate charges; final grant award). She mentioned preliminary rate increases for next year's liability and health insurance plans. She also encouraged Council members to review the Local Focus LOC Q1 2024 magazine.
- City Attorney. Attorney Watts attended the public meeting for the population forecasts with Portland State University (PSU), which impacts the City's revenue sharing funds. He talked about some statistical data. He has raised concerns several times about PSU's last released figures for Clatsop County, which may trigger the need for buildable lands inventory. Attorney Watts also mentioned case law regarding recreational immunity and indicated the City will need to place signage in community parks. He used an example in the Portland Metro area to demonstrate the erosion of City's immunity (e.g., denial of permit, ice storm, damage, legal issues). Both the House and Senate passed Governor Kotek's Housing Bills, which provides clarification on urban growth boundary expansions and land swaps. Once the final bill is signed, Attorney Watts plans to review and report back to Council.
- City Administrator. Administrator Sweet's report was sent to the Councilors in their packets. He went over some current code enforcement issues (e.g., business license, vegetation, fencing). Public works is looking at the feasibility of purchasing a skid unit for water treatment. There has been some areas of high water around town (e.g., Bud's Campground; old Elementary School), which City staff have been trying to help problem solve. There have still been efforts to improve safety on the 4th of July. Fire Chief Como has also agreed to assist in meeting with other local fire chiefs and the County's Emergency Manager to explore setting up an emergency office. Administrator Sweet talked about the Oregon Department of Transportation Great Streets program. Gearhart was selected as one of the four projects to move forward; however, it was categorized as the fourth project and funds were allocated to the first three projects. Councilor Kloepfer mentioned a restriping project in Astoria and wants to pursue potential restriping options even without ODOT funding the overall project. There was discussion on recreational immunity and Councilor Kloepfer requested clarification on signage. Councilor Fackerell requested an

update on the status of individuals who had expressed interest in assisting with sign design in Gearhart. Councilor Gould explained that there was an individual who expressed interest; however, was currently unavailable. She indicated there would be opportunity for more recruitment to assist with exploring branding options for Gearhart. Administrator Sweet briefly talked about elections; attending meetings (e.g., special council, townhall, culvert mediation); water conservation; grants; and tentatively scheduled Gearhart Clean up.

Visitors. Bench Committee. Administrator Sweet read the staff report. He went over maps, apologized for no legends; however, clarified bench color coding (e.g., yellow new; blue existing). He talked about the permitting process that will be required on some of the benches through Oregon Parks and Recreation Department (OPRD). After the permitting process is complete, benches will be ordered. He explained that the first goal in this process is to move the current benches and the second goal is new bench placement. Councilor Fackerell asked about the price. Administrator Sweet said he is working with the vendor and does not anticipate any substantial changes. Councilor Kloepfer asked about the other types of bench placement (e.g., in-town) and he clarified that their placement would be approved by the City Council. There was further discussion on the State Vegetation Line (SVL); option of a plaque memorial board instead of individual benches; feasibility of annual bench maintenance; grant funding; contract; obligation under recreational immunity; and bench recipients' expectations; longevity of memorial bench placement program; and potential moratorium on bench program.

- ON MOTION by Councilor Kloepfer, 2nd by Councilor Fackerell to approve the Bench Committee's request and direct staff to order the necessary benches, apply for the required permit, and proceed with existing bench restoration, MOTION was approved 4 yeas (Fackerell, Gould, Kloepfer, Smith) - 1 nay (Devereaux).

Public Communications - Written & Oral. Mayor Smith read the oral public comment statement on the agenda. There was written correspondence submitted by: Dan Blue, Recology (Rate Review Extension Request); Scott Winkels, Lobbyist (Restore Recreational Immunity); Mayor Kerry Smith (Recreational Immunity Amendments Request); Deb Papadopoulous (Owner's Rep Discussion); and Pete & Vivian Battjes (Israel).

- There was discussion on the pathway to approve Recology's rate review extension request. Attorney Watts recommended the motion option. Councilor Devereaux wanted to know if the delay would cause any impact on the City's financials, which Treasurer Hill indicated no.
  - ON MOTION by Councilor Gould, 2nd by Councilor Fackerell to approve the rate review extension request by Recology, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- Shannon Smith (774 Pacific Way) attended the City of Seaside's 2050 meeting, which she felt was very successful. There were lots of vested stakeholders and participation. At the event they talked about culture and vision. She appreciated their forward thinking and expressed interest in the same type of plan

in Gearhart. She also explained that she continues to talk to interested parties in the Estuary Research Reserve. She has concerns over set-backs and specifically referenced the Neacoxie. She talked about Gearhart's old trees, distributed a handout, and is continuing her discussions with staff at State lands regarding wetland protections.

Ordinances/Resolutions. None.

Old Business. Mayor Smith invited the public to comment on the old business items.

OLCC Renewal Update - Mayor Smith opened the discussion. Administrator Sweet went over the staff report and explained the two Council issues from the last meeting regarding the Drifhaven being registered under another name (parent company) and that Good Times was no longer active in Gearhart. He also read the statement per OLCC's Liquor Licensing Assistant Manager.

- *There was no action necessary.*

New Business. Mayor Smith invited the public to comment on the new business items.

