CONSENT AGENDA:

3.1 Planning Commission Meeting Minutes
- Work Session May 25th, 2022 Minutes

Work Session of the Planning Commission
at Bandon City Hall and via Zoom Meetings
with Live Streaming on Facebook
May 25, 2022

COMMISSION:

☐ Paul Fisher, Chair
☑ Sally Jurkowski, Commissioner
☑ Ed Landucci, Vice Chair
☑ Gordon Norman, Commissioner
☑ Catherine Scobby, Commissioner
☑ Gerald Slothower, Commissioner
☑ Donald Starbuck Commissioner

STAFF:

☐ Dan Chandler, City Manager
☐ Shala Kudlac, City Attorney
☑ Dana Nichols, Planning Manager
☑ June Hinojosa, City Recorder

1.0 CALL TO ORDER

Serving as Acting Chair, Landucci called the meeting to order at 7:00 p.m. Roll Call was taken as indicated above.

2.0 WORK SESSION – Code Cleanup Ordinance

Nichols had prepared a memorandum outlining topics the Commissioners felt needed more discussion after the Public Hearing at their April 28, 2022, Regular Meeting. The first topic was the City's "view line" ordinance, which she said dated back to 1989. Since that time, the Planning Commission had recognized that the view line was difficult to interpret and decisions had been appealed multiple times. In the early 1990s, a View Line Committee had been established to study the issue and bring recommendations to the Commission, but no changes had ever been made to the original code language, which stated:

> *Siting of structures should minimize negative impact on the ocean views of 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.*

In the appeal of a Planning Commission decision in 2001, the City Council made a formal interpretation of the view line code and adopted it by resolution. That resolution stated that view line protection was only afforded to bluff-adjacent properties, the view line was to be drawn between structures on abutting lots along the bluff's edge, and that consideration was to be given to ensure a view line did not eliminate a building site on an abutting vacant lot.

Nichols explained that when a request concerning a property west of Beach Loop Drive was received, Staff would look at the properties to the north and south, and a line would be drawn connecting the westernmost points on the structures on those properties. Nothing could be built beyond that line on the vacant property. Nichols said she had found few examples of a building site being eliminated through this process.

Bandon's view line regulations needed to be reworked in the wake of Oregon House Bill 2001, which included language in ORS (Oregon Revised Statute) 197.307 that stated, "A local government may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including needed housing." Nichols noted that the State had recently redefined "needed housing" to mean "all housing." That meant any time the City's code was applied to any housing project, the language had to be free of ambiguity. For commercial structures, discretion could be applied.

Dennis Lewis, the Planning Director in 1996, wrote to other cities to learn how they treated view line issues. Their responses indicated that they generally drew lines based on the distance of a structure from the street or from the bluff. Nichols observed that the bluff could change over time, causing a view line to fluctuate. She told the Commissioners one option would be to remove the view line language from the code, which she felt would not be a popular choice.

Nichols showed an aerial view of one location in Bandon where establishing a view line would be challenging. The round bluff at Strawberry Point would have made it difficult to develop a vacant lot between two existing structures, because the view line and front yard setback required by the code would have restricted the buildable area to such a degree.

Slothower thought there had to be some room for discretion because of areas like Strawberry Point. He noted that the varied elevations along some portions of the bluffs would make it especially difficult to determine where a view line should be. Slothower wondered if one property owner's choice not to build as close as possible to the bluff would force the view line on a neighboring property to back off from the bluff as well.

Nichols confirmed that it would.

Landucci commented that the existing view line language was vague and not definitive.

Nichols mentioned that the Hearings Officer had suggested in a recent case involving a view line that the view line for a property should be surveyed and marked and recorded with the deed to the property.

Landucci voiced concern about "the eminent domain factor," noting that former City Attorney Fred Carleton had shared that concern, which had also been expressed by attorney Robin Miller in a letter he submitted to the Commission for this hearing.

Nichols pointed out that the recently enacted Hazard Overlay Zone required many of the homes being constructed west of Beach Loop Drive to have a "no-build zone" at some distance from the bluff, to keep structures away from areas that were likely to be subject to erosion. She suggested the Commission could opt to establish the view line on a property as a certain distance from the bluff, and it would remain the same regardless of whatever changes might take place in the future.

