



CITY OF CANNON BEACH

AGENDA

Meeting: City Council
Date: Tuesday, November 7, 2023
Time: 6:00 p.m.
Location: Council Chambers, City Hall

CALL TO ORDER AND APPROVAL OF AGENDA

CONSENT AGENDA

- (1) **Consideration of the Minutes will be on the November 14th Council Meeting**

PUBLIC COMMENT

The Presiding Officer will call for statements from citizens regarding issues relating to the City. The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.

ORDINANCE

- (2) **Ordinance 23-09, an Ordinance Amending the Municipal Code Chapter 6.10 Prohibition on Attracting and Feeding Wild Animals**
If Council wishes to adopt Ordinance 23-09 the appropriate motions are in order.

RESOLUTION

- (3) **Resolution 23-23 for the Purpose of Repealing Resolution 23-12 and establishing Water, Wastewater, and Storm Drain Utility Rates**
If Council wishes to adopt Resolution 23-23 the appropriate motion is in order.

PRESENTATION

- (4) **Cannon Beach Farmers Market Annual Report**

CONTINUATION OF PUBLIC HEARING

- (5) **Continuation of APP 23-05, Appeal by Red Crows, LLC/Jamie Lerma of Planning Commissions approval of AA 23-04, upholding an administrative appeal submitted by Janet Stastny of the City's approval of a Tree Removal Permit.**
Council will hold a hearing and consider the appeal request

ACTION ITEMS

- (6) **APP 23-06, Approval of Findings of Fact & Conclusion for Design Review Board's denial of DRB 23-08, Jay Orloff of Tolovana Architects, applicant on behalf of Paul White for the building of a new accessory dwelling unit above a new garage.**
If Council wishes to adopt the findings, an appropriate motion is in order.
- (7) **Scope of Review Determination for CIDA Inc, on Behalf of the City of Cannon Beach to Appeal a Design Review Board Decision**
- (8) **Intergovernmental Partnership Agreement (IGA) – ePermit System and Services**
If Council wishes to approve the IGA, an appropriate motion is in order
- (9) **City Manager Evaluation**
If Council wishes to adopt the evaluation form and criteria, an appropriate motion is in order

INFORMATIONAL/OTHER DISCUSSION ITEMS

- (10) **Monthly Status Report**
- (11) **Mayor Communications**
- (12) **Councilor Communications**
- (13) **Good of the Order**

ADJOURNMENT

To join from your computer, tablet or smartphone

Join Zoom Meeting

<https://zoom.us/j/99261084699?pwd=TkpjbGcxS0pCOGIMOCtSbSsxVWFMZz09>

Meeting ID: 992 6108 4699

Password: 365593

To join from your phone:

Phone: 1.669.900.6833

Meeting ID: 992 6108 4699

Password: 365593

View Our Live Stream: View our [Live Stream](#) on YouTube!

Public Comment: If you wish to provide public comment via Zoom for this meeting please use the raise your hand Zoom feature. Except for a public hearing agenda item, all Public to be Heard comments will be taken at the beginning of the meeting for both Agenda and Non-Agenda items. If you are requesting to speak during a public hearing agenda item, please indicate the specific agenda item number as your comments will be considered during the public hearing portion of the meeting when the public hearing item is considered by the Council. All written comments received by 3:00 pm the day before the meeting will be distributed to the City Council and the appropriate staff prior to the start of the meeting. These written comments will be included in the record copy of the meeting. Written comments received at the deadline will be forwarded to Council and included in the record, but may not be read prior to the meeting.

Please note that agenda items may not be considered in the exact order listed. For questions about the agenda, please contact the City of Cannon Beach at (503) 436.8052. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.

Posted: 2023.10.31

Consideration of the Minutes will be on the November 14th
Council Meeting



CANNON BEACH CITY COUNCIL

STAFF REPORT

ORDINANCE 23-09 AN ORDINANCE AMENDING THE MUNICIPAL CODE CHAPTER 6.10 PROHIBITION ON ATTRACTING AND FEEDING WILD ANIMALS

Agenda Date: November 7, 2023

Prepared by: Bruce St. Denis, City Manager

BACKGROUND

On October 1, 2019 Council adopted Ordinance 19-06 regarding the feeding of wild animals. Section 6.10.030 states violation of this chapter shall constitute a misdemeanor and be punishable on conviction by a fine of not more than five hundred dollars. The city cannot designate a violation as a misdemeanor.

ANALYSIS/INFORMATION

On October 10, 2023, Council reviewed the violation language with a consensus to remove the misdemeanor language and retain the fine of not more than five hundred dollars.

RECOMMENDATION

Staff recommends Council adopt Ordinance 23-09.

Recommended motions:

“I move to approve the first reading of Ordinance No. 23-09”

“I move to approve the second reading and adopt Ordinance No. 23-09”

List of Attachments

A Ordinance 23-09

BEFORE THE COMMON COUNCIL OF CANNON BEACH

AN ORDINANCE AMENDING THE MUNICIPAL) ORDINANCE NO. 23-09
 CODE CHAPTER 6.10 PROHIBITION ON)
 ATTRACTING AND FEEDING WILD ANIMALS)

WHEREAS, on October 1, 2019 Council adopted Ordinance 19-06 which amended the Cannon Beach Municipal Code to include Chapter 6.10, Prohibition on Attracting and Feeding Wild Animals;

WHEREAS, Section 6.10.030 states violation of this chapter shall “constitute a misdemeanor and be punishable on conviction by a fine of not more than five hundred dollars”;

WHEREAS, on October 10, 2023 Council reviewed the violation language with a consensus to remove the misdemeanor language and retain the fine of not more than five hundred dollars.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF CANNON BEACH ORDAINS AS FOLLOWS:

1. The Cannon Beach City Council amends Chapter 6.10.030 of the Cannon Beach Municipal Code as follows:

Violation of this chapter shall be punishable by a fine of not more than five hundred dollars.

2. This ordinance is effective 30 days after adoption.

ADOPTED by the Common Council of the City of Cannon Beach this 7th day of November 2023,

by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

 Barbara Knop, Mayor

Attest:

Approved as to Form:

 Bruce St. Denis, City Manager

 Ashley Driscoll, City Attorney



CANNON BEACH CITY COUNCIL

STAFF REPORT

RESOLUTION NO. 23-23, FOR THE PURPOSE OF REPEALING RESOLUTION 23-12 AND ESTABLISHING WATER, WASTEWATER, AND STORM DRAIN UTILITY RATES

Agenda Date: November 7, 2023

Prepared by: Ron Logan
Assistant Finance Director

BACKGROUND

On September 19, 2023, staff and council met in a work session to review the Utility Rate Study Report presented by FCS Group. Staff was asked to continue discussions and bring back information requested during the meeting, particularly regarding the 10 year rate increase schedule proposed in the rate study.

At the October 10, 2023 work session, council directed FCS Group to provide rate increase options that allocated rate increases in years 2 through 10 so that they are more equitable to customers who use less water. That analysis will not be available until approximately December 10th. In the interim, Council agreed to the water rate increases that were proposed in the rate study for year 1 only and asked staff to bring a resolution to the November 7, 2023 meeting to consider adoption of water rate increases effective January 1, 2024. The resolution is attached to this report.

RECOMMENDATION

Staff recommends adoption of Resolution No. 23-23, For the Purpose of Repealing Resolution 23-12 and establishing Water, Wastewater, and Storm Drain Utility Rates by making the following motion:

“I move to approve Resolution No. 23-23, For the Purpose of Repealing Resolution 23-12 and establishing Water, Wastewater, and Storm Drain Utility Rates”

List of Attachments

- A Resolution No. 23-23
- B Email from councilor Kerr sent to city manager, city council, and city attorney on 10/23/2023

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF REPEALING RESOLUTION)
23-12 AND ESTABLISHING WATER, WASTEWATER,)
AND STORM DRAIN UTILITY RATES)

RESOLUTION NO. 23-23

WHEREAS, Resolution 23-12 established utility rates for water, wastewater and storm drains;

WHEREAS, rate increases are required to balance the 2023/2024 budget approved by the City of Cannon Beach Budget Committee;

WHEREAS, Cannon Beach Municipal Code section 13.18.040 provides that utility user charges shall be established by resolution of the City Council;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Cannon Beach that:

1. Resolution 23-12 is repealed and replaced by this resolution.
2. Water, wastewater, and storm drain utility rates are established as shown in “Exhibit A” attached and incorporated herein. Water increases are 23%, Sewer and Storm rates will not increase.
3. This resolution is effective on January 1, 2024.

PASSED by the Common Council of the City of Cannon Beach this 7th day of November 2023, by the following roll call vote:

YEAS:
NAYS:
EXCUSED:

Barb Knop, Mayor

Attest:

Bruce St. Denis, City Manager

Water, Sewer, and Storm Drain Rates Effective January 1, 2024

Section 13.18.040 Water service rates and charges.

Water service charges shall include a fixed monthly charge, or “base rate” and a commodity charge or “unit rate”. The base rate includes a consumption allowance of the first 400 cubic feet (4 units - one unit=100 cubic feet or 748 gallons). The unit rate is for each 100 cubic feet consumed and applies to each meter.

All water customers - single-family residential, multi-family residential, commercial and mixed-use properties - will be billed based on their meter size (base rate) and their consumption (unit rate).

The following rate table shows the base plus unit rates for residential and commercial accounts. The commercial unit rate is the same as the residential unit rate.

Meter Size	Base Rate	Base Allowance	Unit Rate per 100 Cubic Feet
3/4"	\$31.57	400 cubic feet	\$7.90
1"	\$78.95	400 cubic feet	
1-1/2"	\$157.90	400 cubic feet	
2"	\$252.63	400 cubic feet	
3"	\$505.25	400 cubic feet	
4"	\$789.46	400 cubic feet	
6"	\$1578.91	400 cubic feet	
Irrigation Line	\$63.16	400 cubic feet	
Note:	Cannon Beach Rural Fire District is exempt from charges		

Section 13.18.040 Sewer service rates and charges.

Sewer service charges shall include a fixed monthly charge, or 'base rate' and a commodity charge or 'unit rate'. The base rate includes a consumption allowance of the first 400 cubic feet (4 units - one unit=100 cubic feet or 748 gallons). The unit rate is for each 100 cubic feet consumed and applies to each meter.

All sewer customers - single-family residential, multi-family residential, commercial and mixed-use properties - will be billed based on their meter size (base rate) and their consumption (unit rate).

The following rate table shows the base plus unit rates for residential and commercial accounts. The commercial unit rate is the same as the residential unit rate.

Meter Size	Base Rate	Base Allowance	Unit Rate per 100 Cubic Feet
3/4"	\$33.39	400 cubic feet	\$8.35
1"	\$83.48	400 cubic feet	
1-1/2"	\$166.95	400 cubic feet	
2"	\$267.12	400 cubic feet	
3"	\$534.24	400 cubic feet	
4"	\$834.75	400 cubic feet	
6"	\$1,669.50	400 cubic feet	
Note:	Cannon Beach Rural Fire District is exempt from charges		

Section 13.18.040 Utility user charge

The monthly storm water drainage fee for one single-family unit (SFU) shall be \$11.99.



a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110
w: www.ci.cannon-beach.or.us | e: stdenis@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: Lisa Kerr <lisacmd1@gmail.com>

Sent: Monday, October 23, 2023 4:32 PM

To: Bruce St. Denis <stdenis@ci.cannon-beach.or.us>; City Council Group <cbcouncil@ci.cannon-beach.or.us>; Ashley Driscoll <ashleyd@gov-law.com>

Subject: Regarding Water Rates

Hello. Attached please find an analysis of how water rates can be more equitable for citizens of Cannon Beach based on information in summary 7/1/22 to 6/30/23.

R. Bruce Kerr (sent on Lisa's home email)

Information from CB Rate Summary-Water 7/1/2022 to 6/30/2023

Rate #	# of Cust.	Desc.	Total \$ Billed	CF of Usage	Ave \$ Cost per 100 CF	% of total \$ Billed	% of CF billed
	1866	Total CF usage		15,530,201			
		Total CF billed	\$1,404,891	15,115,901	\$9.29		
101	1540	Residential 3/4"	\$571,505	5,596,401	\$10.21	40.7%	37.0%
102	54	Residential 1"	\$55,331	426,700	\$12.97	3.9%	2.8%
	1614	TOTAL RESIDENTIAL	\$709,635	6,597,200	\$10.76	50.5%	43.6%
111	106	Commercial 3/4"	\$94,555	1,353,000	\$6.99	6.7%	9.0%
112	25	Commercial 1"	\$77,080	1,022,800	\$7.54	5.5%	6.8%
113	32	Commercial 1.5"	\$166,118	1,999,700	\$8.31	11.8%	13.2%
114	18	Commercial 2"	\$154,778	1,898,200	\$8.15	11.0%	12.6%
115	4	Commercial 3"	\$90,613	1,123,200	\$8.07	6.4%	7.4%
		TOTAL COMMERCIAL	\$659,817	8,120,600	\$8.13	47.0%	53.7%

Questions

Why should Residential users pay 32% more per 100 CF than Commercial users?
(10.76 / 8.13)

Why should Residential 3/4" users pay 46% more per 100 CF than Commercial 3/4" users?
(10.21 / 6.99)

Residential users pay 50.5% of the billings but use 43.6% of the water.
Commercial users pay 47.0% of the billings but use 53.7% of the water.

Suggestion

On 1/1/24 increase the base rate for 3/4" resid from \$25.69 per month (4 x 6.42) to \$27.48 per month (7% increase) AND increase the excess amount from the suggested \$7.89 per 100 CF (23% increase) to \$8.35 per 100 CF (30% increase). This should be "revenue neutral" compared to the suggested overall 23% increase and partially reduce the average rate differential between the Residential Users and Commercial Users.



CANNON BEACH CITY COUNCIL

STAFF REPORT

CANNON BEACH FARMERS MARKET ANNUAL REPORT

Agenda Date: November 7, 2020

Prepared by: Bruce St. Denis, City Manager

BACKGROUND

Cannon Beach Farmers Market Manager, Tracy Abel, will present the 2023 Farmers Market Annual Report.



CANNON BEACH CITY COUNCIL

STAFF REPORT

RED CROW LLC/JAMIE LERMA APPEAL OF A PLANNING COMMISSION DECISION REARDING AA#23-04, AN ADMINISTRATIVE APPEAL OF A TREE REMOVAL PERMIT IN CONJUNCTION WITH CONSTRUCTION AT 743 N. ASH ST., TAXLOT 51019AA05602.

Agenda Date: November 7, 2023

Prepared by: Community Development Department

BACKGROUND

This matter was originally brought before City Council during its August 8th hearing and was continued at the appellant's request as that party was developing alternate plans that may allow for construction of the house without removal of the tree. On September 18th revised plans were submitted to the City and those plans are currently being reviewed. As the review process has not been completed at the time of this writing the appellant has not withdrawn their appeal of the Planning Commission's June 22nd decision.

