

**Regular Meeting of the Planning Commission
at Bandon City Hall and via Zoom Meetings
with Live Streaming on Facebook
May 26, 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.

2.0 ROLL CALL

Roll Call was taken as indicated above. All Commissioners and Staff who attended were present in the Council Chambers. Several members of the public attended in person, and there were a number of others joining by Zoom or Facebook.

3.0 CONSENT AGENDA

3.1 Minutes: Planning Commission Regular Meeting – April 28, 2022

Starbuck moved to approve the Minutes and Slothower seconded the motion, which passed by unanimous voice vote (5:0, absent: Fisher, Scobby).

5.0 HEARINGS

5.1 Best Western Inn at Face Rock, Conditional Use Sign Request – #22-040,

Request for approval of a Conditional Use Permit for replacement of existing signage and addition of new signage at the Best Western Inn at Face Rock.

Landucci opened the Public Hearing at 7:01 p.m. and read aloud the standard statement of Public Hearing rules and procedures.

Regarding ex parte contact or site visits, Landucci noted that he had regularly driven or walked by the Inn at Face Rock. Slothower stated that he had attended meetings in the meeting room there. None of the Commissioners felt they had a conflict of interest in considering the permit application.

Nichols said the Staff Report was provided by the City Manager because the Planning Department was shorthanded. She stated that the proposed project was to replace the existing Best Western Inn parking lot directional sign off Seacrest Drive with a new sign to match the design of the existing entrance signs along Beach Loop Drive. The proposed sign would be internally lit and measure three feet high and two feet, nine inches wide. The existing sign was externally lit.

The Staff Report found that the application met all the approval standards in the Bandon Municipal Code (BMC), and Staff recommended approval of the application as presented, with no conditions.

Matt Winkel, 999 Indiana Ave. SE, Bandon, OR 97411

Winkel spoke as representative of the owner of the Best Western Inn, David Nordahl. He elaborated on the Staff Report, saying the application was for replacing a temporary sign at what was formerly known as the Tee Court SW entrance, located on the north side of the Best Western Inn at Face Rock. The new sign would look similar to the Inn’s signs along Beach Loop Drive, but it would be smaller.

No members of the public requested to speak regarding the application. There were no questions from the Commissioners.

Nichols explained that replacing the sign required a Conditional Use Permit (CUP) because all signage in a controlled development zone was classified as a conditional use, in addition to being subject to the criteria in the City’s sign code. The Best Western was located in the CD-1 Zone.

The Hearing was closed at 7:09 p.m. Slothower immediately moved to approve the application. His motion was seconded by Jurkowski. It passed by unanimous voice vote (5:0, absent: Fisher, Scobby).

4.0 PUBLIC COMMENT – None

5.1 Code Cleanup Ordinance – #22-035, an amendment to Titles 16 & 17. Continuation of a Public Hearing from the April 28, 2022, meeting.

Landucci opened the hearing at 7:10 p.m. and commented that the Commission had a productive Work Session on the Code Cleanup project the previous night.

Nichols offered a recap of what was covered at the Work Session, reported on research she conducted between meetings, and responded to some of the comments received from the public. The Work Session had focused on how to determine the view line for bluff-adjacent properties; the complete removal of discretionary criteria from the City’s housing-related code, in compliance with a State statute; and standardization of uses and definitions listed in the code.

Summarizing what the Commissioners had expressed at the Work Session, Nichols said their sentiment was to keep a view line regulation and check how other cities dealt with the issue. She met with City Attorney Shala Kudlac, who explained that limiting development on the bluffs with a view line would not be considered a “taking” of private property, because it would limit an owner’s property right in the same way the City enforced setback and height restrictions for dwellings. Kudlac told her it was the City’s prerogative to set those kinds of standards. As far as court precedent was concerned, Nichols said there had been numerous cases involving view protection, none of which had deemed the restriction of development to be a taking. She also contacted the Oregon Planners Network but had not heard from them.

Nichols clarified that Bandon’s view line ordinance had to be changed or eliminated because it was not clear and objective as required by the State. It was included in the Code Cleanup effort because there seemed to be a desire to retain it. She advised the Commissioners that ORS (Oregon Revised Statute) 197.307 allowed for an alternative path to be established, as long as the primary regulation was based on clear and objective standards. The Commission could establish a more discretionary process that could be utilized for some properties where applying the objective standards was not felt to be fair or appropriate.

Nichols stated that the Commission had agreed to the removal of all discretionary criteria from the code, aside from where it might be retained for certain commercial design standards or similar special circumstances.

