

City of Bandon

CITY COUNCIL AGENDA DOCUMENTATION	DATE: October 2, 2018
SUBJECT: Request to have a Private Sewer Line incorporated into the City System using Eminent Domain Process - Bill Clark	ITEM #: 2.1

BACKGROUND

Bill Clark will be in attendance to request the City of Bandon use its Eminent Domain powers to bring a private (orphan) sewer line, and associated lateral services, into the City of Bandon Public Sewer System. The sewer line in question is located on the Best Western property, owned by Dave Nordahl & Beach Loop Drive, LLC.

The property was formerly owned by Mr. Clark and later sold to Mr. Nordahl with no reservation of easement to access the private sewer system for the adjoining residential properties retained by Mr. Clark. In order to develop these properties the sewer line will need to be transferred to the City of Bandon, or a new sewer line will need to be installed to do so.

The final order of approval for development of these properties was issued on February 23, 2017, with six conditions (see page 5 of final order, attached). Condition 1 notes the requirement to dedicate the orphan sanitary sewer main to the City of Bandon. This condition is a requirement for future development because the City (per Code and DEQ) cannot issue a zoning compliance for any of these properties, to hook up to a private/orphan sewer system.

After the final order Mr. Clark first filed to appeal condition 1, then came to me with the idea of the City using Eminent Domain to condemn the property and private sewer line in order to bring it into the City system. After researching the issue and having the sewer line and associated easement appraised, I determined that other options exist and there was no compelling reason to recommend that Council consider using Eminent Domain to intervene in a transaction between two private parties.

FISCAL IMPACT

Undetermined.

RECOMMENDATION

Eminent Domain should be used sparingly and only when absolutely necessary to achieve a benefit to the public good. In short, there is very limited, if any benefit to the City of Bandon to use Eminent Domain to intervene in this private property transaction.

At least two options exist for Mr. Clark to provide sewer service to these residential properties:

- He can negotiate an arrangement with Mr. Nordahl and Beach Loop Drive, LLC
- He can install a new sewer line and associated laterals to service these properties, at his own expense

SUBMITTED BY



Robert J Mawson, City Manager



CITY OF BANDON

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Public Service... We Take It Seriously

NOTICE OF DECISION

DATE MAILED: February 23, 2017
PROPERTY OWNER: Bill Clark
REPRESENTATIVE: Russ Dodge
LOCATION: 29-15-01 BA, Tax Lot(s) 100, 200, 300, 600, 700, 1900, 2000, and 2800

IN THE MATTER OF: **Plan Review:** Installation of manufactured homes on property located within the Controlled Development 1 (CD-1) zone.

Decisions are based on the approval criteria found in the Comprehensive Plan and Title 16 and Title 17 of the Bandon Municipal Code.

FACTS:

1. All of the subject properties are located in the CD-1 Zone.
2. Siting of a manufactured home is allowed outright within the CD-1 Zone.
3. The request is to be allowed to site a manufactured home on the specific tax lots noted above and located within the CD-1 Zone.
4. The Planning Commission has authority to grant, grant with modifications, or deny the request in accordance with the standards and procedures set forth in Title 17 of the Bandon Municipal Code.
5. The Planning Commission and City Council have granted authority to the hearings officer to review and render decisions for plan reviews.

CONCLUSIONS AND DECISION:

On February 23, 2017 the Bandon Planning Commission approved the Plan Review to allow for the installation of manufactured homes in the CD-1 Zone on individual parcels described as 29-15-01 BA, Tax Lots 100, 200, 300, 600, 700, 1900, 2000, and 2800. After reviewing the application materials, testimony, comprehensive plan and Title 16 and 17 of the Bandon Municipal Code, the Hearings Officer found the proposal met the criteria for the request.

Materials concerning this decision, including the final order dated February 23, 2017, are available for review during the regular office hours of 10:00 a.m. to 5:00 p.m.

Monday through Friday at Bandon City Hall located at 555 Highway 101, Bandon, or copies may be purchased at Bandon City Hall.

Any person with standing may appeal this decision to the City Council by filing a written notice of appeal with the City Recorder (Administrative Assistant) within 10 days of this notice of decision being mailed and paying the appropriate fee. The fee for appeal of this decision is \$375.00.

Appeals must be submitted in writing, along with a land use application and fee no later than **March 6, 2017** at 5:00 p.m. The written notice of appeal shall contain the following:

1. An identification of the decision sought to be reviewed, including the name, site, location information and the date of the decision;
2. A statement of the interest of the person seeking the review and that the individual was a party to the initial proceedings;
3. The specific grounds upon which the review and appeal are being based. The criteria against which the appeal and review are being requested were addressed during the original determination.



