

I'm responding with further comments following the initial hearing regarding the Forest Lawn wetland. I filed the appeal opposing the City's permit allowing relocation of the stormwater discharge along Forest Lawn. My past efforts are documented in my two (2) previous submissions to the City and Planning Commission. My primary goal in filing the earlier appeal and participating in this process is to ensure that future permits and applications take into account the wetland status of taxlot 4100 and adhere to the requirements set forth in the Cannon Beach Municipal Code related to wetlands.

To date, the Planning Commission has held one meeting regarding the Partition and Conditional Use application filed by the owner of taxlot 4100. Several community members spoke as did the Applicant/Builder. It struck me that some of Applicant's assertions were potentially skewed, misleading or in need of further inquiry. Of most concern is the assertion by Applicant's attorney that the City is obligated to partition the wetland in order to favor infill housing. I question this assertion and would ask for legal precedent supporting the value of housing over that of a wetland. By my read, the Cannon Beach Municipal Code very clearly disputes this premise and speaks directly to the issue at hand. Please see below (emphasis added):

17.43.025 Wetland lot-of-record.

A wetland lot-of-record is a lot or contiguous lots held in common ownership on August 4, 1993, that are subject to the provisions of this chapter. A wetland lot-of-record includes upland portions of the contiguous property that are not subject to the provisions of the wetlands overlay zone. "Contiguous" means lots that have a common boundary, and includes lots separated by public streets. A lot-of-record is subject to the provisions of this overlay zone if all or a portion of the lot is in the overlay zone. The objective of the wetland lot-of-record provision is to permit a property owner a minimum of one dwelling unit on a wetland lot-of-record. A dwelling can be constructed on the wetland portion of a wetland lot-of-record only where there are no upland portions of the wetland lot-of-record that can accommodate a dwelling. The following examples illustrate how the wetland lot-of-record provisions of Section 17.43.030A and Section 17.43.035A are to be applied.

Example 1. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots all of which are entirely of wetlands; one dwelling unit is permitted.

Example 2. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots, two of which are entirely wetlands and one of which contains two thousand five hundred square feet of uplands; one dwelling unit is permitted on the upland portion of the lot which contains two thousand five hundred square feet of uplands.

Example 3. A fifteen thousand square foot lot-of-record consisting of three platted five thousand square foot lots, one lot is entirely a wetland, the second lot contains two thousand five hundred square feet of upland and the third lot contains three thousand five hundred square feet of upland; two dwelling units are permitted, one on the upland portion of the lot which contains two thousand five hundred square feet of upland and one on the upland portion of the lot which contains three thousand five hundred square feet of uplands. (Ord. 94-29 § 2)

Taxlot 4100 is in a Wetland Overlay (WO) Zone and is also a Wetland Lot-of-Record. The lot is currently owned by a single owner. The City's Code speaks directly to this situation and clearly states that only one dwelling is allowed in the upland portion of the lot. There is no mention of an obligation to partition a Wetland Lot-of-Record or WO Zone. In fact, the City's code appears to value wetlands and sets forth measures to preserve wetlands by limiting development. A clear standard has been set by the City's code and Applicant is asking us to ignore this standard. The City's code also sets forth examples of how the law should be applied. I ask that the Planning Commission review these examples and apply the City's code and examples to taxlot 4100. To sum up, the City code sets forth a clear standard for this situation and that code should be followed.

Should the Planning Commission choose to grant Applicant's permit to partition the wetland (despite the arguments set forth above) a more reasonable partition would limit the division and build-out of the upland area at two (2) lots, with a single dwelling on each lot. Partitioning the wetland into three (3) lots, each with a dwelling, access road and parking overcrowds the area and all but destroys the integrity of the wetland. Limiting the partition to two (2) lots, with a single dwelling on each lot is more in line with the City's code.

Please note:

17.043.050(M)(2)(a) – Each lot created must have at least 1,000 sqft of upland available for building coverage, required off-street parking and required access.

17.043.050(M)(2)(b) - The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.

Applicant has squeezed three (3) lots, three (3) dwellings, off-street parking and access roads to both S. Hemlock and Forest Lawn into its proposed partition plan. Applicant's partition plan also appears to include wetland buffer area in its minimum 1,000 sqft which is in direct conflict with 17.043.050(M)(2)(b) (noted above) which states the building site cannot include protected wetland buffer areas. This further demonstrates that the area is not well suited for 3 lots, each with a dwelling, access road and parking. Again, Applicant is asking the Planning Committee to ignore existing City code and grant the Partition Application in direct conflict to City code.

Additionally, Applicant has not complied with the provision of 17.43, and specifically 17.43.050. Please see below:

17.43 Wetland Overlay (WO) Zone - The purpose of the WO Zone rule is to "protect wetland areas from uses and activities inconsistent with the maintenance of the wetland function and values identified for those sites".

17.43.050 Standards – Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:

- Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and
- Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted)...

The list of alternative actions that should be considered to protect wetland areas continues in 17.43.050 but is not included here for brevity's sake. Applicant has not specifically addressed the provisions of 17.43.050. Instead, Applicant simply states that it's building only on upland areas of the lot and that should be enough to satisfy the obligations of 17.43.050. This is not an accurate interpretation of the City's code and Applicant should be required to provide evidence as mandated by 17.43.050. The burden to comply with 17.43.050 falls on Applicant and to date Applicant has provided scarce evidence to demonstrate its consideration and compliance with 17.43.050. I ask that the Planning Commission hold Applicant to this requirement and thoroughly consider whether Applicant's development is 1) consistent with the maintenance of the wetlands and 2) has taken into account alternative actions to protect the wetlands. Holding Applicant to a single dwelling on the current Wetland Lot-of-Record or limiting partition of the lot to two (2) lots with a single dwelling on each lot seems most appropriate.

