

City of Bandon

CITY COUNCIL AGENDA DOCUMENTATION	DATE: November 6, 2017
SUBJECT: Planning Commission Meeting Minutes	ITEM NO: 6.2.1

BACKGROUND:

Meeting Minutes of the Planning Commission as submitted by Megan Worton, Planning Assistant

- August 24, 2017 – Work Session
- August 24, 2017 – Regular Meeting
- September 28, 2017 – Regular Meeting

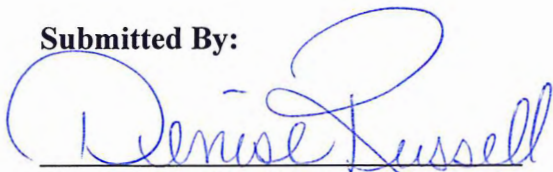
FISCAL IMPACT:

None

RECOMMENDATION:

For information only.

Submitted By:



Denise Russell, *City Recorder*

**REGULAR PLANNING COMMISSION MEETING
BANDON CITY HALL
SEPTEMBER 28, 2017**

COMMISSION: ☒ David Kimes, Chair
☒ Sheryl Bremmer, Vice-Chair
☒ Daniel Graham, Commissioner
☒ David Reed, Commissioner
☒ Harv Schubotho, Commissioner
☒ Blythe Tiffany, Commissioner
☒ Gerald Slothower, Commissioner

STAFF: ☒ John McLaughlin, Planning Director
☒ Dana Nichols, City Planner
☒ Fred Carleton, City Attorney
☒ Megan Worton, Planning Assistant

1.0 ROLL CALL

Roll call was taken with those present and absent reflected above.

2.0 CONSENT AGENDA

Graham asked staff for an update on the traffic study requested previously for Highway 101, Beach Loop, and Seabird Drive. McLaughlin stated that staff is working on this and it will become available as the ODOT/ Road Conversion discussion continues.

Tiffany moved to approve the consent agenda, Bremmer seconded. The consent agenda was approved 7-0 with no additions or corrections.

3.0 PUBLIC COMMENT

Darlene Engebretsen, 1130 Baltimore Ave SE, #12A

Engbretsen requested the Planning Commission work with the School Board to remove the cell phone tower that is currently located on elementary school property due to radiation health and safety concerns.

Calvin Schwen, 1130 Baltimore Ave SE, #12A

Schwen supported Engebretsen's request and described the damaging effects of cell phone radiation in relation to cell phone use.

John Costa, 859 Chicago SE, Bandon OR 97411

Costa requested the City take precautionary measures to prevent future health hazards for our school-aged children, and proposed that future towers be placed no less than 500 meters from public places. Costa presented a letter written by Dr. John Morgan to notify the public of the damaging effects of cell phone tower radiation, based on his professional studies and opinion. Bremmer asked if the School Board was made aware of these concerns, Costa replied that the School Board was made aware several years ago, and has become increasingly more supportive in recent months.

4.0 ACTION/DISCUSSION

4.1 Conditional Use Permit – 2967 Spinnaker Dr. – To designate an existing single family dwelling as a Vacation Rental Dwelling, on property zoned CD-1 in the City of Bandon.

Kimes opened the hearing at 7:13pm for the application of a Conditional Use Permit to designate an existing Single Family Dwelling as a Vacation Rental Dwelling, on property zoned CD-1 in the City of Bandon. The rules and procedures that govern the hearing are available as part of the meeting file.

Disclosures:

Kimes shared his previous involvement with the property and applicant as Code Compliance Officer for the City of Bandon, but stated that his experience would not influence his decision.

McLaughlin informed the Commission that he will be renting the home located directly behind the subject property; therefore, Nichols and Carleton will be handling the agenda item and addressing any questions that may arise.

Staff Report:

With a PowerPoint presentation, Nichols provided a description of the property and home, discussed the staff report and described the history of the property from its original Plan Review and Zoning Compliance approval in the fall of 2016, to the intake of the Conditional Use Permit application in July 2017. Nichols elaborated on topics such as neighborhood compatibility, drainage concerns, and stressed the potential negative impact of the VRD on the neighborhood; issues that the applicant failed to adequately address in the Conditional Use Application. Nichols concluded that the Commission should weigh the applicable criteria heavily. Should the CUP be approved, staff recommended imposing the 17 conditions of approval listed in the staff report on the VRD.