Nichols noted that she had not finished going through the code to standardize uses and definitions. Responding to questions that arose in the Commission's Work Session, she reported that ORS 197.665 and ORS 197.670 required cities to permit residential care homes or residential care facilities in any residential or commercial zone that allowed single family dwellings. Nichols commented, "I think what the State is telling us is that we can't discriminate against any particular housing type. If we allow single-family dwellings, then we really have to allow anything else that...falls under...a similar purview to what a single-family dwelling's impact would be."

Regarding manufactured homes, Nichols referred to Oregon House Bill 4064, which became law in March of 2022. It would cause the City to modify its definition of a manufactured home to remove criteria that would treat it differently from a site-built home.

Nichols mentioned a comment received from a member of the public who was curious about a clause in the code that allowed for Staff to make an interpretation of an undefined item, which then was subject to appeal before the Planning Commission. Staff would also be able to take something directly to the Commission for interpretation.

Landucci opened the hearing to public testimony.

Bill Frey, 1235 Wavecrest Lane SW, Bandon, OR 97411

Frey and his wife, Kathy, had submitted a letter proposing an interpretation of view lines, which applied to a few homes located on the bluff side of Beach Loop Drive, Ocean Drive, or 7th Street SW. Those particular homes were situated one lot back from the bluff-adjacent lots. Frey advised that view line regulations should include protection of existing views for those homes. He said there were six bluff-adjacent homes where his home was located, off Beach Loop Drive, and there were six homes of full-time residents that sat back from the bluff-adjacent homes. Frey and his wife were among those who purchased those homes in part due the partial view of the ocean and the beach. They hoped for some consideration to be given to protecting such views, should someone decide to build up or out from the bluff-adjacent homes. Frey observed that on a nearby street a large home had been constructed that took away the views from several existing residents but remained vacant the majority of the year. He thanked the Commissioners for the time and effort spent on revising the view line code.

Norman suggested that it was realistic to only expect a view line to protect part of a home's view. He asked Frey for his perspective, and Frey addressed the specifics of his property, which had a southwestern-facing view from the upper story. A neighbor with a one-story structure in front of Frey's home could choose to build it up to the 24-foot height limit, and Frey and his wife would lose almost all of their view.

Landucci sought to clarify that the Commission was not establishing policy but was trying to aid the Planning Department so it could comply with the State's requirements.

Lonnie Hakker, 1333 7th Street SW, Bandon, OR 97411

As a believer in private property rights, Hakker thought anyone who bought a property had been able to see all the documents that were submitted through escrow and would have learned what was not allowed to be done with that property. He did not think the rules should be changed after that point. Hakker said his philosophy was that people should have bought a property themselves if they did not want someone else to build a structure that was allowed on that property.

Slothower noted that it had been discussed at the previous night's Work Session that a view line on the bluff might not differ much from where a geologic survey would determine a house could safely be built.

Starbuck thought the view line should be tied to the side property lines rather than the corners of a structure, providing more freedom to the neighboring lots. In this process, the view line would be established by creating a "rough mean line back from the bluff, tied in to the side property lines." Connecting the points where the mean line intersected each side property line would provide that property's view line. "You cannot build to the west of that," Starbuck said. "You could build as far east as you want, but you can't complain about losing your sight line because another house is closer to the sight line on the bluff."

Slothower liked Starbuck's idea of connecting the view line to a home's property line rather than the corners of a home.

Starbuck suggested there could be a safety factor determined by a geologic survey that would establish the closest distance from the bluff that could be allowed.

Nichols asked if Starbuck had an idea what a specific distance from the bluff should be. She pointed out that some property lines extended beyond the bluff, making the measurement of a distance from the rear property line irrelevant as a means of calculating a view line.

Slothower observed that a geologic survey might conclude that it was unsafe to build as close to the bluff as the view line might allow.

Starbuck stated that the view line would constitute the absolute limit to where a structure could be built on a bluff-adjacent property.

Slothower thought it made sense to make the view line an absolute minimum distance from the bluff, and it would be modified by geologic circumstances on a given property.

Norman wanted to clarify that the placement of a house for geological reasons was a safety issue, and a view line had nothing to do with safety.

Jurkowski pointed out that it was desirable for people to build on a site that was stable.

Underscoring Jurkowski's point, Nichols reminded the Commissioners that every property west of Beach Loop Drive was located in a Hazard Overlay Zone and was already required to have a geotechnical report, which would dictate how far from the bluff someone would have to build for their safety. She suggested using GIS (Geographic Information System) mapping to draw a view line around all existing homes along the bluffs and see if there was any consistency in their distance from the bluffs.

Landucci recommended putting the view line issue on hold so it could be studied further.

