

Bruce Spencer  
1349 Strawberry Drive  
Bandon, OR 97411

Bandon City Council  
555 Highway 101  
Bandon, OR 97411

RE: Appeal of Planning Action 23-045 approval of conditional use permit, November 2<sup>nd</sup>, 2023

November 21<sup>st</sup>, 2023

Dear Council Members,

I submit this appeal of the decision referenced above to the Bandon City Council, having standing to appeal based on my previously raising written concerns to the Bandon Planning Commission during the public hearings. The specific issues of my appeal of this decision were all brought up during the Planning Commission's proceedings regarding this application, and include but are not limited to:

1. It was brought up during the public meetings by multiple parties that homeowners who expected to be notified of the meetings were not. ***I therefore appeal the Planning Commission's decision based on 16.04.070B.2.b***, required information pertaining to the location of the meeting was not included on the Notice of Public Hearing dated September 7<sup>th</sup>, 2023. In addition, I appeal the Planning Commission's decision based on 16.04.070B.2.d, whereas the notice did not include required wording disclosing information pertaining to appealing to the City Council or Circuit Court.

*16.08.040A Section 16.08.040 requires the pre-planning of large sites in conjunction with requests for annexation, and applications for phased subdivisions and master plan developments; the purpose of which is to avoid piecemeal development with inadequate public facilities.*

*16.08.040B This section applies to land use applications and annexations affecting more than 40 acres of land under the same contiguous ownership, even where only a portion of the site is proposed for subdividing.*

2. ***I appeal the Planning Commission's decision based on the following.*** As noted above, 16.08.040A requires 'pre-planning of large sites in conjunction with ...', and further provides the purpose of the pre-planning as being for the critical reasons of ensuring projects of this magnitude do not overwhelm city resources or place undue harms on its residents.

I have been informed the Planning Commission did not consider my previous testimony to them regarding this issue because they interpreted my objection as not conforming to this code section, predominantly because the application is not requesting a land division or property line adjustment. However, I would argue the following:

- The 16.08 chapter heading 'Land Divisions and Property Line Adjustments' does not fully encapsulate the purposes and applications outlined within the chapter.
- 16.08.010 Purpose includes subsections C, D, and E, which are independent of and irrelevant to sections A and B. Those subsections encourage efficient use of land resources, promoting public

health, safety, and general welfare through orderly and efficient urbanization, and providing of adequate transportation, water supply, sewage, fire protection, pollutions control, among other things.

- Applicant's Consolidated Request opens with the statement 'Gravel Point will be located on a 24.8 acre (6 tax lots combined) parcel'. They have indicated their intention to treat multiple lots as a single unit.
  - Applicant's response in Project Narrative and Proposed Findings of Compliance to 17.94.090H continued to page 35 states the applicant's plan 'includes 90 acres of contiguous ownership', and future development is planned for additional acres than the 24.8 acres in the current proposal. This exceeds the contiguous ownership of 40 acres in 16.08.040B. While 16.08.040B states 'even where only a portion of the site is proposed for subdividing', there are multiple arguments this wording does not preclude applicants from the Pre-Planning for Large Sites reporting requirements. For example, no, or 0% subdivision is less than 1% subdivision. In addition, the wording 'master plan developments' by definition includes multi-phased developments, which the applicant has attested to having in store for the additional acreage above the 24.8 included in the current application.
  - A qualified, properly drafted and executed Pre-Planning for Large Sites Report would provide the city much more information than it has now to address many of the city's departments and constituents' concerns, including but not limited to:
    - o Utilities, especially sewage
    - o Accessibility
      - Plans for direct access from 101
    - o Traffic
      - Beachloop, Carter, Lincoln, Seabird, etc.
    - o Support and emergency services
      - Police
      - Fire
      - Health
    - o Public health, safety, and general welfare
      - Several communities have rejected projects of similar scope and magnitude based on the negative impacts expected to public health, safety, and general welfare
      - It is not just traffic that will be affected on the above mentioned streets, impacts will also be to pedestrians, dog walkers, cyclists, joggers, etc.
    - o Orderly growth
  - ***The City Council should reject this application until the applicant submits a conceptual master plan with pre-application materials for the project or proposal as outlined under section 16.08.040C and D, or at a minimum until the City Council feels the applicant has met the burden of proof on the items noted above for their future plans for their full 90 acres, not just the current 24.8 acres.***
3. The developer's project is in Bandon's CD-1 zone, and is for the purpose of developing and operating a hotel and restaurant. The developer's proposal includes thirty-two individual, stand alone, unattached units, each with two full baths, one powder room (half bath), kitchen and laundry facilities, and a spa on the patio. These units are not hotel rooms. The applicant has responded to previous objections that they are hotel rooms because they are part of a development plan for a hotel. However, the applicant also notes 'The Villa/Suites are residential in nature'. In addition, no internet search or dictionary definition supports their position that these are hotel rooms. These units are temporary single family residences, as defined in 17.02 as well as the 'Definitions' section of 16.12.090K. 16.12.090K further states Vacation Rental Units (VRDs) are a conditional use in the CD-1 zone, and further defines rules and regulations for

