

# City of Bandon

<b>CITY COUNCIL AGENDA DOCUMENTATION</b>	<b>DATE:</b> January 10, 2023
<b>SUBJECT:</b> Planning Commission Meeting Minutes	<b>ITEM NO:</b> 6.2.1

## **BACKGROUND:**

Meeting Minutes of the Planning Commission as submitted by Richard Taylor, Minutes Clerk

November 17, 2022 – Regular Meeting

December 15, 2022 – Regular Meeting

## **FISCAL IMPACT:**

None

## **RECOMMENDATION:**

Motion: to approve Planning Commission Meeting Minutes from November 17 and December 15 , 2022

## **SUBMITTED BY:**



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*June Hinojosa, City Recorder*

# Regular Meeting of the Planning Commission at Bandon City Hall and via Zoom Meetings November 17, 2022

## COMMISSION:

- Sally Jurkowski, Vice Chair
- Ed Landucci, Commissioner
- Gordon Norman, Commissioner
- Tom Orsi, Commissioner
- Catherine Scobby, Commissioner
- Gerald "Bear" Slothower, Chair
- Donald Starbuck Commissioner

## STAFF:

- Dan Chandler, City Manager
- Shala Kudlac, City Attorney
- June Hinojosa, City Recorder
- Dana Nichols, Planning Manager
- Kristan Liechti, Planner

### 1.0 CALL TO ORDER

Slothower called the meeting to order at 7:00 p.m.

### 2.0 ROLL CALL

Roll Call was taken as indicated above. Scobby joined the meeting via Zoom. The remainder of the Commissioners and Staff were present in the Council Chambers.

### 3.0 CONSENT AGENDA

#### 3.1 Regular Meeting Minutes – September 22, 2022

Hearing no objection, Slothower approved the September 22, 2022, Regular Meeting Minutes.

### 4.0 PUBLIC COMMENT (none)

### 5.0 WORK SESSION – DRAFT ORDINANCES

#### 5.1 Structures in Required Setbacks

Slothower began the discussion by summarizing the Bandon Municipal Code (BMC) definition of a structure as a built or constructed edifice or building. Staff had proposed amending that definition to specify that paved areas or vegetative landscaping materials would not be considered structures.

Staff had also recommended an amendment to BMC 17.104.030 Projections from buildings, allowing porches, decks, steps, and similar open structures not exceeding 30 inches in height to encroach into setbacks, provided they maintained at least a five-foot setback, met vision clearance standards, and did not conflict with utilities or other easements.

Slothower asked Nichols if something like a sidewalk could cover up a five-foot setback.

Nichols replied that at-grade patios constructed with concrete or pavers had been allowed under existing code language because they were not elevated off the ground. She noted that at their previous meeting, some Commissioners had expressed a need for further discussion about whether there should be a provision in the code for temporary structures. There also had been a question as to whether front and rear yards should be treated differently from side yards.

Nichols pointed out that there were some corner properties in Bandon that were in violation of setback requirements. She explained that a corner lot's front yard was determined by which street the front door faced. That front yard was required to have at least a 20-foot setback, and the setback on the side yard facing the other street had to be at least 15 feet. Nichols said the violations occurred when property owners decided to put a door that was not in the approved site plan on the side of the house and then added steps into the setback. At the final inspection, they were asked to remove the steps, which they did. Later, they put steps back in. She suggested the Commission could consider an exception to allow projections into that type of side yard.

Norman observed that any municipal code could not cover all contingencies. He posed a hypothetical of a tree house built as a platform that ended up under ten feet from the fence, and he wondered if that would be a code violation.

Nichols responded that the City had ignored treehouses in the past unless someone complained about them. However, a treehouse would qualify as a structure as defined by the code, although structures under 50 square feet were allowed without a permit as long as they were at least five feet from the property line.

Slothower interjected that there could be an issue if the treehouse was obtrusive and making a neighbor uncomfortable. Landucci added there could be spying, and Norman suggested there could be a noise problem.

Nichols stated that the treehouse would then become a nuisance, covered by the BMC's Nuisances chapter, 8.08.

Starbuck recalled an instance when the Commission was considering an application for a two-story structure in a neighborhood where the homes were all one story. There was objection from the neighbors, who did not want someone to be able to look into their backyards.

Nichols reiterated that the Draft Ordinance would only allow open structures of 30 inches high or less in required setbacks, but no closer than five feet from the property lines. Since there were Commissioners objecting to the proposal, Nichols stated that Staff would initiate a Type IV process to amend the municipal code, which would lead to a Public Hearing before the Commission in January 2023.

## **5.2 Measuring Height in the Floodplain**

Slothower noted that the Commission had previously discussed this proposed code amendment and seemed to be favorable to the change.

Nichols said the Draft Ordinance would modify the BMC's definition of "Height of building or structure" to include a sentence saying, "For any area within a special flood hazard zone height shall be measured from the Base Flood Elevation," which meant the level at which a structure would be protected from a minimum flooding hazard. The change would mean that anything below that elevation—breakaway walls and foundations—would not count in calculating the height of a new structure. Nichols thought this language would set a standard measuring point for everyone in the floodplain, where she said most of the height issues were found.

Hearing no objections, Slothower okayed the initiation of a Type IV process on this code amendment.

### **5.3 Old Town Parking**

Slothower asked the Commissioners if they saw any way around removing the parking restrictions in Old Town.

Nichols clarified that Staff was only recommending removing the requirements that applied to outright permitted businesses—retail stores, restaurants, etc.; the Commission would still be able to determine the required amount of parking for any Conditional Use. She said the change was recommended based on a desire for economic development and the possibility of parking lots being redeveloped into more businesses. Nichols pointed out that the City had recently finished paving a new 40-space parking lot.

#### **Chris Bentien, 1380 Face Rock Drive, Bandon, OR 97411**

A member of the public in attendance, Bentien inquired if the parking regulations would apply to the new hotel that was planned to be built across the street from the Old Town Marketplace building.

Slothower responded that the hotel project had not come before the Commission yet.

Nichols stated that hotels and motels were a Conditional Use in the C-1 Old Town Commercial Zone. Nothing formal had been submitted yet for that project, but it would eventually come before the Planning Commission for approval.

Slothower indicated that Staff should begin the Type IV process for this code amendment.

### **5.4 Vacation Rental Dwelling Code Update**

Slothower thought the Staff's Draft Ordinance included most of the recommendations that had resulted from the Commission's previous discussions about the City's Vacation Rental Dwelling (VRD) code.

Landucci wanted to make sure the City required VRDs to have the biggest garbage cans possible. Otherwise, he felt that the proposal covered "about as much as legally we can cover," thinking it would not be possible to include his suggestion that a home inspection should be required.

Nichols responded that Staff had proposed weekly solid waste collection service during all months a VRD was available as a rental, using a large size garbage cart. She also believed there might be a way to require inspections by mandating VRD owners to apply with the Building Codes Division for a change from "User Occupancy" to "Commercial Residential." The commercial use of a residential structure would trigger a basic life/safety inspection, to be conducted by Coos County inspectors.

Jurkowski asked if this requirement would apply to existing VRDs.

Nichols thought that it would. She explained that the VRD code had been divided into two sections—approval criteria for all new VRDs and general regulations that would apply to all VRDs, which would include inspections, provided these provisions met legal approval. Existing VRDs that were not in compliance with the general regulations would have 120 days to come into compliance after the ordinance passed. Nichols emphasized that the City was not trying to shut down any VRDs but to ensure that they were operating safely, legally, and appropriately for the community.