Nichols offered the option of removing the view line language, to address it separately, and agreeing to the remainder of the Code Cleanup recommendations. The Commission would hold a new hearing at a later date, strictly on the view line question, and new notices would have to be sent out.

Slothower made a motion for the Commission to recommend the City Council's adoption of the land use ordinance as proposed for code changes to Titles 16 and 17 of the Bandon Municipal Code, with the exception of the view line regulations. Jurkowski seconded the motion, which passed unanimously by roll call vote (5:0, absent: Fisher, Scobby).

Landucci closed the hearing at 7:45 p.m.

6.0 STAFF UPDATE/DISCUSSION

6.1 2022 Land Use Legislation Report from DLCD

Nichols shared two items from the Department of Land Conservation and Development (DLCD) 2022 Land Use Legislation Report.

House Bill 4014, the System Development Charges Report, required Oregon Housing and Community Services to conduct a comprehensive study of System Development Charges (SDCs)—impact fees paid when people connected into municipal transportation, water, wastewater, and storm drainage systems—and prepare a report to be released by June 1, 2022. The legislation moved the date of the report to December 15. Nichols believed this report would answer the question of whether Bandon’s SDCs were in line with those in other communities.

House Bill 4064 restricted local governments from prohibiting the siting of or imposing unique placement standards on manufactured dwellings or prefabricated structures inside and outside of manufactured dwelling parks.

Nichols said there would also be updates to wildfire prevention legislation.

6.2 Planning Department Report

At the time the report was prepared, the Planning Department had received applications for construction of 27 single-family dwellings in 2022, on a par with 2021. Nichols said two more had been received in the previous week. The report also showed six Conditional Use Permit applications, while the number had reached nine by the time of the meeting. Although Staff had attempted to reduce the number of permits being reviewed, especially for fences and temporary structures, Nichols felt the overall volume of permits had remained about the same.

The Planning Department had taken in over 100 percent of its anticipated revenue for the fiscal year, due in part to several large projects Staff processed. Nichols said the City had budgeted for a slight increase in the Planning Department for the coming year, based on upcoming potential projects.

Nichols reported that the City was recruiting for an Assistant Planner. After a round of interviews, one candidate had been offered a second interview.

The City of Bandon was receiving planning assistance from the Lane Council of Governments (LCOG) through intergovernmental agreements. A member of the LCOG staff was handling all of Bandon’s Vacation Rental Dwelling (VRD) permits and Nichols said he would probably be making Zoom presentations to the Commission again, as he had done during the pandemic.

Bandon received a grant from ODOT (Oregon Department of Transportation) for assistance with the City’s Transportation System Plan (TSP). Nichols said the City was hoping to sign off on the final Scope of Work, go out for procurement, and sign a contract with someone during the coming summer. A contract had been awarded to FCS Group, from Lake Oswego, Oregon, for consulting services on Bandon’s Housing Needs Analysis. The consultants would make their first visit to Bandon in early June and they might give a presentation to the Commission about their initial Buildable Lands Inventory work.

Nichols told the Commissioners that members of the public would be sought to participate in either a Housing Advisory Team or a Transportation Advisory Team and to provide comments before those plans came before the Commission for a review.

Nichols reported that listening sessions were being conducted to gather public input about the natural, economic, and social assets associated with the Coquille River, aimed at formulating an Estuarine Resilience Action Plan that would help local communities plan future projects and obtain funding for them. She said the City had been coordinating with the Port of Bandon to develop ideas for projects to include in the plan.

In partnership with Travel Oregon Southern Coast, the City of Bandon was conducting a Coastal Public Access Project funded by a grant from DLCD. Nichols said this involved taking an inventory of all the public access points and determining which ones should be used and maintained, and which ones should be expanded. As a result, some code changes might be proposed that would come before the Commission, covering such aspects of beach access as ensuring ADA (Americans with Disabilities Act) accessibility and establishing how the City would respond to an access point damaged by a tsunami or other disaster.

Since the last Staff Report, two Planning Department decisions had been appealed. The first one involved siting of a structure beyond a view line. The Hearings Officer, contracted through LCOG, issued a decision affirming Staff's denial of the deck protruding beyond the view line but reversed the decision to deny the entire application. The second appeal was based on a drainage concern regarding Staff's approval of a geologic assessment review to construct a home on Beach Loop Drive. A Public Hearing had not been scheduled yet.

Asked by Landucci what was going to be on the Commission's agenda in June, Nichols replied that there had been five applications for VRDs in the last month and three CUP applications. Depending on how many of those applications were ready for hearings in June, there could also be a hearing on the view line ordinance.