Graham asked whether any provisions had been made in the original Plan Review and Zoning Compliance applications to address neighborhood compatibility, drainage and retention. Carleton clarified that no such provisions could have been imposed, as they would have been discretionary decisions which exceed the authority of the Hearing's Officer and City Staff. Graham asked if other homes utilize the storm water retention basin that the home impacts, Nichols and Carleton explained that the basin serves many properties in the area and was the subject of a previously addressed legal matter. Graham asked why drainage would be a considering factor for the CUP application, Nichols explained that it is included as a part of the history and make-up of the property.

Reed asked why the Staff Report lists only three bedrooms in the home, while the floor plan shows potentially five. Nichols stated that the applicant only listed three bedrooms in the application.

Testimony:**Dave Schradieck, 87190 Jupiter, Bandon OR 97411**

Schradieck spoke on behalf of the applicant and read a letter that the applicant provided and distributed several documents, disputing the size of the home and neighborhood compatibility, questioning the large impact of the Ocean Trails subdivision traffic on the existing neighborhood, and outlining the rules and requirements potential guests would be subject to as clients of his successful Vacation Rental Property Management business. Graham asked if the applicant would agree to all of Schradieck's presented rules and requirements, should the application be approved, Schradieck stated that the applicant would be happy to comply. Schradieck suggested that the applicant's cultural differences may have been a factor in any miscommunication or misrepresentation that occurred during the building of the subject property's home, but emphasized that the home meets all requirements as presented in the Bandon Municipal Code, as a VRD the home will be subject to more stringent upkeep and monitoring than a standard residence, and that the applicant is willing to comply with any conditions of approval deemed necessary to move forward with his plans. Slothower identified an error in the staff report regarding the expiration of Conditional Use Permits, Graham and Kimes clarified the code and the error was noted.

Maureen O'neil, 2927 Ruby Ct. Bandon OR 97411

O'neil read her previously submitted letter of support.

Elwood Caban, 2991 Spinnaker, Bandon OR 97411

Mr. Caban read his previously submitted letter of opposition and described the drainage issues he has faced as a property owner in the subject property's subdivision. Graham asked Mr. Caban how long he has resided at his current address; Mr. Caban replied, six years. Mr. Caban asked Graham how drainage was engineered for the subdivision. Graham stated that he is personally unaware, but an engineer

would have designed the drainage plan for the subdivision, which is available in the Planning Department.

Aida Caban, 2991 Spinnaker, Bandon OR 97411

Mrs. Caban supported Mr. Caban's letter of opposition and clarified that the drainage basin located near the subject property that serves the whole subdivision is classified as a retention pond, not a detention pond. Graham stated that drainage was an issue previously addressed, as such, it is not criteria that impacts the Conditional Use Permit application.

Alexis Proctor, 2992 Ruby Ct, Bandon OR 97411

Proctor summarized her previously submitted letter of opposition, stating her belief that the applicant deceived the surrounding property owners from the beginning of his Plan Review and Zoning Compliance applications. Proctor stated that neighbors were made to believe the home would be used primarily as a residence, occupied by a single father and son, with no indication that it would be used as a large Vacation Rental Dwelling. Proctor discussed several issues that she would like to see the applicant address on the property as soon as possible, including gorse abatement and installing ADA compliant hand railings on the ramp/entry of the home. Reed asked why the neighbors thought that only a father and son would be living in the home. Proctor stated that the applicant's representative stated this in a previous meeting for a previous planning action. Proctor added that the holding pond near the Caban home and the subject property is a frequent flood hazard due to being plugged.

Clarence Pitts, 2958 Ruby Ct., Bandon OR 97411

Pitts spoke briefly about the prior wetland designation of the entire subdivision which contributes to the drainage issue, and read his previously submitted letter of opposition.

John Costa, 859 Chicago SE, Bandon OR 97411

Costa stated his opinion that people have the right to peace and quiet on their private property.

Deliberation:

Slothower asked for clarification about the recourse neighboring property owners have against Vacation Rental Dwellings. Kimes and Graham explained that a VRD's Conditional Use Permit may be revoked if the property owner violates the conditions of approval, in addition to the usual police recourse. Kimes closed the Public Hearing at 8:22pm.

