

City of Bandon

CITY COUNCIL AGENDA DOCUMENTATION	DATE: October 2, 2023
SUBJECT: Planning Commission Meeting Minutes	ITEM NO: 6.2.1

BACKGROUND:

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

- August 24, 2023, Regular Meeting

FISCAL IMPACT:

None

RECOMMENDATION:

MOTION: to approve as part of the Consent Agenda.

SUBMITTED BY:



June Hinojosa, City Recorder

**Regular Meeting of the Planning Commission
at Bandon City Hall, on Facebook, and via Zoom Meetings
August 24, 2023**

COMMISSION:

- Bill Frey, Commissioner
- Sally Jurkowski, Vice Chair
- 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 7:02 p.m.

2.0 ROLL CALL

Roll Call was taken as indicated above. Slothower welcomed Bill Frey to the Commission. Norman joined the meeting using Zoom. The other Commissioners and City Staff members were present in the Council Chambers.

3.0 CONSENT AGENDA

3.1 Regular Meeting Minutes – July 27, 2023

Hearing no objections or corrections, Slothower approved the July 27, 2023, minutes as written.

4.0 PUBLIC COMMENT

Beverly Seltzer, part-time resident of Bandon

Seltzer and her husband owned two properties in Bandon and lived in Bandon six months a year. They were interested in building an ADU (Accessory Dwelling Unit) and had been told that the City would be increasing the size limit to 900 square feet. She wondered when that would happen.

Nichols explained that the Planning Commission had forwarded a positive recommendation on the size increase to the City Council, which would make its decision at its September 11, 2023, meeting. The new regulation would go into effect 30 days after being adopted by the Council.

Neal Barlow, resident of Bandon

Barlow thanked everyone who put together the Downtown Streetscape Open House earlier in the week. He commended them for the interesting ideas they presented. Barlow noted that Bandon enjoyed "a large variety of restaurants and stores that would make most small towns envious." He observed, "We need to recognize and encourage the businesses downtown. Hopefully, with a comprehensive plan, we can maintain the character through this thoughtful development."

Barlow noted that the plans that were shown assumed the Marriott Hotel would be built, which he believed would have a dramatic impact on the downtown area. He had seen on the Planning Department's web page that the Marriott's application was still incomplete, and he inquired if any progress had been made toward completing the application.

Nichols responded that the Planning Department had 30 days from the time an application was submitted to deem it complete or incomplete. At that point, the applicant had an additional 180 days to provide more information, but no additional materials had been submitted yet.

Barlow feared a corporation saying, “Due to economic environment, we have changed our plans.’ And then if we make a city plan based on a building that doesn’t actually exist, I will let your imagination go forward on that.” He was concerned that the downtown plan could be ready to put into place within a few months, but the hotel “might still be a figment of imagination.”

Nichols stated that the developers of the hotel had been meeting with City Staff “to get into the completeness realm” and get the application before the Planning Commission.

Nancy Noble Post, resident of Bandon

Post asked if the Commission was aware of the application the Planning Department had received for the Gravel Point project.

“Yes,” was Slothower’s reply.

Nichols clarified that the application had not been scheduled for a Public Hearing yet, and the Commission could not discuss the application outside of a Public Hearing.

Post asked when a date would be set for the Public Hearing.

Nichols answered that the application had been deemed incomplete. Additional materials had been submitted, but Staff had not conducted a secondary completeness review. She anticipated the Public Hearing to be held in September or October of 2023, at a regularly scheduled Planning Commission meeting.

Post commented, “This is a pretty big deal for people on Strawberry Drive.” She wondered if the public could still comment on the project during the Public Comment portion of the Commission’s meetings.

“You can say what you want,” Slothower told Post. “We just can’t answer you.”

Nichols underscored that the Commissioners could not take any comments into consideration outside of a Public Hearing, but comments could be submitted after notice of the Public Hearing was received. Then, those comments would be included in the record of the Commission’s decision.

Post recalled from having served on the Planning Commission that it sometimes helped Commissioners to visit a site where there were complicated issues involved in a decision. “This is a very complicated site with a lot of aspects,” she noted. “I feel like if you knew what it looked like on the ground, from Beach Loop, from Strawberry Drive, from Face Rock Drive...you would have a lot better idea of the enormity of the project.”

