



Staff Report

For City Council Meeting - 10/1/2025

Subject - Ordinance/Resolutions - Ordinance #950 - An Ordinance Vacating a Portion of Hemlock Avenue Right of Way

Synopsis: The attached Ordinance #950 proposes vacating a portion of Hemlock Avenue as indicated in the supporting documents. The City Council has the authority to vacate within a right of way following proper procedures, and has done so previously (e.g., Hager Street). Garrett has provided an updated staff report, embedded below.

Since the September City Council meeting, staff conducted a site evaluation based on Council's direction and met on-site with two Councilors. Following that evaluation, Garrett Phillips and I refined the estimated compensation table on page 9 to reflect the actual amount of potentially developable land. In September, Council continued the public hearing on the street vacation through a series of motions and tabled the ordinance to this meeting. Specific changes to the ordinance draft are outlined in the Council options.

TO: Gearhart City Council

FROM: Garrett Phillips, City Planner

DATE: September 25th, 2025

RE: #24-08SV, Street Vacation Request (Hemlock ROW)

File: #24-08SV

Application Purpose: An application to vacate a portion of Hemlock Avenue ROW, south of Pacific Way.

Decision Type: This is a legislative decision by the City Council. The Planning Commission considered the request as business (not in a hearing), and made a recommendation to City Council. City Council holds a

hearing and makes a decision.

Applicant/Owner:

Beach Development LLC/ Terry Lowenberg
925 11th Avenue
Seaside, OR 97138

Location:

Hemlock Avenue as laid out on the Amended Plat of Woodland Park Addition to Gearhart Park, Blocks 1 to 10, inclusive. As Recorded in Book 7, Page 27, Clatsop County Plat Records from the South Line of 6th Street to the South line of Lot 5, Block 4 on the East and Lot 42, Block 4 on the West.

Preapplication Conference:

None

Completeness:

July 25, 2025

Planning Commission Meeting:

August 14, 2025

Notice Mailed:

August 18, 2025

Notice Published:

August 19 and 26, 2025

City Council Hearing:

September 3, 2025, Continued to October 1, 2025

Exhibits:

Application Materials
Testimony of Tom Theis (P.O. Box 2831)
Ordinance #950

Review Criteria:

GZO Article 12 Street and Alley Vacation
GZO Article 13 Application, Notice and Hearing Procedures
Gearhart Comprehensive Plan, 1994
Gearhart Transportation System Plan, 2017
Gearhart Parks and Recreation Master Plan, 2022

Public Comments:

Tom Theis, neither for nor against: "...I do have a concern that it is a wetland and drainage Stream. If this becomes private property can it slowly be filled in, which would cause more flooding upstream? Can it be stated that if it becomes private property that nothing can be done with the property or that there can be zero fill-in?..."

Agency Comments:

State agency comments were not requested. The fire marshall and public works staff were invited to comment, and verbally expressed that they did not have any issues with the vacation.

Building Official –

No Comments

Fire Marshall –

No Comments

Police –

No Comments

Public Works –
City Administrator –

No Comments
No Comments



Street View



Existing Zoning, and Rough Illustration Boundary of Vacation Area in dashed line.

locally Significant Wetlands. It is adjacent to commercial and vacant uses zoned C-2 and C-3 to the east and west.

When a city vacates a whole right of way, the ROW land is split in half, and added to the adjacent existing legal lots on both sides. Staff's understanding is that if the vacation is approved, the applicant and adjacent landowners may request lot line adjustments to transfer some land amongst those parties, however this is not part of the application that the Planning Commission and City Council are considering at this time.

The primary criteria for deciding on a vacation are in GZO Article 12. The City does not have to approve the proposal just because it meets those minimum criteria.

Planning Commission Discussion and Recommendation

Planning Commission considered the proposal and recommended approval with conditions on August 14th. The first condition was for staff to complete notification of estimated compensation to the adjacent owners before the City Council hearing. The other condition recommended by Planning Commission is to require an access easement for the City. (Other recommended conditions in this report were added by staff after the Planning Commission meeting).