John McLaughlin
Planning Director

February 23, 2017

**FINAL ORDER OF APPROVAL
OF A PLAN REVIEW**



FILE NUMBER: P17-05 through 17-012
LOCATION: 29-15-01 BA, Tax Lots 100, 200, 300, 600, 700, 1900, 2000, and 2800
APPLICANT: Russ Dodge
PROPERTY OWNER: Bill Clark
REQUEST: **Plan Review:** Installation of manufactured homes on property located within the Controlled Development 1 (CD-1) zone.

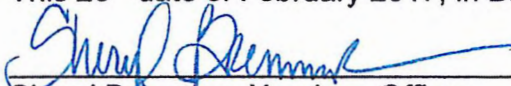
Chair:
David Kimes

Commissioners:
Sheryl Bremmer
Ben Fisher
Daniel Graham
David Reed
Harve Schubothe
Blythe Tiffany

Property is located in the CD-1 Zone.

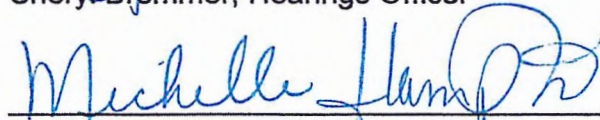
HEARINGS OFFICER: Sheryl Bremmer
HEARING DATE: Scheduled Hearing Date: February 21, 2017
Actual Hearing Date: February 23, 2017
RECORD CLOSED: February 21, 2017
FINAL ORDER: **APPROVED**

SIGNED: This 23rd date of February 2017, in Bandon, Oregon



Sheryl Bremmer, Hearings Officer

ATTEST:



Michelle Hampton, City Planner

APPEAL PROCEDURE:

Pursuant to Chapter 17.124, any applicant or any other person with standing, may within ten days after the findings of fact of any decision of the Planning Commission has been signed, file a written request with the City Recorder appealing the decision to the Council. The written request appealing the decision of the Planning Commission shall state specific reasons for the appeal based upon pertinent, applicable criteria contained in Chapter 17.124. The fee for appeal of this decision is \$50.00.

RECOMMENDATION

A. SUMMARY

1. The subject property is located within the CD-1 Zone.
2. All decisions are based on information submitted by the applicant and the property owner.

Additional information regarding the subject property was reviewed through the City's street files.

B. Preliminary Issues:

The applicant is submitting a plan review for approval of the proposed construction.

1. The developer is required to gain approval from the Planning Commission during a plan review in public session regarding the siting and design of any structure and all other requirements of this title. The Planning Commission and City Council have determined that a hearings officer can conduct reviews and render decisions as evident by Bandon Municipal Code, Title 2.

CITY OF BANDON MUNICIPAL CODE

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 17 - Chapter 17.20 – Controlled Development 1 (CD-1) Zone

- | | |
|---|--|
| 1. Section 17.20.010 Purpose | 4. Section 17.20.070 Yards |
| 2. Section 17.20.020 Conditional Use | 7. Section 17.20.080 Lot Coverage |
| 3. Section 17.20.040 Limitations on Use | 8. Section 17.20.090 Height of Structure |

III. ADDITIONAL COMMENTS:

No testimony in favor of the request was received. The City of Bandon has received testimony against the request submitted by Mr. Charles J. Huber, Attorney for Beach Loop Drive, LLC. The testimony has been incorporated as part of the record.

Planning Director McLaughlin submitted written responses to the issues raised by Mr. Charles J. Huber, Attorney for Beach Loop Drive, LLC, and is incorporated as part of the record.

The Hearings Officer incorporates, by reference, all facts established in the record of the February 23, 2017 review, the application and plans, and other materials and testimony .

The Hearings Officer concludes that the case for approval of the application has been substantiated based upon the following facts:

Bill Clark
29-15-01 BA, Tax Lots 100, 200, 300, 600, 700, 1900, 2000, and 2800
Plan Reviews combined
Plan Review – 8 manufactured homes

1. **Location:** 29-15-01 BA, Tax Lots 100, 200, 300, 600, 700, 1900, 2000, and 2800.
2. **Zoning and Plan Designation:** The subject property is zoned CD-1 (Controlled Development 1 Zone). The Comprehensive Plan designates this area as Controlled Development Area (CDA).
3. **Site Description:** The subject properties are residential lots located within the Fairway Court Subdivision. The properties are located on the south side of Seacrest Drive (east of Beach Loop Drive), the west side of Lincoln Avenue (south of Seacrest and Lincoln Avenue SW intersection), and the west side of Fairway Court (a private drive).

Seacrest Drive and Lincoln Avenue are local streets built to current street standards. Fairway Court is a private drive and has been determined not to meet any of the existing street standards.

Due to the topography of tax lot 2800; soils, hydrology, and geology reports (hazards report) have been required. The remaining tax lots are relatively flat and the City will rely on the author of the report to determine if a detailed hazard report is warranted for each individual lot.