The City of Cannon Beach Planning Commission rendered a decision to affirm the appeal of an administrative decision to issue a tree removal permit in conjunction with residential development at 743 N. Ash St, file number AA 23-04. This item was heard by the Commission during their regularly scheduled hearings on May 25th and June 22nd. The Commission's findings are included as 'Attachment B.'

The applicant of the tree removal permit, Jamie Lerma of Red Crow LLC, requested a review of the decision in a notice of appeal received on July 11, 2023, within the fourteen consecutive calendar day appeal period from the date the orders for AA#23-04 were signed. The City Council held a Scope of Review hearing as a non-public hearing item on July 25th and determined that the appeal will be heard on the record of the decision made by the Planning Commission, according to Section 17.88.160 of the Cannon Beach Municipal Code.

The tree removal permit application, included as Exhibit C-1 of Attachment B, was issued in conjunction with building permit 164-23-000006-DWL. Exhibits C-4 and C-5 of Attachment B document correspondence between the project's designer, consulting arborist, and Community Development staff regarding the developer's plan to preserve the tree if possible and remove it if necessitated by construction impacts.

The removal application meets criterion A of the City of Cannon Beach Tree Removal Application form which is included as C-1 of Attachment B. The application form's language states:

- A. *You are constructing a structure or development approved and allowed by pursuant to Cannon Beach Municipal Code 17.70.030, which involves any form of ground disturbance including required vehicular and utility access.*

The criteria evaluated for the administrative decision to issue the tree removal permit are found in Municipal Code 17.70 – Tree Removal and Protection, specifically 17.70.020(D):

17.70.020 Permit Issuance – Criteria

The city shall issue a tree removal permit if the applicant demonstrates that one of the following criteria is met:

- A. *Removal of a tree which poses a safety hazard. The applicant must demonstrate that:*

1. *The condition or location of the tree presents either a foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure; and*
 2. *Such hazard or danger cannot reasonably be alleviated by pruning or treatment of the tree.*
- B. *Removal of a tree damaged by storm, fire, or other injury and which cannot be saved by pruning.*
- C. *Removal of a dead tree.*
- D. *Removal of a tree(s) in order to construct a structure or development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).*
- E. *Removal of a tree where required to provide solar access to a solar energy system where pruning will not provide adequate solar access to permit effective operations of the solar energy system.*

The additional requirements referenced in criterion D are detailed below:

17.70.030 Additional Requirements

- B. *For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).*
- Q. *An application for a tree removal permit under Section 17.70.020(D), submitted under the direction of a certified tree arborist for removal of a tree(s) to construct a structure or development, must include the following:*
1. *A site plan showing the location of the tree(s) proposed for removal, the location of the proposed structure or development, and the location of any other trees six-inch DBH or larger on the subject property or off site (in the adjoining right-of-way or on adjacent property) whose root structure might be impacted by excavation associated with the proposed structure, or by soil compaction caused by vehicular traffic or storage of materials.*
 2. *Measures to be taken to avoid damaging trees not proposed for removal, both on the subject property and off site (in the adjoining right-of-way or on adjacent property).*
 3. *The area where a tree's root structure might be impacted by excavation, or where soil compaction caused by vehicular traffic or storage of materials might affect a tree's health, shall be known as a tree protection zone (TPZ).*
 4. *Prior to construction the TPZ shall be delineated by hi-visibility fencing a minimum of three and one-half feet tall, which shall be retained in place until completion of construction. Vehicular traffic, excavation and storage of materials shall be prohibited within the TPZ.*

The appellant's legal counsel argued in Exhibits D-10 and D-18 of Attachment B that the removal of the tree was not necessary for the construction of the house as the removal application was not submitted until after the building permit application had been filed and that the issuance of the removal permit was inconsistent with CMBC 17.70. Additional arguments were made regarding potential impacts to slope stability that may result from the removal of tree.

Based on the information in the record the Planning Commission found that, consistent with the purpose statement of CBMC 17.10.010, CBMC 17.70.020(D) authorizes the City to issue a tree removal permit in order to construct an approved structure only if the tree's location is required for the structure itself or for required vehicular and utility access. The Commission also found that the Municipal Code does not authorize the City to issue a permit to remove a tree if the applicant can reasonably build an allowed structure for a permitted use on another part of the

property without undertaking extraordinary measures to build the structure. Based on these findings the Commission affirmed the appeal and reversed the administrative approval of the tree removal permit.

LIST OF ATTACHMENTS

- A. Notice of Appeal of Planning Commission Decision, stamped received July 11, 2023.
- B. Findings of Fact and Conclusions of Law from the Planning Commission's hearing of Administrative Appeal AA#23-04.
- C. Minutes of the Cannon Beach Planning Commission May 25, 2023 Public Hearing
- D. Minutes of the Cannon Beach Planning Commission June 22, 2023 Public Hearing



CITY OF CANNON BEACH

ATTACHMENT A

NOTICE OF APPEAL OF PLANNING COMMISSION DECISION

Appellant's Name: Red Crow, LLC/Jamie Lerma
 Email Address: jamie@redcrowgc.com
 Mailing Address: PO Box 825, Cannon Beach, OR 97110
 Telephone: (503) 849-0258

City of Cannon Beach
Finance Department

JUL 11 2023

Received

1. Appeal of Planning Commission decision of June 28, 2023, regarding:
 Janet Stastny appeal of the administrative decision to approve a Tree Removal Permit, issued on May 2, 2023 at 743 N. Ash St to the appellant.
2. Interest/Involvement in initial proceedings:
 The appellant applied for and received the Tree Removal Permit, prior to the Janet Stastny appeal, AA#23-04. Appellant participated in the Planning Commission ("PC") hearing on May 24, 2023, and the continued hearing on June 28, 2023.
3. Specific grounds relied upon for review and criteria addressed at Planning Commission hearing against which review is being requested:

See attached.

4. Type of Review/Appeal Requested:

- ☒ On the Record _____
☐ Hearing on Specific Issue or Issues _____
☐ De Novo Hearing _____

If you are requesting a hearing on a specific issue or issues, or a de novo hearing, please state the reason(s) for requesting such a hearing (refer to page one of General Information Sheet and note a specific reason from Section 17.88.180 of the Municipal Code): N/A

City of Cannon Beach
Finance Department

Please attach additional pages, if needed, and any other relevant information.

JUL 11 2023

FEE: \$1,000

PAID

Appellant Signature: [Signature] Date: July 11, 2023

For Staff Use Only:

Date Appeal Received: _____ By: _____

Appeal Fee Paid On: _____ Receipt No.: _____

(Last revised March 2021)

Specific grounds relied upon for review and criteria addressed at Planning Commission ("PC") hearing against which review is being requested:

Grounds for Review: Per the June 28, 2023 order and CBMC 17.88.140(C), the PC decision may be appealed to the City Council by an affected party by filing an appeal with the City Manager within 14 days of the date the order was signed.

Criteria addressed at PC hearing against which review is being requested:

At the PC hearing, the PC found that, "consistent with the purpose statement of CBMC 17.70.010 . . . CBMC 17.70.020(D) does not authorize the City to issue a permit to remove a tree if the applicant can reasonably build an allowed structure for a permitted use on another part of the property without undertaking extraordinary measures to build the structure."

This interpretation of CBMC 17.70.020(D) is in error. The plain language of CBMC 17.70.020(D) requires the City to issue a tree removal permit if the application demonstrates that a tree must be removed, "in order to construct a structure or development approved or allowed pursuant to the CBMC, including required vehicular and utility access, subject to the requirements in 17.70.030.B and 17.70.030.Q." The tree in question must be removed in order to construct the structure approved in the appellant's final building permit. Accordingly, the appellant met the requirements of CBMC 17.70.020(D) and the PC should have denied Janet Stastny's appeal, AA#23-04.



CITY OF CANNON BEACH

BEFORE THE PLANNING COMMISSION
OF THE CITY OF CANNON BEACH

IN THE MATTER OF AN ADMINISTRATIVE
APPEAL OF A TREE REMOVAL PERMIT
AT 743 N ASH ST., TAXLOT 51019AA05602

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER NO. AA#23-04

IN ZONE: RL

Applicant: Janet Stastny
755 N. Ash St.
Cannon Beach, OR 97110

Janet Stastny appeal of the administrative decision to approve a Tree Removal Permit, issued on May 2, 2023 at 743 N. Ash St. The appeal was reviewed pursuant to Municipal Code 17.88.180, Review Consisting of Additional Evidence or De Novo Review and applicable sections of the Zoning Ordinance.

The public hearing on the above-entitled matter was opened before the Planning Commission on 5/25/2023 and continued to 6/22/2023; the Planning Commission closed the public hearing at the 6/22/2023 meeting and a final decision was made at the 6/22/2023 meeting.

THE PLANNING COMMISSION ORDERS that the appeal of administrative decision is AFFIRMED and adopts the findings of fact, conclusions and conditions contained in Exhibit "A." The effective date of this ORDER is 14 days following the signing of this order, subject to conditions contained in Exhibit "A."

This decision may be appealed to the City Council by an affected party by filing an appeal with the City Manager within 14 days of the date this order is signed.

CANNON BEACH PLANNING COMMISSION

DATED: 6/28/2023

DocuSigned by:
Clay Newton
D700D2BD0B954B9...

Chair Clay Newton



Cannon Beach Planning Commission

Findings of Fact and Conclusions of Law

PUBLIC HEARING AND CONSIDERATION OF AA#23-04, JANET STASTNY ADMINISTRATIVE APPEAL OF THE CITY'S APPROVAL OF A TREE REMOVAL PERMIT IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW SINGLE FAMILY DWELLING AT 743 N. ASH ST (TAX LOT# 5602, MAP 51019AA) IN A RESIDENTIAL LOWER DENSITY (RL) ZONE. THE APPEAL WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE 17.88.180, REVIEW CONSISTING OF ADDITIONAL EVIDENCE OR DE NOVO REVIEW AND APPLICABLE SECTIONS OF THE ZONING ORDINANCE.

Agenda Date: May 25, 2023, continued to June 22, 2023

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 2, 2023 unless otherwise noted.

"A" Exhibits – Application Materials

A-1 Notice of Appeal of Administrative Decision for a tree removal permit at 743 N. Ash St., received May 2, 2023;

"B" Exhibits – Agency Comments

None received as of this writing;

"C" Exhibits – Cannon Beach Supplements

C-1 Tree Removal Permit for 743 N. Ash St., Issued May 2, 2023;

C-2 Tree Removal Application Review for 743 N. Ash St., received May 2, 2023;

C-3 Site Plan Survey, received April 27, 2023;

C-4 V. Cerelli email, received March 13, 2023;

C-5 J. Balden email with project memo, received March 13, 2023;

C-6 J. Lerma email, received March 10, 2023;

C-7 A. Butler email, received June 20, 2023;

"D" Exhibits – Public Comment

D-1 D. Stastny email, received May 2, 2023;

D-2 D. Stastny email, received May 5, 2023;

D-3 D. Stastny email, received May 14, 2023;

D-4 K. Weckwerth email, received May 14, 2023;

D-5 D. Stastny email, received May 17, 2023;

- D-6** D. Stastny email, received May 17, 2023;
- D-7** J. Stastny email, received May 17, 2023;
- D-8** D. Stastny email, received May 17, 2023;
- D-9** J. Lerma email, received May 22, 2023;
- D-10** D. Alterman letter, received May 25, 2023;
- D-11** Earth Engineers Report, received June 15, 2023;
- D-12** Retaining Wall Schematic, received June 15, 2023;
- D-13** Retaining Wall Calculations, received June 15, 2023;
- D-14** Prager Arborist Report, received June 15, 2023;
- D-15** S. Benefield letter, received June 21, 2023;
- D-16** W. Rasmussen letter, received June 21, 2023;
- D-17** Iron Oak Engineers letter, received June 21, 2023;
- D-18** D. Alterman letter, received June 22, 2023;

SUMMARY & BACKGROUND

The appellant, Janet Stastny, is appealing the administrative decision to a tree removal permit in conjunction with construction at 743 N. Ash St., Taxlot# 51019AA05602, that was approved on May 2, 2023.

The City of Cannon Beach received the Notice of Appeal for an Administrative Decision on May 2, 2023, where it was stamped paid and received by the City on the same date, within the 14 consecutive day appeal period.

This item was initially heard by the Planning Commission during a May 2023 public hearing where it heard testimony related to the tree removal permit specifically and the construction of a new single-family dwelling at 743 N. Ash St. generally. During that hearing the Commission requested that additional information be provided by the respondent regarding potential geotechnical impacts resulting from removal of the tree and an assessment of the current condition of the tree. The requested materials were provided to the Commission in preparation of the June 2023 public hearing.

FINDINGS

The Planning Commission finds that City staff issued the tree permit under the provisions of Municipal Code 17.70.020 *Permit Issuance – Criteria* which states:

The city shall issue a tree removal permit if the applicant demonstrates that one of the following criteria is met:

- D. Removal of a tree(s) in order to construct a structure of development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).*

Sections B and Q contain additional requirements for a building permit to have been issued and required information from an ISA certified arborist to be included with an application.

The Commission heard the respondent indicate that it was their intention, in an effort to obtain a tree removal permit, to follow their arborist's advice and preserve the tree if possible and remove it if necessary. However, the evidence presented to the Commission did not support a reasonable effort to protect the tree, both during site excavation or any reasonable amendments to the building plan or construction methods. Based on testimony from the respondent's arborist, and lack of any evidence of communication with their architect to modify the plan, the Commission could not find enough support that the applicant had made a reasonable attempt to preserve the

tree. Further, based on the geotechnical reports in the record, the Commission found potential impacts to downslope properties that may result from the tree's removal, were not clearly addressed.

Based on exhibits in the record and testimony during the public hearings the Commission found that, consistent with the purpose statement of CBMC 17.10.010, CBMC 17.70.020(D) authorizes the City to issue a tree removal permit in order to construct an approved structure only if the tree's location is required for the structure itself or for required vehicular and utility access that City code requires the structure to provide. CBMC 17.70.020(D) does not authorize the City to issue a permit to remove a tree if the applicant can reasonably build an allowed structure for a permitted use on another part of the property without undertaking extraordinary measures to build the structure.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner Bates seconded by Commissioner Farrow, the Cannon Beach Planning Commission moved to affirm the Janet Stastny appeal, AA#23-04, and reverse the administrative approval of the tree removal permit at 743 N. Ash St.