Norman remembered Scobby reporting at a previous meeting that vacation rentals in Newport, on the Oregon coast, required a sign or plaque in front of each VRD saying that it was a vacation rental and providing a phone number for someone to call with a complaint or other issue.

Landucci agreed with that suggestion and Nichols said she would look into that requirement.

Norman wondered how the City should handle “off the books” VRDs. He had read an article about the how VRDs on the Hawaiian island of Oahu had taken over and crowded out affordable housing for local residents. Norman said the fine in Hawaii for those illicit VRDs was \$1,000 a day.

Landucci interjected that Bandon’s penalty was only \$750.

Nichols added that the Draft Ordinance contained a new section on compliance that clarified how illegally operated vacation rentals would be treated. Violators would be issued a “nice letter” followed by a “mean letter” and they would be cited into Municipal Court if the violation continued. The judge would have discretion to determine the amount of the fine, but the code specified fines could be issued up to \$750 per violation per day. Violators would also be required to pay Transient Occupancy Tax (TOT) for any overnight stay during the violation period.

Nichols stated that the City would be working with a company called Host Compliance that would monitor vacation rentals in the Bandon area. Host Compliance would use the City’s list of approved VRDs to look for VRDs operating in Bandon outside of those that were permitted. Host Compliance would provide a 24/7 contact number that could be called to report a violation or problem, and the responsible party would have a fixed amount of time to respond to the call and remedy the situation. Noncompliant or nonconforming VRD operators would receive official warning letters leading to potential citations.

The City hoped Host Compliance’s services would accomplish what the City’s limited staffing could not, especially with most complaints occurring on weekends. Nichols indicated that preparatory work was underway and the Host Compliance services would probably not start until February 2023.

Based on input from the City Council, Planning Commission, and the public, Staff was suggesting a change in the maximum rate of VRD saturation in a neighborhood from 30 percent to 20 percent as an option to further limit the number of vacation rentals.

Landucci urged, “Tighten it as tight as we can make it.”

Slothower favored a 25 percent ratio.

Starbuck asked if the proposed vacation rental would be included in both the numerator and denominator of the ratio.

Nichols gave credit to a few members of the public who regularly attended Commission meetings for performing calculations that showed the saturation ratio was changed substantially if the subject property was included in the count of single-family dwellings.

Starbuck asked if multi-unit dwellings were included in the calculation.

Slothower pointed out that the updated language referred only to dwellings, not single-family dwellings.

Orsi asked if that meant multi-unit dwellings would count as more than one dwelling.

Nichols clarified that dwelling units would be counted, as opposed to single-family dwellings.

Orsi noted that the denominator could increase as a result.

Scobby commented that there might be some locations, such as near The Colony—a multi-unit development—where the calculation change might actually allow more VRDs.

There was a disagreement about the interpretation of the proposed calculation change, since Slothower and Scobby thought the denominator was the count of all dwelling units within 250 feet of the subject property, while Nichols maintained only single-family dwellings would be included, because the idea was to only include eligible properties in the denominator. With all dwelling units included, more VRDs were likely to be allowed. She determined more work was needed to make the saturation calculation as understandable as possible.

Slothower thought the consensus was to count all vacation rental units—meaning two separate units in the case of a VRD duplex—in both the numerator and the denominator. But multi-family dwellings that were not VRDs would not count in the calculation at all.

Landucci and Starbuck were in accord with Slothower’s interpretation.

**Kathy Frey, 1235 Wavcrest Lane SW, Bandon, OR 97411**

Frey, a member of the public in attendance, thanked the Staff and Commissioners for their work and for listening to the public. She asked if the change in the language from “single-family dwellings” to “dwelling units” would mean eliminating nonconforming VRDs.

Nichols answered that the nonconforming VRDs would be counted in the calculation.

Frey stated that there was a triplex in her neighborhood that appeared to have vacation rentals in two of the three units. She wondered if it would be counted for the saturation ratio as two VRDs out of three dwelling units. Frey did not think The Colony, an 18-unit apartment community, should count in the calculation, but she believed a multi-unit vacation rental should be counted in both the numerator and the denominator of the saturation ratio.

Norman asked why The Colony was excluded from the calculation.

Nichols explained that units in The Colony were not eligible to become vacation rentals, because the code only allowed single-family detached dwellings to apply to be VRDs. There were a few VRDs still operating that had been approved under an old ordinance that allowed more than one vacation rental in a dwelling. These were duplexes or triplexes. Nichols said the intent of the code update was to make sure such nonconforming VRDs counted in the saturation rate.

Jurkowski asked about the requirement for an individual person to be named on a VRD permit.

Nichols shared that she had recently learned that the code that was written in 2018 to keep VRD permits from staying with a property that was sold or passed on to another owner did not apply to any VRD that received its permit prior to 2018. Those VRDs would be considered a nonconforming use and subject to the City’s nonconforming use code, which would allow them to continue operating under the old ordinance unless they ceased operating for one year or the Commission chose to revoke their permit due to a violation. If the owner died and the permit had been approved after 2018, the permit could not be transferred to the new owner.

Nichols pointed out that a detailed, lengthy, all-encompassing definition of “owner” was going to be added to the code for legal purposes.

Norman wondered if that meant some VRDs could change ownership in perpetuity and remain VRDs.

Nichols responded that they could, as long as they kept operating within the confines of their Conditional Use Permit.

Jurkowski asked about the possibility of requiring some kind of license for VRDs.

Nichols answered that the idea had been discussed, but the City of Bandon did not have a business license program, so Staff decided the most realistic means of ensuring compliance was to have general regulations that applied to every vacation rental and to work closely with the City's Finance Department.

Landucci interjected that there had always been opposition to business licenses in Bandon.

Nichols explained that land use regulations such as occupancy limits could not be changed for VRDs that had already been approved, but the City could impose requirements for them to continue operating. She had found that other cities with short-term rentals had used a similar approach.

Norman thought compliance would become confusing due to post-2023 vacation rentals being treated as commercial enterprises and those that came before being considered private residences.

Nichols responded that the proposed code would require all VRDs to comply with the Building Codes aspect of the ordinance, but she still needed to confirm that this approach would be allowed. The goal was to make sure that regardless of when a VRD's land use permit was received, it would be operating in a safe and legal fashion. Nichols added that rule about who would be the permit holder changed in 2018 and was not going to change in the new ordinance, except to be defined more clearly.

Jurkowski inquired if owners were going to be limited to one VRD.

Nichols affirmed that there was language in the Draft Ordinance that a person could only own one VRD, whether as sole owner or as part of any kind of group ownership.

Slothower wondered how many VRDs a business could own.

Nichols replied that a business could also only own one. The detailed definition of an owner would apply, and it would say a business consisted of the persons who comprised that business.

"What about a trust?" Slothower asked.

Nichols answered that she would make sure City Attorney Shala Kudlac participated in the Public Hearing on this Draft Ordinance to help with legal questions. Nichols said Kudlac had pointed out that the City had to be realistic about how serious it could be about enforcing regulations that would take more than the two-person Planning Staff to handle. It might be difficult to verify every trust or corporation, so Nichols hoped people would cooperate with the spirit of the ordinance.

Landucci thought the intent of the regulation was "to discourage a corporate approach" to vacation rentals in a small community. "We don't need people coming in and buying up properties and turning them into hotel rooms," he stated.

Responding to Norman's concern about when the new ordinance would take effect and how someone might take advantage of the existing code, Nichols thought Staff could present a revised version of the proposal to the Commission at its December 2022 meeting, with hearings conducted in January or February of 2023, leading potential approval by April or May.