conditional use permits. ***I appeal the Planning Commission's decision based on the developer not applying for, nor complying with, the conditional use permit for VRDs.***

***a. In addition to the above, if the City Council does not decide to reverse the Planning Commission's decision, for Utility and SDC purposes these units should be counted as a full unit each vs the 1/3 unit applied to hotel/motel rooms.***

4. *An abandoned partially completed project would be detrimental to the community, and provide an unstructured environment that would lead to decay, trash, overgrowth, and other undesirable impacts, including partially built structures encouraging homeless encampments. Whether the developer had the financial capability to complete the project once started was brought up as testimony during the Planning Commission's proceedings. The developer, Perk Development Group LLC, currently has four projects listed on their web site. I have some concerns with this:*
  - a. *I am unable to find Perk Development Group LLC on the Oregon Secretary of State (SOS) web portal. If that is correct, this precludes them from doing any business in the state of Oregon, including paying bills (or submitting applications such as the one we are now addressing).*
  - b. *The nearest listing to Perk Development Group LLC that I can find is Brett Perkins Construction LLC under the Oregon Construction Contractors Board (not the Oregon SOS, still unable to conduct business in the state). This entity is bonded for \$20,000 which is not adequate for a proposal of this size. The entity's insurance is listed as \$1,000,000, again, not adequate for a development of this size.*
  - c. *Regardless of Oregon SOS status, it has not been determined that the developer has the necessary funds to commit to the complete development of this project. Additional concerns are Gravel Point is one of four current projects, all robust in scope, and the developer's web site is soliciting investments to fund its projects.*

16.40.020 lists requirements for bonds, cash, or other financial security. ***I appeal the Planning Commission's decision based on the applicant not providing proof of their ability to finance, bond, and insure the completion of this project.***

17.04.020 of the Bandon Municipal code lists several areas that were addressed during the Planning Commission's proceedings.

5. *While bringing tourism funds into Bandon is an important part of our economy, building too quickly, without the resources to support the growth, will increase the cost of living to all Bandon residents, and take away the much-needed services required of the existing residents and businesses. This only serves to increase the cost of living for Bandon residents, and further price Bandon residents out of both permanent (home ownership) and temporary (rental) housing. ***I appeal the Planning Commission's decision due to the promotion of the economic well-being of the city and its residents not being fully addressed as outlined in 17.04.020N.****
6. *The Bandon Transportation Refinement Plan, Table 2, reflects a total of 423 acres, of which 133 are buildable, to the combined CD, CD-1 and CD-2 zones. Ultimately this project will cover 90 acres, consuming 21% of all available land as of the date of the refinement plan. ***I appeal the Planning Commission's decision based on this project taking away from adequate space for housing as outlined in 17.04-0200.****

