

## Gearhart Planning Commission Minutes for July 14, 2022

MEMBERS: Virginia Dideum, Don Frank, Terry Graff, Sharon Kloefer, Russ Taggard, Judy Schector, and John Mesberg

STAFF: Carole Connell, Chad Sweet, and Angoleana Brien

### Minutes

The regular meeting of the Gearhart Planning Commission for Thursday, July 14, 2022, was called to order at 6:00 p.m. by President Virginia Dideum. *Members and staff were present, except for Judy Schector, who was excused for her requested absence.*

### CONSENT AGENDA

On **MOTION** by Graff, 2nd by Kloefer, the consent agenda for July 14, 2022, was approved by unanimous motion. Said agenda approved the financial report for June 28, 2022. There was no correspondence.

Minutes for June 9, 2022 are to be brought back to the commission for review after Terry Graff's comments are added.

### STAFF REPORT

Sweet reported that councilor Kerry Smith was officially appointed mayor with the council's approval, and a new councilor was appointed to take Smith's prior position. The new councilor's name is Dana Gold. She has experience in law enforcement, project development, and resiliency. Sweet gave an update on the park excavation going on and that the experts helping to put the equipment together are very busy currently; however, he believes that we are in the queue for the beginning or middle of August. Once we have a date, the city will go out for volunteer efforts to help with that.

### COMMISSIONERS REPORT

None

### GOALS LIST

Dideum asked if the second line, Fire Station site UGB swap/Annexation/Zone change, still belongs on our goals list.

Sweet said so far, the council has not made any recommendations on that yet, and to leave it as is for now.

Taggard suggested that we add addressing the subdivision ordinances to avoid some of the problems that have been recurring with the partitions that we are running into.

Connell said the goals list under Comprehensive Plan Update Considerations, item 3, Rewrite and Update Subdivision Ordinance, has been there for some time now and needs to be done. The current ordinance was not adhered to in many of the prior decisions; and why we are running into some of these situations now. Connell added that we could add a priority listing to it.

Taggard said to make it a priority two.

Connell addressed the goal at the bottom, draft a statement summarizing the vision of the Comprehensive Plan for distribution, and asked Frank if he would like to try doing the first draft on his own and collaborate once he is ready. Frank said yes.

Connell spoke about the suggestions to add the Elk issue-based on the declaration of cooperation, which might be something we address next.

Dideum said that Carole should come up with a little more detail to add it to the goals list as it may need to be a separate item, and they will decide.

## VISITORS COMMENTS

None

## LAND USE APPLICATIONS CONTINUATION OF DISCUSSION

#22-04P Cutler Lane - An application for approval of a Minor Land Partition to divide one parcel into three, on a parcel located on a private street easement named Cutler Lane in a Residential R-2 zone.

Dideum reopened the public hearing for 22-04P An application for approval of a Minor Land Partition to divide one parcel into three, on a parcel located on a private street easement named Cutler Lane in a Residential R-2 zone, to the public at 6:18 p.m.

Dideum read the disclosure statement for #22-04P and #22-05CUAn application for a Conditional Use to permit 26 long-term apartments in the existing Windjammer Motel building in a Commercial C-2 zone, adding two new units.

Dideum asked if any Commissioners needed to declare an ex-parte conflict, a conflict of interest, or a personal bias. Frank contacted Mr. Cooter and had two conversations regarding this land partition. He also had a brief email chain with Mr. Evans to discuss; however, they never had the discussion. He had no new information to share.

Dideum said she went to the Windjammer property to look around.

Dideum explained the reason for reopening the public hearing for 22-04P is that there is new evidence and to allow the proponents and opponents to speak tonight.

City Planner Connell gave an overview of the new additional correspondence, and her staff report for #22-04P An application for approval of a Minor Land Partition to divide one parcel into three, on a parcel located on a private street easement named Cutler Lane in a Residential R-2 zone.

Dideum asked if the commissioners had any questions.

Frank spoke to Connell about her saying the commission can not enforce a promise from 2005 but asked if they could enforce an existing ordinance today.