Norman reintroduced the question of what the VRD saturation rate should be.

Nichols noted that the type of calculation that had been used in Bandon was not used everywhere. For example, the city of Bend, Oregon did not permit a new VRD within a certain distance from an existing VRD. She encouraged any Commissioner who had other ideas to bring them to the next meeting.

Norman suggested the simplest solution might be the best, such as using a measuring tape.

Slothower insisted that “math isn’t that difficult.” He thought a 20 percent saturation rate was too restrictive, and he preferred 25 percent.

Landucci felt the general consensus on the Commission was to limit vacation rentals so they did not become a negative force in the community. He observed that Port Orford and some towns on the north coast of Oregon had shut down vacation rentals because they had become disruptive.

Jurkowski commented that the Commission had to accept the fact that some VRDs would be around for a long time because they had been permitted under previous rules. She observed that there was no perfect solution.

Landucci mentioned that VRDs were located in some of the nicest neighborhoods in Bandon and he had seen large numbers of cars causing congestion around some VRDs.

Jurkowski point out that it was hard to tell if some of the traffic and parked vehicles were due to vacation rentals or new construction in the area.

Orsi favored a 25 percent saturation rate because the house being considered for a VRD permit was going to be included in the numerator.

Norman stated, “I think that we’re actually not reducing anything, because all of the vacation rentals we currently have are there, and they’re probably not going to go away.” He continued, “We’re just looking at, ‘What are we going to add?’” Norman thought there probably were already enough vacation rentals in Bandon. He considered it to be the City’s obligation to help protect the general health of the community, so he preferred tight limits on VRDs.

Landucci knew of a landlord who had two rentals that were being rented on 30-day intervals, which was legal, but the tenants in turn sublet them as vacation rentals for their friends. He thought there was a lot of this type of thing going on and he hoped the Host Compliance service would help the City track such activity.

Jurkowski wondered how someone would be able to tell for sure that a neighbor was operating an illicit vacation rental. She would prefer that a complaint did not have to come from a neighbor.

Landucci agreed that a neighbor might be afraid of retaliation.

Liechti brought up a few points. She noted that there had been concerns about unsafe vacation rentals that may have posed fire hazards or other safety issues, but the proposed ordinance would give VRDs 180 days to comply with new standards that some may not be able to meet in that time frame. Liechti told the Commissioners they would be in the position to decline the renewal of VRD permits for noncompliance, leading to the possible reduction in the number of VRDs. She urged the Commissioners to focus on life and safety matters rather than their feelings about what number of VRDs was acceptable.

Landucci remarked that his concern throughout the Commission’s discussions about VRDs was that the City was not addressing public safety issues and had given “junk buildings permission to be VRDs.”

Liechti added that designating VRDs as commercial uses would help remedy that.

Nichols pointed out that when the state was handling the Building Codes implementation in Coos County, its staff was unwilling to conduct inspections. Since the building permit process had been taken over by the county, she had learned the county staff was willing to do inspections, if there was a change of use occupancy. Nichols said the Staff and Commissioners had been in a difficult position because they were not qualified to perform an inspection and determine if a building was safe. They could only determine whether an application met the City’s code.



Norman thought it was wishful thinking to assume the number of VRDs would drop because they were being treated as commercial residences. He was curious to know how many VRDs had stopped operating over the previous five years as opposed to how many had been added.

Nichols responded that the City had listed around 70 vacation rentals in 2018. A current count showed 63 VRDs, but she said that number included several duplexes and triplexes, so the overall number was probably still about 70. Nichols thought some drop-off in the total was due to owners who had been told a vacation rental could not continue to operate when the property was sold. She figured a lot of the nonconforming VRDs that had been expected to cease operating might not end up doing so.

Nichols suggested the Staff could pay closer attention to noncompliant VRDs such as those that listed occupancy beyond their permitted limit, send them warning letters, and if necessary refer offenders to the Commission for a Public Hearing on whether to revoke their permit.

Jurkowski agreed that safety was “extremely important,” but she noted that the Commission was also hearing that people were concerned for the quality of life for those who lived in a neighborhood near a VRD.

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

Frazier, a member of the public in attendance, asked the Commissioners to consider that the unintended consequences of the existing code language had caused two neighborhoods to be oversaturated with vacation rentals, and she recommended that they find a saturation number that would help bring balance to the overall number of VRDs in Bandon.

Norman asked Frazier what she thought was a fair saturation rate, and she told him 20 percent.

“Living by a VRD,” Frazier said, “It’s not only important that they have a large trash can...but that somewhere in the code that they’re also required to service the can, which means they don’t just bring it out to the street and then leave it there for two weeks, but that they’re required to take it back after trash service.” She remarked, “How hard can it be? All trash is picked up on one day.”

Frazier thanked the Commissioners for their consideration and hard work.

Jurkowski was not sure to what extent the VRD owners could be required to provide guidelines for their guests.

“It’s so lucrative,” Landucci commented, “you’d think somebody that’s going to take that on would just do it the right way. It’s a business, you know.”

Norman interjected, “The municipal code is an expectation. You’re stating an expectation.”

Nichols said the Draft Ordinance included a requirement for a VRD owner to post a rental permit inside the door that supplied basic information including the days of solid waste collection, and she indicated language could be added that stated weekly garbage service would have to be provided and the can would have to be maintained.

Frazier pointed out that a VRD owner would already be paying for garbage service and probably for a property manager, so the owner needed to be made aware that the property manager was not fulfilling his contract by failing to take care of the garbage can.

Nichols said that would be the kind of thing Host Compliance would deal with. Also, a placard with a contact phone number would enable neighbors to report issues.

Liechti suggested limiting the total number of VRDs in Bandon, not just setting a saturation rate.

Nichols thought the city of Coos Bay had limited its VRDs to something like five percent of its total dwelling units. She felt that setting a fixed number limit could become complicated and there would be a risk of oversaturating certain areas unless a saturation factor was still in place.

Landucci observed that there were only around 1,700 or 1,800 homes in Bandon.

Nichols responded that there were a little over 2,000. She added that it would be hard to know when the City had reached its capacity of VRDs because the saturation rate was unique to each property and its surroundings.

Independently, Jurkowski and Slothower calculated that three and a half percent of Bandon's homes were operating as permitted VRDs.

Norman and Landucci voiced support for a 20 percent saturation rate.

Jurkowski advocated for setting a cap on the number of VRDs.

Scobby suggested that a percentage cap should be a percentage of the eligible properties in zones where VRDs were allowed, because more new home construction was taking place outside those zones and did not have an impact on the saturation of VRDs.

Slothower said the City could keep using the saturation calculation along with a cap on the total number of VRDs, which could be a fixed number rather than a percentage.

Nichols offered to present the Commissioners with options at their next meeting, showing examples using the effect of different saturation restrictions on sample properties.

Slothower thought there would need to be another Work Session on the vacation rental ordinance in December 2022, preferably separate from the Commission's Regular Meeting.

Nichols noted that there would be one or two Public Hearings at the December 15 meeting. She listed the topics Staff would prepare for discussion at the upcoming Work Session: redoing the saturation calculation; determining who would qualify for the change of use occupancy and what an inspection should cover; looking into the idea of a placard with a phone number; dealing with the trash issue; and choosing between a saturation ratio and a percentage cap.

Norman was confused by the proposed definition of owner.