7. The existing hospitality, restaurant, and retail options in Bandon cannot find and retain talent to adequately run their businesses. Help wanted signs are prevalent. So are signs requesting patron's patience as lack of personnel is affecting customer service. Businesses have had to curtail operating hours during tourist season. Restaurants have had to cancel reservations due to staffing and supply issues. The existing hotels are constantly seeking housekeeping, maintenance, and other support staff. 'No Vacancy' signs have not necessarily meant there are no rooms available, but instead have sometimes meant no staff available at the front desk or to service the existing available rooms. The applicant states 'The Gravel Point Project forecasts up to 60 long-term jobs'. Many of these jobs will be taking away from the existing pool of talent from the current Bandon businesses, and that is if they can fill them. The developer has also stated he expects a 'long lead time for labor' when referencing how long the development is expected to take to complete. ***I appeal the Planning Commission's decision based on the proposed facility discouraging the orderly growth of the city as outlined in 17.04-020H.***
  
8. With additional traffic in the area, both during construction and after completion, we will see more speeding, more running stop signs, less being courteous to pedestrians, dog walkers, joggers, and bicyclists, specifically on Beach Loop, but also around the other access points to the development. The safety of residents and other respectful tourists is a unique quality to this area. Adding the number of people and vehicles proposed to this area, as well as the types of vehicles especially during construction, of drivers who in general do not have the experience of driving in Bandon, or do not have the experience of conducting themselves under the ordinances of our town, will negatively impact the safety of the rest of our community. ***I appeal the Planning Commission's decision based on the fact that it does not conform to 17.04.020G as it relates to avoiding congestion, and 16.08.010C as it pertains to public health and safety.***
  - a. The applicant has argued that their application should not be penalized by the city's lack of access they will require in order to build and operate the development. I counter the city should not be penalized for the developer trying to force their project into an area that is not suitable for it.
  - b. The applicant has provided studies that suggest the amount of traffic generated by the development will meet Highway Capacity Manual LOS and ODOT limits. Many testimonies have disputed the studies provided by the applicant, that they do not meet the burden of proof required to offset the traffic congestion impact in this section. In addition, the traffic engineer who generated the applicant's traffic assessment used the term 'we' several times during the Planning Commission 10/19/23 meeting, in the context she was part of the development team. The City Council should consider whether the reports used in the Gravel Point Consolidated Application are unbiased, and conduct their own, independent, traffic study of the area surrounding the development tailored to the specific circumstances of the area.
  - c. I further argue the application's approval should be dependent on the applicant/developer providing and implementing a viable solution to a more feasible direct access to the development from 101.
  
9. The applicant is pursuing LEED certification at the Gold level. LEED is a green building rating system that provides a framework for healthy, efficient, and cost-saving green buildings. Gold LEED Certification is awarded to 50% of the projects that apply for LEED certification. Platinum LEED Certification is only awarded to the top 10% of LEED certification applicants. Gold LEED Certification appears less impressive in this context than in the applicant's plans. Platinum LEED

**Certification would further enhance meeting the highest level of compliance with 17.04.020J. *I appeal the Planning Commission's decision based on 17.04.020J, and instead suggest the City Council only consider the application if the developer achieves Platinum LEED Certification.***

I will close with reminding the City Council that under 16.04.070E.3 in a non-public hearing the council can determine the scope of appeals. I encourage the council to have that meeting and consider all options, giving special attention to the option of a de novo hearing, which would help ensure all important issues regarding this project get appropriate attention. As I stated in my letter to the City Council at the November 6<sup>th</sup>, 2023 City Council meeting, I suspect if this decision ends up appealed to LUBA, they are likely to only consider the technical aspects of the appeals. They will not have the context or narrative of knowing this area, living here, raising families here, having vested interests here, more fully understanding the impacts of a project of this magnitude on this community. Thank you for your attention to my concerns.

Sincerely,  
Bruce Spencer