Slothower stated that the Commission would take all of that into consideration at the appropriate time.

Don Suva, resident of Bandon

Suva asked if residents of Strawberry Drive could submit comments at any time, or if they had to wait for a Public Hearing.

Nichols responded that comments had to be submitted during the public comment period to be considered by the Planning Commission at its Public Hearing. Those who lived within 250 feet of the subject property would be notified by mail 20 days in advance of the Public Hearing and that notice would tell them how to submit their comments to the Commission. Nichols added that the Staff Report would be written with an eye on the application’s consistency with the municipal code. The Commission would make the decision on the application.

5.0 HEARINGS

5.1 23-046 – An amendment to the Comprehensive Plan and Title 17 of the Bandon Municipal Code to Address Coastal Public Access

Slothower opened the Public Hearing at 7:25 p.m. and he read aloud the standard guidelines for participation in a Public Hearing.

Nichols provided a presentation on the proposed amendment. She said the Commission had previously held a Work Session on the topic.

Nichols offered a brief historical overview of coastal public access in Oregon. In 1913, the state declared that the shoreline was a “public highway” that was defined by wet sand. In light of development in coastal towns that extended out to the beach, Oregon’s Beach Bill was passed in 1966, designating the shorelands up to the vegetation line—a line that migrated over time—as belonging to the public. Additionally, Statewide Land Use Planning Goal 17 covered coastal shorelands and required cities to provide public beach access, develop an inventory of physical and visual access sites, and afford some level of protection to those sites.

Nichols commented that Bandon’s Comprehensive Plan (Comp Plan) included the “bare minimum” required reference to coastal public access, merely providing a copy of the statement from Goal 17 and agreeing to protect public access points.

Recently, the City of Bandon had received a grant from DLCD (Department of Land Conservation and Development) which paid for Planning Staff time and a specialist, Claire Fiegenger, who helped craft the proposed Comp Plan and code update. Nichols and Fiegenger used an existing public access inventory, visited beach access sites in and around Bandon, and updated the inventory. The resulting list contained both developed and undeveloped sites. Some of the undeveloped sites were at the end of streets in the Jetty and could be opened for emergency or alternate access points; others were easements along the coast that had the potential to be opened to the public. Sites in the Sunset City area were also included in the inventory.

An inventory list describing the sites in more detail was created, and entities that owned the sites that were not owned by the City of Bandon were contacted to verify the accuracy of the information. Those entities included Coos County, U.S. Fish and Wildlife, and the Port of Bandon.

The next step was to examine the Comp Plan policies and goals that could be adopted. Some definitions were added for clarity. A list of goals was generated, including finding a balance between protection of cultural resources and the improvement of access to coastal sites, as well as equitable access for the disabled, including appropriate signage. Nichols mentioned that it was essential to consult with the Coquille Tribe because much of the area was significant to them.

Nichols covered the specific policies produced by the public access project. She explained that the City’s Comp Plan was an aspirational guiding document. In order to enforce those policies they had to be added to the Bandon Municipal Code (BMC).

Recommended policies for the City’s role included:

- conducting a public access program
- maintaining an inventory of access sites
- acquiring land and easements to increase access when appropriate
- considering the negative impacts on cultural resources
- maintaining emergency vehicle access points
- updating the City’s Transportation System Plan (TSP)
- including equitable access and accessibility
- adopting an implementing ordinance for these policies

Noting that he was able to read along with Nichols' presentation because the Commissioners had been given a copy of the proposed language, Slothower asked where the public could find it.

Nichols replied that the full version was in the meeting packet attached to the agenda and on the project's page on the City of Bandon's website. She resumed listing the proposed policies, itemizing those that concerned recreation standards:

- developing access sites that included inclusive signage
- collaborating with local tribes when developing new access sites or improving existing sites
- meeting or exceeding ADA (Americans with Disabilities Act) standards when developing or improving public access sites
- providing parking, restroom and accessibility infrastructure when developing new sites

Nichols pointed out that there was no current plan and no current funding to improve any sites, but the proposed policies would set the standards for future access site development or improvements. Then, she listed the recommended policies related to development standards:

- shoreline stabilization measures would require beach access to be maintained during construction
- commercial developments on the waterfront would be encouraged to provide public access to coastal shorelands
- access to or through the dune areas would be controlled to protect their ecological resources
- public estuary access would be required for any port or marina project
- community docks would be encouraged, rather than private moorages
- accessibility elements would be considered when developing emergency evacuation routes
- archaeological and historic resources would be protected during development

Concluding her presentation, Nichols enumerated the actions that the proposal recommended, to ensure that the project would be implemented properly:

- developing a comprehensive public access program, which would be carried out by adopting the proposal
- maintaining an inventory on a minimum of a decadal basis
- reviewing and strengthening the implementing ordinances
- requiring all development to be consistent with the City's Comp Plan
- updating any forms, information sheets, and processes to include the updated policies

The proposed Comp Plan update would be reflected in changes to BMC Chapter 17.76 Shoreland Overlay Zone, with the addition of Section 17.76.140 Public Access.

Nichols offered to take questions about the proposal from the Commissioners.

Norman observed that docks were mentioned a number of times, and community and public docks were to be encouraged over individual single-purpose docks and piers. He wondered if there was any limitation on the number of individual docks and he asked if the docks might be on the ocean as well as the river.

"I don't think you could put a dock on the ocean," Nichols replied. "I think that would be very unsuccessful." She pointed out that there were few locations where someone could site a dock, and she mentioned having received inquiries about building something at the vacant lot along the Breuer Building, next to the Old Coast Guard Building, and in putting a private dock there. Nichols indicated there was nothing in the code to disallow that, but she had placed language in the proposed code update that would allow individual docks by a Type II process, if it was determined they were appropriate within the Comp Plan policies. If the Commissioners preferred, requests for

individual docks could be handled by a Type III process requiring Planning Commission approval rather than Staff discretion.

Norman asked if there was any mention of environmental or safety concerns regarding construction of individual docks, and Nichols answered that such construction would be subject to requirements of the Water Zone and Shoreland Overlay Zone and covered separately by policies stated in the Comp Plan.

Regarding the construction of docks, Jurkowski wondered if the state had guidelines as well.

Nichols thought there would be a state process involved, because the City would not be the only permitting agency concerned with something being located in the water.

Slothower figured a federal agency would also come into play due to the river being a navigable waterway.

Nichols suggested making docks a Type III conditional use, and Slothower and Jurkowski agreed.

Having encountered the word “geomorphology” in the proposal, Norman asked, “Is there a more understandable word, for those of us that are not geologists?”

“Geomorphology’s a great word!” Slothower exclaimed.

Nichols said she and Slothower were familiar with the word because they were both geologists. She noted that the term was only used in her findings and not in the actual proposed code language.

Starbuck suggested, “You could just say, ‘lay of the land.’”

“It’s how geology shapes the land,” was Slothower’s definition.

“Over geologic time,” added Starbuck.

Slothower invited public comments on the proposed Comp Plan and code amendment.

Jeff Seltzer, part-time resident of Bandon

Seltzer inquired about the policy for coastal access over private land. He wondered if a well-established pathway that crossed over private property to the beach would generally be available to the public.

Nichols replied that it was somewhat of a legal question that she was not qualified to answer, but she did know there were some locations, shown on the inventory map, where there were public access easements that allowed public use. She noted that there were other instances where people were walking across private property where there was no access easement. Those would not be covered by the ordinance.

Seltzer supposed that the easement would prohibit an owner from abruptly closing the pathway.

“That’s correct,” Nichols responded. “The purpose of all of this is to protect those and to encourage the City to actually get more of them,” she said. She told Seltzer that the locations of such easements were marked on the inventory map.

The Commissioners provided additional comments.

Orsi commented on the use of acronyms in the proposed ordinance. He felt it would be beneficial to spell out what the acronyms represented.

Nichols pledged to make appropriate changes.

Starbuck stated that he would like to see Type III decisions used for piers and docks.

Nichols noted that earlier Slothower had brought to her attention the limited number of emergency beach access points in Bandon. In fact, there was only one—the beach access road in the Tish-A-Tang neighborhood. “That’s pretty far south if there’s an accident on the north side of the beach,” she

observed. Nichols said there had been an internal discussion about finding another emergency access point or perhaps an easement at a different location that could be used. She worried about erosion or fire or some other event causing that single access point to be closed off.