Nichols explained that companies were purchasing VRDs and the all-encompassing definition was selected because it provided a safeguard in legal terms, to help the City determine who were the responsible individuals. She stated, "The spirit of the definition is meant to be that if you in any way have any ownership in one vacation rental in town, then you cannot also have ownership in any way—whether it's trust, a business, an individual person—in another vacation rental in town."

Norman found that language to be much clearer than the proposed definition.

Scobby wondered if there were any unintended consequences to having another Work Session. She felt the Commission had worked on the subject quite a while and had discussed many different options, and she noted that some of the citizens in attendance had been concerned about a particular VRD permit application that would have an impact on their neighborhood. Scobby worried that the Commission would be in the position of having to approve that application and others under the existing code in spite of its desire to change the rules. She hoped the Commissioners could agree on enough basic principles to move forward without another Work Session.

Nichols believed the Commission could hold both a Work Session and Public Hearings. State law required notice to be given to DLCD (Department of Land Conservation and Development) 35 days prior to an evidentiary hearing, which meant the earliest Public Hearing could take place at the Commission's Regular Meeting in late January 2023, preceded by a December Work Session.

Nichols acknowledged that Scobby had a valid point, but she added that there was one VRD application being processed at that time and there would be probably be more before the ordinance was adopted. She advised patience with the slow process but encouraged the Commissioners not to rush their decision. "You want to make sure that you get it right," she told them. "We don't want to be reviewing it every four years. It's okay that we are, because things have changed...The short-term rental world is changing so rapidly and we're reacting to that."

Slothower checked with members who had not yet voiced a preference for a particular saturation percentage. Starbuck was undecided. Jurkowski wanted something less than 30 percent but had not decided whether it should be 20 percent or 25. Orsi favored 25 percent.

Orsi brought up an overlooked issue—the question of what length of an inactive period would cause an owner to lose a VRD permit. He was considering owners who might reserve their VRD for half the year or more for personal or family use and rent it for the remainder. Orsi contended it would be too restrictive to say they would have their permit revoked if they went six months straight without renting their VRD.

Nichols read the existing code language, which said a permit would become null and void if VRD activity ceased for a period of one year or it failed to be rented for more than ten nights within a calendar year. Staff's proposal had been to reduce the one year period of inactivity to six months, but she saw the merit in Orsi's reasoning.

**Steve Friedland, 1130 Baltimore Avenue SE, Bandon, OR 97411**

Joining the meeting on Zoom, Friedland asked, "Why not a two-year moratorium while the complexities of the situation get sorted out and further research on alternatives is conducted?"

Norman answered, "Not enough votes."

Landucci clarified that the City Council had turned down that option. At a Joint Work Session with the Commission earlier in the week, it was apparent that more Councilors opposed a moratorium than favored it.

## **6.0 STAFF UPDATE/DISCUSSION**

### **6.1 Planning Department Report**

Nichols reported that an application had been approved for a new Grocery Outlet store, to be located along the east side of Highway 101, between 15<sup>th</sup> and 17<sup>th</sup> Streets, just south of the former Italian restaurant.

An approval had also been signed for a five-plex at the corner of 11<sup>th</sup> Street SE and Chicago Avenue SE. Nichols said a local person had submitted the application a couple of months ago, and this was a multi-unit development that would be ready more quickly than some of the larger complexes being discussed.

Staff was still working on the City's Housing Needs Analysis and the Housing Committee would be meeting in January 2023. Nichols said the Transportation System Plan was taking a long time to go through the Oregon Department of Justice, but the City was hoping to have a signed agreement and a notice to proceed in early December 2022. A grant for the plan had been received a year and a half earlier.

Nichols mentioned some recent actions by the Parks and Recreation Commission because they involved matters that would come before the Planning Commission as the approving body. The City had received a grant from the state to install new playground equipment and a grant to develop an update to the City Park Master Plan. The Parks and Recreation Commission was also looking at installing a skate park.

## **7.0 OPEN DISCUSSION**

### **Commissioner Comments**

Scobby supported the 20 percent VRD saturation rate and said she was anxious to hear more from the community about the vacation rental issue.

## **8.0 ADJOURN**

Slothower brought down the gavel and adjourned the meeting at 8:34 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  
December 15, 2022**

**COMMISSIONER:**

- Sally Jurkowski, Vice Chair
- Ed Landucci, Commissioner
- Gordon Norman, Commissioner
- Tom Orsi, Commissioner
- Catherine Scobby, Commissioner
- Gerald “Bear” Slothower, Chair
- Donald Starbuck Commissioner

**STAFF:**

- Dan Chandler, City Manager
- Shala Kudlac, City Attorney
- June Hinojosa, City Recorder
- Dana Nichols, Planning Manager
- Kristan Liechti, Planner

**1.0 CALL TO ORDER**

Slothower called the meeting to order at 7:00 p.m.

**2.0 ROLL CALL**

Roll Call was taken as indicated above. Four of the seven Commissioners were present, forming a quorum.

**3.0 CONSENT AGENDA**

**3.1 Regular Meeting Minutes – November 17, 2022**

Hearing no objection, Slothower approved the November 17, 2022, Regular Meeting Minutes.

**4.0 PUBLIC COMMENT (Comments from the public on any item not on the agenda)**

**Venetta Nixon, 1079 Harlem Street SE, Bandon, OR 97411**

Nixon said she and a child who accompanied her wanted to express their “want and need and concern for the Bandon Skate Park.” They were excited to hear that the skate park was going to be “revamped” and they thought it would be great for the community.

**Earl Robicheaux, 87101 Mars Lane, Bandon, OR 97411**

Robicheaux hoped to see some accommodation for bicyclists and pedestrians on Beach Loop Drive. He stated that he had ridden a bike there many times and “you always have to watch out to make sure you’re not run over.”

**Tanya Depalo, 56373 Prosper Junction Road, Bandon, OR 97411**

Depalo said she had lived in Bandon since 1977 and was an avid roller-skater. “It’s excellent exercise and fun,” she told the Commissioners. Having heard the Bandon Skate Park was being revived, she wanted to be part of making sure it was built properly for both skateboarders and roller-skaters, and for adults as well as youth.

## 5.0 PUBLIC HEARINGS

### 5.1 Type III Major Modification to Conditional Use Permit for 250 1<sup>st</sup> Street SW (28S-15W-25AD, TL 1000) Old Town Marketplace Building

– 22-106, Request to modify the Farmers Market Conditional Use Permit (12-002) to expand service from part-time and temporary to full-time and permanent.

Slothower opened the Public Hearing at 7:06 p.m. and read aloud the procedures for public comments.

Nichols provided the Staff Report. She stated that the applicant was requesting a modification to a Conditional Use Permit (CUP) that was issued in 2012, which allowed a temporary seasonal farmers market and fish market at the subject location. The market had grown since that time and had become popular in the community. The applicant wished to make the market permanent and full time, while expanding some of the activities already taking place there.

For this application, the Applicable Criteria from the Bandon Municipal Code (BMC) were:

- 16.12 Conditional Uses
- 17.48 Marine Commercial (C3) Zone
- 17.76 Shoreland Overlay (SO) Zone
- 17.96 Off-Street Parking and Loading

Details for each of the criteria had been provided to the Commissioners in their meeting packets.

The Farmers Market was located in the Old Town Marketplace building on the Coquille River waterfront. For many years, the building had fisheries-related and industrial uses until they ceased to be viable in Bandon. At that point, it was re-envisioned as a seasonal market and had been a vibrant enterprise in recent years.