Landucci was curious as to how other cities handled the view line question.

Nichols was unfamiliar with the policies of other cities but offered to do some research on it. She noted that she could reach out to the Oregon Planners Network listserv to find experienced planners who were familiar with other coastal communities in the state.

Starbuck felt it was restrictive to draw the view line between structures on abutting lots. His alternative was to draw a perpendicular line from the view side of existing homes on either side of a property to the property lines of the lot in the middle, then connect those points to create a view line.

Landucci thought view lines could be established in advance of new developments using a method such as Starbuck described. He wondered if the property owner would be required to have a property surveyed to establish its view line as part of the purchase.

Nichols interjected that the Hazard Overlay Zone mandated that any mitigation measures resulting from the required geotechnical survey were to be recorded onto that property's deed.

Norman asked what a drawback would be to formalizing the view line by recording it into a property owner's deed. He recognized that there would be additional work and money involved.

Commissioners guessed the surveying cost would be somewhere in the range of $600 to $1,000.

Scobby inquired if the survey would be done when a property was sold or if everyone on the bluff would have to establish the view line at the same time.

Nichols clarified that the view line would be determined when someone prepared to build. Any construction after the view line regulation took effect would have to conform to the new code.

Scobby did not think it was equitable that a home built closer to the street would affect its neighbor's allowable view line. She thought a uniform setback from the bluff would be preferable.

Jurkowski agreed that fairness had to be a factor.

Slothower pointed out that someone might want to build farther away from the bluff on a portion of their property that was more elevated and produced a better view, but that could bring about a view line that would prevent an adjacent owner with a lower elevation from building close enough to the bluff to take advantage of the view.

Landucci emphasized that the City should be careful not to give the impression that it was taking land from people or restricting their rights.

Nichols said she would consult with City Attorney Shala Kudlac. She stressed that the intent of the code was not to place an excessive restriction on property owners. Nichols did not think the Commission needed to be concerned about "takings" or unfair language, because the code contained a number of limitations on the development of private property, such as the limit on the height of a structure west of Beach Loop Drive. She said, "I don't think that setting a more restrictive rear setback on the bluff side would be egregious in any way. But I think finding some way that it's black and white for Staff is going to be very important."

Slothower liked the idea of setting the view line a specific number of feet from the bluff.

Norman remarked that there were homes with a view that were not anywhere near the bluff and could be affected by the view line code.

Nichols explained that the City Council had determined that the view line ordinance only applied to bluff-adjacent properties.

Norman believed there should be a view line regulation in the code. He also thought it should apply to commercial development as well as residential. Norman observed that in the context of housing and homelessness problems, the state might look unfavorably at exclusionary local regulations. However, he was concerned with promoting whatever would enhance the City of Bandon's livability, which might mean appropriate restriction of property rights. He thought it was a problem for someone on the bluff to build a two-story home that blocked someone's existing view.

Landucci commented that the "front row seats" with ocean views had generally been taken already.

Jurkowski wondered how the Commission would determine what was a safe distance from the bluff.

Slothower responded that the "safe" distance would vary from one location to another. He pointed out that there were geotechnical standards that would have to be met, in addition to a specified, concrete distance from the bluff.

Nichols added that LiDAR (Light Detection and Ranging) data, which was used to determine landslide hazards, might be helpful in defining a "no-build line" along the entire edge of a bluff. Regardless of where the Commission set the view line, Nichols pointed out that every property west of Beach Loop Drive was in a Hazard Overlay Zone and was required to have a Geologic Assessment Review conducted when any form of development was proposed. She suggested changes due to erosion, landslides, and liquefaction might bring the no-build line closer and closer to Beach Loop Drive.

Landucci countered that there had not been much erosion seen along Bandon's coastline. He recalled that when City water service was brought to Sunset City, a geologist stated that the dune there was 10,000 years old. That meant it had survived earthquakes and tsunamis and remained stable.