Norman asserted that the Commission would need to come to some conclusions regarding the view line issue before its June meeting.

Nichols noted that the Commission would be electing a new Chair and a new Vice Chair. She noted that a new Commissioner was going to be appointed by the City Council on June 6 to replace Paul Fisher, who had resigned. Nichols added that she would be organizing a Joint City Council and Planning Commission meeting to determine what projects would make up the Commission's Work Program for the next fiscal year.

Norman wondered if the City was close to capping the number of VRDs it would allow.

Nichols responded that it was hard to know what the maximum number of VRDs would be, because the saturation radius was specific to each property that applied. Staff's best guess was 10 to 15 more VRDs the last time this question came up.

Nichols said City Staff had its first meeting with some LCOG staff to discuss acquiring some GIS mapping services, which would help provide the data needed to make decisions on VRD applications.

7.0 OPEN DISCUSSION/COMMISSIONER COMMENTS

Slothower complimented Landucci on running a smooth meeting as Acting Chair.

8.0. ADJOURN

Landucci adjourned the meeting at 7:59 p.m.

Planning Commission Regular Meeting Minutes
Submitted by Richard Taylor, Minutes Clerk

**Regular Meeting of the Planning Commission
at Bandon City Hall and via Zoom Meetings
with Live Streaming on Facebook
June 23, 2022**

COMMISSION:

- Sally Jurkowski, Commissioner
- Ed Landucci, Vice Chair
- Gordon Norman, Commissioner
- Tom Orsi, 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.

2.0 ROLL CALL

Roll Call was taken as indicated above. All Commissioners and most Staff who attended were present in the Council Chambers. Chandler joined using Zoom. Several members of the public attended in person, and there were a number of others joining by Zoom or Facebook.

2.1 Welcome new Commissioner: Tom Orsi

Landucci welcomed a new member to the Commission, Tom Orsi. He also acknowledged that Jurkowski had been reappointed for her second term as a Commissioner.

3.0 CONSENT AGENDA

3.1 Minutes: Planning Commission Work Session – May 25, 2022

Norman moved to approve the Minutes and Jurkowski seconded the motion, which passed by unanimous voice vote (6:0:1, absent: Slothower).

4.0 PUBLIC COMMENT – None

5.0 HEARINGS

**5.1 Type III Conditional Use Permit for 1388 Face Rock Drive (28S-15W-36BC, TL 108)
– #22-047, Request for a Conditional Use Permit to Operate a Vacation Rental Dwelling
in the Controlled Development 1 (CD-1) Zone**

Landucci opened the Public Hearing at 7:01 p.m. and read aloud the standard statement of Public Hearing rules and procedures.

Regarding ex parte contact or site visits, Starbuck declared that he would not participate in the Commission's discussion of the application.

Nichols introduced Henry Hearley, Associate Planner at Lane Council of Governments, who was contracted by the City of Bandon and had been assisting the Planning Department with Conditional Use Permit (CUP) applications. Joining the meeting via Zoom, Hearley presented the Staff Report.

Hearley reported that the subject property included a three-bedroom, 2,000-square-foot home that was built in 2006. Four off-street parking spaces would be available—two on the driveway and two in the garage. Patio spaces on the property were enclosed, protecting the privacy and views of adjacent properties. No private beach access was available from this property, and the property management contractor would provide guests with information on how to locate public beach access. A landscaping contractor would maintain the grounds on the property, and garbage and recycling services would be arranged.

Hearley said the applicant had requested a maximum occupancy of nine, in line with the City's ratio of three occupants per bedroom, but he noted the Commission had the discretion to reduce that limit based on other factors. Hearley stated that the applicant understood and agreed to all eleven conditions listed in the Staff Report. He noted that those conditions were standard for all VRD permits in the VRD Overlay Zone.

A map of VRD saturation showed three existing VRDs out of eleven total single-family dwellings within 250 feet of the proposed VRD, yielding a 27.27 percent saturation rate, less than the maximum 30 percent rate.

Staff's recommendation was for the Commission to approve the application.

Landucci read aloud the procedures for testimony from the applicant and the public.

Dave Reed, Wayward R Studio, P.O. Box 1800, Bandon, OR 97411

Reed represented the applicant, Fred Mau, and co-owners of the subject property, Andrea Blanchard and Christina Mau. He said this family had a number of vacation rentals in the area and he believed they were well-maintained and upgraded.

There were no questions from the Commissioners. No members of the public chose to speak. Landucci closed the hearing at 7:11 p.m.