No one testified to the Planning Commission and the applicant was not present. No significant new information was identified in the hearing.

The Planning Commission did not identify reasons why the City should not approve the proposal, but did encourage finding out more information on why the applicant wants to obtain right of way for 400 feet south of Pacific Way, instead of just right of way in the more immediate vicinity of Pacific Way. Planning Commission's approval recommendation was not specifically contingent on any given compensation amount, however at the time of the hearing they understood total compensation to the City would likely be between \$58,000 and \$120,000, based on two alternative interpretations of the Article 12 compensation estimating method.

New Information Since the Planning Commission Meeting

Staff clarified the compensation estimate method, including verification of how the method was applied in the last vacation approved by the City in 2018. That clarification results in estimated compensation near the low end of the range above. Staff also corrected a math error to more precisely assign compensation to each adjacent lot based on its own value, rather than the average of the values, resulting in the final compensation estimate in the findings below.

Staff mailed notices of estimated compensation (the correct amount) to adjacent owners on August 21st.

II. DECISION CRITERIA AND FINDINGS

SECTION 12.010 COMPLIANCE WITH STATE STATUTES

A request for a street or alley vacation shall be submitted in accordance with the state statutes, ORS 271.005 – 271.540.

FINDING: Staff reviewed ORS 271 and found that by implementing Article 12 of GZO, the requirements of ORS 271 will be met.

A. Application. The applicant shall file a petition with an application fee accompanied by consent forms from adjoining property owners affected by the street vacation as determined to be land lying on either side of the proposed vacation and extending laterally to the next parallel street, not to exceed 200 feet; and land for a like distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. The statute requires all abutting property owners consent and requires at least two thirds of owners of the real property land area described above.

FINDING: The applicant submitted consent forms signed by all adjacent property owners. The applicant also submitted additional property owner consents from the area extending 400 feet beyond both ROW termini, totaling 2/3rds of the area.

The application includes signed consents from the adjacent owners below.

- Beach Development LLC (owner to the east)
- Palmberg Jason (owner to the west)
- Hanson, Gary L (owner to the west)

The application also includes signed consents from the following owners. In total this appears to constitute consents from 2/3rds of the area based ownership.

- Hanson, Gary L
- Kumar, Alpana
- Inman William D
- G & S Estates LLC
- Thompson Hunter L
- Pacific Pelican LLC
- Seahart Enterprises LLC
- DMT Development LLC
- SCOFI Gearhart LLC

B. Fee. As a condition precedent to the city's accepting any petition for the vacation of

any street or alley, it shall be the obligation of the petitioner to submit a filing fee as established from time to time by resolution of the city council, which shall be nonrefundable; provided, however, in the case of petitions submitted by public agencies such filing fees may be waived. Fees described in this chapter are imposed for the purpose of defraying the administrative cost of processing vacation petitions.

FINDING: The applicant submitted the required application fee.

C. Notice. Notice of a public hearing before the City Council shall be published in the local newspaper of record and the City website once each week for two (2) consecutive weeks prior to the hearing. Written notice of the petition and hearing shall be posted in three of the most public places in the city and by signage posted on the subject right-of-way area.

FINDING: Staff published newspaper notices and posted a sign notice at the right of way location for the City Council Hearing.

SECTION 12.020 REVIEW PROCEDURES

The Planning Commission shall review the request and provide a recommendation to City Council. The City Council must hold a public hearing and approve a street vacation by ordinance.

FINDING: Planning Commission recommended approval with conditions on August 14th.

SECTION 12.030 ASSESSMENT COMPENSATION REQUIREMENTS

Except in the case of a public agency, no ordinance vacating a street or alley shall be complete until the petitioner or their representative has received from the City Administrator a statement of the assessed value of the property to be vacated. The compensation to be paid by the applicant to the City shall be determined by ascertaining the most recent county assessor's valuation of the land to which the vacated property is to be joined, determining the assessed value of each square foot of such property, then multiplying that amount by one-half (50%).

FINDINGS: The City sent statements to the owners around August 21st, 2025, notifying them of the compensation amount based strictly on the Section 12.030 formula.