Cannon Beach Planning Commission

Staff Report Addendum (June 16, 2023):

PUBLIC HEARING AND CONSIDERATION OF AA#23-04, JANET STASTNY ADMINISTRATIVE APPEAL OF THE CITY'S APPROVAL OF A TREE REMOVAL PERMIT IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW SINGLE FAMILY DWELLING AT 743 N. ASH ST (TAX LOT# 5602, MAP 51019AA) IN A RESIDENTIAL LOWER DENSITY (RL) ZONE. THE APPEAL WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE 17.88.180, REVIEW CONSISTING OF ADDITIONAL EVIDENCE OR DE NOVO REVIEW AND APPLICABLE SECTIONS OF THE ZONING ORDINANCE.

Agenda Date: May 25, 2023

Continued to June 22, 2023

Prepared By: Robert St. Clair, Planner
Community Development Department

GENERAL INFORMATION

NOTICE

Public notice for this May 25, 2023 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on May 5, 2023;
- B. Notice was mailed on May 5, 2023 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 2, 2023 unless otherwise noted.

"D" Exhibits – Public Comment

- D-11** Earth Engineers Engineering Geologic Visual Reconnaissance, received June 15, 2023;
- D-12** Bennett Residence Retaining Wall Schematic, received June 15, 2023;
- D-13** Retaining Wall Structural Calculations, received June 15, 2023;
- D-14** T. Prager & Associates Tree Assessment, received June 15, 2023;

SUMMARY & BACKGROUND

The appellant, Janet Stastny, is appealing the administrative decision to a tree removal permit in conjunction with construction at 743 N. Ash St., Taxlot# 51019AA05602, that was approved on May 2, 2023.

The City of Cannon Beach received the Notice of Appeal for an Administrative Decision on May 2, 2023, where it was stamped paid and received by the City on the same date, within the 14 consecutive day appeal period.

This item was initially heard by the Planning Commission during its May 2023 public hearing where it heard testimony related to the tree removal permit specifically and the construction of a new single-family dwelling at 743 N. Ash St. generally. During that hearing the Commission requested that additional information be provided by the respondent regarding potential geotechnical impacts resulting from the removal of the tree and an assessment of the current condition of the tree.

The respondent, Jamie Lerma, provided additional exhibits after 12:00pm on June 15, 2023. These exhibits include a geotechnical assessment, schematics and calculations for a retaining wall, and an arborist report.

The Earth Engineers Inc. geotechnical report, included as Exhibit D-11, states in its conclusions: *“We recommend that an engineered retaining wall, if properly designed, will provide a greater improvement to slope stability (i.e. increasing the factor of safety by providing greater resisting forces to counteract the driving forces of the soil) than the tree that is being removed.”* This conclusion was based on observations that the subject tree is located in an area of shallow bedrock and may be more susceptible to blowdown or other damage as a result of high winds.

A schematic and calculations for a proposed engineered retaining wall have been included. The proposed retaining wall would not be an expansion of the approved single-family dwelling and would not contribute to increases of the calculated lot coverage and floor area ratio.

The Todd Prager & Associates analysis of the tree determined that it is in good health despite recent pruning and damage sustained during construction activity on the site. The amount of live foliage removed is estimated to be 20% or less, which is stated as being an acceptable amount. Regarding the matter of slope stability the arborist defers to the geotechnical engineer’s assessment.

APPLICABLE CRITERIA

17.70.020 Permit Issuance – Criteria

The city shall issue a tree removal permit if the applicant demonstrates that one of the following criteria is met:

- D. Removal of a tree(s) in order to construct a structure of development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).*

17.70.030 Additional Requirements

- B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).*
- Q. An application for a tree removal permit under Section 17.70.020(D), submitted under the direction of a certified tree arborist for removal of a tree(s) to construct a structure or development, must include the following:*
 - 1. A site plan showing the location of the tree(s) proposed for removal, the location of the proposed structure of development, and the location of any other trees six-inch DBH or larger on the subject property or off site (in the adjoining right-of-way or on adjacent property) whose root structure might be impacted by excavation associated with the proposed structure, or by soil compaction caused by vehicular traffic or storage of materials.*
 - 2. Measures to be taken to avoid damaging trees not proposed for removal, both on the subject property and off site (in the adjoining right-of-way or on adjacent property).*
 - 3. The area where a tree’s root structure might be impacted by excavation, or where soil compaction caused by vehicular traffic or storage of materials might affect a tree’s health, shall be known as a tree protection zone (TPZ).*

4. *Prior to construction, the TPZ shall be delineated by hi-visibility fencing a minimum of three and one-half feet tall which shall be retained in place until completion of construction. Vehicular traffic, excavation and storage of materials shall be prohibited within the TPZ.*

17.88.180 Review Consisting of Additional Evidence or De Novo Review.

- A. *The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:*
 1. *The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or*
 2. *A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and*
 3. *The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.*
- B. *Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of Sections 17.88.010 through 17.88.100.*
- C. *All testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review. (Ord. 90-10 § 1 (Appx. A § 62); Ord. 89-3 § 1; Ord. 79-4 § 1 (10.084))*

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moved to tentatively (affirm, reverse, or modify in whole or part) the administrative decision to approve the tree removal permit at 743 N. Ash St., with regards to the Janet Stastny appeal, AA#23-04, as discussed and requests that staff draft findings for review and adoption.



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF AA#23-04, JANET STASTNY ADMINISTRATIVE APPEAL OF THE CITY'S APPROVAL OF A TREE REMOVAL PERMIT IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW SINGLE FAMILY DWELLING AT 743 N. ASH ST (TAX LOT# 5602, MAP 51019AA) IN A RESIDENTIAL LOWER DENSITY (RL) ZONE. THE APPEAL WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE 17.88.180, REVIEW CONSISTING OF ADDITIONAL EVIDENCE OR DE NOVO REVIEW AND APPLICABLE SECTIONS OF THE ZONING ORDINANCE.

Agenda Date: May 25, 2023

Prepared By: Robert St. Clair, Planner
Community Development Department

GENERAL INFORMATION

NOTICE

Public notice for this May 25, 2023 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on May 5, 2023;
- B. Notice was mailed on May 5, 2023 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 2, 2023 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1** Notice of Appeal of Administrative Decision for a tree removal permit at 743 N. Ash St., received May 2, 2023;

"B" Exhibits – Agency Comments

None received as of this writing;

"C" Exhibits – Cannon Beach Supplements

- C-1** Tree Removal Permit for 743 N. Ash St., Issued May 2, 2023;
- C-2** Tree Removal Application Review for 743 N. Ash St., received May 2, 2023;
- C-2** Site Plan Survey, received April 27, 2023;
- C-3** V. Cerelli email, received March 13, 2023;
- C-4** J. Balden email with project memo, received March 13, 2023;
- C-5** J. Lerma email, received March 10, 2023;

“D” Exhibits – Public Comment

- D-1** D. Stastny email, received May 2, 2023;
- D-2** D. Stastny email, received May 5, 2023;
- D-3** D. Stastny email, received May 14, 2023;
- D-4** K. Weckwerth email, received May 14, 2023;
- D-5** D. Stastny email, received May 17, 2023;
- D-6** D. Stastny email, received May 17, 2023;
- D-7** J. Stastny email, received May 17, 2023;
- D-8** D. Stastny email, received May 17, 2023;

SUMMARY & BACKGROUND

The appellant, Janet Stastny, is appealing the administrative decision to a tree removal permit in conjunction with construction at 743 N. Ash St., Taxlot# 51019AA05602, that was approved on May 2, 2023.

The City of Cannon Beach received the Notice of Appeal for an Administrative Decision on May 2, 2023, where it was stamped paid and received by the City on the same date, within the 14 consecutive day appeal period.

The appellant’s areas of concern are divided into two portions: Items that pertain to the appeal of the tree removal permit, and other items about the project generally that are outside of the scope of this appeal. These items are addressed below.

1. Appeal of Tree Removal Permit

The tree removal permit being appealed is for an approximately 60 foot tall, 40-inch DHB Sitka Spruce located at or near the southeast corner of the single-family dwelling authorized by building permit 164-23-000006-DWL. Based on emails received by City staff that are attached to this report at exhibits C-3, C-4, and C-5, the development team’s intention was to preserve the tree if possible and remove it only if it became necessary to do so. In Exhibit C-4, Joe Balden, the contractor’s consulting arborist stated that the tree contributes significantly to slope stability and does not have any health or structural defects. Mr. Balden’s report then goes on to state that excavation on the north side of the property will be necessary to determine whether the tree will need to be removed as that excavation will determine the depth of the foundation’s footing and the lower-level floor height. It states: *“At the time of excavation on the north side of the property we can make an informed opinion on whether or not the tree can be retained.”*

As a result of the excavations along the north side of the property the developer determined that the conditions would not allow for the construction of the dwelling in a manner that conforms to the project’s geotechnical report while retaining the tree. At that time a tree removal application was submitted to the City and reviewed under the pertinent criteria of Municipal Code 17.70 – Tree Removal and Protection, specifically 17.70.020(D) which states:

17.70.020 Permit Issuance – Criteria

The city shall issue a tree removal permit if the applicant demonstrates that one of the following criteria is met:

- D. Removal of a tree(s) in order to construct a structure of development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).*

The requires from 17.70.30 are below:

17.70.030 Additional Requirements

- B. *For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).*
- Q. *An application for a tree removal permit under Section 17.70.020(D), submitted under the direction of a certified tree arborist for removal of a tree(s) to construct a structure or development, must include the following:*
1. *A site plan showing the location of the tree(s) proposed for removal, the location of the proposed structure of development, and the location of any other trees six-inch DBH or larger on the subject property or off site (in the adjoining right-of-way or on adjacent property) whose root structure might be impacted by excavation associated with the proposed structure, or by soil compaction caused by vehicular traffic or storage of materials.*
 2. *Measures to be taken to avoid damaging trees not proposed for removal, both on the subject property and off site (in the adjoining right-of-way or on adjacent property).*
 3. *The area where a tree's root structure might be impacted by excavation, or where soil compaction caused by vehicular traffic or storage of materials might affect a tree's health, shall be known as a tree protection zone (TPZ).*
 4. *Prior to construction, the TPZ shall be delineated by hi-visibility fencing a minimum of three and one-half feet tall which shall be retained in place until completion of construction. Vehicular traffic, excavation and storage of materials shall be prohibited within the TPZ.*

The City retains the services of a contract arborist who provides an independent review of tree removal applications as per Municipal Code 17.70.030(O) which states:

The city may seek independent expert opinion when reviewing an ISA Tree Hazard Evaluation, or when reviewing any request to remove a diseased, damaged, dying, or hazardous tree. An arborist retained by the city under this section is expected to render independent expert opinion, consistent with the ISA Certified Arborist Code of Ethics.

The arborist contracted to provide reviews for the City reviewed and commented on this application, and the arborist's report is included with the tree removal permit in exhibit C-1 and can be found as exhibit C-2, although applications in conjunction with construction are not required to be independently reviewed and 17.70.020 states that the City "shall" issue a removal permit when the pertinent criteria are satisfied. In his memo the reviewing arborist, Jeff Gerhardt, stated "Given the circumstances, it is with great reluctance that I advise removal of this tree." The memo then went on to state that the application meets permit Criteria A, which states:

You are constructing a structure or development approved and allowed by pursuant to Cannon Beach Municipal Code 17.70.030, which involves any form of ground disturbance; including required vehicular and utility access.

The role of the contracted arborist is not decision making for submitted applications but rather to provide technical review and recommendations for tree related hazards and diseases that are often outside the professional expertise of City staff.

Based on the criteria for removal of trees in conjunction with construction projects, CBMC 17.70.020(D), the City was required to issue the tree removal permit for 743 N. Ash St. The application was complete and contained a site diagram identifying the tree to be removed and was accompanied by a narrative prepared by an ISA certified professional arborist. The work being performed is in conjunction with permitted construction on the subject property.

2. Other Project Concerns

These items do not pertain to the appeal of the tree permit but are included as they are referenced in the appeal and are anticipated to be part of the discussion during the appeal's public hearing. These items include:

- Excavation & setback encroachment.

Setback restrictions – or “yard requirements” as they are sometimes referred to in the code - do not restrict excavations, rather they apply to the location of perimeter of the structure and prohibit some structures within a certain distance from adjoining properties. In order to provide working space for the placement of forms and footings excavation generally extends into the setback. The appellant alleges that the neighboring property owner has excavated into their property. Staff has inspected the property and this does not appear to be accurate based on the surveys provided to the City. A site survey submitted by the developer on April 27, 2023 (Exhibit C-2) shows the side yard (north) setback as five feet and the front yard (west) setback as 15 feet. This conforms to the minimum setback standards for the Residential Low Density zoning standards detailed in Municipal Code 17.10.040. To the extent the survey is in error, the City has no ability to remedy that situation and it would have to be addressed through civil litigation

- Errors in calculations used in the plan review and permission for unpermitted work.

The appellant has not identified any particular calculation that is in error or provided any support for such errors, other than a general assertion of error. The assertion that the building official failed to issue building permits or that the City is allowing unpermitted work to take place is incorrect.

- Accusations of unethical behavior on the part of City staff.

The appellant provides no supporting evidence for their assertion that the subject property owner’s development team and the previous Community Development Director entered into an unethical arrangement to enable development on the property.

APPLICABLE CRITERIA

17.88.160 Scope of Review.

A. An appeal of a permit or development permit shall be heard as a de novo hearing.

17.88.180 Review Consisting of Additional Evidence or De Novo Review.

A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:

- 1. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or*
- 2. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and*
- 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.*

B. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of Sections 17.88.010 through 17.88.100.

C. All testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review. (Ord. 90-10 § 1 (Appx. A § 62); Ord. 89-3 § 1; Ord. 79-4 § 1 (10.084))

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moved to tentatively (affirm, reverse, or modify in whole or part) the administrative decision to approve the tree removal permit at 743 N. Ash St., with regards to the Janet Stastny appeal, AA#23-04, as discussed and requests that staff draft findings for review and adoption.



CITY OF CANNON BEACH

City of Cannon Beach
Finance Department
ATTACHMENT B

MAY 02 2023
Received

NOTICE OF APPEAL - ADMINISTRATIVE DECISION

Appellant's Name: JANET H. STASTNY
Email Address: jstastny@me.com
Mailing Address: 755 ASH ST
CANNON BEACH
Telephone: 503 782 9843

1. Appeal of Administrative Decision by RED CROW regarding:

TREE REMOVAL AT ~~743 N~~ 743 N ASH
as stated in letter dated 4/25/23

2. Specific grounds relied upon for the appeal, including any Zoning Ordinance criteria or standards that you consider to be relevant: PLEASE REFER TO LETTER FROM DON STASTNY DATED 5/2/23

Please attach additional pages, if needed, and any other relevant information.