A motion was made by Norman and seconded by Jurkowski to approve the application. It passed by unanimous voice vote (5:0:1:1, abstaining: Starbuck, absent: Slothower).

6.0 ACTION

6.1 Interpretation of Retaining Walls in View Line (item removed from the agenda)

7.0 STAFF UPDATE/DISCUSSION

7.1 Bluff Erosion – Email from Meg Reed

Following up on the Commission's previous discussions about the City's "view line" regulations, Nichols had contacted Meg Reed, the Coastal Shore Specialist at the Oregon Coastal Management Program, part of the Department of Land Conservation and Development (DLCDC). Reed had assisted Bandon in the past for its Hazards Overlay Zone Update and might lend her expertise to an update of Bandon's Shoreland Overlay Zone.

Nichols approached Reed to learn how other cities were determining setbacks from bluffs, to combine the concern for erosion control with the need to establish a view line for adjacent properties. Nichols invited Reed to make a presentation to the Commission and Reed, in turn, contacted someone at DOGAMI (Oregon Department of Geology and Mineral Industries) who was interested in providing a presentation in August. Nichols thought local geotechnicians could also be invited to contribute their knowledge of the local bluffs.

Reed supplied some potential setback approaches that had been used elsewhere. They included a fixed mandatory setback, such as requiring all structures to be set back a certain distance from the edge of a bluff; erosion-based setbacks based on the potential future erosion of a bluff, which would be unique to each property; and tiered setbacks, with smaller setbacks for lesser structures.

Norman recalled a comment that was made at a Commission meeting in May, to the effect that Bandon's bluffs had not been experiencing erosion, so it was not a big concern. He wondered if there had been any geological assessments of the vulnerability of the bluffs.

Nichols understood that parts of the bluffs in Bandon were eroding more than others, sometimes from manmade causes and sometimes due to nature. She thought someone from DOGAMI would have information to present on that topic and she added that there was mapping available, related to the Hazards Overlay Zone, that showed changes to the coastal shoreline over time, along with bluff erosion areas. However, Nichols did not think there was sufficient data over a long enough timeline to show how rapidly bluffs were eroding in Bandon.

Landucci mentioned gorse removal as a possible cause of erosion, asserting that it had originally been planted for erosion control and to contain cattle.

Norman asked what Nichols knew about man-caused erosion in the area, aside from gorse removal.

Nichols replied that in the past there were some older homes that had drainage that went right off the bluff and tended to erode the edge of the bluff. Newer development was required by the City to mitigate runoff onsite or pump it to Beach Loop Drive, to divert it away from the bluff. She said a couple of houses near the Sunset Motel that had pipes carrying runoff to the bluff's edge had to be torn down due to the erosion created by water running under the houses.

Landucci suggested conducting an inventory of areas along the bluffs that were problematic. He was concerned that the construction of more buildings would mean more runoff going toward the bluffs.

Nichols assumed there were areas where a certain soil type made them more susceptible to erosion. She added that some longtime Beach Loop Drive residents had told her that their backyards had gotten smaller over the years.

Norman wondered how much erosion might be caused by properties that were not on the bluff but were located east of Beach Loop Drive. He asked if owners were responsible for mitigating that runoff.

Nichols responded that Oregon drainage law required all new construction to provide drainage that did not have an impact on neighboring properties, by being mitigated onsite or directed toward a city system. She noted that older homes with drainage pipes coming off the bluff were required to hook into the City's storm drain system when it was developed. Nichols said there was a storm drainage map that would show who was connected to the system and who was handling it onsite with a drywell or other structure.

Landucci observed that floodplain regulations had an impact on the handling of runoff water. He thought the Department of Environmental Quality (DEQ) was involved with floodplain issues, but Nichols told him the Department of State Lands (DSL) was the agency the City would contact about developments around wetlands. DEQ was involved with any septic systems in the City. She said the City was the floodplain manager and dealt with all applications in floodplain areas that came in, making sure they conformed to Bandon Municipal Code (BMC) 15.28, which governed floodplain development. Nichols indicated floodplain regulations were not primarily concerned about drainage or erosion, because they were aimed at protecting property from damage due to a flood.

Norman wanted to know what happened to decommissioned septic systems when they were abandoned in favor of joining the City's drainage infrastructure.

Landucci answered that they had to be filled with sand or removed.

7.2 VRD Multi-Family Dwelling Impact

The meeting documentation included a memo from Nichols that pointed out how a small change in the language of the City's VRD code prevented multi-family vacation rentals from being included in the VRD saturation calculation. Accompanying the memo was a map created in 2021 showing the location of all 62 vacation rentals in Bandon at that time, with the 18 nonconforming VRDs colored red.