Connell said yes, in a new proposal, you can; however, when there are other property owners involved, it adds a layer that is questionable with regards to the legality of enforcing a promise.

Frank said a dedication would have to be agreed upon by both parties then.

Connell said, in this case, yes.

Taggard said that McNally's statement in 2005, that if we do anything beyond how it is currently utilized, it will have to be a paved road. Is that not a statement of the city's position?

Connell explained that if it was required to be paved in 2005 it should have been done with a dedication then, not later.

Taggard said we are putting it on the property owners to fight over who maintains the road.

Connell said that it should probably be required to have a cooperative agreement for road maintenance between the property owners.

Kloepfer asked if Connell agreed with the statement in the email from CKI where it says that the owner of the other two lots is owned by EPI, so Mr. Evans would have to agree first to dedicate the road to the public.

Connell said that that is a legal question and that unfortunately, we were unable to get an answer from the city attorney. The commission can make a decision and it would have to go on appeal to the city council.

Commissioner President Dideum asked if there were any proponents.

Scott Cooter with CKI Land Surveying, P.O. Box 2699, Gearhart, OR 97138. Cooter pointed out that sometimes they do subdivisions where they dedicate the road to the public, the city owns it and pays to maintain it, and a private road is just that where the landowners that live on that road are responsible for maintaining it. Typically there would be a road maintenance agreement for the private road, and that would decide how all the landowners that use the road would be responsible for the maintenance and cost. On this project when the 2005 partition happened, it should have been conditioned that there was a road maintenance agreement recorded. Anything mentioned in McNally's notes indicating what should happen for future development should have been put in form of a deed restriction, and also recorded at the county clerks office. They did get a legal opinion from Christian Zupanic regarding the legality of dedicating the easement as a public road. Cooter said that Christians statement was you can't dedicate what you don't own. Cooter said his letter clearly states their opinion on this matter. They are not necessarily willing to pave the entire street, he does not believe it is reasonable for Johnson to bare the cost of the entire paved section with a section of the easement not being his. They would potentially be willing to pave the apron so it would be safer for pulling out and in off the highway, and Johnson would be willing to enter a discussion with Evans to come up with a road maintenance agreement to have recorded at the county, and believes Johnson would be willing to cover the cost for a road maintenance agreement. This would require agreement with all parties and signatures.

Mesberg asked Connell, what if the commission required a road maintenance agreement as a condition, and the parties were unable to reach an agreement, what would happen at that point.

Connell stated that then the conditions of the approval of the partition would have not been met and when they came back for their final partition to be made, the approval would be denied.

Nathan Johnson, 90856 Fort Clatsop Rd, Astoria, OR. 97103. Johnson believes that the comment on a road maintenance agreement is sound and it would be important; however, he does not think that Evans would be required to sign off on it. He does believe that there would be a lot of potential upsides for both properties to come to some agreement; however, he does not believe that it could be a condition. In regards to the paving, it would be nice to do, but it is roughly 675 feet from the highway to the property, so would it be reasonable to oppose that kind of burden, and from his perspective, it would not be. Johnson posed the question of what criteria was looked at with the recent Gronmark partition when the Gronmark partition was approved with seven residences that ingress and egress in the same manner as Cutler with three additional residences, which he believes is a valid point to consider. Johnson does agree that an apron at highway 101 is important with the cost opposed upon him. He believes that Evans would have to be agreeable to that because it is on his property, but he would do that because he believes it would benefit everyone.

Commissioner President Dideum asked if there were any opponents.