FEE: \$600.00
Appellant Signature: [Signature] Date: 5/2/23

For Staff Use Only:
Date Appeal Received: _____ By: _____
Appeal Fee Paid: _____ Receipt No.: _____
City of Cannon Beach
Finance Department
Fee:
803 - Planning \$600
(Last revised March 2021)

MAY 02 2023



Tree Removal Request on Tax Lots 5602 and 5604

1 message

Donald Stastny <djstastny@me.com>

Tue, May 2, 2023 at 12:58 PM

To: Robert St Clair <stclair@ci.cannon-beach.or.us>

Cc: Janet Stastny <jstastny@me.com>, Mickey and Chet Moritz <atmoritz@gmail.com>

Robert St.Clair, Planner
City of Cannon Beach

Mr. Livingston:

This letter is a CITIZEN'S APPEAL to the approval to remove the major tree on Tax Lots 5602 and 5604, filed by Contractor Jamie Lerma on behalf of the Owner. We, as Owners on the adjacent property object to the approval of any removal permit as the entire sequence of events as extensive excavation work has continued on the site without the appropriate permits. Major excavation on the site has been undertaken, we have been told that a building permit has been issued but have no indication of such issuance (and were told by the previous Director of Development that we would be notified when a permit was applied for), current excavation has occurred inside the 5' setback and extended into our property putting our house at risk, we were given a proposed retaining wall on the north of the property are extending into the 5' setback (and has errors in the drawing/calculation support), and the subject tree has been severely butchered by the excavation contractor. Additionally, Ash Street has been severely damaged by construction activities and erroneous information supplied the Owner's "designer" and a deal cut behind closed doors by the previous Director of Development. This entire project has been done on an incremental basis to deny the neighborhood a right to review or protest nor with appropriate notification of the neighbors or neighborhood. The latest "increment" is the removal of the tree, which can be saved with a realignment of the proposed building on the site.

Please notify us of the status of the tree removal permit and the review process that will be involved in reaching a decision. As of this protest, all construction activity on the site should immediately cease until all issues are resolved. Thank you.

Sincerely,

Donald J. Stastny
Janet H. Stastny
Owners of Tax Lot 5603

City of Cannon Beach
163 E. Gower Street, PO Box 368
Cannon Beach, OR 97110

CITIZEN'S REPORT

The City of Cannon Beach invites your suggestions for methods of improving law enforcement services, constructive criticism of department procedures, comments indicating dissatisfaction with manner of performance by officers, or information concerning commendable actions by our officers.

If you wish to make a personal report, you may come to the office of the City Manager at City Hall or the Chief of Police at the Cannon Beach Police Station. You will be received courteously and thorough consideration will be given to your report. If you wish to register your report in writing, complete and return this form. Please provide as much information as possible. Give your name and address so that we may contact you for further information if needed. Any information you give will be kept confidential if you wish.

Each report received will be investigated thoroughly and appropriate action taken. You will be informed of the results of the completed investigation. Every letter of complaint, suggestion, constructive criticism or commendation will receive our attention. Any commendation of our personnel will receive appropriate recognition.

Remember law enforcement is everybody's business.

Print your name, address & phone number		
Janet H Stastny . 755 North Ash Cannon Beach 97110 503 781-9843		
Print the date this form is filled in	Print the day & date of incident or action	Time of incident
05/02/2023.	05/02/2023	
Where did incident or action take place?		
Property located directly below our address.		
Print the names of any witnesses, their addresses & phone numbers.		
If a person was arrested, print the individual's name, address & phone number if known.		
If an officer was involved, print his or her name and car number, if you have this information.		
Print the nature of opinion, complaint, suggestion or commendation & provide as much detail as possible.		
stop removal of mature Sitka Spruce tree. Reason for stopping removal of tree is due to questionable activities on job site by contractor and the motives of the owners in regards to site development.		
Thank you, Janet Stastny		
Signature		



City of Cannon Beach
 163 E Gower St | PO Box 368
 Cannon Beach, OR 97110
 (503) 436-1581
cityhall@ci.cannonbeach.or.us

XBP Confirmation Number: 143747250

Transaction detail for payment to City of Cannon Beach.		Date: 05/02/2023 - 3:31:18 PM MT	
Transaction Number: 197252802			
Visa — XXXX-XXXX-XXXX-3643			
Status: Successful			
Account #	Item	Quantity	Item Amount
743 N. Ash - Stastny	Planning Fees	1	\$600.00

TOTAL: \$600.00

Billing Information
 ANNA T MORITZ
 , 97110

Transaction taken by: Admin Front

City of Cannon Beach Tree Removal Application

APR 25 2023

Received

Please fill out this form completely. Please type or print.

Applicant Name: Red Crow, LLC/Jamie Lerma

Mailing Address: PO Box 825, Cannon Beach, OR 97110

Phone: 503-849-0258

Email: jamie@redcrowgc.com

Property Owner Name: Jaqueline Bennett

Mailing Address: 1651 Woodland Terrace, Lake Oswego, OR 97034

Phone: (503) 462-6539

Email: jbenn6115@yahoo.com

Property Location: 743 N. Ash, Cannon Beach

Map/Tax Lot Number: 51019AA05602

The city shall issue a tree removal permit if one of the following criteria is met. Please circle the letter of the criteria that applies.

These criteria require a Tree Removal Report from an International Society of Arboriculture (ISA) Certified Arborist:

- ☒ A. You are constructing a structure or development approved and allowed by pursuant to Cannon Beach Municipal Code 17.70.030, which involves any form of ground disturbance; including required vehicular and utility access. **SEE ATTACHMENT A – Removing Trees Because of Construction.**
- ☐ B. Removal of a tree for the health and vigor of surrounding trees.

These criteria require an ISA Tree Hazard Evaluation Form prepared by an ISA Certified Arborist:

- ☐ C. The tree presents a safety hazard, where:
 - 1. The condition or location of the tree presents either a foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure; and,
 - 2. Such hazard or danger cannot reasonably be alleviated by pruning or treatment of the tree.
- ☐ D. The tree was damaged by storm, fire or other injury, which cannot be saved by pruning.

You must submit a tree removal permit with a reason if:

- ☐ E. The tree is dead.
- ☐ F. Tree removal is necessary to provide solar access to a solar energy system where pruning will not provide adequate solar access:
 - 1. The city may require documentation that a device qualifies for Oregon Department of Energy Solar Tax Credit, or other incentive for installation of solar devices offered by a utility.
 - 2. No tree measuring more than 24 inches in diameter shall be removed for solar access.
- ☐ G. Tree removal is for landscaping purposes, subject to the following conditions:
 - 1. The tree cannot exceed 10 inches in diameter.
 - 2. A landscape plan for the affected area must be submitted and approved by the City.
 - 3. The landscape plan must incorporate replacement trees for the trees removed. The replacement trees must be at least six feet in height or have a two-inch caliper; and,
 - 4. The City shall inspect the property one year after the approval of the permit to insure the landscape plan has been implemented.

If your tree presents an immediate danger of collapse and if such potential collapse represents a clear and present hazard to persons or property, **please contact the Community Development Director (CDD)**. If it is determined by the CDD that there is an immediate danger, then a tree removal permit is not required prior to tree removal. However, within seven days after the tree removal, the tree owner shall make application for an after-the-fact permit. Where a tree presents an immediate danger of collapse, a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required. Where a safety hazard exists, as defined by this subsection, the city may require the tree's removal. If the tree has not been removed after forty-eight hours, the city may remove the tree and charge the costs to the owner.

Attach a site plan showing the location and type of all trees on the property, including the trees to be removed. Indicate the location of replacement trees and the type. SEE ATTACHMENT B – Site Plan. Attach photos of the trees to be removed and mark the trees with ribbon.

Explain how the request meets one or more of the applicable criteria. Include the number and type of trees requested for removal. If appropriate, explain why pruning would not accomplish the same goal as tree removal.

City of Cannon Beach
Finance Department

APR 25 2023

PAID

Application fee: \$50.00 for 1-4 trees; \$100 for 5 or more trees

Note: The application fee is a **nonrefundable** fee that is due upon receipt of application, whether the removal request is approved or denied.

Applicant Signature  Date: 4/25/23

If the applicant is other than the owner, the owner hereby grants permission for the applicant to act in their behalf.

Property Owner Signature:  Date: 4/25/23

Please attach the name, address, phone number and signature of any additional property owners.

I understand, as property owner, that I am responsible if an approved tree removal permit is violated in any way. As property owner, my signature or an authorized applicant's signature, allows any duly authorized employee of the City to enter upon all properties affected by this permit, for the purpose of follow-up inspection, observation or measurement.

Date: _____ Fee Paid: \$ _____ Receipt Number: _____ Permit #: _____

Application is:

_____ Approved _____ Denied
☒ Approved - Tree replacement required per Cannon Beach Municipal Code 17.70.040, Tree Replacement Policy.
 _____ Approved with comments:

By:  Robert St. Clair
 Planner Date: May 2, 2023

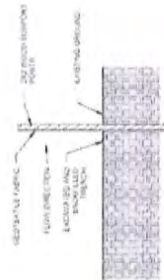
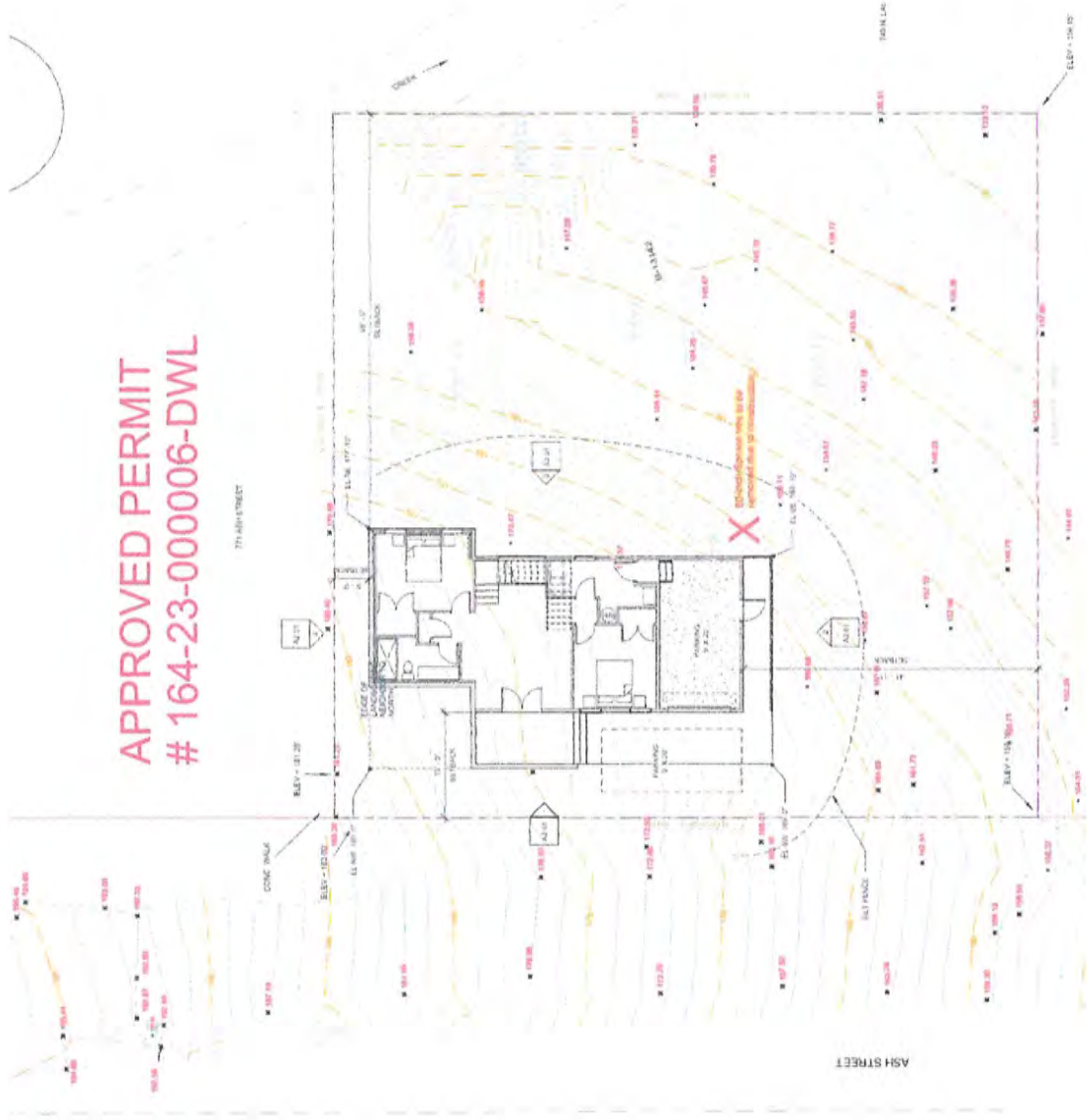
Decisions on the issuance of a tree removal permit may be appealed to the Planning Commission in accordance with Section 17.88.140 a, of the Municipal Code.

AVERAGE GRADE CALCULATIONS:

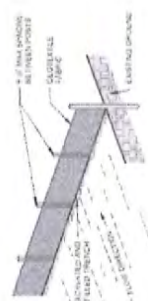
NW CORNER EL = 137.42'
NE CORNER EL = 137.10'
SE CORNER EL = 137.10'
SW CORNER EL = 137.42'
AVERAGE GRADE = 137.42' + 137.10' + 137.10' + 137.42' = 549.04' ÷ 4 = 137.26'
MANHOLE BUILDING HEIGHT = 137.26' - 24'-0" = 113'-0"

APPROVED PERMIT
164-23-000006-DWL

775 ASH STREET



SILT FENCE - SECTION 2
3/4" = 1'-0"



SILT FENCE - ISOMETRIC 3
3/4" = 1'-0"

Robert St. Clair

From: Joe Balden <joebalden70@gmail.com>
Sent: Friday, April 28, 2023 8:35 AM
To: Jamie Lerma; Robert St. Clair; jeffgerhardt treescapesnorthwest.com
Subject: 743 N. Ash Street project

All,

I have reviewed the site plan and construction details. for the proposed house construction as it relates to the existing Sitka spruce tree. The southeast corner of the house is shown to be at the base of the tree. The tree root system would be severely compromised by excavation for the retaining wall and stem wall of the house. Removal of the tree will be necessary for construction to proceed per the approved plans.