Reed noted that the home is very large and out of proportion from the surrounding properties, and shared his opinion that building a home with the intention of operating it as an immediate Vacation Rental is an illegitimate way to build a relationship with the community.

Tiffany agreed with Reed and shared her concern of homes being built with the sole intent of becoming Vacation Rental Dwellings. Tiffany stated that approval of the VRD may set a dangerous precedent.

Bremmer agreed with Reed and Tiffany and described her experience with the applicant, the applicant's representatives, and the property, as the Hearing's Review Officer for the initial Plan Review required for the development of the home, through which the home was approved as a Single Family *Residence*. Bremmer highlighted the timeline of development in relation to the submission of the Conditional Use Permit application, noting that the application for VRD status was submitted before the home had been issued a Certificate of Occupancy, which is the determining factor of final development. Excerpts from Page 247 and 147 of the Comprehensive Plan were read to remind the Commission of their discretionary power when approving or denying Condition Use Permits, and the community's number one goal of guarding the scenic view by careful development of tourist facilities. Bremmer elaborated on the poor neighborhood compatibility of the home and alleged that the zone the property is located in is erroneously zoned, which contributes to many issues in the subject property's subdivision. Bremmer stated her opinion that the approval of the subject property as a VRD would negatively affect the surrounding neighborhood.

Graham shared some of the same concerns as Reed, Tiffany and Bremmer, but expressed his belief of a legal obligation to allow VRDs that meet all the requirements listed in the application.

Schubotho agreed with Graham and stated that currently the City has inadequate ordinances in place regarding Vacation Rental Dwellings.

Slothower disagreed with denying the application based on objections to theoretical problems, and stated that approval with recourse seems appropriate.

Kimes admitted his belief that the home is not compatible with the neighborhood, but stated that all conditions and criteria of the application have been met.

McLaughlin reminded the Commission that the applicant is seeking a Conditional Use Permit approval for a home that was approved and built in the CD-1 zone, the role of the Commission is to determine neighborhood compatibility.

The Commissioners debated the role of the Planning Commission and its discretionary powers. Nichols mentioned requiring the applicant to construct a fence, as a condition of approval, to eliminate some of the noise and privacy concerns brought forth by many neighbors. Fence height, property elevation, and required state permits for fences exceeding six feet were discussed.

Schubotho motioned to approve the application with conditions set forth in the staff report and applicant supplied "Comments of staff recommendations", Graham seconded the motion. A roll call vote was taken as reflected below:

Approved 4:3

Reed	No	Schubotho	Yes
Tiffany	No	Slothower	Yes
Bremmer	No	Kimes	Yes
Graham	Yes		

4.2 **Measure 56 – Recreational Marijuana Ordinance**

Kimes opened the Public Hearing at 9:10 pm for the ordinance amendment of recreational marijuana. The rules and procedures that govern the hearing are available as part of the meeting file.

Disclosures:

No Commissioner's declared ex parte.

Staff Report:

Nichols summarized the Staff Report and provided a timeline of the history of Marijuana Ordinances in the City of Bandon, providing background information on marijuana legalization status across the United States and within the State of Oregon. Staff recommended a Recreational Marijuana Ordinance similar to the existing Medical Marijuana Ordinance, limiting the location of retail sales to specific zones within a set radius of school property and Head start, noting an error in the Staff Report on page seven, letter 'j' which was intended to be two separate points. Kimes stated that requiring 1,000 feet between marijuana retail spaces is a large radius, which may prevent business growth in Bandon. Nichols clarified that retailers commonly hold both licenses for medical and recreational marijuana sales, which allows businesses to market both products from one space. McLaughlin stated that the intent of the radius is to protect the community image, which was a concerning factor throughout the Medical Marijuana Ordinance process, but reminded the Commission that they have the power to change Staff's recommendations, as ultimately the Planning Commission's recommendation is what will be proposed to the City Council.