Nichols said there were geotechnicians who worked in the Bandon area frequently, and she could arrange for them to give a presentation to the Commission on what was happening to the geology on the local bluffs.

Nichols told the Commissioners that people who were considering purchasing a property would often come into the Planning Department wanting to know to what standard their potential neighbors would be held. She said adopting clear and objective standards would ensure that the code was being applied fairly to everyone. The view line discussion was to continue the next night at a Public Hearing during the Commission's regular monthly meeting.

The complete removal of discretionary criteria from the Bandon Municipal Code was the next topic of discussion. Nichols reiterated the State's requirement for local housing regulations to have clear and objective criteria. At question was whether commercial development should also be subject to clear and objective criteria. Nichols recommended removing discretionary criteria such as "small-town village feel" and "rustic appearance" from the design standards in the CD-2 and CD-3 zones. She noted that the City's commercial design standards only applied to new buildings or expansions of buildings of a certain size.

Norman commented, "I just...think this is folly, to expect that there will be no discretion by the Staff." He did not know what kind of wording would convey that "We want this to be a...attractive, friendly little village community."

Nichols thought if that was the intent of the Commission, the code could indicate that Staff did not have the discretion but the Planning Commission did, or that Staff could exercise discretion but the public would have an opportunity to appeal.

Landucci felt there should be plan reviews for commercial uses in certain zones.

Norman agreed, citing as an example how the architectural features of Walmart stores varied depending on the community in which they were located.

Landucci voiced the next question on the agenda, "Should structures that are not needed housing—outbuildings, decks, etc.—be subject to additional review and/or discretion?" He answered, "I say absolutely, yes."

Slothower concurred.

The Commission moved on to discuss standardization of terminology in the code. Nichols explained that the Municipal Code listed similar uses with different names in different zones, sometimes grouped together differently. She had tried to combine overlapping uses and solve puzzling questions, such as, "If an office is allowed somewhere, does that mean that a medical office is allowed?" or "If a duplex is allowed, does that also mean a two-family dwelling is allowed, even though they're not listed and they have separate definitions?" Nichols said combining similar uses and clarifying those that were unclear would make the code easier to interpret.

The recommended changes would include:

- For clarity, combine "duplex" and "two-family dwelling" into one definition and choose between the City's definition and the State's. The City defined a duplex as "a building with two attached housing units on one lot or parcel." A two-family dwelling referred to "a building on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units." A triplex would fall under the definition of a "multi-family dwelling."

  Nichols thought the upcoming Housing Needs Analysis would give the Commission an opportunity to separate multi-family housing into a number of distinct housing types and determine where each would be allowed. She noted that larger cities were required to allow duplexes on corner lots or other specified lots that were zoned for single-family dwellings. Her recommendation was to only use the term "duplex" and select an appropriate definition.

- "Residential home" would take the place of the separate terms used in the code—"residential care home," "residential care facility," and "adult foster care home." Nichols recommended adopting the State's definition. The State had a separate definition for "residential facility." Nichols favored aligning with the ORS standards. These facilities or homes could be permitted in specified residential zones with special use standards.

  Norman pointed out that the two State definitions referred to different types of programs with different specified staffing requirements. He added that there was a downside to adopting the ORS standards, because they were "written for the benefit of the State, not for the benefit of the City of Bandon."

  Landucci had the understanding that such group homes could not be excluded from residential zones.

  Nichols planned to look up the exact applicable language in the Fair Housing Act. She indicated that the State Model Code could also offer some help in establishing special use standards that would protect neighborhoods. Nichols felt Bandon's code was silent when it came to specific guidelines for special uses.

  Landucci acknowledged that siting of these facilities was a sensitive issue.

- "Public park and recreation facility" might utilize the Model Code's definition of "parks and open space," which included "playgrounds, trails, nature preserves, athletic fields, courts, swimming pools, and similar uses." The existing Bandon code only defined "open space."

Slothower liked the State's definition, because he believed open space should be open to the public and not restricted to the residents or owners of a neighborhood or development. However, he did not believe recreational facilities such as pools should be required to have public access if they were part of a private development.