Joe Balden
Consulting Arborist
Balden Arboriculture Services

**Balden & Associates
Arboriculture Services**

Joe Balden
Consulting Arborist **PN0736**

41500 Anderson Road
Nehalem, OR 97131
503.368.7807 office
503.801.3762 cell
joebalden70@gmail.com

March 13, 2023

Vito Cerelli
Jamie Lerma

Project: Bennett Residence
743 N. Ash St., Cannon Beach

Vito,

I met with Jamie on site 3/9 to discuss the situation where the SE corner of the house is projected to be at the base of the Sitka spruce. We discussed possible alternatives to construction where the spruce could be retained. My position is that the tree is significant in that the tree root system presents a major component to slope stability on the east side of the property. The tree is structurally sound, has good characteristics (adapted to weather exposure, good taper, moderate height, no structural defects). If the structure can be adjusted a few feet either north or west, then cut and fill over the west side of the tree roots would be acceptable. Jamie and I discussed how the dig out on the north side of the lot would determine footing depth and floor height. At the time of excavation on the north side of the property we can make an informed opinion on whether or not the tree can be retained. Let me know when we can discuss this project detail further.

Sincerely,

Joe Balden



Treescaples Northwest
Jeff Gerhardt, Consulting Arborist
ISA Certified Arborist #PN-5541A



City of Cannon Beach, Planning Department

Attn: Robert St. Clair
stclair@ci.cannon-beach.or.us
(503) 436-8041

May 1, 2023

Tree Removal Permit Application Review - 743 N Ash

Per your request, I reviewed the Tree Removal Permit Application submitted by Jamie Lerma. A site map was included in the application. Additionally, a letter necessitating tree removal was received from Certified Arborist, Joe Balden. I visually inspected the tree and site on May 1st along with City Planner, Robert St. Clair. Given the circumstances, it is with great reluctance that I advise the removal of this tree.

The tree is a Sitka spruce (*Picea sitchensis*), that is approximately 40" in DBH and 60' tall (photograph attached). The tree is a specimen, exemplifying great health and structure. Located on a steep site, the tree is hugely beneficial in anchoring the slope. Unfortunately, in order to accommodate planned home construction the tree must be removed according to permit Criteria A: "*You are constructing a structure...*".

Poor planning has led to little consideration for retaining and protecting this valuable tree. Perhaps, if fines were imposed by the City for this type of blatant disregard, situations as this could be hindered.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Gerhardt".

Jeff Gerhardt

Treescaples Northwest
P.O. Box 52
Manzanita, OR 97130

CCB# 236534
Cell: 503-453-5571
www.treescaplesnorthwest.com





Treescaples Northwest
Jeff Gerhardt, Consulting Arborist
ISA Certified Arborist #PN-5541A



City of Cannon Beach, Planning Department

Attn: Robert St. Clair
stclair@ci.cannon-beach.or.us
(503) 436-8041

May 1, 2023

Tree Removal Permit Application Review - 743 N Ash

Per your request, I reviewed the Tree Removal Permit Application submitted by Jamie Lerma. A site map was included in the application. Additionally, a letter necessitating tree removal was received from Certified Arborist, Joe Balden. I visually inspected the tree and site on May 1st along with City Planner, Robert St. Clair. Given the circumstances, it is with great reluctance that I advise the removal of this tree.

The tree is a Sitka spruce (*Picea sitchensis*), that is approximately 40" in DBH and 60' tall (photograph attached). The tree is a specimen, exemplifying great health and structure. Located on a steep site, the tree is hugely beneficial in anchoring the slope. Unfortunately, in order to accommodate planned home construction the tree must be removed according to permit Criteria A: "*You are constructing a structure...*".

Poor planning has led to little consideration for retaining and protecting this valuable tree. Perhaps, if fines were imposed by the City for this type of blatant disregard, situations as this could be hindered.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Gerhardt".

Jeff Gerhardt

Treescaples Northwest
P.O. Box 52
Manzanita, OR 97130

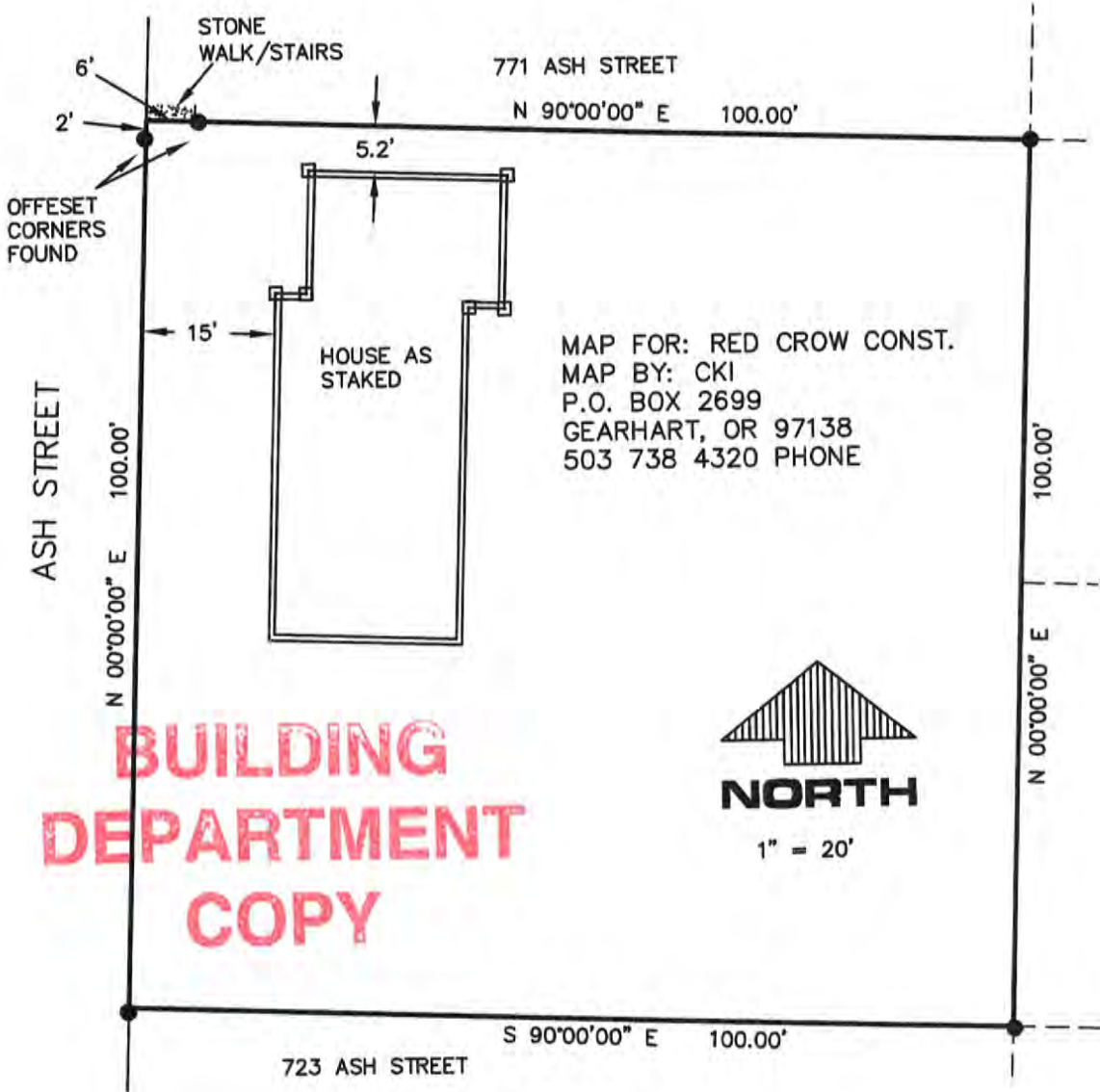
CCB# 236534
Cell: 503-453-5571
www.treescaplesnorthwest.com



4-27-23
AB

SITE PLAN

743 ASH STREET TAX LOT 5602 MAP 51019AA
CITY OF CANNON BEACH, CLATSOP COUNTY, OREGON
DATE: APRIL 27, 2023



BUILDING
DEPARTMENT
COPY



LEGEND

- INDICATES SURVEY CORNER FOUND
- INDICATES SURVEY NAIL/HUB & TACK SET AT EXTERIOR WALL CORNER

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JUNE 30, 1997
SCOTT S. COOTER
2829

RENEWS 12/31/23 26

Robert St. Clair

From:

Sent:

To:

Subject:

vito cerelli <vito.cerelli@gmail.com>

Monday, March 13, 2023 6:51 PM

Robert St. Clair; Jamie Lerma

743 Ash St.

Follow Up Flag:

Flag Status:

Follow up

Completed

Robert -

I have been working alongside both Jamie and Joe Balden for the project located at 743 Ash St.

We plan to work alongside Joe B. to preserve the tree on the site if possible. He will be present for the excavation working alongside Jaime Lerma and McEwan -

Thank you,

Vito

Vito Cerelli | vito.cerelli@gmail.com | c: 503.440.5766

Robert St. Clair

From: Joe Balden <joebalden70@gmail.com>
Sent: Monday, March 13, 2023 12:33 PM
To: Robert St. Clair
Subject: 743 Ash St. Bennett new construction
Attachments: BennettAsh st 323.docx

Robert,
Attached is my memo that I sent to Cerelli and Lerma regarding retention vs removal of one Sitka spruce on the site. The tree may need to be removed depending on construction impact. I want Cerelli to review the design and my comments before making a decision on remove or retain the tree.

Joe Balden
Balden Arboriculture Services

**Balden & Associates
Arboriculture Services**

Joe Balden
Consulting Arborist **PN0736**

41500 Anderson Road
Nehalem, OR 97131
503.368.7807 office
503.801.3762 cell
joebalden70@gmail.com

March 13, 2023

Vito Cerelli
Jamie Lerma

Project: Bennett Residence
743 N. Ash St., Cannon Beach

Vito,

I met with Jamie on site 3/9 to discuss the situation where the SE corner of the house is projected to be at the base of the Sitka spruce. We discussed possible alternatives to construction where the spruce could be retained. My position is that the tree is significant in that the tree root system presents a major component to slope stability on the east side of the property. The tree is structurally sound, has good characteristics (adapted to weather exposure, good taper, moderate height, no structural defects). If the structure can be adjusted a few feet either north or west, then cut and fill over the west side of the tree roots would be acceptable. Jamie and I discussed how the dig out on the north side of the lot would determine footing depth and floor height. At the time of excavation on the north side of the property we can make an informed opinion on whether or not the tree can be retained. Let me know when we can discuss this project detail further.

Sincerely,

Joe Balden

Robert St. Clair

From: Jamie Lerma <jamie@redcrowgc.com>
Sent: Friday, March 10, 2023 10:06 AM
To: Robert St. Clair
Subject: 743 N. Ash - Bennett tree permit

Good Morning Robert,

Regarding the removal of the 60" spruce tree that I contacted you about earlier this eek, I met with Arborist Joe Balden at 743 N. Ash yesterday morning and we determined that our path forward would be to save the tree if possible and to remove if necessary.

Joe is writing a report a report to that effect. I will forward that report to you when I receive it.

I would have Joe inspect the tree as we excavate to determine the viability of the tree.

We'll have to have our building permit to proceed with excavation, so I'd like to ask you to proceed with the plan review with approval from Community Development pending the report from Joe, which I expect early next week.

Thank you,

Jamie

Jamie B. Lerma
President
Red Crow, LLC
(503) 849-0258
PO BOX 825
Cannon Beach, OR 97110
CCB#226835

Robert St. Clair

From: Alton Butler
Sent: Tuesday, June 20, 2023 12:47 PM
To: Robert St. Clair
Cc: Steve Sokolowski
Subject: Re: AA#23-04

Robert,
I would accept this for a permit however as in the north retaining wall the height of the cut exceeded what was submitted on the stamped plans. Further engineering and an additional geo was needed.

Alton

Get [Outlook for iOS](#)

From: Robert St. Clair <stclair@ci.cannon-beach.or.us>
Sent: Tuesday, June 20, 2023 8:15:11 AM
To: Alton Butler <butler@ci.cannon-beach.or.us>
Cc: Steve Sokolowski <sokolowski@ci.cannon-beach.or.us>
Subject: FW: AA#23-04

Alton,

Could I ask you to give the retaining wall information a quick review and provide a comment as to whether or not it meets code? This is in regard to J. Lerma's project on Ash St. which has the tree removal permit that has been appealed to the Planning Commission.

Thanks,

Robert

**Robert St. Clair***Planner***City of Cannon Beach**

p: 503.436.8041 | **tty:** 503.436.8097 | **f:** 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | **e:** stclair@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: Jamie Lerma <jamie@redcrowgc.com>
Sent: Thursday, June 15, 2023 2:11 PM
To: Emily Bare <bare@ci.cannon-beach.or.us>; Robert St. Clair <stclair@ci.cannon-beach.or.us>
Subject: AA#23-04

Emily and Robert,

Please find the attached opposition exhibits for the City of Cannon Beach Planning Commission hearing continuance of AA#23-04 Tree Permit Appeal for 743 N. Ash:

- Exhibit 1 - Slope stability report by Earth Engineers, Inc.
- Exhibit 2a - Retaining wall detail by Iron Oak Engineering
- Exhibit 2b - Retaining wall calculations by Iron Oak Engineering
- Exhibit 3 - Tree report by Prager & Associates

Please confirm receipt and that this information will be distributed to city staff and commission members prior to the June 22nd continuance.

Thank you,

Jamie

--

Jamie B. Lerma
President
Red Crow, LLC
(503) 849-0258
PO BOX 825
Cannon Beach, OR 97110
CCB#226835

Robert St. Clair

From: Donald Stastny <djstastny@me.com>
Sent: Tuesday, May 2, 2023 12:58 PM
To: Robert St. Clair
Cc: Janet Stastny; Anna Moritz
Subject: Tree Removal Request on Tax Lots 5602 and 5604

Robert St.Claire, Planner
City of Cannon Beach

Mr. Livingston:

This letter is a CITIZEN’S APPEAL to the approval to remove the major tree on Tax Lots 5602 and 5604, filed by Contractor Jamie Lerma on behalf of the Owner. We, as Owners on the adjacent property object to the approval of any removal permit as the entire sequence of events as extensive excavation work has continued on the site without the appropriate permits. Major excavation on the site has been undertaken, we have been told that a building permit has been issued but have no indication of such issuance (and were told by the previous Director of Development that we would be notified when a permit was applied for), current excavation has occurred inside the 5’ setback and extended into our property putting our house at risk, we were given a proposed retaining wall on the north of the property are extending into the 5’ setback (and has errors in the drawing/calculation support), and the subject tree has been severely butchered by the excavation contractor. Additionally, Ash Street has been severely damaged by construction activities and erroneous information supplied the Owner’s “designer” and a deal cut behind closed doors by the previous Director of Development. This entire project has been done on an incremental basis to deny the neighborhood a right to review or protest nor with appropriate notification of the neighbors or neighborhood. The latest “increment” is the removal of the tree, which can be saved with a realignment of the proposed building on the site.

Please notify us of the status of the tree removal permit and the review process that will be involved in areaching a decision decision. As of this protest, all construction activity on the site should immediately cease until all issues are resolved. Thank you.