Nichols listed Comprehensive Plan (Comp Plan) policies that had to be satisfied by the application:

- Commercial uses that were benefitted by a waterfront location.
- The availability of parking, utilities, dock space, and transportation when siting processing, retail, and wholesale activities in the Marine Commercial area.
- Manage urban shorelands in the Shoreland Overlay along the Coquille River estuary which were “especially suited for water dependent” (ESWD) uses.

Nichols explained that the Shoreland Overlay gave added protection to properties along the estuary, regulating what was allowable. Some properties were designated as ESWD based on their proximity to the waterfront and some were outright permitted to have other uses. In the Jetty area, for example, most uses were residential.

Regarding parking requirements, Nichols noted that a Port of Bandon Parking Plan had been generated in the past. The application would create an update to that plan to redesignate where those parking spaces would be located. With 10,000 square feet of retail and 650 square feet of dining proposed for the building, 29 parking spaces would be required. Nichols said the Port maintained over 150 spaces in total, and 29 of those would have to be dedicated to the Farmers Market.

Staff recommended the following Conditions of Approval for the application:

- All proposals of the applicant shall become conditions of approval unless otherwise modified by Staff.
- Approval of the plan is based solely on the information provided. No other approvals are expressed or implied.
- Any new signage shall require zoning compliance approval from the City of Bandon.
- The Port of Bandon shall maintain a minimum of 29 parking spaces within 500 feet of the structure for the express use of the Farmers Market Building.
- Any outside sales areas shall be drained and paved or surfaced with crushed rock.

Nichols pointed out that some of the Conditions of Approval were specific to the application and some were requirements of the C3 Zone or CUPs in general. Since the application did not include a request for new signage, any future signage would require a separate Zoning Compliance.

Norman asked if there were 29 parking spaces in the existing gravel lot near the building.

Nichols did not think all 29 required spaces were in that lot, but there were more spaces within the waterfront area that would serve the Farmers Market. The site plan that accompanied the application showed additional spaces behind the building, likely to be used by vendors for loading and unloading. Replying to a follow-up by Norman about the availability of the large gravel parking lot across 1<sup>st</sup> Street SW from the Farmers Market, Nichols stated that it was private property.

Norman had questions about the relationship between the dining area and the overall space within the building.

Nichols responded that the application mentioned a plan to put tables throughout the building, so she guessed that the dining space would be casual and disbursed. She said the applicant would be able to provide better answers when her opportunity to speak came up.

Referring to the Staff Report, Norman asked if parking was an aspect of the application that the Commission needed to examine, along with food carts parked next to the building during events.

Nichols clarified that parking was one of the issues that the Commission could choose to discuss, because it had the capacity to reduce or require more parking. She noted that Old Town was very busy on Farmers Market days and parking was a big issue. Nichols added that the application did meet the parking criteria, based on the square footage of the retail and dining areas. Staff recommended approval of the application, with the conditions that were listed.

Nichols handed out copies to the Commissioners of a letter from the Bandon Chamber of Commerce and another letter from the Greater Bandon Association.

Slothower read additional ground rules for conduct of the Public Hearing. Landucci and Norman declared they had made site visits. The applicant spoke next.

**Sheri McGrath, P.O. Box 1548, Bandon, OR 97411**

McGrath, in the capacity of Coos Curry Consulting, prepared the application as representative for the Port of Bandon, owner of the subject property. She told the Commissioners she was presenting the concept of a year-round marketplace at the Fisheries Building in Old Town. McGrath served on the Commission in 2012 when it approved the permit for a seasonal market at that location. “To be involved in the evolution and growth of the market ten years later, I consider a privilege,” she said.

McGrath observed that the Port of Bandon's request to upgrade the Old Town Marketplace building to a year-round marketplace was considered a major modification to the existing Conditional Use Permit. She said the Commissioners had been given a project narrative and findings in support of that request.

In 2018, the Port of Bandon received approval to rebuild the Annex building for dining and retail uses. McGrath stated that the Port of Bandon had determined "after much consideration" that the "highest and best use of the property" was "to utilize the existing structure and to create a year-round marketplace instead."

McGrath cited a survey by the nonprofit organization Project for Public Places that "showed that visitors to a public market were 60 percent more likely to shop surrounding businesses on the same day." McGrath contended that supporting local businesses had "an economic multiplier effect, resulting in a local recirculation of revenue of 48 percent, versus 13 percent when shopping at a chain store."

McGrath said modifying the market would allow it to grow from a seasonal enterprise to a "thriving location for start-up artisans to produce and sell year-round and form a marketplace for small, independent businesses." The initial concept was to create year-round vendor spaces that could be delineated and secured during off-hours. As it was with the existing use, a portion of the building would be dedicated to seasonal or occasional vendors. Current vendors who had wanted the option to sell year-round were to be assisted in their effort to grow. At the same time, space would be retained for seasonal vendors and farmers. Those open spaces for the seasonal market would continue to be available for special events, community festivals, and music in the off-season and other available times during the week, as was the existing practice.

The Port of Bandon planned to put a greater focus on Bandon's waterfront and ocean resources by providing an aquarium and aquaculture tanks. McGrath stated that those attractions would be educational in nature and enjoyable for every visitor, increasing the likelihood of success for small businessmen and artisans in the marketplace.

McGrath noted that the Fisheries Building was a landmark in a historic part of Bandon, a location that provided scenic views not available elsewhere. She added that Farm and Sea (currently occupying part of the building) and the seasonal market provided "education, pleasure, and welfare of the citizens by offering workshops, tastings, live music, and access to the waterfront." The addition of an aquarium and aquaculture tanks would enhance those aspects of the market.

McGrath maintained that with the proposed upgrade, the marketplace would serve full-time residents, seasonal residents, and tourists better. The customer base of the seasonal market would remain intact year-round. She suggested foot traffic and vehicle traffic patterns in the Old Town area would improve as a result of operating the market seven days a week, because people could shop at their own convenience, helping reduce the traffic and parking problems caused by the limited hours of the seasonal market on Fridays and Saturdays. McGrath noted that the abundant community and visitor support of the market had brought in as many as 1,000 customers on some Saturdays.

McGrath summarized that the purpose of the application was to modify the existing uses of the Fisheries Building to put them under one permit approval for a year-round marketplace. She said the operators of Farm and Sea were enthusiastic about the change, seeing it as a benefit to their business and others alike.



McGrath addressed questions that had been raised earlier in the hearing, beginning with the parking issue. She explained that the City of Bandon had “grandfathered-in” the Fish Market parking and stated that it was not required for the Fisheries Building. When the City approved the Farmers Market in 2012, 21 parking spaces were allocated for the Farmers Market’s use, which were currently available. McGrath said there was room for six additional parallel parking spaces on the west side of the building, which could be used in the future for vendors to unload and park instead of using street parking or the gravel lot. The proposal she presented was to bring the property into compliance by meeting the required number of 29 parking spaces.

McGrath pointed out that the Port of Bandon had recently entered into an agreement to give parking to the City of Bandon. Additionally, the City had approved a new paved parking lot at the Fisheries Building that would provide 20 spaces there, including an ADA (Americans with Disabilities Act) space and sidewalks, and would allow room for outdoor vendors. She believed the existing surplus of parking spaces in the waterfront area would suffice for the Farmers Market and the future development that was needed for business on the high dock.

Responding to an earlier question about the proposed 650 square feet of dining space in the Marketplace, McGrath stated that was an area with tables already being used for seated dining in an appropriate location in the building. She emphasized that the purpose of the application was to establish a year-round market place in the facility and not necessarily to delineate how the overall space would be used. However, it had already been determined where the aquarium and aquaculture tanks would be located, and it was clear where the permanent vendors would be set up and provided with a means to keep their items secured and locked up on site. There would be some remaining space where the usage would rotate among seasonal vendors and special events of a public nature, such as festivals, trainings, food preservation workshops, or emergency preparedness programs.