Slothower pointed out that it was not possible to get past Face Rock at high tide to go to an emergency north of it.

Nichols added, "Because of the geomorphology of our coastline, we don't have any place that would really be appropriate for ADA access." She described how other beaches furnished mats that could be rolled out over the sand to facilitate wheelchair access. It would be difficult to put that to use at Tish-A-Tang, due to the long, steep, rocky road from Beach Loop Drive to the beach below.

Nichols suggested looking at developing one of the City's rights-of-way in the Jetty area for easier access. She acknowledged that the dunes provided protection for homes on the Jetty, so creating an access point through the dunes might not be a workable solution.

"Signage makes a place moderately inclusive," Nichols commented, "but if you can't actually get on the beach, then it's not inclusive at all."

Slothower thought it would be easy to make ADA or emergency access at the South Jetty, but Starbuck pointed out how storms brought a lot of driftwood onto that beach and would quickly plug things up.

Slothower recalled driftwood piled ten feet high across the road at Bullards Beach a few years earlier. He emphasized the need to maintain the access point, wherever it was created.

Nichols remembered people calling the City and asking, "Why did you move the rocks around at the Jetty?" She observed, "It just happens. The ocean is so strong in the winter."

Orsi moved to recommend to the City Council approval of the proposed amendments to the City's Comprehensive Plan and Bandon Municipal Code to address coastal public access as amended, making individual docks and piers a conditional use. Starbuck seconded the motion and it passed by unanimous voice vote of those who were present (6:0:1):

AYES: Frey, Jurkowski, Norman, Orsi, Slothower, Starbuck

NAYS: None

ABSENT: Scobby

Nichols said the City Council would take up the proposal at its September 11, 2023, meeting.

6.0 STAFF UPDATE

6.1 Planning Department Report

As she had mentioned earlier, Nichols reported that the Marriott Hotel application was incomplete. So was the application for the Gravel Point project, but she anticipated it being complete "sooner rather than later."

Nichols asked the Commissioners if they wanted to hold a September 2023 meeting if there were no Public Hearings scheduled, or if they wished to suggest topics to discuss or have a study session.

Jurkowski wanted to know when there would be a hearing on the mariculture project at the Moore Mill property.

Nichols guessed that it would happen in October or November 2023, because she still needed to notify DLCD. She noted that the October meeting would have to be held a week earlier than normal, because the Oregon Planning Conference was taking place that week.

Nichols observed that some of the Commissioners had attended the open house for the Downtown Streetscape Plan on August 22, 2023, where some ideas presented by the consultant team contracted by the City were shown. She said information and images from the project were available on the Planning Departments page on the City of Bandon website. Nichols encouraged feedback on the project to be emailed to the Planning Department. She expected a survey and another community meeting to be conducted on the project.

Nichols informed the Commission that she had applied for additional funding from DLCD to produce the second part of the City's Housing Needs Analysis and Buildable Lands Inventory. During the previous biennium, funding had been received to perform economic research and assemble GIS (Geographic Information System) data about the buildable land and housing needs in Bandon. Nichols said the second part involved adopting the results of the first part and developing and implementing code changes to encourage housing opportunities.

Funding had materialized for a Beaches and Dunes update as well.

Nichols reported sadly that Planner Kristan Liechti was leaving her position and moving to Ashland. "She's been a great support to me and I think to everyone in the community," Nichols observed. "There's no one who talks to angry people better than Kristan does," she commented.

Norman, Starbuck, and Slothower expressed interest in attending a training in Oregon land use hosted by DLCD in Coos County on September 8, 2023.

Starbuck thought the Commission should recommend to the City Council that a minimal tax or fee be instituted for Vacation Rental Dwellings (VRDs), to prevent VRD owners from fraudulently claiming a small amount of income in order to remain in compliance.

Nichols responded that she had examined the City's Transient Occupancy (TOT) code after the same idea had come up at a previous Commission meeting. She found that the code had a provision for the City's Finance Department to audit a VRD operator's books in the event that fraud was suspected. Nichols believed that might address Starbuck's concern.

Starbuck persisted with a suggestion that a base amount could be calculated, equivalent to a typical VRD rent.

"Because it does cost something for the City to process those things," Slothower interjected, "and if somebody's...renting to their buddies for \$10 a night, that doesn't even cover our costs on it."