- Beach Development LLC (owner to the east)
- Palmberg Jason (owner to the west)
- Hanson, Gary L (owner to the west)

The City finds, based on prior street vacation cases, that it has discretion to determine the final compensation amount based on ROW characteristics, such as its potential for productive use or other characteristics that affect its value.

GZO prohibits development in Locally Significant Wetlands. Following the September hearing, staff modified the compensation amounts by excluding Locally Significant

Wetland areas, resulting in compensation amounts estimated below.

Estimated Compensation

Property (Account / Taxmap / Owners)	SqFt	Assessed Land Value (2024)	Value per SqFt	Estimated ROW Value per SqFt x 50%	Estimated Area of Attaching ROW (sq ft)	Estimated required compensation
Account 9347 / 61010BA03600 / Palmberg Jason, Hanson Gary L	71,874	\$551,939	\$7.68	\$3.84	15 ft. x 400 ft. = 6,000 sq ft 1625 sq ft developable	\$6,240
Account 9342 / 61010BA03300 / Beach Development LLC	30,492	\$269,116	\$8.82	\$4.41	15 ft. x 175 ft. = 2,625 sq ft 0 sq ft	\$0
Account 9343 / 61010BA03301 / Beach Development LLC	12,197	\$169,328	\$13.88	\$6.94	15 ft. x 75 ft. = 1,125 sq ft 685 sq ft developable	\$4,754
Account 9341 / 61010BA03200 / Beach Development LLC	22,651	\$365,420	\$16.13	\$8.065	15 ft. x 150 ft. = 2,250 sq ft	\$18,146
Total				—	—	\$29,140

SECTION 12.040 TITLE TO VACATED AREA

Title of the vacated areas shall attach to the lands bordering on each side in equal portions in accordance with state statutes.

FINDING: If approved the result will be that each existing legal lot adjacent to the vacated area will have vacated ROW added to it. The applicant and other owners receiving vacated land will have to produce a survey establishing the new boundaries of their respective lots, and submit it to the City for review by staff to ensure compliance with this standard.

SECTION 12.050 VACATION APPROVAL CONSIDERATIONS

The following criteria provide a basis for the City to determine if the public street or alley should be vacated:

1. What is the reason for the application to vacate this particular area?

FINDING: Staff's understanding is that the vacation (and potential subsequent lot line adjustments) are intended to bring an existing driveway

and portions of a shed and/or building into the applicant's ownership. Staff do not understand the applicant's reason for vacating ROW south of that area most adjacent to Pacific Way.

2. Does the vacation eliminate access to public infrastructure installations such as sewer, water or storm drainage facilities?

FINDING: No staff did not find any indication that there are public infrastructure items in the vacation area.

3. Will the vacation result in the elimination of access to any parcel in the surrounding area?

FINDING: Land surrounding the proposed vacation is accessed from streets adjacent to the other sides of the lots, including Pacific Way, Glenn Avenue, and US 101. None of the parcels appear to use existing improved access in the vacation area.

4. Would vacation inhibit the future development of infrastructure or future development of land surrounding the proposed vacation?

FINDING: See the finding above regarding access. Utilities serving adjacent lots also use those rights of way, and do not include existing service or easements in the vacation area. There is a gas line and power line in the area serving the petitioner's property. Staff reviewed maps of all lots surrounding the Hemlock ROW from Pacific Way south to its terminus and found that all adjacent lots have access to other rights of way. In conclusion, the vacation would not inhibit development of planned infrastructure or land in the area.

5. Is any portion of the subject vacation area noted on the Transportation System Plan (TSP) of the City? If so, how does the vacation affect the plan?

FINDING: The vacation area is not identified or discussed in the TSP.

6. Would the vacation inhibit the free flow of traffic in the immediate or surrounding area?

FINDING: There is no existing traffic in the vacation area, so vacating the area would not displace traffic.

7. Are there wetlands, flood plain or other naturally occurring elements in the immediate area?

FINDING: Much of the area to be vacated is Locally Significant Wetland (Wetland #W4). Locally Significant Wetlands are regulated by GZO Section 3.13 Freshwater Wetland and Lake Overlay Zone and are generally off limits to any building, grading and vegetation removal, however there is no requirement that the City retain ownership of them. 100 year floodplain

(Flood Hazard Overlay Zone) is not designated in the vacation area.