Bryan Evans, 1142 Buttercup Rd, Hailey, ID. 83333. He purchased the property as it exists and it winds the way it does so in his opinion, this project makes no sense in terms of access. Evans stated that this commission is bound by the ordinance as it exists today and the fact that prior decisions were made that don't comply with the ordinance and believes this project can not be approved because the street would have to be improved to city standards and paved. He believes it does not meet standards thirty-eight and in section 40.2, twenty-five of frontage, if you deemed it a street or dedicated it a street he doesn't believe you would meet lot coverage. He is

said that as it is platted, as it exists now with the current plat, you can not meet the city ordinance, and does not believe that the city could compel him to change his easement as it exists. He stated that everyone is stuck with the easement as it is recorded unless they all mutually agree to alter it. Evans quoted McNally's statement from the 2005 minutes "the twenty-five foot access easement would be sufficient access for two parcels and if an additional development were to occur, the access would need to be dedicated as a public road and paved to the city standards ". Evans said it didn't get improved before there were multiple owners and we are bound by the easement as it exists, which is a road and utility easement, ingress-egress, and believes that the commission can not approve this without ignoring the city's own subdivision ordinance. Evans stated that if he were to agree to it, he should not be imposed by the costs. There is a lot of work that would need to be done to take two thirty-foot trees out of it, relocate a light pole, and fire hydrant. Evans stated that there is not adequate access as platted.

Abigail Germain with Elam & Burke 251 E. Front St. Suite 300, Boise, ID. 83701. Germain said without dedicating the easement to a public road and meeting the city street standards, it can not meet the conditions of both the 2005 partition in which the city administrator stated that should further development be conducted on that parcel it would have to be dedicated as a public road and paved to city standards, in addition to the fact that the Gearhart city ordinance requires that should the partition be granted it would have to front a public road and street. In that circumstance, you would have to have dedication of the street and paved to city standards. She said as city staff has already pointed out, dedication would require the consent of all property owners adjacent to the easement, which would include Evans. Without an agreement to dedicate an easement as a public road, without any other abilities to meet the requirements of the 2005 conditions, and the requirements of the subdivision ordinance, the commission must deny the partition as presented.

#### APPLICANT REBUTTAL.

Johnson stated that he believed everything has been covered.

Cooter said that with the Gronmark partition being approved with the same issues, and does not believe it to be reasonable to insist for Gronmark to pay for the paving of Gronmark Lane and dedicating it with seven other owners. Cooter does not believe it is legal. There is twenty-five feet of frontage on all three of the Cutler lots, it's allowed by the code, it's the way the zone was set up for seventy-five hundred square foot lots, and it meets the criteria. He believes it is approvable as is.

Dideum closed the public hearing for the #22-04P Cutler Ln at 7:19 p.m.

Discussion with commissioners occurred.

Frank asked Connell to explain the difference between the Gronmark petition and this one.

Sweet said that he believes that the commission's thought process was that it was the last parcel to be approved and what already had been established, they could require things on the piece being partitioned but again the commission could not make owners do anything on the property that the commission did not have any influence over or own. Sweet said there is really not much difference.

Connell said that the roads were there and the access was there, which meets the zoning standards, and you can't necessarily go back and require paving and dedication. She is not sure there is much difference other than it's been the historical practice of the city.

Sweet said that he does not know if after the fact the city can require it.

Frank said but per the subdivision ordinance that Germain brought up that technically should have been applied.

Connell said yes.

Frank added and any of all the other developments over the past how many years it should have been applied.

Sweet said correct, and the roads that are graveled now and some that we do have around town that we do not have an agreement, the neighborhood is basically tasked with taking care of those roads on their own time and money. The city has been asked why doesn't the city pave it, usually, the developers at the time pay for it, it's when they get beyond that the city doesn't really have the ability to require it or to do it, and the city wouldn't do it because it is not the city's street.

Frank asked if we did require the last development to meet the subdivision ordinance, that street would become city property and the city would maintain it, correct? Who would pay for the initial paving? Would it be the developer, or divided up between the property owners? He asked how that would apply to this situation.

Connell said that that is the problem. She said it is unfortunate with the way it happened. Seven lots, seven different owners, and now two lots, two different owners. Gronmark is straighter, and Connell believes that the lots are bigger. She doesn't think the city has a good answer except that the road was there and it was probably not thoroughly looked at the same way until this case came up and it was challenged. Which is admittedly the key difference.

Frank asked if there is not an agreement and the city wants to take an easement for a public city road, does the city have the option to condemn it?

Sweet asked Frank if he meant eminent domain. Sweet said he is sure there is a process for that, however, he would not know if it would be successful. That's a detailed question he can not answer at the moment. He did say that eminent domain is difficult to do and everyone must be remunerated for what has been taken from them as well.