Nichols could not imagine telling someone they had to have a minimum rental fee. Slothower termed it a "minimum tax," but Nichols countered that the tax would be based on nightly room rentals and would mean the City was "essentially setting a base rate for what a room would cost."

"You're giving them the choice of what they charge," Jurkowski maintained. "If you're just saying the tax is a certain amount, you're not choosing how much they charge. You're just saying, 'This is what the City expects,' because there are other people that might really want one, too. But they're taking a spot."

Nichols suggested putting the topic on a future Commission agenda.

Frey asked if the VRD monitoring service the City had begun to use recently was maintaining a database that would show the average rental rate.

Nichols replied that Host Compliance tracked people who listed their short-term rentals on VRBO, Airbnb, or similar websites, and then provided the City with a report showing the number of nights rented and the rental rate. She noted that some of Bandon's VRDs did not use an online platform or maybe used an agency like Exclusive Property Management, so that same kind of data would not be available for their rentals.

Norman wondered if the Finance Department had the resources to conduct extra audits of VRD finances.

Nichols indicated that audits were already under consideration by the Finance Department.

Starbuck did not feel the City needed to be monitoring VRDs and send them a warning after three quarters with no TOTs reported, because they might have “a banner fourth quarter.”

Slothower repeated that he favored a minimum annual tax and Jurkowski agreed.

Nichols planned to find out whether the City could even institute such a tax.

Slothower allowed a public comment.

Kathy Frey, resident of Bandon

Frey suggested the type of VRD owners who might have reported rentals at \$1 a day to avoid losing their permit might also just pay the minimum tax regardless of actually having rented their units for the requisite 10 days per year. She thought that might be an unintended consequence of the minimum tax.

Nichols and Slothower agreed that the discussion of a minimum VRD tax should be placed on a future Commission agenda.

6.2 Appeal of 23-038

Nichols reported that the Commission’s decision to deny the property at 850 Portland Avenue SW continued use as a vacation rental had been appealed to the City Council, which affirmed the Commission’s decision.

Slothower, Starbuck, and Jurkowski voiced their approval of the Council’s action.

7.0 OPEN DISCUSSION

Commissioner Comments

Jurkowski, owner of two properties in Bandon, showed the Commissioners a solicitation she had received from Vacasa that suggested she could be using them for vacation rentals. “I know that I can’t use my houses for a vacation rental because of the location,” Jurkowski said, “but my concern is that the general public still may need educated that just because you get...something in the mail asking you if you want to use your house for a vacation rental, does not give you permission from the City’s viewpoint.”

Jurkowski also expressed her concern about the safety of the intersection of Fillmore Avenue SE and Highway 101 due to the number of “close calls” she had experience while walking or driving there. She wished there was signage that would remind people that pedestrians had the right-of-way and that it was not safe to make a left turn just because an oncoming vehicle was making a left turn, since vehicles in the other lane might be going straight.

Nichols noted that Mayor Mary Schamehorn shared Jurkowski’s concern and had brought it up many times over the years. She said engineers were studying that intersection during the City’s Transportation System Plan update, looking for a way to improve the timing of the light or the left-hand turn situation.

Jurkowski stated that she had almost been hit by a car while crossing the street at that intersection earlier in the day.

Starbuck interjected that he had experienced similar incidents at the 11th Street intersection with Highway 101.

Nichols responded that ODOT (Oregon Department of Transportation) was providing the City with data about all intersections with Highway 101 in Bandon, and traffic engineers were working on redesigning those intersections to improve their safety.

Starbuck thought a longer lag time between the walk light and the green light would help.

Frey asked if the Police Department had rectified the issues being experienced in generating reports, caused by a software upgrade. He was curious about the rate of traffic citations in recent months.

Nichols thought the problem had resulted from a software change at the county level that turned out not to be user friendly and more expensive.

Jurkowski told Nichols she appreciated the information in the presentation about the coastal public access amendments.

Frey wished Liechti good luck and commented that it was an exciting time to be on the Commission, with a lot of potential changes for the City. He believed the way those changes were managed would determine how Bandon would look for the foreseeable future.

Norman also wished Liechti good luck in her new adventure.

8.0 ADJOURN

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

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