Tom Theis testimony asked “If this becomes private property can it slowly be filled in, which would cause more flooding upstream? Can it be stated that if it becomes private property that nothing can be done with the property or that there can be zero fill-in?” Staff’s response is below.

Developing, filling, or disturbing vegetation in any amount is not allowed in Locally Significant Wetlands per the Gearhart Zoning Ordinance, regardless of ownership. These protections logically also protect against hydrological alterations that would impact upstream and downstream flooding. The recommended condition to retain a private access easement would help ensure that the City can enforce its zoning ordinance wetland protections. Additional conditions to further protect wetlands could include any of the following, however these are not included in the “Recommended Conditions of Approval” at the end of the report.

- 1) Require a DSL Certified wetland delineation to establish the wetland boundary and wetland conditions.
- 2) Require an easement or covenant protecting the wetland, and protecting a wetland buffer if desired.
- 3) Reduce the size of the vacation area to omit wetlands



Locally Significant Wetland W4 is in the vacation area.

8. Does the proposed vacation create a buildable lot or a portion of a buildable lot?

FINDING: No the vacation will not create new lots. The vacated land will attach to the adjacent lots, increasing their size, so in this regard the vacation creates new portions of existing buildable lots. The vacated area that is Locally Significant Wetlands will not be buildable.

SECTION 12.060 VACATION DOCUMENTATION REQUIREMENTS

1. Prior to recording the street vacation with Clatsop County, the applicant shall assure that any necessary utility easements are provided and included in the final recording documentation..

FINDING: Staff did not identify water utilities in the vacation area. The applicant's survey identified a power line and gas line serving the applicant's property east of the right of way but did not identify public utility easements for those. The applicant may record an easement for their power line and gas line service across the vacation area that will attach to their neighbor's property, but because these lines do not appear to serve additional lots and there is no existing easement for them, staff are not recommending that the city require new recorded easements for them.

If the vacation is approved, the City will continue to own ROW south of the vacation area that has no connection to the public street network. While it is unlikely that the City would need to access this remnant right of way, staff and Planning Commission recommend that the City require an easement granting the City access to the remnant right of way, as a condition of approving the vacation. The easement could follow the same boundary as the vacation area, or it could be provided through property accessed from Glenn or US 101.

2. The applicant shall provide a legal description of the ground to be vacated with exact concise distances, to be provided by a land surveyor or attorney licensed by the State of Oregon and verified by the City Administrator.

FINDING: The application includes the following legal description, and provided the following image from the referenced plat. A final survey and legal description by a licensed surveyor must be provided to City staff for review and approval, and then they along with the City Ordinance must be recorded with Clatsop County after the City is compensated.

Hemlock Avenue as laid out on the Amended Plat of Woodland Park Addition to Gearhart Park, Blocks 1 to 10, inclusive. As Recorded in Book 7, Page 27, Clatsop County Plat Records from the South Line of 6th Street to the South line of Lot 5, Block 4 on the East and Lot 42, Block 4 on the West.