Kloepfer asked for clarification on what is most important on what they would be focused on approval or denial.

Connell said that number three on the staff report is the one that is being focused on and contested.

Kloepfer asked if the commission is even able to do that because according to Cooter, he said that he does not believe the city can require either of those two things. She also wanted to know if we are setting a precedence for this and is it important to set it.

Connell said we are trying to apply the subdivision ordinance as it is now, but the problem is with prior approvals which makes it difficult to apply this now, and the city is in a difficult situation because of the two owners. So we can't compare it to future decisions, because hopefully with all future decisions the city will address this at the right time.

Kloepfer had one last comment on the record that she does not feel that taking out twenty trees is in the interest of anyone's health.

Graff said first we are dealing with whether the application meets the standard required by the city, which we should be dealing with, and second, he believes we are trying to mediate between two landowners regarding whether to have a management or maintenance agreement. He said that has become part of the discussion which is not what they should be focused on. The key question here is, is there required to be a dedicated public road paved, if in fact, we approve these three lots? The city attorney said on 6-21-22 it doesn't preclude further land division but seems like they will need to build the street up to code. So if the commission passes this and approves it, then this could be made a condition. Then Evans does not agree and Johnson loses either way. Based on this Graff's question is can we deny this based on the fact that we already know that the easement cannot be dedicated? Graff also asked that on page two the bottom, findings where it says "Staff finds that the proposed partition provides 25' feet of frontage to each of the subject three lots by extending the easement from its current terminus to the new parcels" how can the applicant extend an easement through these other parcels without agreement from the other party.

Dideum said that she asked and already has the answer to extending the easement. The easement on the partition plan is actually a new easement benefiting the new lots required turnaround and accessing utilities to those lots. This may require digging, legal analysis, or appeal to determine. So it is a new easement, not an extension.

Taggard said that on the Gronmark partition those lots already had the easement as part of them. The new parcels just became part of what was already established with the prior owners and lots. He believes that the McNally comments in 2005 are specific to this partition on Cutler, and those specific comments say you need to pave it, regardless of not paving Gronmark, or not paving Lamont Ln.

Mesberg said we have three pieces of evidence that suggest if we choose to approve this, we should retain number three in the original findings. Number one our current city code suggests that it should be paved and brought up to city code, number two the McNally comments indicate that they should be paved and brought up to city code, and number three our own attorney said that we need to build our street up to code. He believes that this is enough evidence that if they choose to approve this that they retain item number three in the findings, and let the owners determine how they want to proceed. He does not necessarily agree that they should not approve it based on foreseeing the opponent fighting it.

Graff said that when you have an easement it is a written document that is recorded that the public refers to and the public knows what that easement is for. It is for a particular piece of property and Graff would like one of the conditions to be that the existing easement shall be recorded to service the new parcels.

Dideum said she believes that the notes from 2005 and their intent are important. She has gone back and referred to past minutes and recordings for fifteen years and has found that it is important to go back and look at what the intent was. The city records the meetings and has minutes because what goes on in the discussions is important when any decision is being made. She also stated that there have been a lot of comparisons between Cutler Ln to Park Ln, however, she believes that the comparison would be closer to East Pine. The commission did not approve East Pine, and the number one reason they didn't was that the homeowners signed a petition saying we do not want this. Dideum is concerned with the way the road curves and goes up, she does not want to see trees gone and she does not have an engineering report, even if just preliminary, to give them an idea of the outcome of putting the third lot back there. She agrees with Graff that the easement must be granted access through commercial property. She is unsure of how many cars Evans has on the property, today she counted 12-12 cars parked there. You could get a car through there, however, it would be a challenge to get

a fire truck through there. She does not believe that Evans should have to pay to pave his own private easement. The intent for 2005 is as important today as it was then.

More discussion with commissioners occurred.