Testimony:

Isabel Marquez, 16209 W. Hoffeldt Ln., Brookings OR

Martinez shared her experience and knowledge of marijuana as a business owner, facing restrictive zoning and city ordinances in addition to stringent state and federal requirements. She explained the common practice of marketing both medical and recreational cannabis from one storefront, due to financial feasibility. Marquez stated that with only 51 lots available for cannabis sales, Bandon would essentially only be able to support three retailers, which would significantly impact the large stream of revenue the City could profit from. Slothower asked how many stores Bandon could support. Marquez replied that her research indicates that there are around 7,000 people in Bandon proper, which is more than enough to support more than one store. Bremmer asked what hours of operation would be considered normal for marijuana sales. Marquez stated that in her experience, hours of operation are 7 am-10 pm, but this is largely affected by the community in which the store is located. Specific to Bandon, Marquez stated that 8 pm seems like a reasonable closing time with earlier opening hours to accommodate the senior population. Slothower asked the reason for limiting hours of operation. McLaughlin explained the rationale of limiting hours may be to protect community values and image.

The hearing was closed by Kimes at 9:40 pm.

Deliberation:

Tiffany stated that without clear direction from the Council, the recommend ordinance seems fine.

Bremmer addressed the expeditious manner that the recreational marijuana item was sent to the Planning Commission by Council direction, and the history of Council decisions to overturn the Commission's decisions and previous recommendation regarding medical marijuana.

Graham stated his desire to recuse himself from the issue, but without having a true reason to be able to recuse, he wishes to abstain. Graham continued to participate in the hearing, stating that without clear direction from the Council and adequate research, the issue should not have been presented.

Schuboth shared his belief that the Council's Medical Marijuana Ordinance does not reflect the true feelings or desires of the community and stated that perhaps Marijuana as a whole should be more carefully researched prior to rushing through decisions.

McLaughlin reminded the Commissioners of their role and duty to make decisions for the good of the community as appointed members of the Commission.

Slothower wished to remove the 1,000 foot radius requirement and expand business hours. Kimes clarified that the 1,000 foot radius is the State minimum, but the City Council has imposed a 1,500 foot radius from school facilities and Head Start specific to Medical Marijuana. McLaughlin reiterated that the Council has asked the Commission to review the City's Medical Marijuana Ordinance and propose an updated ordinance considering recreational marijuana.

Tiffany clarified that the Commission wishes to make changes to letter G of the proposed ordinance provided in the Staff Report, removing the limit of eight hours of operation; changing letter K to letter L with the additional point in letter J being recognized; letter L changing to Letter M, and reducing the 1,000 foot radius from another retail sales outlet to 500 feet; the 1,500 foot radius from school property be reduced to the State minimum of 1,000 feet; and letter M be changed to letter N, and that all changes be reflected in the existing Medical Marijuana Ordinance. Bremmer discussed the controversial history of the Medical Marijuana Ordinance and the equally controversial inclusion of the Head Start facility as a school.

Bremmer moved to accept the proposed ordinance with the exception of: Letter "G", which shall be changed to "limiting hours of operation to between 8am-8pm"; "J" being broken into two points, changing letters K through M to L through N and designating the new letter "K" to read "Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated

with the business are prohibited.”; adjust the restrictive radius to 1,000 linear feet; remove completely the Head Start facility; and apply such changes to the existing Medical Marijuana Ordinance. Tiffany seconded the motion. A roll call vote was taken as reflected below:

Approved: 6:1

Reed	Yes	Schuboth	Yes
Tiffany	Yes	Slothower	Yes
Bremmer	Yes	Kimes	Yes
Graham	No		

5.0 DISCUSSION/OTHER

6.0 COMMISSIONER COMMENTS

Slothower thanked the room for a good discussion. Bremmer addressed a statement made in public testimony, alleging that the Planning Commission determines hearing outcomes prior to the Hearing. She emphasized that in her personal case, she does not make decisions until she has heard all public testimony, staff reports, and Commissioner comments. Tiffany requested that Staff and the Commission look into clarifying the existing code involving VRDs, specifically 17.92.090 Letter K. Kimes agreed with Tiffany and suggested adding a time limit to define ‘existing dwelling’, he shared that the 101 Redesign and Wayfinding issues from the previous meeting will be an ongoing discussion.

7.0 ADJOURN

Kimes adjourned the meeting at 10:10 p.m.

Minutes submitted by Megan Worton, Planning Assistant