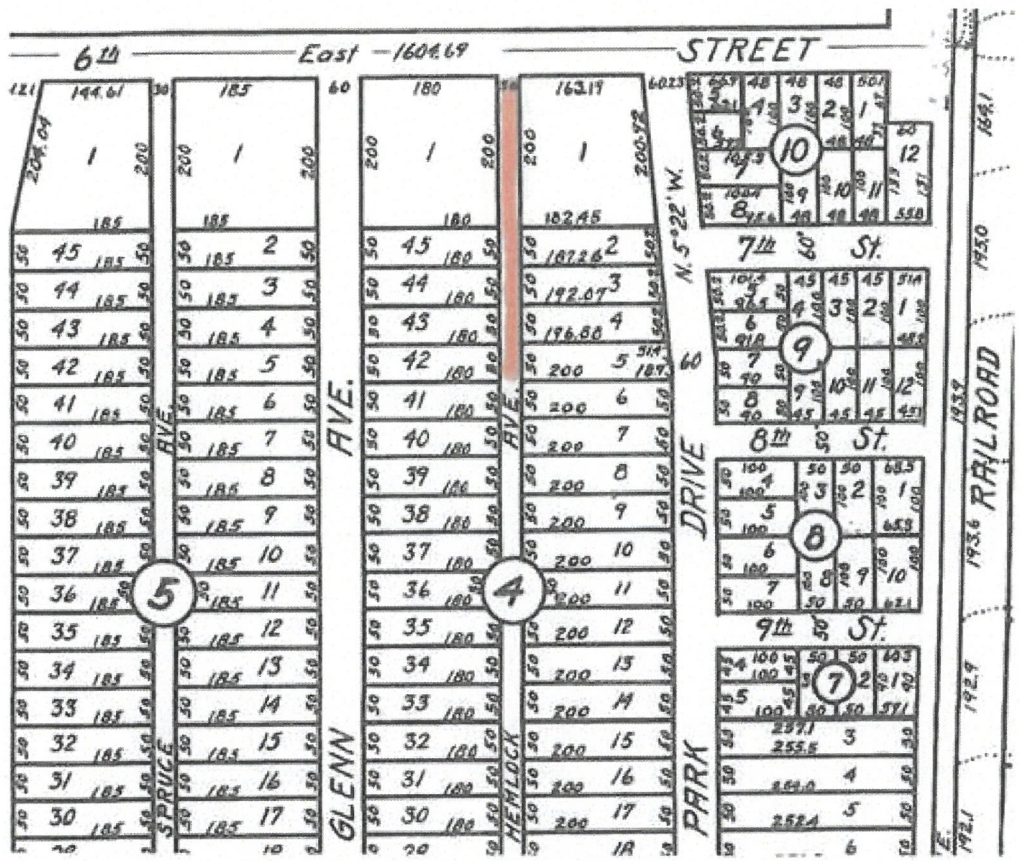


Image of the referenced plat.

3. A certified copy of the ordinance and legal description vacating the street shall be filed for record with the Clatsop County Clerk. The petitioner(s) for vacation shall bear the recording cost and cost of preparing and filing the certified copy of the ordinance and survey exhibit. A copy of the certified and recorded documents shall be provided to the City Recorder.

FINDING: This requirement is implemented after the City Council Hearing and ordinance readings if the City Council approves the vacation.

SECTION 12.070 PUBLIC ACCESS TO BEACHES, LAKES AND SHORELANDS

In accordance with the provisions of Article 12 Street and Alley Vacation:

1. The City shall review under ORS 271.230 proposals for the vacation of public easement or right-of-way which provide access to or along ocean beaches or lakes.
2. The City shall review under the provision of ORS 271.300-271.360, proposals for the sale, exchange or transfer of public ownership which provides access to ocean beaches or lakes.
3. Existing public ownership right-of-way and similar public easements which provide access to or along ocean beaches or lakes shall be retained or replaced if they are sold, exchanged or transferred.

4. Public beach, lake or shoreland access rights-of-way may be sold, exchanged or transferred.
5. Rights-of- way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

FINDINGS: The vacation area does not provide public access to beaches, lakes or coastal shorelands. The absence of beaches and lakes is verified on areal images. Staff verified the absence of Coastal Shorelands by reviewing the Comprehensive Plan Goal 17 chapter, and the Local Wetlands Inventory. Comp Plan Goal 17 does not refer to the protection of any wetlands other than estuarine wetlands, and does not refer to other Goal 17 resources. The Local Wetlands Inventory identifies Wetland Complex W2 as a Locally Significant Wetland, and as a non estuarine wetland, with the head of tide south of the subject area at G Street.

III. CONDITIONS OF APPROVAL

The City Council may require conditions of approval based on findings that they are needed to satisfy specific approval criteria. The following conditions are recommended.