The Planning Commission had discussed multi-unit vacation rentals and their effect on the VRD saturation ratio more than once. At the request of Planning, City Attorney Kudlac had provided guidance in a July 15, 2021 memo that offered a strict interpretation of the code. She advised that nonconforming VRDs should not be included in saturation calculations because the code language only specified counting single-family dwellings within 250 feet of the subject property in a VRD application.

Nichols pointed out that multi-family dwellings could not remain vacation rentals after a change in ownership, but there was no way to know when that turnover might happen. Meanwhile, a nonconforming VRD had an impact that was not reflected in the calculation that was used to determine whether a new VRD application could be approved. Nichols acknowledged that the intent of the VRD code revision in 2018 may have been to limit the number and impact of vacation rentals, but failure to include counting nonconforming VRDs had the opposite effect.

Nichols presented the Commissioners with options that included amending the code to count a multi-family vacation rental as one VRD in the calculation, to count each unit as a separate VRD, or to make no change to the existing code language.

Nichols highlighted a portion of the VRD map in which a vacation rental application might have to be approved despite being surrounded by four or more VRDs, including one triplex. She stated that Staff was not aware that many of these permitted VRDs were nonconforming until they looked at County Assessor's Office data and saw how the dwellings were classified for taxing purposes. Nichols added that documentation was not available to learn how each of those VRDs were approved.

Landucci favored counting each unit as a separate VRD.

Norman suggested notifying owners of nonconforming VRDs that the VRD code was being reviewed. He asked if the nonconforming VRDs were treated the same as conforming VRDs when it came to annual fees.

Nichols clarified that every VRD shown on the map had been approved at one time, but the amended VRD code that took effect in 2018 specified only single-family dwellings could become VRDs. Each VRD was registered with the City of Bandon and paid the Transient Occupancy Tax (TOT) to the Finance Department on a quarterly basis.

Norman supported changing the code to reflect the actual number of VRDs in multi-unit dwellings, but still trying to keep the language simple. He also thought it would be helpful to have a discussion on the impact of VRDs on the community.

Landucci wanted to have a Work Session with the City Council to work toward a definitive approach to VRDs.

Given the Conditional Use nature of VRDs, Jurkowski inquired if notice could be given to those whose vacation rentals were nonconforming, saying that they would no longer be allowed to operate them as VRDs.

Nichols answered that everyone in a zone that allowed VRDs was notified when the VRD code was changed in 2018, whether or not they had a vacation rental. The same notification would be given if the City decided to amend the VRD code again.

Jurkowski clarified that she was asking if the City could stop someone from operating a VRD because they were allowed to do so as a Conditional Use.

Kudlac interjected, "At the time they were a VRD, they were allowed under our code to be a VRD." She continued, "We've changed it since then, and that's what makes them currently nonconforming. But they have that vested interest to be a VRD, because they went through the process beforehand."

Nichols added, "It's not illegal for them to be operated, and we can't take away their permit unless they go against some part of the code." She said an unintended consequence of the reworded VRD code was not being able to count multi-family dwellings as VRDs. Nichols offered to make available to the Commissioners a list of all VRDs in Bandon, specifying which ones were nonconforming.

Landucci noted that there were 53 vacation rentals at the time, and Nichols pointed out that one more had been added earlier in the meeting.

Norman recalled in an earlier meeting that Staff mentioned finding VRDs in Bandon that were not permitted but were listed on some websites.

Nichols explained that Planning Staff somewhat regularly monitored sites such as Airbnb and VRBO to see if there were people attempting to operate a VRD without a permit. The Code Compliance Officer would contact those people and have them remove their listing or change it to a 30-day minimum rental, so it would no longer be in violation of the code. Nichols indicated there were four or five instances a year of this happening.

Landucci emphasized the need to specify what the City wanted the VRD ordinance to accomplish. He remarked that VRDs could disrupt communities and some areas had decided not to allow them.

Nichols thought the Commission's goal in 2018 had been to limit the scope of vacation rentals and might not have gone far enough at that time.

Landucci invited comments from the public.

Denise Frazier, 1259 Wavecrest Lane SW, Bandon, OR 97411

Frazier encouraged the Commission to revisit the 2018 language change to the VRD ordinance, specifically its unintended consequences to the saturation calculation. She understood the saturation ratio was intended to prevent forming “VRD neighborhoods” and to minimize the impact of VRDs on residential neighborhoods, and she felt that leaving nonconforming VRDs out of the calculation had the potential to oversaturate a neighborhood with vacation rentals.