Nichols observed that playgrounds and other common areas within such a development would typically be intended for residents only.

Slothower said he was specifically thinking of "green" areas along streets where it would be impossible to restrict public access. He understood that those areas were different in nature from shared, common, private recreational areas.

Nichols was hoping that clarifying the definition and location of public recreation would help Staff explain to private owners that they were not allowed to use their property as a park and campground.

Norman, Landucci, and Slothower discussed examples of community centers, pools, and other facilities that were exclusive to residents of homeowners associations or similar developments.

- "Government structure," undefined in the City's code, would change to "community service including governmental, emergency service, or nonprofit offices." Nichols read the State's broad, detailed definition of this type of use.
  Norman grimaced at the lengthy definition and suggested it should simply be termed, "Public service, common good."
  Landucci wondered how the Port of Bandon fit into this category.
  Nichols thought the governmental designation may have initially been written into the code specifically because of the Port and the City of Bandon's own government facilities.
  Slothower also urged simplification of the State's definition, which included a reference to "uses providing mass shelter or short-term housing" that the Commissioners had difficulty applying to anything in Bandon. It might have pertained to a location for the homeless or a designated place to house people displaced by a natural disaster.
  Nichols indicated she would research how other cities defined government-related uses in their municipal codes.

- Medical-related uses were clarified by combining several types of offices and clinics into one category of outpatient clinics. "Hospital" could be changed to "medical center, public" or left as is. References to "drugstore" would change to "pharmacy/urgent care," although none of these terms had definitions in the City's code or the State's code.
  Norman preferred keeping hospitals separate from urgent care clinic or pharmacy uses.
  Landucci was fine with leaving the existing terms in the code.

Nichols checked the code and noted that a "drugstore" was allowed in residential zones where other commercial uses were not allowed. The Commission was unable to resolve whether a drugstore should be classified as a commercial use or combined with medical uses, so Nichols offered to go through the code and determine which path seemed more appropriate.

- Any use that could be described as "commercial retail sales and service" would be combined into that category. Recreational and medical marijuana facilities would remain separate in the code. The existing Bandon Municipal Code (BMC) defined a retail establishment as "a business in which 60 percent or more of the gross floor area is devoted to the sale or rental of goods," but the Oregon Model Code called retail "a land use involving the buying and selling of goods and services as a primary activity." Nichols recommended moving away from a definition that quantified a percentage that could change over time and was difficult for Staff to interpret. Since the State's definition was very broad, the Commission could choose to use its language and add exceptions. Landucci wondered what kind of exceptions there might be, and Slothower suggested vehicle repairs and servicing.
  Nichols pointed out that a use that was specifically allowed in a certain zone, would not automatically be combined with allowable uses in other zones.
  Scobby liked the State's definition, as did Norman, Jurkowski, Slothower, and Landucci. Starbuck was undecided.
  Nichols said she would examine the code to see if any exclusions were necessary to make sure the definition was clear.

- The "residential facility" use would remain the same, although Nichols gave the option of choosing the ORS definition. She planned to check the Fair Housing Act requirements for this type of housing.

- "Nursing home" would broaden to "nursing, convalescent, and retirement home." Nichols said the Model Code used the term "senior housing" and included assisted living facilities.
  Slothower was curious as to why the City had defined a nursing home as having more than five residents, but it did not appear the ORS had similar numeric requirements.
  Nichols did not have an answer, thought it might have something to do with specific types of licensing, and said she would look more closely at the ORS. In the BMC, "residential care home" was defined as being licensed by the State to have five or fewer residents.
  Nichols suggested the Commission might not want to set numeric limits for these facilities , because the code would have to be revised if the State changed its definition. She figured a broader definition based on the State's would work well.
  Jurkowski wanted "rehabilitation" to be included in the definition. Otherwise, the Commissioners liked the State's definition, although they favored adding language requiring State licensing for these facilities.

- Existing office-related uses in the BMC included “business, governmental, or professional office” (which overlapped with the previously discussed “Community service” use) and “offices, except for... ,” which Nichols thought could be replaced by “offices, unless defined differently.” This would apply to offices that did not have a medical or community purpose.
  Slothower remarked that he had a problem with the State’s definition: “Office uses are characterized by activities conducted in an office.” He preferred “a group of rooms used for conducting the affairs of a business.”
  Nichols said she would seek clearer language.