Sincerely,

Donald J. Stastny
Janet H. Stastny
Owners of Tax Lot 5603

Robert St. Clair

From: Donald Stastny <djstastny@me.com>
Sent: Friday, May 5, 2023 12:14 PM
To: Lisa Kerr
Cc: Alton Butler; Robert St. Clair; Anna Moritz; Janet Stastny; Kathy and Harold Weckwerth
Subject: Re: Request for copies of relevant permits

Lisa: Thank you for looking at the plans. I am still awaiting the electronic copies of all documents that were requested of Jennifer Barrett. We continue to be concerned with the incremental approach to the construction—excavation with no retaining wall plans, site layouts that show one corner of the proposed house in the same location as the tree trunk, the outline nature of the documents (that I have seen) as opposed to complete architectural and structural plans that were required for our house, structural calculations and drawings indicating how they propose to build the house on a very difficult site, depths and locations of footings, etc. Building in this area of Cannon Beach is not an easy task. In any case, the entire project should be designed, planned, stamped by a licensed Structural Engineer or Architect and a strategy in place as to how it will be executed. From my knowledge (and lacking the architectural and structural drawings) it appears that excavation and setting forms is proceeding without a complete understanding of the foundation system and its impact on the site. The contractor, Red Crow Construction, appears to not have an understanding of the site and the conditions to be resolved on the site. We continue to be concerned that the excavation impinged on our property and that there was trespassing on the property to install warning fences that are totally off the subject property. We also question the wisdom of placing the house adjacent to the north property line, endangering the structure of our house, but also creating a fire hazard by putting house too close together without adequate fire-fighting capacity (inaccessibility of fire fighting equipment that was determined by the Cannon Beach Fire Department, and location of fire hydrants at the top and bottom of the hill requiring laying down 200' of fire hose from either of the hydrants to the critical spacing between houses. This concern should be a major concern of the city as in 2000, there was a fire in one house under construction, that ended up taking out three houses and heat damaging at least 3-4 others—and this fire was on Oak Street where fire equipment had access. The City should immediately demand that construction on the site cease immediately until site and construction issues are resolved. Don

On May 5, 2023, at 9:11 AM, Lisa Kerr <kerr@ci.cannon-beach.or.us> wrote:

I looked at the building plans yesterday. There is very little information and no drawings concerning a retaining wall. I think there may be a serious problem on the site. The arborist report in the building plans that I looked at say that the tree the applicants want to remove—the 60" spruce—contributes to hillside stability and should be left in place if at all possible. It IS possible. Redesign so that it doesn't get removed! Also, it appears that the excavation goes right up and over the neighbor to the north's property line. They will probably retain an attorney—at least that is what I would do! This needs lots of oversight to avoid problems.
 Lisa Kerr

Get [Outlook for iOS](#)

From: Alton Butler <butler@ci.cannon-beach.or.us>
Sent: Wednesday, May 3, 2023 1:52:00 PM
To: Donald Stastny <djstastny@me.com>; Robert St. Clair <stclair@ci.cannon-beach.or.us>
Cc: Lisa Kerr <kerr@ci.cannon-beach.or.us>; Anna Moritz <atmoritz@gmail.com>; Janet Stastny <jstastny@me.com>; Kathy and Harold Weckwerth <kapweckwerth@msn.com>
Subject: RE: Request for copies of relevant permits

Mr. Stastny,

I have spoken to the general contractor of Red Crow Construction to address these issues.

I requested that the construction fence be put up for your safety plus a tarp to mitigate any rain water that could erode the slope below your property.

I have already been out to the property twice. Once the retaining wall is formed and before concrete is poured,

I will field measure the setback which has been surveyed and staked by the surveyor. This is a required inspection for setbacks and foundation.

I share your concern about safety and damage to property.

Best,

Alton Butler

Alton Butler

Building Official

City of Cannon Beach

p: 503.436.8046 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | e: butler@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

-----Original Message-----

From: Donald Stastny <djstastny@me.com>

Sent: Wednesday, May 3, 2023 12:04 PM

To: Alton Butler <butler@ci.cannon-beach.or.us>; Robert St. Clair <stclair@ci.cannon-beach.or.us>

Cc: Lisa Kerr <kerr@ci.cannon-beach.or.us>; Anna Moritz <atmoritz@gmail.com>; Janet Stastny <jstastny@me.com>; Kathy and Harold Weckwerth <kapweckwerth@msn.com>

Subject: Re: Request for copies of relevant permits

Alton and Robert: I have filed a records request with the City of Cannon Beach this morning for all drawings and materials submitted for building permits for Tax Lots 5602 and 5604 as well as any permit checklist that indicates the applicant has complied with all code requirements. Staff were not able to give me any response time. I suspect that structural and other requirements are not included in the drawings and calculations. Work is underway on the site last night and this morning on retaining wall concrete forms. I asked the workers for a building permit authorizing their work and they indicated they did not have a copy of any building permit. There should not be any work done on the site without a valid building permit. Has the latest supplemental engineering drawing been submitted and approved? As a neighbor and citizen, I request that all work on the site should immediately cease until ALL permit issues are resolved. Also, as a matter of good construction, the contractor is required to supply a restroom on site for workers. This has not been done. The Contractor and Owner have greatly endangered our property as well as trespassing with construction materials and construction activity. Don Stastny

> On May 2, 2023, at 2:29 PM, Alton Butler <butler@ci.cannon-beach.or.us> wrote:

>
> Mr. Stastny,
> A records request form can be submitted that is online for the City of Cannon Beach.
> Jennifer Barrett is the contact person here for the city that coordinates that.
>
> Best,
> Alton Butler
>
>
> Alton Butler
>
> Building Official
> City of Cannon Beach
>
> p: 503.436.8046 | tty: 503.436.8097 | f: 503.436.2050
>
> a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110
> w: www.ci.cannon-beach.or.us | e: butler@ci.cannon-beach.or.us
>
> DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.
>
>
> -----Original Message-----
> From: Donald Stastny <djstastny@me.com>
> Sent: Tuesday, May 2, 2023 1:54 PM
> To: Alton Butler <butler@ci.cannon-beach.or.us>
> Cc: Robert St. Clair <stclair@ci.cannon-beach.or.us>; Janet Stastny <jstastny@me.com>
> Subject: Request for copies of relevant permits
>
> Dear Alton: This is a formal request that we, as adjacent property owner to Tax Lots 5602 and 5604, be given copies of any and all permits issued on the construction project underway on Tax Lots 5602 and 5604. This request should include any approval of the extensive excavation that occurred last week that has severely impacted the stability of our property (including excavation into our property and installation of construction fencing on our property. Also, we request a copy of the site survey, the geotechnic report, engineering calculations and other documents that were reviewed for a Building Permit (assuming such has been issued). We would also like an explanation of why additional engineering for a retaining wall was required and why it was not in the original documentation—as well as an explanation why the drawing for the retaining wall does not match the calculations. Thank you. Don
>
> Donald J. Stastny
> Janel H. Stastny

Robert St. Clair

From: Donald Stastny <djstastny@me.com>
Sent: Sunday, May 14, 2023 8:17 PM
To: Alton Butler
Cc: Robert St. Clair
Subject: Ceasing construction on Tax Lot 5602 and 5604

> Mr. Butler: Once more, lacking any response to my last request and as part of the Ash Street neighborhood in Cannon Beach, we request that construction activities on the subject Tax Lots (5602 and 5604) cease immediately. This request is based on our experiences with the General Contractor and the City in undertaking this construction. This is a very complex situation with issues that should have been resolved prior to beginning construction.

>

> 1. The neighbors have been told that the City has granted approval of the Ash Street right-of-way and upper parking area for construction activities. We have yet to see what this approval is, or what limitations it puts on the Contractor and his subcontractors. The net result has been an operation that has completely obliterated the central part of Ash Street, covered over landscaping that was installed because the City did not live up to its promise to restore the landscape and roadway when the water project was installed a couple of years ago. Likewise, all of the neighbors have been severely impacted by the parking of vehicles and equipment up and down Ash Street.

>

> 2. The building for which a building permit was supposedly issued should not have been issued without a resolution of the Sitka Spruce tree in the middle of the subject properties. The regulations for applying for a building permit require that any application for tree removal be included within the building permit application. The first application for tree removal was denied (according to the Contractor), and since the proposed building footprint impacts the tree, the initial building permit should not have been issued. Note: the location of the tree, and its impact on the foundation of the house, was obvious in the initial layout of the site, with the southwest corner of the proposed residence flagged as being in the middle of the tree trunk of the Sitka Spruce. Since the tree removal permit was denied, the building permit should not have been granted and is invalid.

>

> 3. It is our understanding that the City approved a building permit (without the tree issue being resolved) and the Contractor brought in McKuen Excavating to excavate the site, even though the full footing structure of the residence as proposed, could not be built without the removal of the Sitka Spruce. The excavation revealed a hard-pan layer and the Contractor over-excavated the site, leaving a 12 foot high cut at the northern property line, with excavation extending into our property at 755 North Ash Street and potentially compromising the structure of our residence. Both the Contractor and the City trespassed on our property and erected fencing and construction tape to cover their liability due to the over excavation.

>

> 4. Even though there was no approved tree removal permit, McKuen damaged the lower branches of the Sitka Spruce with their equipment—instead of sawing off the branches, tore them off. After the tree had been damaged, and McKuen telling the Contractor they could get a tree removal permit. We heard that that the City had asked for another arborist to inspect the tree, resulting in Mr. Robert St.Clair, Community Development Planner, issuing a tree removal permit for the subject tree. There was NO public process in approving the tree removal permit and we found out about it because the subject was brought up in a City Council meeting. We immediately filed an appeal regarding the tree removal permit and the appeal will be heard before the Planning Commission on Thursday, May 25.

>

> 5. Subsequently, the Contractor, in an effort to protect his liability for the over excavation and intrusion into our property, secured the design of a retaining wall from a structural engineer (not the structural engineer of the residence). There is nothing in the retaining wall design that indicates any tie back to the proposed residential foundation. We assume you have approved this design, even though there is not indication of how it fits with the foundation of the

entire residence. The workmen on the site told us that the forms were surveyed and approved on Friday. We also received a telephone call from the Contractor asking when we would be in residence because they were going to block access on Ash Street to pour concrete. If this construction has been approved by the City, pouring concrete is illegal because there is not a valid building permit until the tree issue is resolved and a final foundation plan drawn and approved. Moreover, the concrete forms (in place as of Friday) indicate that there is a foundation/retaining wall extending at least 7' into the front yard setback and that the underground footing of the north retaining wall extends into the side-yard setback with a "footing" that is not restrained or defined. Extending any construction into the prescribed set-backs is not allowed.

>

> 6. In reviewing the drawings and calculations submitted for the initial building permit, we note, at a minimum, the following issues:

>

> 6.1 There is a lack of a complete foundation plan, retaining wall details and footing placement. The plans may be sufficient for a "builder" house in the suburbs, but not for a building in sloping, difficult urban site. We assume that is the reason the Contractor went to another structural engineer for his "emergency" retaining wall was because of the incompleteness of the original drawings.

>

> 6.2 The geotechnic report was done a number of years ago and was not a true geotechnic report for the proposed residence (with proper soils testing). The request made of the geotechnical engineer at that time was "how can we (the owner and designer) put two houses on this property?"—not a request for a full geotechnical report. The test holes were made between the ROW line and the 15' front yard setback and the recommendations of the geotechnical engineer were made, not on knowledge of the site, but on observation ("neighboring houses do not show any signs of structural failure") and observations about the geotechnic characteristics of the coast environment. As well, we know that there was 1'-5' of loose overburden on a major portion of the site as a result of construction of our houses and agreement with the previous property owner. If the geotechnical report is read carefully, it indicates how to build two houses on the site—not founding ONE house in the proper location. This part of Ash Street was an abandoned rock quarry historically, but this fact and the underlying strata were not considered in the geotechnical report nor in the design of the residence.

>

> 6.3 The structural calculations address lateral loading on the walls, but do not address the requirement we, as the house above, had to adhere to: 90 mile-an-hour UPLIFT. We are subject to severe winds coming off the ocean from the southwest and funneling up the hill during the winter months. Not only do the drawings not recognize this requirement, there are NO details of how the house is anchored to the foundation. Our house has steel bolts going from roof to major anchors under the lower floor. Additionally, the design of the proposed residence indicates shed roof forms that will exasperate the situation by collecting wind pressure—causing structural failure unless uplift is considered in the design.

>

> 6.4 The proposed residence placement does not address fire safety. Ash Street has been evaluated numerous times by the Cannon Beach Fire Department as to accessibility of fire-fighting equipment to the houses on the steeply sloping part of the Ash Street ROW. The analysis of the Fire Department says that they cannot get equipment to a fire, but must fight the fire by laying down hose from the upper hydrant or the lower hydrant. In both cases, it would mean hoses at least 200-250 feet in length. In 2000, there was a fire during construction of a house on Oak Street in a relatively level area with structures 10' apart (total of 2-5' side-yard setback). The fire took out three houses and severely damaged another four. The Owner and designer continue to compromise our structural and fire safety by placing the residence up against the 5' side-yard setback, even though they have 90' of frontage along Ash Street to place the house with 25' from the house to neighboring structures (north and south). The Owner and designer have justified the proposed placement of the residence based on "saving the Sitka Spruce" (which has to be removed to put the house in its current proposed location) and the old geotechnical report that was based on putting two houses on the site (which is not allowed in the RL zoning passed in the 1960's).

>

> 6.5 The allowable building height calculation, which has been a policy of Cannon Beach for years, is questionable as proposed. The discipline of placing a box around the structure and then calculating the average of the corners has not been followed. Extending the east side of the house to the south would put the southeast corner below the tree. This is

not recognized in the calculation—and I would question the validity of the site survey as it was ALSO from years past and does not align with surveys up the hill. The contours and elevations also appear to be in error because the site was never cleared of overgrowth to substantiate the survey.

>

> 6.6 There are sufficient inconsistencies in the materials submitted for the building permit that the application should be denied and re-submitted incorporating any modifications that might come about as a result of resolution of the tree removal (or not) from the hearing before the Planning Commission.

>

> 7. The neighbors on North Ash Street (between 7th and 8th Streets) petitioned the City in February 2019 to resolve circulation issues on Ash Street—especially addressing access to undeveloped parcels on Ash Street. We met enmass with Ms. Karen LaBonte, Director of Public Works and Mr. Jeff Adams, then Director of Community Development. Their response to the neighborhood from

> Adams: “we cannot make any determination until there is an active building permit application.” We understood later that Mr. Adams made an agreement with the designer of the subject residence based on information that was in error (length of required street development to improved paving and assuming the driveway paving that the neighborhood installed was an appropriate street paving standard)—which it is not, but was installed by the neighbors to ensure access to our properties. Therefore, if the Owner and designer insist on site access from the north, they will be required to bring the entire length of Ash Street from 8th to property up to city street standard OR a minimal driveway from the south (as was proposed by the neighborhood).