“We believe we can make the Farmers Market better,” McGrath told the Commissioners. “It’s great now, but it’s struggling because it needs to take a growth step.” The intent was to reach more people and provide farmers with a venue where they could set up for more than just two days at a time. It would be “a public place that we can all go to on a regular basis...not just on the weekend.”

Norman needed to have the Farmers Market’s current days of operation clarified.

McGrath responded that it was open weekly during the season approved by its CUP, which she believed to be May through November, and open on an occasional basis during the rest of the year.

Norman asked if there was enough demand to support opening the Marketplace six or seven days a week, year-round.

McGrath answered that there were current vendors at the Farmers and Artisans Market who had asked to be able to sell every day. She added that some of the vendors were hobbyists, but “some of them really do want to take their craft to the next level. We want to become a place where they can take that step without moving to a brick-and-mortar.” McGrath observed, “We don’t have that place in Bandon where a business can really grow slowly or grow at the right pace for what they want to accomplish.”

Slothower wondered if any consideration had been given to setting up permanent outdoor stands to make it easier for farmers to set up and take down their produce.

McGrath replied that it would be ideal to have that in place. She noted that it was hard to find a farmer who wanted to drive all the way to Bandon for one day. Giving farmers an opportunity to have a stand where they did not have to haul everything to and from Bandon would be ideal, whether indoor or outdoor. McGrath pointed out that the parking plan approved by the City showed a buffer between the paved parking and the high dock, where it was envisioned a food truck could be located or where a farmer could pull up and sell from a trailer. This would be an area designated for such uses, instead of using part of the parking lot for outdoor sales.

Landucci complimented McGrath on the marketplace concept and the job she had done in presenting the details. He thought it would be “a wonderful thing for the community,” and he saw no downside to it. Landucci also commented that the Staff report was “very comprehensive and excellently produced.”

Norman wondered if the workshops and other events would have a dedicated space in the building and if they would take place at the same time as vendors were selling their wares.

McGrath responded that those activities could go on in the building at the same time because “10,000 square feet is a lot of space.” How that space was managed—the hours of operation, the layout, the scale of events—would be determined when a business plan was developed. Her idea was constructing ten-foot by ten-foot booth spaces for permanent vendors along the perimeter of the Marketplace, which could be closed and locked up at night. That would leave more than enough room, McGrath, suggested, for seasonal or occasional vendors to set up and to have a workshop going on. She felt the vendors would benefit from having people drawn to the market for workshops.

Norman inquired if the west side of the building was currently being used for loading and unloading.

McGrath answered that it had been used for that purpose. It was also where trash bins and recycling bins were located. Following City of Bandon standards, she had developed a draft plan for six parallel parking spaces in that area, but she thought as many as nine spaces could be possible on the 33 feet of paved property between the houses on Cleveland Avenue SW and the west side of the Fisheries Building. McGrath added that the old loading dock was located there as well.

A period of public testimony followed.

**Rod Taylor, P.O. Box 2127, Bandon, OR 97411**

A member of the Port Commission, Taylor reported that the Port Commission unanimously recommended approval of the application. He called the year-long Marketplace “an enhancement to everything that Bandonites are looking for. We want to be a vibrant community. We want a community that offers abundance of opportunity.” Taylor commented, “As we see down in the harbor every day, twice a day, a rising tide lifts all boats.” He asserted that establishing policies to enhance the business environment would benefit everyone in the business community and the community at large.

**Tanya Depoalo, 56373 Prosper Junction Road, Bandon, OR 97411**

Depoalo said she had spoken to some business owners, in retail and in the food industry, who voiced concern that food trucks at the Farm and Sea area and retailers in the Marketplace building would take away from the businesses they were already struggling to maintain year-round. They said they felt the impact on the weekends of people spending money at the Farmers Market and not having money left to spend at shops in Old Town. Depoalo shared the concern of those merchants. She also worried that the vendors at the Farmers Market might not be local Bandonites, and if they were not, she wondered where they were coming from.

Norman observed that the permanent “brick-and-mortar” merchants felt there was an unfair playing field because those who came into town on a temporary basis did not have the same worry about their overhead.

Landucci remarked that it was still a free enterprise system, and he did not believe government should set certain dates so certain vendors in a certain part of town could succeed.

**Reg Pullen, 55966 Prosper Junction Road, Bandon, OR 97411**

Pullen, a 26-year member of the Port Commission, thought some issues were being discussed that were “muddying the waters a little bit.” He noted that he did not believe in having food trucks at the Fisheries Building location except on special occasions like the Cranberry Festival, and he did not think the goal was additional food trucks there.

Pullen favored mainly having produce at a farmers market. “That hasn’t worked out,” he suggested, “because apparently there’s not enough income selling produce two days a week. Whereas, if they were selling produce seven days a week, there might be more of an incentive to set up greenhouses.” Pullen said he considered having a small truck farm himself, because he was not having success in the cranberry business, and the expanded Farmers Market might present a good opportunity.

Having served on one of the original planning committees in 1980, Pullen recalled that the plan was to maintain development that was especially suited to the waterfront along the Coquille River Estuary. “Most of us at that time,” he said, “felt that it was not a good idea to be so restrictive. Even in 1980 we could see that there was not going to be much marine commercial anymore. The sawmill was getting ready to shut down, commercial fishing was failing, things did not look bright.”

Pullen noted that tourism had increased greatly over the following years, “yet we still have this restrictive zoning along the waterfront.” He believed the zoning had hindered development there in some cases. “I would like to see those restrictions lifted, so that we can actually continue to move forward,” he told the Commissioners.

“I’m really proud of this community and the waterfront,” Pullen concluded. “I think it’s a gem that competes with any other port on the West Coast, and we want to continue to push that.”

**Earl Robicheaux, 87101 Mars Lane, Bandon, OR 97411**

A Bandon resident since 2007, Robicheaux mentioned that he had 25 years of retail experience. Since moving to Bandon, he had observed the gradual development of the City’s waterfront, but he did not feel it really took shape until Farm and Sea moved into the Fisheries Building. After that, Robicheaux said he switched from buying fish in Charleston to buying at Farm and Sea. As a member of Art by the Sea Gallery, Robicheaux met customers from a wide variety of states, and he recommended they go over to the waterfront and Farm and Sea.

Robicheaux advised local retailers to “up their game.” He pointed out that Tripadvisor rated Coastal Mist, Second Street Gallery, and Art by the Sea Gallery among the highest rated places to shop in Bandon. Robicheaux was aware that an upscale hotel was planned to be built across the street from the Marketplace. He expected the guests at that hotel would be looking for upscale places to shop, and he thought a farmers market right across the street would be a great place for them to shop. Robicheaux added that he knew many people locally who raved about Farm and Sea. He called the Farmers Market expansion “an excellent move forward for the City.”

**Jack Sahl, 88550 Trout Pond Lane, Bandon, OR 97411**

From Sahl’s perspective, there were three issues related to the Farmers Market. First, his family enjoyed “the benefits of a thriving, fun, and boutique-style opportunity” provided by the Farmers Market. Second, when his family had guests visiting, they were directed to the Farmers Market for something to do, where they would spend money and enjoy themselves. Third, Sahl also recommended a visit to the Farmers Market to clients of his small business. “What we need in this town,” Sahl commented, “is the economic vitality that’s associated with these kind of opportunities,” and he encouraged the Commission to support the application.