- There were a number of terms used in Bandon’s code that could refer to apartments: “multiple housing,” “apartments, provided they are accessories to an incidental...use,” and “live, work, sell.” The code also applied what Nichols called “an outdated version of the Building Code Division definition of a dwelling unit” when it addressed the circumstances where apartments were permitted.
  Nichols recommended changing the use to “residential uses accessory to other non-residential conditional or permitted uses.” This, in turn, would lead to defining “residential use” as “a long-term occupancy of a dwelling unit, which may be owner-occupied or rented. Occupancy of a dwelling unit for shorter periods of time is considered an overnight accommodation.” Nichols said the Planning Department sometimes received questions about whether a vacation rental was allowed in a commercial zone, in a residential building. This definition would allow Planning to say a residential home in a commercial zone could not be used as a vacation rental.
  Norman asserted that the new model for metropolitan areas was for retail spaces on the bottom floor with two or three residential stories above them.
  Nichols responded that the Commission could also adopt a definition of “mixed use,” referring to the combination of residential uses with commercial uses.
  Scobby favored using “mixed use.”
  Slothower liked the integration of residential and commercial uses, especially where someone could live above their business.
  Landucci noted that one of the initial ideas in Old Town—which never materialized—was for craftspeople to have their shops downstairs and living quarters upstairs or elsewhere on the premises. He added that there were a few people who did live full-time in Old Town.

- “Indoor recreation establishments” could broaden and be called “recreation facilities, including concert halls, theaters, and convention centers.” Nichols said Bandon’s code did not define indoor recreation establishments and the Model Code only defined “commercial outdoor recreation,” so an appropriate definition was needed.
  Landucci anticipated more outdoor activities in Old Town and he mentioned that there had been a theater in Old Town where well-known musicians had performed. He hoped to see that type of activity return.

Slothower thought the indoor and outdoor recreation uses should be kept separate, and Scobby agreed.

Norman asked about the purpose of distinguishing between indoor and outdoor recreation.

Nichols surmised that the noise factor was one distinguishing aspect. Traffic problems would be another.

Landucci recalled wanting to establish a bocci ball court in Old Town, but there was a lack of interest. There had been an area where he and friends would play.

- "Community club or building" would replace "Community center" or could be combined with other community services.

  Norman thought a club would suggest a place for a social gathering, rather than a social service.

  Landucci thought a VFW (Veterans of Foreign Wars) or American Legion hall qualify as this type of use. He noted that those facilities were open to the general public and provided community services.

  Nichols stated that nonprofits would fit with the "community service" use discussed earlier. The consensus was against having a separate use for the facility and classifying the organization and its building as being a community service.

3.0 OPEN DISCUSSION/COMMISSIONER COMMENTS

Responding to a question from Norman, Nichols clarified that the Commission had accepted Staff's proposed Mobile Food Unit Ordinance at its previous meeting with no recommendation to the City Council as to where the food carts could be located.

Landucci commented that some Commissioners did not want the mobile vendors to locate on City property and others did, so the decision was going to be made by the Council.

Nichols told the Commissioners she had just learned about Oregon House Bill 4064, which stated, "A local government may not subject manufactured homes or prefabricated structures within an urban growth boundary, or the land upon which the homes or structures are sited, to any applicable standard that would not apply to a detached, site-built single-family dwelling on the same land..." She noted that Bandon's code required manufactured homes to be multi-sectional and at least 1,000 square feet in size, and those provisions were no longer enforceable.

Jurkowski pointed out that the State was looking for ways to alleviate its housing shortage, and the cost of manufactured homes was considerably less than "stick-built" homes. She said she would want the option of buying a manufactured home if she could not afford a site-built home.

4.0 ADJOURN

Landucci adjourned the Work Session at 8:45 p.m.

Planning Commission Work Session Minutes
Submitted by Richard Taylor, Minutes Clerk