1. A private access easement to the City of Gearhart accessing the remaining Hemlock Street ROW shall be recorded at the same time as the vacation. The easement may be extinguished if and when the remaining Hemlock Street ROW is vacated.
2. Prior to recording the vacation with Clatsop County, the applicant shall assure that any necessary utility improvements or easements are provided and included in the final recording documentation.
3. The applicant shall provide a legal description and survey of the ground to be vacated with exact and concise distances, to be provided by a land surveyor or attorney licensed by the State of Oregon.
4. Prior to recording the City shall be paid the estimated compensation (\$29,140) or the compensation specified by City Council in this decision, the precise amount to be determined by the final survey of the area to be vacated.
5. A certified copy of the ordinance and legal description vacating the street shall be filed for record with the Clatsop County Clerk by the applicant. The petitioner(s) for vacation shall bear the recording cost and cost of preparing and filing the certified copy of the ordinance and survey exhibit. A copy of the certified and recorded documents shall be provided to the City Recorder.
6. The approval shall become void one year after the effective date of the ordinance if all conditions are not completed.

IV. RECOMMENDATION OPTIONS

The City Council has the following three options for a motion:

- a. Move to approve the request with the above conditions or alternate conditions.
- b. Move to continue the hearing to a future date certain meeting; or
- c. Move to deny the request and summarize findings in support of a denial.

Council Options:

- Motion to approve Ordinance #950 with the above conditions reading once by the title only;
- Make changes and motion to approve as amended;
- Motion to continue the hearing to a future meeting and table the ordinance;
- Motion to deny the request and summarize findings in support of a denial.

Recommended Motion: Council has the option to make decisions regarding the hearing and/or the ordinance; City staff has no recommendation. Commission recommendations state above.

Legal Analysis: The ordinance describes transferring 400 x 30 feet of Right of Way. If the applicant wants to acquire less, [the city will] need to issue an addendum with a new legal description. If the ordinance is unanimously approved to be read once by title only, it will move to a second reading option in November, following approval taking effect in December.

Financial Analysis: SECTION 12.030 ASSESSMENT COMPENSATION REQUIREMENTS & **Estimated Compensation** table (pgs 8-9) reflect updated amounts after Council's concerns in September.

Respectfully Submitted,



Chad



ORDINANCE NO. 950

AN ORDINANCE VACATING A PORTION OF HEMLOCK STREET RIGHT OF WAY

WHEREAS, Beach Development LLC submitted an application to vacate a portion of Hemlock Street Right of Way located in contemporary lay terms as the right of way running north and south between US 101 and Glenn Avenue, from Pacific Way about four hundred feet to the south, and formally/legally described below; and

WHEREAS, City of Gearhart Planning Commission considered the application as new business on their publicly noticed agenda and recommended approval with conditions on August 14th, 2025; and

WHEREAS, the request with conditions approved by City Council following their September 3rd, 2025 hearing meets the requirements of City of Gearhart Zoning Ordinance Article 12 and ORS 271.005 – 271.540;

NOW, THEREFORE, the City of Gearhart ordains that a portion of Hemlock Street shall be vacated as defined herein and in accordance with the Gearhart Zoning Ordinance Article 12 Street and Alley Vacation.

Section 1 Right of Way Area to be Vacated

Hemlock Avenue as laid out on the Amended Plat of Woodland Park Addition to Gearhart Park, Blocks 1 to 10, inclusive. As Recorded in Book 7, Page 27, Clatsop County Plat Records from the South Line of 6th Street to the South line of Lot 5, Block 4 on the East and Lot 42, Block 4 on the West.

Section 2 Street Vacation Stipulations

The applicant and adjacent owners to whose property the vacated right of way will attach shall comply with the conditions established in the September 3rd, 2025 City Council hearing.

Section 3 Effective Date

This ordinance will be read two times and will be effective 30 days after the second reading.

Section 4 Compensation

Adjacent owners shall compensate the City a total of \$29,140.

Passed by the City Council of Gearhart this ____ day of _____, 2025.

Yeas:

Nays:

Absent:

Abstain:

Approved and signed by the Mayor of Gearhart this ____ day of _____, 2025.

Mayor Kerry Smith

ATTEST:

City Administrator, Chad Sweet