There was discussion at the hearing (and confusion in the public record) regarding further partitioning of the lot and Wetland Lot-of Record in order to donate the lowland/non-buildable portions of the wetland to the City. If the City opts to partition the lot, this seems an issue worth considering if it helps protect the integrity of the remaining wetland. If this is simply a maneuver by Applicant to obtain a tax benefit or rid itself of wetland restrictions it seems suspect. I'd also like to suggest the City consider placing conditions on the project/build if partition is to be considered.

When considering this matter, please take into account that Applicant purchased taxlot 4100 well aware of it's Wetland Overlay (WO) Zone and Wetland Lot-of-Record designations. Applicant was also very likely aware of the City's one dwelling limit. Wetlands are much cheaper to buy than upland areas because they're meant to take stormwater discharge and development is limited by City code to protect the wetland areas. Applicant purchased this wetland knowing it's limitations. It also appears Applicant persuaded City officials and/or City officials misled Applicant to believe draining, partitioning and developing the wetland was acceptable. The public record shows ongoing discussion and coordination between Applicant and City officials regarding this project from it's inception as an eight (8) lot development to the current three (3) lot development.

This is most apparent in the discussions regarding the relocation of the stormwater discharge point along Forest Lawn. Originally, the City approved a permit to relocate the stormwater discharge point to a more northern part of the wetlands. This permit was granted administratively (and in error) by the City and was the basis of my earlier appeal. Because of the wetland status of taxlot 4100, a Conditional-Use-Permit (reviewed by the Planning Commission) is required to alter the storm water discharge. Ultimately, the City withdrew the original permit and the Conditional-Use-Permit is now before the Planning Commission. These efforts were (and still are) an attempt to drain the wetlands. In correspondence between a City official and Applicant at the beginning of this project, a City employee wrote "[o]bviously, the benefit of doing it [moving of the storm drains from one part of the wetland to another] now is we could tell if the work helps dry out the lot the way you had hoped..." This correspondence is in the pubic record as are several other email exchanges showing an overly familiar relationship between city employees and Applicant.

Relocation of the stormwater discharge point was not contemplated by the city until the wetland lot was purchased by Applicant and plans for development started taking shape. It appears Applicant hoped to have the city install the new storm-water line, force the adjacent neighbor to hook up to the new line, and extend the discharge point of the new line to the northern-most point of the wetland, thereby draining the southern-most part of the wetland and acquiring more upland area to build on. This is likely

still the plan. Movement of the stormwater discharge point will likely divert stormwater out of the wetlands, the very place they are meant to be discharged. Transferring the stormwater to the northern most part of the wetland will dry up the southern part of the wetland and likely create more upland area that can be developed at a later date. Likewise, transferring the stormwater completely out of the wetland and all the way to S. Hemlock will remove all stormwater from the wetlands and dry up the wetlands. This action would eventually eliminate the wetland. A wetland can be re-delineated every 5 years so this lot (or portions of it if partitioned) would be up for re-delineation in 2026 should the owner(s) choose. With time and the movement of the stormwater out of the wetlands, the entirety of tax lot 4100 could be developed. Moving the stormwater to the northern most part of the wetland has a less drastic effect but still likely results in the creation of more upland area and additional development in the future. This issue seems to get very little attention but is of great importance.

The City has an ordinance saying storm water stays in the natural drainage. See below:

17.43.050(J)(3). Stormwater runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions.

Why then is the City considering redirecting stormwater runoff away from the wetland? Why are the taxpayers paying for this?

The City also has an ordinance saying the developer must pay for any stormwater projects. See below:

13.16.030 (B). The improvement of both public and private storm drainage facilities through or adjacent to a new development shall be the responsibility of the developer. Said improvements shall comply with all applicable city ordinances, policies and standards.

Clearly the City should not be paying for the relocation of the stormwater discharge point. I further dispute the City and Applicant's claim that stormwater runoff from an adjacent neighbor's lot and the existing discharge point is damaging the wetlands. How can you damage an area that's naturally designed to accept and filter water? Please see my earlier submitted comments for a more in-depth discussion on this topic.

I encourage the Planning Commission to deny Applicant's Conditional-Use-Permit. There is no compelling reason to move the discharge point and the City should definitely not pay for this work. Should Applicant show legitimate reasoning for moving the discharge point (and pay for the work), the Planning Commission should require the relocation to remain in the wetland. Allowing Applicant to relocate the discharge point to S. Hemlock will dry and destroy the wetland.

Wetlands hold and clean stormwater of pesticides, oils and street toxins before it gets to the beach. Wetlands provide bird habitat, tree canopy and aesthetic value to our community. Please consider maintaining the integrity of the Forest Lawn wetlands.

For the reasons set forth, please 1) deny the Conditional-Use-Permit request to relocate the stormwater discharge point and 2) deny completely or limit the partition request to no more than 2 dwellings. Thank you for your consideration and time spent on this issue.

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