Budget Committee Appointments. Mayor Smith opened the discussion and explained that a motion for recommendation would be needed for each budget member appointment. He mentioned there were three positions and three applicants.

- ON MOTION by Councilor Gould, 2nd by Councilor Fackerell to appoint Paulina Cockrum to the Budget Committee, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to appoint Jennifer Grey to the Budget Committee, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Gould, 2nd by Councilor Fackerell to appoint Robert Lee to the Budget Committee, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Red Cross Proclamation. Mayor Smith opened the discussion. Administrator Sweet went over the synopsis and mentioned a minor change made to the Proclamation. Attorney Watts referenced the Council's historical support of recognizing issues in Proclamations, but noted that they do not usually advocate for a specific group.

- There was Council consensus (Devereaux, Fackerell, Gould, Kloepfer, Smith) for Mayor Smith to proclaim March 2024 as American Red Cross Month.

Request for RFP Approval - Owner's Representative Services. Mayor Smith opened the discussion and Administrator Sweet went over the staff report. He explained that another City's document was used as a template and there were some corrections that needed to be made in the draft document, and a new copy was distributed to the City Council. Changes made were on page 2; page 3; page 4; page 7; and page 14. Councilor Fackerell asked about how it would be advertised and Councilor Kloepfer wanted clarification on whether or not the public would get to comment on this request. Administrator Sweet said it would be discussed at the next Council meeting, which is a public meeting. Councilor Gould wanted legal interpretation if any of the changes were considered substantial, which Attorney Watts did not feel any were and classified them as minor changes. Councilor Gould went over the process and confirmed City Council would have the final approval.

- ON MOTION by Councilor Devereaux, 2nd by Councilor Kloepfer to approve the publishing of the amended RFP seeking Owner's Representative Services to oversee the public safety building project, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Request for RFP Approval - Water Rights. Mayor Smith opened the discussion and Administrator Sweet went over the staff report. Mayor Smith asked for clarification on the lack of language in the RFP regarding certain submission report deadlines the City should specifically require due to changes coming with the Oregon Water Resource Department (OWRD). Attorney Watts agreed the submission deadline requirement could be added during the motion process directing staff to put in the language. Councilor Devereaux requested clarification on why the Water Master was unfamiliar with the region, which Administrator Sweet discussed.

- ON MOTION by Mayor Smith, 2nd by Councilor Kloepfer to approve publishing an RFP for the Water Rights project after staff have added verbiage requiring a specific submission deadline to the OWRD, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Discussion - Setting City Precedent. Mayor Smith opened the discussion. Attorney Watts explained City Council members are granted a vast deference in interpreting City code. He used an example of the Gearhart short-term rental litigation and how the Mayor's definition of domicile provided a benefit to the City by providing clarity. Planning Commission has some deference but less than the City Council. City Council is the legislative body. City staff are not entitled to any deference. All City Council members do not have to agree with the interpretation provided by a Council member; however, the majority would rule when determining the finalized interpretation. When City business has ambiguous terms (e.g., the character of Gearhart, compelling architecture), City staff would need City Council to go on the record and provide clarification. Decisions that are approved over and over, (outside of a land use context), by City Council can create precedent (e.g., water leak). He explained that everyone needs to be treated

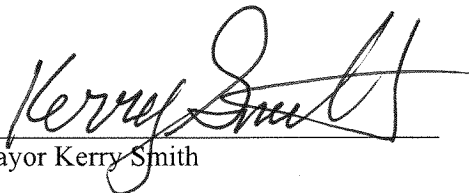
equally in decision making and not to use selective enforcement. City Council also needs to realize that not all circumstances are the same. He recommended that a decision that goes against the standard one must be explained (e.g., more fair to applicant; circumstances different). Goals in consistent decision making are transparency and to avoid litigation. Staff cannot set precedent. He explained that priorities of the City Council may change, which can influence changes in decision making (e.g., City approach to 4th of July activities). He recommends clear communication and publicizing in advance of any changes to decision making. Sometimes staff have to make a decision (e.g., emergency) without the City Council's input, which they often reach out to Attorney Watts.

#### Council Concerns.

- Councilor Fackerell requested an update on the zip code. Executive Assistant Ficker explained that a field representative from Senator Wyden's office had been assisting and was supposed to be reaching out to the USPS District Manager. Gearhart has not been made aware of any movement. There were some staffing issues with Seaside's Postmaster, which created a communication gap. With a change in staffing in Seaside, Executive Assistant Ficker will reach out to see if there is any new activity.
- Councilor Devereaux reported no concerns.
- Councilor Kloepfer reported no concerns.
- Councilor Gould would like a discussion at the next meeting regarding communicating changes out to the community. While engaging with citizens, it has been brought to her attention that the City Council may need to do a better job of publicizing changes they approve. She feels that if the City Council changes rules, citizens need to know the rules. She would like to discuss improving the publication of changes. Councilor Gould would also like to explore the option of a worksession prior to each City Council meeting to allow for discussion, which may assist in reducing the length of the overall meetings.
- Mayor Smith reported no concerns.

Mayor Smith requested adjournment.

- ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to adjourn the meeting, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays. Mayor Smith adjourned the regular Council meeting at 8:48 pm.

  
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Mayor Kerry Smith

  
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Chad Sweet, City Administrator