4. **Surrounding Zoning and Land Uses:** Surrounding properties are zoned CD-1, with the exception of the properties to the north of this parcel are zoned Residential 1 (R-1) and properties to the south, east, and west are zoned CD-1 and are residential in nature.
 5. **Proposal:** The CD-1 zone requires a plan review by Planning Commission (or Hearings Officer) to determine if the request is appropriate for this zone.
 6. **Public Notice and Comments:** Public Notices were distributed in accordance with Chapter 17.120, Administration and Enforcement.
3. **Section 17.20.040 Limitations on Use**
- B. All new uses or structures or exterior alterations of existing structures in the CD-1 zone shall comply with the following:
 1. The developer shall be required to gain approval from the Planning Commission during a plan review in public session regarding the siting and design of the structure and all other requirements of this title. The approval or denial of a proposed land use resulting from this review will occur as a limited land use decision and shall require notice to property owners in the notice area.

FINDING: The developer has applied for a plan review before the Planning Commission, which was held in public session, regarding the proposed

development. The Planning Commission and City Council have granted authority to the Hearings Officer to review and render decisions for plan reviews.

The **Hearings Officer finds** the proposed development will meet the above criteria and the Hearings Officer has authority to render a decision on this request.

2. Siting of structures should minimize negative impact on the ocean views of the existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewscapes. Siting of structures should minimize negative impact on the ocean views of the existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewscapes.

FINDING: The Hearings Officer considered the protection of views from vacant building sites and the above criteria. On January 16, 2011 the City Council interpreted Section 17.20.040(B)(2) to mean that it affords view protection primarily to those lots adjacent to the edge of the bluff. The proposed development is on the east side of Beach Loop and not adjacent to the bluff.

The **Hearings Officer** considered the protection of views from the neighboring property and **finds** no views will be obstructed from this construction.

- C. Plans shall be reviewed to assess the possible presence of any geologic hazard. If any part of the subject lot is in an area designated as a moderate or severe hazard area on the Bandon Bluff Inventory Natural Hazards Map or if any geologic hazard is suspected, the Planning Commission shall require a report to be supplied by the developer which satisfactorily evaluates the degree of hazard present and recommends appropriate precautions to avoid endangering life and property and minimize erosion. The burden of proof is on the landowner to show that it is safe to build.

1. the following identifies the reports which may be required:
 - a. Soils Report
 - b. Geology Report
 - c. Hydrology Report

FINDING: The soils, geology, and hydrology reports will be referred as the “hazards report” for purposes of this section.

The file contains correspondence from Eric Oberbeck, RG, CEG, of Cascadia Geoservices Geologist and Engineers. Mr. Oberbeck has notified the City of Bandon that Cascadia Geoservices has been contracted to do the required hazards report.

The Hearings Officer has the ability to waive the hazards report. The Hearings Officer has determined a hazard report is necessary for development of tax lot 2800. Sample bores may be taken on the remaining tax lots and development can occur on the remaining parcels if Cascadia Geoservices determines a detailed hazards report is not warranted. However, if Cascadia Geoservices determines additional reporting is necessary, no development can occur until such time that the detailed hazard report is submitted and accepted by the City of Bandon.

The following conditions shall apply to the approval:

1. Prior to issuance of a zoning compliance for the new home, the sanitary sewer main serving this parcel shall be made part of the public wastewater system. Specifically, the applicant shall prepare and provide the City an offer of dedication for a public utility easement for the orphan sanitary sewer main, working cooperatively with the adjoining property owner. The new easement shall be for the entire orphan sewer main system serving the Fairway Homes Subdivision parcels and Inn at Face Rock property. Additionally, a report shall be prepared by a City-approved consultant and at the expense of the property owner(s) confirming the size of the sewer main, and detailing the current condition of the sewer main through the use of a camera system. Should the sewer main not meet City standards for acceptance as a public facility, the applicant shall be responsible for the necessary repairs and/or upgrades to meet City standards prior to acceptance as a public facility, and issuance of zoning compliance approval.
2. Prior to issuance of a zoning compliance for the new home, a document shall be prepared for recordation on the parcel outlining the responsibilities of the property owner regarding the maintenance of the abutting private street (Fairway Court), and the private storm water drainage system. The document shall identify the other properties sharing the responsibility for the maintenance, reference to the existing conditions, covenants, and restrictions (CC&R's) that are in place for the Fairway Homes Subdivision, and identify the financial responsibilities associated with the maintenance responsibilities. The document shall be recorded on the parcel prior issuance of zoning compliance approval.
3. Applicant will adhere to all conditions, recommendations, and requirements as stated in the Cascadia Geoservices hazard report.
4. Applicant must adhere to all conditions and requirements from the Coquille Indian Tribe.
5. There shall be no alterations from what has been approved on the submitted site plans without first obtaining written approval by the City of Bandon Planning Department.

6. Applicant must adhere to all conditions of approval as outlined during the permitting process.

This Plan Review Approval expires six (6) months from the date of signature.

BIU CLARUL PROJECT