>

> From this discussion, there are major and complex issues at play. It is in the best interests of the City, the neighborhood, the Owner and her designer and the Contractor to “pause” the construction pending resolution of issues.

>

> Donald J. Stastny

> Janet H. Stastny

Robert St. Clair

From: kathleen preedy-weckwerth <kapweckwerth@msn.com>
Sent: Monday, May 15, 2023 8:08 AM
To: Planning Group
Subject: May 25th Planning Meeting Re: AA 23-04

Follow Up Flag: Follow up
Flag Status: Completed

From: Kathleen Weckwerth, 772 N. Ash Street

Sent: May 15, 2023

To: The Planning Commission of Cannon Beach

Subject: AA 23-04 Tree Removal Appeal

I am in support of denying the removal of the Sitka spruce tree located at 743 N. Ash Street.

An application for tree removal was made on April 25, 2023. In the application packet is a letter from Joe Balden, arborist, dated March 13, 2023. That letter states “the tree is significant in that the tree root system presents a major component to slope stability...” Also in the application is a letter from the consulting arborist, Jeff Gerhardt, dated May 1, 2023. That letter states that “The tree is a specimen, exemplifying great health and structure. Located on a steep site, the tree is hugely beneficial in anchoring the slope... Poor planning has led to little consideration for retaining and protecting this valuable tree.” What actions have been required of the applicant to stabilize the slope?

In the same application a site plan is included. On that drawing a portion of the house is situated within the required 15’ street yard setback. A March 7, 2019 letter from Jeff Adams states “The application (for setback reduction) was withdrawn on January 31, 2019 following the January Planning Commission hearing, with an indication that they would no longer seek a front yard set back and build within the required building envelope.” When was a set back reduction approved? My understanding of Cannon Beach’s code is that “Required yards are measured from property lines to building foundations.” (Handout titled City of Cannon Beach Residential Building Permit and Zoning Information, page 10 of 21)

The Sitka spruce is located on a property that is two tax parcels of 50’ x 100’ resulting in a buildable property that is 100’ x 100’. The home owner, Jacqueline Bennett, and the designer, Vito Cerelli have known since 2019 that the Sitka spruce tree was essentially in the center of the property. Hasn’t that been enough time to design a house that incorporates such a valuable tree? If saving the tree wasn’t their intention, why wasn’t an application for tree removal submitted at the same time as the application for the building permit? On page 4 of 21 of the same handout “....application for the tree permit should be made at the time of the building permit application.” The excavation company, McEwan Construction, started site activity on or before April 18, 2023. They have broken many branches off the tree during the excavation for footings of the building. This indicates an intent to remove the tree well before the April 25 application for tree removal.

It is with great disappointment that such a beautiful tree was permitted for removal on May 2, 2023 by Robert St. Clair. Please take the necessary action to grant the appeal made by Janet Stastny.

Sent from my iPad

Robert St. Clair

From: Emily Bare
Sent: Thursday, May 18, 2023 11:41 AM
To: Robert St. Clair
Subject: FW: AA 23-04 Tree Removal Appeal
Attachments: Ash St. letter & tax lot map.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Emily Bare

Administrative Assistant – Planning Department City of Cannon Beach

p: 503.436.8054 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110
w: www.ci.cannon-beach.or.us | e: bare@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

-----Original Message-----
From: Donald Stastny <djstastny@me.com>
Sent: Wednesday, May 17, 2023 4:04 PM
To: Emily Bare <bare@ci.cannon-beach.or.us>
Cc: janet Stastny <jstastny@me.com>
Subject: AA 23-04 Tree Removal Appeal

Emily: Submitting this letter in support of AA 23-04 Tree Removal Appeal explaining earlier interaction with the City on access. Don

February 27, 2019

Bruce St. Denis, City Manager
Karen LaBonte, Director of Public Works
Jeff Adams, Director of Community Development
City of Cannon Beach
163 E. Gower
Cannon Beach, Oregon 97110

Cc: Les Wierson, Public Works Committee

Ladies and Gentlemen:

We, the citizens along N. Ash Street, are asking for your direction and assistance in controlling circulation through our neighborhood. We are writing based on the following conditions, both past and present:

1. For the past 10+ years, and at the action of the City, the middle section of N. Ash Street (between 7th and 8th Avenues) has been closed to through traffic from the access to Tax Lot 3800 and Tax Lot 5603 on the north, and from access to Tax Lot 4000 and Tax Lot 5601 on the south. This closure is due to the steepness of this section of N. Ash Street and the use of the right-of-way by 4-wheelers and other vehicles as "thrill hill". When the street was open (graveled) this use both endangered residents and properties as well as was a great disruption to the neighborhood through noise and dust. We wish to thank the City for this action as it has ensured that our area develops both as a group of homes, as well as a neighborhood. This has been instrumental in creating a "sense of place" in this area of Cannon Beach.
2. Although the slope of the right-of-way may be prohibitive, we understand that N. Ash needs to remain accessible as it may serve as the alternate emergency route should Ecola Park Road be subject to closure by natural disaster. This situation does not require the right-of-way to be improved—only that it remain free of impediments that would preclude this use in the case of a natural disaster.
3. With the closure of the middle section of N. Ash, and the lack of appropriate signage and "way finding", we have experienced traffic (vehicles, trucks and RVs) executing turn-arounds utilizing our driveways on both the north and south ends of the closed area. This is an irritation, but is also a matter of safety, as this neighborhood is basically a pedestrian precinct and errant types of vehicular movement endanger our properties as well as visitors that are using N. Ash Street as a connection to the trail to Ecola Park.
4. During the past summer, the residents along N. Ash Street experienced a very disruptive spring, summer and fall with the installation of the new water line. We all realize the difficulty of constructing this project and commend McEwan Construction for their careful and diligent work in accommodating neighborhood needs and circulation over the extended construction schedule. Now that the construction is complete, we are diligently returning our properties to the condition prior to the beginning of construction.
5. Over the past three months, new demands have been placed on the neighborhood by proposed and new development of vacant parcels. First, a residence currently under construction at the intersection of N. Ash Street and 8th Avenue has an access that was approved (as we understand it) by the County. Access to the house is a steep driveway from 8th Avenue up to the building site. Second, an application for a Reduction in Front Yard Setback was filed for Tax Lots 5604 and 5602. This application has since been withdrawn due to neighborhood resistance and findings by the Director of Community Development. Inherent in this application, however, was a site plan that assumed accessing the property from the north by an extension of the driveway "T" serving Tax Lots 3800 and 5603.
6. On analysis of future development, there are three vacant parcels on N. Ash Street between 7th and 8th Avenues: Tax Lot 4100 (5000 sf), Tax Lot 3900 (5,000 sf) and Tax Lots 5604/5602 (10,000 sf). By zoning code (Chapter 17.10 RL Zone), each of the three parcels can only have a single residence built on them. Tax Lots 5604/5602 are contiguous and under one ownership, therefore can only have a single residence—Tax Lots 3900 and 4100 can have one residence each due to being "grandfathered in" per the zoning ordinance. Tax Lot 4100 can be accessed directly from the south (level) section of N. Ash Street. Tax Lots 5604 and 3900 require future access and share a southern boundary. Therefore, the least disruptive access to the neighborhood would be via a driveway extension from the south, creating a "T" access to both parcels from the south similar to the existing "T" access that serves Tax Lots 3800 and 5603 further up the hill. Access to Tax Lots 3900 and 5604/5602 from the south maintains the majority of the "closed" section of N. Ash Street so that the ambiance and neighborhood access is maintained while allowing emergency access up the N. Ash Street right-of-way between the "T" in the event of loss of Ecola Park Road.

Based on the above situations and conditions, we, as adjacent property owners, hereby request the following of the City:

Action #1: Three directional signs be located in three separate positions as shown on the accompanying map. These signs are to reduce traffic and provide clear way finding for N. Ash Street and the western portion of 8th Avenue. These signs could include the following information:

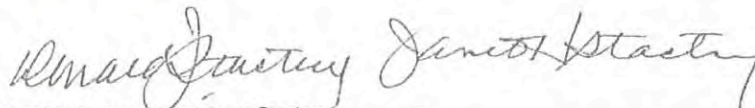
STREET CLOSED
RESIDENT VEHICLE ACCESS ONLY
NO ACCESS FOR TRUCKS OR RVs
NO TURNAROUND AVAILABLE BEYOND THIS POINT
PEDESTRIANS AND HIKERS WELCOME

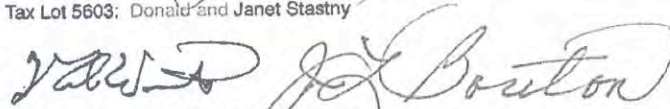
Action #2: A formal determination and direction from the City Planning Commission and the Department of Public Works that access to Tax Lot 3800 and Tax Lots 5604/5602 be from a driveway extension from the south terminus of N. Ash Street.


Thank you for your consideration of this request.

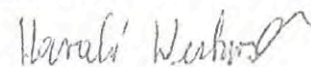
Sincerely,


N. ASH STREET NEIGHBORS


Tax Lot 5603: Donald and Janet Stastny

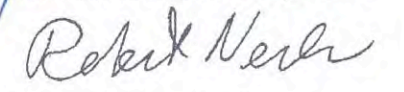
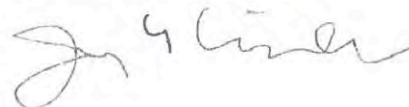

Tax Lot 6200: Mark Winrott and Lauren Bollen

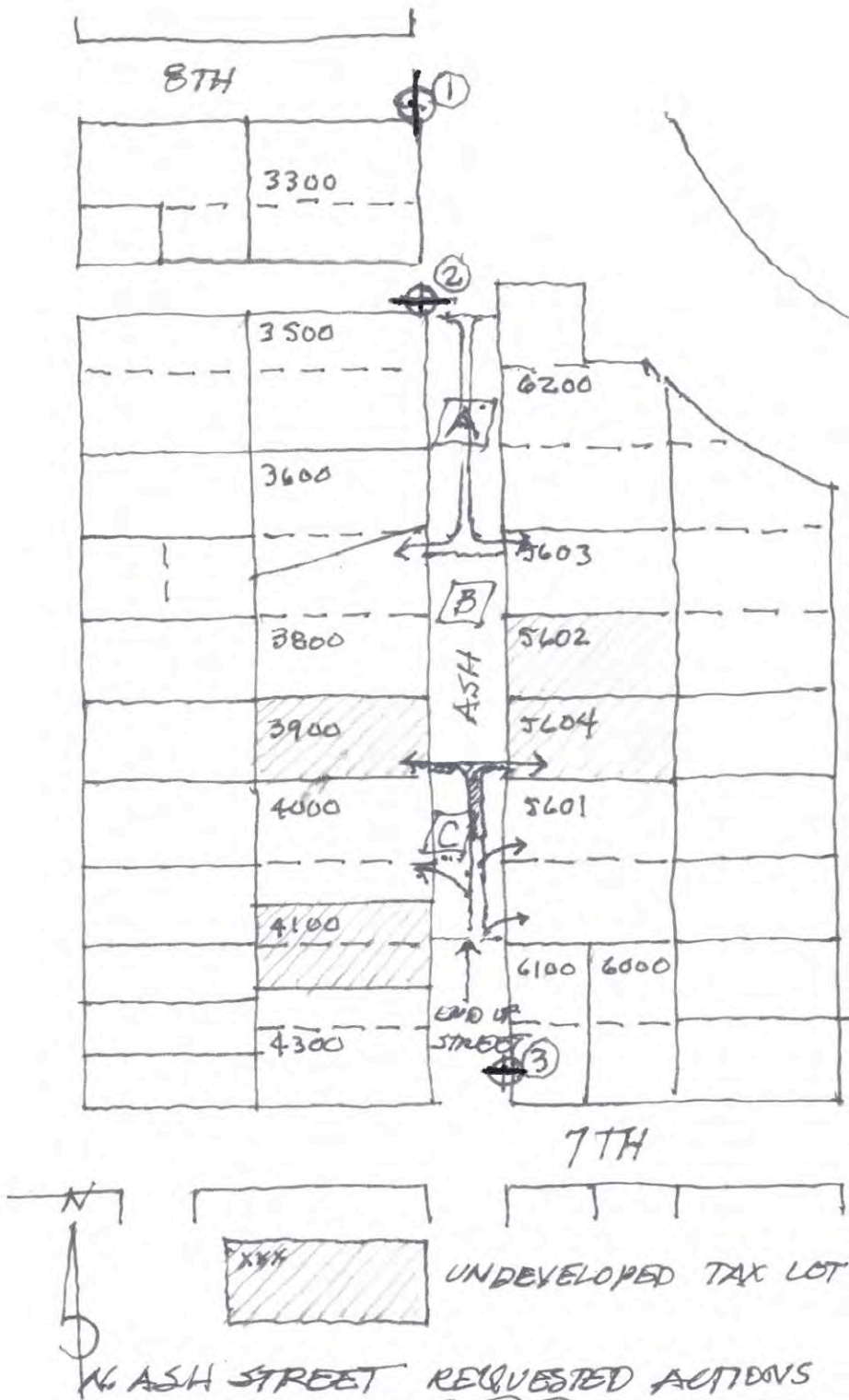

Tax Lot 3500: Kathleen Preedy Weckworth


Tax Lot 3600: Harald Weckwerth


Tax Lot 3800: Jack and Kelly Berina

Tax Lot 4000: Bob Necker and Joyce Lincoln



SUGGESTED SIGN LOCATIONS

- ① 8TH & ASH
(AFFECTS 8TH)
- ② ASH @ ALLEY
R.O.W.
(AFFECTS ASH TO SOUTH)
- ③ ASH & 7TH
(AFFECTS ASH TO NORTH)

STREET CONDITIONS

- [A] ONE-LANE ACCESS
- [B] CLOSED AREA OF ASH
(15% SLOPE OR GREATER)
- [C] PROPOSED ONE-LANE ACCESS TO
T.L. 3900 &
5604/5602

Robert St. Clair

From: Emily Bare
Sent: Thursday, May 18, 2023 11:41 AM
To: Robert St. Clair
Subject: FW: Ceasing construction on Tax Lot 5602 and 5604

Follow Up Flag: Follow up
Flag Status: Flagged

**Emily Bare**

Administrative Assistant – Planning Department

City of Cannon Beach

p: 503.436.8054 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | e: bare@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: Donald Stastny <djstastny@me.com>
Sent: Wednesday, May 17, 2023 4:00 PM
To: Emily Bare <bare@ci.cannon-beach.or.us>
Cc: Janet Stastny <jstastny@me.com>; dean Alterman <dean@alterman.law>
Subject: Fwd: Ceasing construction on Tax Lot 5602 and 5604

Emily: We are submitting the following to be entered in the record in support of AA23-04 Tree Removal Appeal. Don

Begin forwarded message:

From: Donald Stastny <djstastny@me.com>
Subject: Ceasing construction on Tax Lot 5602 and 5604
Date: May 14, 2023 at 8:16:32 PM PDT
To: Alton Butler <butler@ci.cannon-beach.or.us>
Cc: "Robert St. Clair" <stclair@ci.cannon-beach.or.us>

Mr. Butler: Once more, lacking any response to my last request and as part of the Ash Street neighborhood in Cannon Beach, we request that construction activities on the subject Tax Lots (5602 and 5604) cease immediately. This request is based on our experiences with the General Contractor and the City in undertaking this construction. This is a very complex situation with issues that should have been resolved prior to beginning construction.