Frazier said oversaturation was happening in her neighborhood, where the current code interpretation counted three VRDs and a total of 14 single-family dwellings, with a 23 percent saturation ratio. However, if the nonconforming VRDs had been included in the count, the number of VRDs would have been five and the ratio would increase to 35.71 percent. Frazier pointed out that approval of the application for a VRD at 1250 Tish A Tang Lane, which had recently been withdrawn, would have increased the number of VRDs within 250 feet to six when nonconforming VRDs were included, and the actual saturation rate would have been 42.85 percent.

Frazier stated that a duplex operating as two VRDs should count as two VRDs. She contended that would be the most clear, objective, and truthful way to calculate VRD saturation.

Colleen Welch, 1275 Tish A Tang Lane, Bandon, OR 97411

Welch urged the City as part of its code simplification work to rewrite the VRD density calculation “to include nonconforming VRDs instead of treating them as vacant lots.” From researching County tax records, she determined that 15 percent of existing VRDs in Bandon were duplexes or triplexes and were being ignored in calculating VRD saturation.

Welch maintained that there were negative impacts on a neighborhood from the presence of any VRDs—single-family or duplex. They included noise, traffic, and loss of community. In some cases, she said, the impact was greater from separate parties staying in a duplex. Welch also noted that 26 current VRDs were held in trust, LLCs (Limited Liability Companies), or had multiple owners, suggesting it would be years before those properties would be sold and lose their VRD permit.

Although recognizing that VRDs generated revenue for the City, Welch believed the full-time permanent residents of Bandon were the ones who helped make it a destination community by paying property taxes, volunteering, helping their neighbors in need, shopping locally year-round, donating to local charities, and supporting community events. “We are the voters that help pass bonds and measures to pay for City services and schools,” she stated. “Our value to the community exceeds an occupancy tax.”

Bill Frey, 1235 Wavecrest Lane SW, Bandon, OR 97411

Frey mentioned that Frazier and Welch were his neighbors, and he said they had made a thorough presentation of their request. He thanked the Planning Department for initiating the discussion about nonconforming VRDs and the Planning Commission for considering the subject, and he perceived that some of the Commissioners agreed that it was an issue that needed to be reviewed.

Landucci told the citizens who spoke that he was glad they showed up and he said their input was important.

Nichols clarified that as of 2018 only an actual person—not a trust or LLC—could hold a VRD permit and be responsible for paying a VRD’s quarterly tax. This was intended to prevent a VRD from being handed down through a trust.

Norman asked if all three people who were listed as owners of a property could also be on its VRD application.

Nichols said she would check the City's form, but she thought a couple could certainly have joint ownership.

Scobby wanted to know if the City was tied to the saturation rate as written. She was specifically thinking of how the Commission should handle the 1250 Tish A Tang VRD application if it were resubmitted.

Kudlac responded that the code may have been an error, but it was written very clearly and the strict interpretation would prevail until the code was amended.

7.3 Reschedule July Meeting + Upcoming Agenda Topics

Nichols planned to be on vacation at the end of July and beginning of August, so she asked the Commissioners which date they would prefer for their July meeting, which would normally have been held on July 28. All Commissioners present agreed to change the next Regular Meeting date to July 21, 2022.

In July, Nichols suggested the Commission could either schedule a Work Session to focus on the view line issue or delay addressing it until a Joint Meeting could be held with the City Council. Also in July, two more vacation rental applications would be reviewed by the Commission, followed by two more in August. Nichols expected the Commission to discuss its 2022 Work Plan in July and look ahead to a plan for 2023. There would also have to be elections for Chair and Vice-Chair of the Commission.

Landucci said the most critical item would be holding a Work Session with the Council to discuss VRDs.

Jurkowski felt the Council also considered it an important issue.

Starbuck thought the view line issue should be included in the session with the Council.

Jurkowski and Landucci agreed.

7.4 Planning Department Report

Nichols informed the Commission that Staff had begun the Housing Needs Analysis (HNA) project and Buildable Lands Inventory (BLI), meeting with consultants from the FCS Group. She said the project was in the data gathering stage and Staff was providing information requested by the consultants. The first step involved the consultants creating the BLI, which would show all buildable land in the City that could be used for any purpose. Nichols stated that the City would be especially interested in land available for housing.

Staff was in the process of assembling a Housing Advisory Committee that would be active for the duration of the project. A Planning Commissioner with an interest in housing was needed to serve on the committee, which would periodically bring items to the Planning Commission for review and discussion.

Through ODOT (Oregon Department of Transportation), notice had been sent out that the City was accepting small purchase contracts for the City's Transportation System Plan (TSP), with work to get underway at the beginning of August. A Transportation Advisory Committee would be assembled to accompany this project, also requiring a Planning Commissioner to participate.