Regarding the question of an expanded Farmers Market competing with other businesses in Old Town, Sahl contended that bringing growth into the community would strengthen the economy, be beneficial for all the businesses, and be helpful for the whole of the City of Bandon.

**Marie Simonds, 55756 Prosper Junction Road, Bandon, OR 97411**

Simonds said she was a local shopper who loved Farm and Sea and the Farmers Market. She referred to herself as a “community advocate” who served on local boards and committees and volunteered in many ways to help the Bandon community.

In her capacity as Executive Director of Wild Rivers Coast Alliance, the grant-making department of Bandon Dunes Golf Resort, Simonds spoke in support of modification of the Port of Bandon’s Conditional Use Permit to enable year-round use of the Fisheries Building. “Bandon’s a year-round tourist destination,” she stated, “and having the Marketplace available to be open full time would be an incredible community asset.”

“We support the Port of Bandon in their economic development endeavors,” Simonds concluded, “to enhance Bandon, the boardwalk, the Coquille River, the community, the local businesses, the marina, and more. We encourage your approval this evening.”

**Lori Osborne, 56068 Wheeler Road, Bandon, OR 97411**

As a business owner in Bandon since 1994, owning the Beverage Barn and Farm and Sea, and having a business in the Fisheries Building since 2016, Osborne offered full support to the Port of Bandon’s request for a major modification to the CUP for the Old Town Marketplace building. She felt that granting the change from seasonal and temporary use to daily and permanent use would allow the building to become “more of a hub for the waterfront and would provide much more suitable uses for the building than what it currently provides.”

Osborne contended that approving the modified CUP would “eliminate the conflicts and confusion that exist with a part of the building under one permitted use and the other on a completely different permitted use. She believed year-round use of the Marketplace would ease traffic congestion and help with parking by spreading out traffic over several days, rather than tying up the parking lot only on the busiest days—Saturdays during the tourist season.

Osborne thought the expanded Farmers Market would allow the potential for new businesses to start up and have a venue that would help them get on their feet and compete with other businesses in the community.

After reviewing the permit application, Osborne saw “only potential positive impacts for our business, the building, the Port of Bandon, the waterfront district, and the community of Bandon,” and gave her full support to its approval.

**Margaret Pounder, 54177 Morrison Road, Bandon, OR 97411**

Pounder, the President and Chief Executive Officer of the Bandon Chamber of Commerce, stated that the requested CUP modification would “allow for the growth of a seasonal market into a thriving location for startup artisans to produce and sell year-round, to form a marketplace for

small, independent businesses. And the Chamber's all about independent businesses." She noted that businesses were the centerpiece of Old Town.

"Along with additional businesses," Pounder continued, "there will be a greater focus on the waterfront—which we all love and cherish—and our ocean resources, by providing an aquarium and aquaculture tanks in the future," which would add to the ambience of the Marketplace and offer access to sea life that was not typically available anywhere on Oregon's south coast.

Pounder told the Commissioners there had been a favorable response from the community, vendors, and others to the concept of a year-round market at that location. She also thought it would be a great place for the public to mingle and visit with folks they did not get to see regularly. "The level of civic pride will be high," Pounder suggested. "The community's sense of well-being...the level of attachment that people feel for their town and the waterfront will likely be at its highest." She said, "As cities and towns have lost their sense of identity, residents' sense of civic pride has followed. It becomes harder to support something that doesn't stand out, and we can make this stand out."

Pounder added, "The Port of Bandon and its properties are special. They have character. They've been here a long time, and we want them to flourish. The Fisheries Building is a landmark in historic Old Town," with unique scenic views. She said Farm and Sea and the seasonal market provided education, pleasure, and the welfare of local citizens and Bandon's visitors, by offering workshops, tastings, live music, and access to the waterfront. Pounder urged the Commission to approve the application.

**John Towne, 290 1<sup>st</sup> Street SW, Bandon, OR 97411**

Living next to the Fisheries Building, Towne offered a different perspective on the requested permit modification. He maintained that it amounted to "rezoning the current marine zone." Towne said he supported the 2012 CUP approval as well as turning the seasonal market into a year-round operation. He also favored a number of the uses of the Marketplace mentioned in the application, including community gatherings, charity events, marine exhibits, the brand-new aquarium, educational events, and more.

Towne did not favor "turning a marine zone treasure into an alcohol-fueled venue." He observed that Bandon had zoning that allowed "alcohol-fueled night clubs or restaurants" and there was The Barn Community Center as well. Towne stated that amplified music was another aspect of the plans for the building.

Towne commented that the Port indicated in its application that it wanted to keep the property in question marine related, yet five-to-fifteen-year leases were typically given, which would allow the potential nonconforming uses to last decades at that location.

Towne asserted that the Marketplace did not have 10,000 square feet of floor space if the space used by Farm and Sea was subtracted from that number.

"The Port has been doing some incredibly wonderful marine-related projects lately," Towne noted, such as growing dulse seaweed, which is a great sustainable worldwide product. They are looking into growing sea urchins, which would be a great local opportunity. They are working with the Coquille Tribe on salmon restoration in this district." Towne concluded that he would like those marine-related uses to continue and would like to have a year-round Farmers Market there, "but I do not see the value to this city...of adding another bar/restaurant in this marine zone."

Given an opportunity for rebuttal, McGrath thanked the Commissioners for their time and voiced appreciation for the public comment at the meeting. She felt it was clear that there was community support for the expanded Marketplace, but she acknowledged that the issues raised were legitimate and would be taken into consideration as the project developed.

Slothower wanted to know what Towne meant by “alcohol-fueled amplified music.” He asked if there were plans to sell alcohol at the Farmers Market.

“No,” McGrath answered, “but Farm and Sea currently has special events that have been advertised.” She added, “I cannot speak on behalf of the Port, but I would say from what I know of them that their intention is not to create a nightclub environment that is going to disrupt the residential neighborhood.” The Port Commissioners who were present nodded in agreement. McGrath pointed out that any major change to the building that would require a permit—such as a nightclub, a bar, or a brewery—would have to come back to the City for approval.

McGrath invited the Port Commissioners who were present to join in the rebuttal, and Pullen returned to the lectern. “I don’t think we’ve ever been in favor of free-wheeling alcohol activity down there,” Pullen began. “The liability issues are so great, and that incident that happened at the Cranberry Festival two years ago, where a young man was seriously injured during that kind of event is something I am totally against.” He shared Towns’ concern and favored “casual wine tasting and minimizing the amount of alcohol that’s consumed.” Pullen concluded, “We have plenty of bars in Bandon as it is.”

Landucci mentioned that he had been present when Osborne hosted a gathering to watch the Oregon/Oregon State football game in the Fisheries Building. He thought it was a “nice setup” and a relatively quiet event.

Nichols clarified that the Port’s application did not require City Council approval unless there was an appeal of the Planning Commission’s decision. She also noted that she had produced some findings from the Staff Report concerning conformance with the criteria for ESWD uses. Nichols explained that an ESWD building had to meet certain criteria for Conditional Uses to be permitted. The building would have to be able to revert to an ESWD use at any time, and accordingly the applicant had not proposed any permanent changes to the building. In fact, the Port had stated that it would use the building for a water-dependent purpose at any time, if it were to become economically viable to do so. Nichols added that the City had broadened its definition of what was allowed in a zone, using the all-encompassing term “Commercial Retail Sales and Services.”