On **MOTION** by Taggard, 2nd by Frank, to approve the partition with condition number three rewritten as follows:

In the 2005 Cutler Lane partition approval, the City Administrator Dennis McNally said that “if additional development were to occur the access easement would need to be dedicated to the City as a public road and paved to City standards.” Therefore, the final plat shall include dedication of the easement to the City of Gearhart as a public street. Prior to the issuance of an occupancy permit of the first home construction, Cutler Lane shall be dedicated as a public street and paved from Highway 101 to Parcel 3 per City local street specifications at the applicant’s cost. The existing easement shall be rewritten and reworded to service the new parcels Motion passed 4 to 2 with Mesberg, Taggard, Graff and Frank for - Kloepper, and Dideum against.

#### PUBLIC HEARINGS

#22-05CU An application for a Conditional Use to permit 26 long-term apartments in the existing Windjammer Motel building in a Commercial C-2 zone. Note – the application refers to three new units for a total of 27. On 6-29-22 the applicant said only two new units are being added for a total of 26.

Dideum asked if everyone has read and is familiar with the application. Carole gave a brief overview of the staff report.

#### APPLICANT TESTIMONY

Kim Bauske PO Box 1053 Seaside, OR 97138. She is the sole owner of the Windjammer. She inherited this property and has continued to run it as an extended stay. There are several families that have lived there since 2014. All units have kitchens, with one unit there that is a studio that is rented as a two bedroom, two bath. She had a couple inquire about buying it, and interested in having multi-family housing. She has no intention of changing the way it is running as long as she is there and to continue to pay lodging taxes. She has only had one rent increase since she has taken over, and believes that the couple want to change it over to long-term while keeping the renters that are there. The city needs more housing and agrees this to be a good idea. The agreement is that time will be given to the tenants to switch over from weekly payments to monthly payments.

Dideum asked if she was going to maintain the property.

Bauske said that it has to be bought outright, as is. Zachary Smith & Steven Yett will be the owners and are planning to have a management company run it. They made an offer on the property and if approved it is supposed to close next week. She put all her inheritance money into updating the property to better living conditions. The first year she did 15 of the units and then the other ten units the next year.

Steven Yett PO Box 26125 Eugene, Oregon 97402. Yett said that the intention is to continue to upgrade the property and maintain it as affordable housing that is well cared for and locally managed. They believe they have settled on a property manager in the area with a great reputation and experience.

Mesberg asked Yett if they owned other properties similar to this. Smith does not, however, Yett has been in property management for approximately thirty years. Yett owns many properties with similar income strata in Eugene; he has about fifty-eight ?? at that property.

Commissioner President Dideum asked if there were any opponents. There were none.

Dideum closed the public hearing at 8:20 p.m.

Dideum asked if the commission had any questions.

Frank said that if changed from a motel to long term, the lodging tax would go away, and asked how much that would be.

Bauske said last year she paid fifteen thousand eight hundred dollars in lodging tax.

Mesberg asked if there were any other tax implications that would compensate for that.

Sweet said no, the city would just lose that revenue.

Graff said he likes the project and is taking it at face value. He did mention that he would have preferred someone to be there at city hall for them to see.

Taggard asked if the commission approves this for full-time living, does the status of hotel/motel go away on the zoning, or does it maintain dual status?

Dideum said it is zoned C-2 and it will stay C-2. This is just a conditional use for apartments, so it would only be allowed to change to what's allowed in C-2 without having to come back to the planning commission.

On MOTION by Mesberg, 2nd by Kloepfer, by unanimous motion to approve the Conditional Use Permit based on the findings in the staff report and conditions of approval.

#### UNFINISHED BUSINESS

None

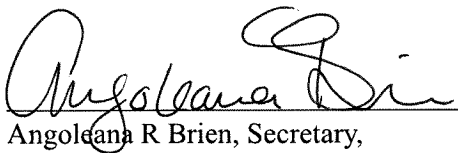
#### NEW BUSINESS

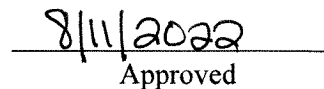
None

#### CONCERNS OF THE COMMISSION

None

The meeting was adjourned at 8:25 p.m.

  
Angoleana R Brien, Secretary,

  
Approved