Nichols reported the formation of a Community Involvement Committee, consisting at the outset of one member each from the City Council, Planning Commission, Parks and Recreation Commission, and Library Board. The Committee's first tasks would be finding three at-large community

members and helping to fill similar roles on the Housing and Transportation Advisory Committees. Scobby was the Planning Commission representative on the Committee, which had a mission of advising the City on how to have a better public engagement process.

Staff was also working on another project, a Public Access Inventory, with grant funding from DLCDC. Using an existing inventory on the Oregon Coast Visitors Association website that showed visitors to the Bandon area all the ways they could access beaches and estuaries. Nichols said the existing inventory was “wildly outdated” and incorrect, so Staff had gathered data about each access point. She told the Commissioners they would have an opportunity to consider code amendments in about a year that would concern protecting and enhancing those access points, through the TSP, the Parks and Recreation Master Plan, the Shoreland Overlay, and the Municipal Code in general.

Nichols announced that the City had a Planner I position open, with applications taken through July 5, 2022. The job had only been posted a week prior to this meeting, and only one application had been received.

Landucci wondered how Nichols had been handling the workload with no assistant in the Planning Department.

Nichols replied that she was receiving a lot of support at City Hall, including City Recorder June Hinojosa, who provided clerical support and was present to run the Zoom meeting and Facebook livestream. Nichols pointed out that many of the Planning Department’s procedures had been streamlined to conform to the State’s requirement to make it easier for housing to be developed. It had also been learned that ORS (Oregon Revised Statutes) 197.307, which applied to “needed housing” also applied to commercial and industrial lands and lands encumbered by hazards, eliminating drawn-out and complicated procedures for those types of applications. The result was less work for the Planning Department and more potential code updates for the Planning Commission.

Norman was confused because the City had initially posted an Assistant Planner position.

Nichols explained that the City had been unable to fill that position and had pulled the listing and advertised a higher-paying Planner opening instead.

Jurkowski expressed interest in the Housing Advisory Committee.

Before proceeding to Commissioner Comments, a member of the public who joined on Zoom was given time to speak.

Nancy Evans, Bandon, OR 97411

Evans was excited to hear that the Community Involvement Committee (CIC) was being formed. She remembered that an earlier version of the committee, then called Committee for Citizen Involvement (CCI), had been an extremely accessible means for citizens to resolve issues that had not been resolved before the Planning Commission or in the Planning Department. Evans said it had been almost 10 years since the CCI last functioned in Bandon.

Evans noted that the agenda for the June 29, 2022 CIC meeting was posted on the City of Bandon’s website, and one of the documents included with the agenda explained Oregon’s Statewide Land Use Planning Goal 1 (Citizen Involvement). Evans called the CCI the “cornerstone of Goal 1.” She wanted everyone to know that bringing back the CCI concept was “a wonderful opportunity” and “really important.”

Evans also praised the individuals who offered public comments earlier in the meeting. She was impressed by how well-prepared they were and how precise their statements were. “They did their homework,” Evans said.

Norman asked if the CCI was a requirement or a recommendation by the State.

Nichols replied that it was required. Having looked at documents from the past, she understood that it was difficult to staff the committee. For a time, the City had considered having the Planning Commission serve as the CCI, which was the outcome in many of the small jurisdictions that lacked enough staff and volunteers to maintain a separate committee. Nichols said the City had opted to follow its code and form a citizen involvement committee.

“The more community involvement, the better,” Landucci emphasized.

8.0 OPEN DISCUSSION

Commissioner Comments

Unrelated to Planning Commission issues, Jurkowski expressed her appreciation for the shuttle service that had been arranged for Circles in the Sand events, alleviating some of the parking problems.

In light of the traffic on Beach Loop Drive, Scobby stated that the City needed to consider a dedicated pedestrian lane there. She suggested if the proposed increase in TOT were to be approved by the voters, a pedestrian lane on Beach Loop would be a good use of some of the proceeds, since a percentage of the TOT money had to be directed toward something tourism-related. Scobby did not think it would have to be a sidewalk.

Landucci agreed it was dangerous on Beach Loop, especially during the summer months. He noted that there was a 60-foot right-of-way along Beach Loop Drive, so there would be sufficient room to accommodate pedestrians if the money was available. “We want to encourage people to walk,” Landucci said.

9.0 ADJOURN

Landucci adjourned the meeting at 8:09 p.m.

Planning Commission Regular Meeting Minutes
Submitted by Richard Taylor, Minutes Clerk