Regarding the potential for the impact on the surrounding residential neighbors of noise from the Fisheries Building, Nichols pointed out that that the City’s noise ordinance prohibited amplified sound from 10:00 p.m. to 8:00 a.m. without the City Manager’s permission. She informed the Commissioners that they had the ability to limit the hours, days, place, and manner of operations, and could set such criteria for this application if they chose.

Nichols thanked the members of the public who had participated in the Public Hearing.

Slothower also expressed appreciation for those who turned out for the meeting. He closed the Public Comment portion of the Public Hearing and sought comments from the Commissioners.

Landucci stated, “I think it’s a great idea, well planned, and I’m all for it.”

“I hope it works really well,” said Orsi, but he was curious as to how an event like the Gorse Festival could be held in the Marketplace, given the other uses that were planned in the building and the fact that the festival was “loud music and alcohol driven.”

With mock outrage, Slothower responded, “It is not! I like the Gorse Festival.”

“I do, too,” said Orsi, but he did not think there would be enough space for it after the building was configured for vendors.

Slothower recalled that some of the vendors in the past had joined in with the festival theme and dedicated their booths to something related to gorse.

Norman noted that there were many details to be worked out by the Port once the project got underway.

Landucci offered a motion to approve the request for a major modification to the Conditional Use Permit for the Farmers Market as proposed in Application 22-106, located at 250 1<sup>st</sup> Street SW in the City of Bandon, with the attached conditions. Norman seconded the motion, which passed by unanimous roll call vote by those Commissioners who were present (4:0:3):

AYES: Landucci, Norman, Orsi, Slothower

NAYS: None

ABSENT: Jurkowski, Scobby, Starbuck

## **6.0 WORK SESSION – DRAFT ORDINANCES**

### **6.1 Vacation Rental Dwelling Code Update**

Nichols indicated she had made some changes to the Draft Vacation Rental Dwelling (VRD) Ordinance that the Commissioners requested at their previous meeting. She also scheduled a Public Hearing on the proposed ordinance update during the January 26, 2023, Planning Commission meeting. A Measure 56 notice for the hearing had been sent to Bandon citizens who would potentially be affected by the Commission’s decision, a PAPA (Post-Acknowledgement Plan Amendment) had been submitted to DLCD (Department of Land Conservation and Development), and notices were to be placed in *The World* newspaper.

One of the changes Nichols had made involved using the Change of Use process to trigger a home inspection. In consultation with City Attorney Shala Kudlac, Nichols learned that this procedure could only be required of new vacation rentals.

Slothower asked if VRDs could be required to meet commercial code requirements if they were considered to be commercial buildings.

Nichols replied that since a land use decision was involved, the City could not impose that requirement. She said some cities had a permit process that was separate from their land use process, but existing VRDs in Bandon had been approved under a land use process, so it would not be possible to apply different standards after the fact. Some requirements, such as signage, would not affect the operation of a VRD, and could reasonably be imposed on existing VRDs, but an inspection might require modifications to a home.

Slothower insisted that a VRD should not be considered a commercial enterprise if it did not meet the standards for safety and other concerns that were required of commercial enterprises.

Nichols responded that the time to address that would have been many years earlier. She planned to ask Kudlac to attend the January meeting so this topic could be discussed more thoroughly. Nichols reported that she contacted the Coos County Building Department and found that they were still working out the particulars of the Change of Use process.

Nichols had also looked up the Short-Term Vacation Rental Inspection Checklist for the City of Cannon Beach, on the north coast of Oregon. Among the items to be checked were the functioning of the bathroom facilities, the soundness of the roof, and the proper number of electrical outlets in habitable rooms. Nichols agreed that these were reasonable requirements for

a commercial enterprise but was uncertain that it would be within the City's purview to require such an inspection of already-permitted VRDs.

Slothower remarked that it was a matter of safety and comfort.

Landucci chimed in that it was common sense.

Nichols had also updated the trash requirement in the Draft Ordinance to specify VRDs would have to use a 96-gallon container and it would have to be brought in within 24 hours after the weekly garbage pickup. In another change, the proposed language would revert to the existing requirement for VRDs to show some rental activity within a one-year period or potentially lose their permit. The parking requirement language was also clarified, but Nichols was unable to determine exactly how to explain the VRD saturation rate calculation.

Before the Public Hearing in January, Nichols planned to come up with language to fulfill Scobby's suggestion of an outside placard for every VRD with its name and contact information, and she was going to develop a list of requirements for the inspection that would follow a Change of Use application.

The focus turned to the vacation rental saturation rate, and Orsi asked for a clarification on what was considered an "eligible dwelling unit."

Slothower maintained that existing noncompliant VRDs should be included in both the numerator and denominator of the saturation ratio, even though they were not eligible dwelling units.

Norman noted that a triplex in which two units were VRDs should count as two dwelling units.

Nichols interpreted the Commissioners' statements as indicating they wished all existing vacation rental dwelling units to count.

Orsi thought the proposed language did say that, but in an awkward way.

Nichols suggested redoing the language to clarify that all existing VRDs would count—whether conforming to the code or not—and to include the subject property in the calculation. She clarified that nonconforming VRDs were approved units that were operating in multiple-unit dwellings, not in single-family detached dwellings, and so would not be approved under the current code. Nichols perceived that the Commissioners did not want ineligible dwellings to count in the ratio's denominator.

Norman observed that the City's interest was to mitigate the concentration of VRDs in any neighborhood and control the overall number of VRDs, which would probably require a cap.

Nichols recalled that the City Council had not expressed interest in doing that. She hoped to develop clear step-by-step language before the January hearing to describe the saturation calculation in more understandable terms. Nichols told the Commissioners there could be a second hearing in February if necessary, because the Council's hearing would not take place until March.

Orsi was curious about how a 20 percent saturation calculation would be made if there were fewer than five eligible properties within 250 feet of the subject property, including the subject property. He thought that would be an unlikely scenario, and the VRD would probably have to be allowed due to no saturation in that neighborhood. Orsi still favored a 25 percent ratio.

Slothower speculated that a variance could be extended to the applicant in the unusual case Orsi had described. He felt there would be some way around applying the standard saturation rate.



Nichols interjected that Bandon’s code had a hardship variance, but that would depend on a determination that something was out of the ordinary about the subject property. She hoped to develop language about the saturation rate that was both comprehensive and comprehensible, and she planned to have a Staff Report and Draft Ordinance ready for the Commissioners at least a week before the January hearing.

## **7.0 STAFF UPDATE/DISCUSSION**

### **7.1 Planning Department Report**

Nichols reported that she and Liechti had been working on some projects and preparing for some of what the Commission would be taking on in the new year, including a Master Plan Ordinance Development Amendment.

Staff had received a draft of the Housing Needs Analysis/Buildable Lands Inventory, a data dominated document that could be accessed on the City’s website. Nichols said it showed the numbers that illustrated Bandon’s “dire housing need.”

Nichols mentioned that the agreement to begin the Transportation System Plan (TSP) Update had not been signed yet, and she added in response to an earlier public comment that the City recognized the transportation issues on Beach Loop Drive and she hoped to address those in the TSP Update.

Because of the state requirement to apply clear and objective standards to housing matters, Nichols said language related to the Shoreland Overlay and Hazards Overlay needed to be examined. The Shoreland Overlay also needed to be digitally mapped using geolocation technology.

## **8.0 OPEN DISCUSSION**

### **Commissioner Comments (none)**

## **9.0 ADJOURN**

Slothower adjourned the meeting at 8:39 p.m.

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