1. The neighbors have been told that the City has granted approval of the Ash Street right-of-way and upper parking area for construction activities. We have yet to see what this approval is, or what limitations it puts on the Contractor and his subcontractors. The net result has been an operation that has completely obliterated the central part of Ash Street, covered over landscaping that was installed because the City did not live up to its promise to restore the landscape and roadway when the water project was installed a couple of years ago. Likewise, all of the neighbors have been severely impacted by the parking of vehicles and equipment up and down Ash Street.
2. The building for which a building permit was supposedly issued should not have been issued without a resolution of the Sitka Spruce tree in the middle of the subject properties. The regulations for applying for a building permit require that any application for tree removal be included within the building permit application. The first application for tree removal was denied (according to the Contractor), and since the proposed building footprint impacts the tree, the initial building permit should not have been issued. Note: the location of the tree, and its impact on the foundation of the house, was obvious in the initial layout of the site, with the southwest corner of the proposed residence flagged as being in the middle of the tree trunk of the Sitka Spruce. Since the tree removal permit was denied, the building permit should not have been granted and is invalid.
3. It is our understanding that the City approved a building permit (without the tree issue being resolved) and the Contractor brought in McKuen Excavating to excavate the site, even though the full footing structure of the residence as proposed, could not be built without the removal of the Sitka Spruce. The excavation revealed a hard-pan layer and the Contractor over-excavated the site, leaving a 12 foot high cut at the northern property line, with excavation extending into our property at 755 North Ash Street and potentially compromising the structure of our residence. Both the Contractor and the City trespassed on our property and erected fencing and construction tape to cover their liability due to the over excavation.
4. Even though there was no approved tree removal permit, McKuen damaged the lower branches of the Sitka Spruce with their equipment—instead of sawing off the branches, tore them off. After the tree had been damaged, and McKuen telling the Contractor they could get a tree removal permit. We heard that that the City had asked for another arborist to inspect the tree, resulting in Mr. Robert St.Clair, Community Development Planner, issuing a tree removal permit for the subject tree. There was NO public process in approving the tree removal permit and we found out about it because the subject was brought up in a City Council meeting. We immediately filed an appeal regarding the tree removal permit and the appeal will be heard before the Planning Commission on Thursday, May 25.
5. Subsequently, the Contractor, in an effort to protect his liability for the over excavation and intrusion into our property, secured the design of a retaining wall from a structural engineer (not the structural engineer of the residence). There is nothing in the retaining wall design that indicates any tie back to the proposed residential foundation. We assume you have approved this design, even though there is not indication of how it fits with the foundation of the entire residence. The workmen on the site told us that the forms were surveyed and approved on Friday. We also received a telephone call from the Contractor asking when we would be in residence because they were going to block access on Ash Street to pour concrete. If this construction has been approved by the City, pouring concrete is illegal because there is not a valid

building permit until the tree issue is resolved and a final foundation plan drawn and approved. Moreover, the concrete forms (in place as of Friday) indicate that there is a foundation/retaining wall extending at least 7' into the front yard setback and that the underground footing of the north retaining wall extends into the side-yard setback with a "footing" that is not restrained or defined. Extending any construction into the prescribed set-backs is not allowed.

6. In reviewing the drawings and calculations submitted for the initial building permit, we note, at a minimum, the following issues:

6.1 There is a lack of a complete foundation plan, retaining wall details and footing placement. The plans may be sufficient for a "builder" house in the suburbs, but not for a building in sloping, difficult urban site. We assume that is the reason the Contractor went to another structural engineer for his "emergency" retaining wall was because of the incompleteness of the original drawings.

6.2 The geotechnic report was done a number of years ago and was not a true geotechnic report for the proposed residence (with proper soils testing). The request made of the geotechnical engineer at that time was "how can we (the owner and designer) put two houses on this property?"—not a request for a full geotechnical report. The test holes were made between the ROW line and the 15' front yard setback and the recommendations of the geotechnical engineer were made, not on knowledge of the site, but on observation ("neighboring houses do not show any signs of structural failure") and observations about the geotechnic characteristics of the coast environment. As well, we know that there was 1'-5' of loose overburden on a major portion of the site as a result of construction of our houses and agreement with the previous property owner. If the geotechnical report is read carefully, it indicates how to build two houses on the site—not founding ONE house in the proper location. This part of Ash Street was an abandoned rock quarry historically, but this fact and the underlying strata were not considered in the geotechnical report nor in the design of the residence.

6.3 The structural calculations address lateral loading on the walls, but do not address the requirement we, as the house above, had to adhere to: 90 mile-an-hour UPLIFT. We are subject to severe winds coming off the ocean from the southwest and funneling up the hill during the winter months. Not only do the drawings not recognize this requirement, there are NO details of how the house is anchored to the foundation. Our house has steel bolts going from roof to major anchors under the lower floor. Additionally, the design of the proposed residence indicates shed roof forms that will exasperate the situation by collecting wind pressure—causing structural failure unless uplift is considered in the design.

6.4 The proposed residence placement does not address fire safety. Ash Street has been evaluated numerous times by the Cannon Beach Fire Department as to accessibility of fire-fighting equipment to the houses on the steeply sloping part of the Ash Street ROW. The analysis of the Fire Department says that they cannot get equipment to a fire, but must fight the fire by laying down hose from the upper hydrant or the lower hydrant. In both cases, it would mean hoses at least 200-250 feet in length. In 2000, there was a fire during construction of a house on Oak Street in a relatively level area with structures 10' apart (total of 2-5' side-yard setback). The fire took out three houses and severely damaged another four. The Owner and designer continue to compromise our structural and fire safety by placing the residence up

against the 5' side-yard setback, even though they have 90' of frontage along Ash Street to place the house with 25' from the house to neighboring structures (north and south). The Owner and designer have justified the proposed placement of the residence based on "saving the Sitka Spruce" (which has to be removed to put the house in its current proposed location) and the old geotechnical report that was based on putting two houses on the site (which is not allowed in the RL zoning passed in the 1960's).

6.5 The allowable building height calculation, which has been a policy of Cannon Beach for years, is questionable as proposed. The discipline of placing a box around the structure and then calculating the average of the corners has not been followed. Extending the east side of the house to the south would put the southeast corner below the tree. This is not recognized in the calculation—and I would question the validity of the site survey as it was ALSO from years past and does not align with surveys up the hill. The contours and elevations also appear to be in error because the site was never cleared of overgrowth to substantiate the survey.

6.6 There are sufficient inconsistencies in the materials submitted for the building permit that the application should be denied and re-submitted incorporating any modifications that might come about as a result of resolution of the tree removal (or not) from the hearing before the Planning Commission.

7. The neighbors on North Ash Street (between 7th and 8th Streets) petitioned the City in February 2019 to resolve circulation issues on Ash Street—especially addressing access to undeveloped parcels on Ash Street. We met enmass with Ms. Karen LaBonte, Director of Public Works and Mr. Jeff Adams, then Director of Community Development. Their response to the neighborhood from Adams: "we cannot make any determination until there is an active building permit application." We understood later that Mr. Adams made an agreement with the designer of the subject residence based on information that was in error (length of required street development to improved paving and assuming the driveway paving that the neighborhood installed was an appropriate street paving standard)—which it is not, but was installed by the neighbors to ensure access to our properties. Therefore, if the Owner and designer insist on site access from the north, they will be required to bring the entire length of Ash Street from 8th to property up to city street standard OR a minimal driveway from the south (as was proposed by the neighborhood).

From this discussion, there are major and complex issues at play. It is in the best interests of the City, the neighborhood, the Owner and her designer and the Contractor to "pause" the construction pending resolution of issues.

Donald J. Stastny
Janet H. Stastny

Robert St. Clair

From: Emily Bare
Sent: Thursday, May 18, 2023 11:42 AM
To: Robert St. Clair
Subject: FW: AA 23-04 Tree Removal Appeal Pictures of damaged tree 5/16/23

Follow Up Flag: Follow up
Flag Status: Flagged



Emily Bare
Administrative Assistant – Planning Department
City of Cannon Beach
p: 503.436.8054 | tty: 503.436.8097 | f: 503.436.2050
a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110
w: www.ci.cannon-beach.or.us | e: bare@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: Janet Stastny <jstastny@me.com>
Sent: Wednesday, May 17, 2023 3:50 PM
To: Emily Bare <bare@ci.cannon-beach.or.us>
Cc: Donald Stastny <djstastny@me.com>; Dean Alterman <dean@alterman.law>
Subject: AA 23-04 Tree Removal Appeal Pictures of damaged tree 5/16/23

Emily:

Attached are three pictures of Sitka Spruce tree in question taken 5/16/23. I took these pictures as a point of reference to document any future damage done to tree before hearing. The tree has been damaged by construction but is still healthy. With proper pruning of the damaged branches the tree will be fine.

Janet Stastny

>

>



>
>
>



>
>
>



>
>
> Jan Stastny
> Stastny:architect LLC
> jstastny@me.com
> (503)781-9843

Robert St. Clair

From: Emily Bare
Sent: Thursday, May 18, 2023 11:42 AM
To: Robert St. Clair
Subject: FW: AA 23-04 Tree Removal Appeal

Follow Up Flag: Follow up
Flag Status: Flagged

Emily Bare

Administrative Assistant – Planning Department City of Cannon Beach

p: 503.436.8054 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110
w: www.ci.cannon-beach.or.us | e: bare@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

-----Original Message-----

From: Donald Stastny <djstastny@me.com>
Sent: Wednesday, May 17, 2023 3:50 PM
To: Emily Bare <bare@ci.cannon-beach.or.us>
Cc: janet Stastny <jstastny@me.com>; dean Alterman <dean@alterman.law>
Subject: AA 23-04 Tree Removal Appeal

Emily: We are submitting the following to be entered in the record in support of AA 23-04 Tree Removal Appeal.

To the Planning Commission of Cannon Beach:

1. History of our property: Purchased Tax Lot 5603 in 1975. Built residence at 755 North Ash Street in 2000. Have enjoyed residency continuously for 23 years. House was built on a 50'x100' lot due to being a single ownership within the RL Zone. Note: in the RL Zone, if two contiguous tax lots are owned by one person, only one residence can be built on those lots; existing 50'x100' lots were "grandfathered" in as part of the rezoning of the area—also allowing only one residence on the lot. Our lot, due to geotechnical considerations by Mr. Horning (a geotechnical engineer very familiar with the site and area) stated that the house had to be set 5' west of the edge of the ravine (at the east of our property. Given front and sideyard set-backs of 15' (front yard) and 5' (side yard), we were left with a 40'x20' site to build. We applied for, and received a reduction of 7' in the front yard setback (based an analysis of view, access and distance from residence to the north (which had a reduction in their front yard set-back of 14'). We ended up with a 140 SF bay in the approved reduced front-yard setback. Upon Mr. Horning's recommendation, there was a leaning tree in the slope of the ravine and we included in our building permit application a tree removal request which was granted. The removal of the

tree was for safety reasons, was outside the footprint of the house, and removal of the tree was not necessary to enable the siting of the house.

2. The Sitka Spruce in question: Located on Tax Lots 5602 and 5604, the tree has grown undisturbed for many, many years. Neighbors have watched it gain at least 30' in height over the last 23 years. As such, the tree and its root system have grown and the root system has become a major component of slope stability (according to Joe Baldwin, arborist). Additionally, the tree has become a specimen Sitka Spruce exemplifying great health and structure (according to the consulting arborist Jeff Gerhardt). The tree has been a major feature of the property through at least three previous owners.

3. An application for reduction of the front yard setback: An application was made in early 2019 by Mr. Vito Corelli on behalf of the owner, Ms. Jacqueline Bennett. The application was incomplete (only asked for reduction for Tax Lot 5604) and the then Director of Community Development, Jeff Adams, modified the application (after it had been submitted) to include both Tax Lots (5602 and 5604). Mr. Adams counseled the Owner and Mr. Corelli without understanding the zoning code and the history of the site. After a public hearing on the matter of the set-back reduction, the request was denied and Mr. Adams sent out a letter to the neighboring property owners stating "the application (for the set-back reduction) was withdrawn". There were no reasons given for the set-back reduction request other than the houses north had received set-back reductions. Additionally, a reason given by Mr. Corelli for the reduction in setback request was the Owner's desire to save the Sitka Spruce.

4. Access to undeveloped lots on North Ash Street: In February 2019, prompted by the "withdrawn" set-back reduction action, the neighbors on Ash Street petitioned the City to specify access to Tax Lots 5602/5604 in February 2019 to be from the south (from 7th). Mr. Adams (Director of Community Development) and Ms. Karen LaBonte (Director of Public Works) met with the neighbors on site for 20 minutes. Mr. Adams stated that there was nothing that could be specified as to access to the sites UNTIL there was a building permit application filed—and that we, as adjacent land-owners would be notified if a building permit application was filed (this promise was not honored). Ms. LaBonte's comment: "...they (the neighbors) will get over it". Unfortunately, the attitude displayed by these two individuals was not helpful to the neighbors but left a distinct impression that the City will do what it wants without consulting citizens or neighborhoods.

5. Notification of neighbors regarding planned development: No notification was given by the City. The General Contractor, Mr. Jamey Lerma delivered a notice that construction was proceeding immediately. His notification letter was hand-delivered on Sunday afternoon before excavation began. Previous to this, the corners of the proposed residence were surveyed and staked on site. The staking clearly indicated that the southeast corner of the proposed house was somewhere in the trunk of the Sitka Spruce. This indicated that the tree would have to be removed to build the residence as set out in the building permit application. As such, the City of Cannon Beach should not accept an application for a building permit without an accompanying application for tree removal—if necessary for the building to be built. In this case, lacking a Tree Removal Permit, a Building Permit should not have been issued since the drawings and survey indicate that a house cannot be built, as designed, unless the Sitka Spruce is removed.

6. Tree Removal Permit: It is our understanding that the Building Permit for the residence was issued even though the Tree Removal Permit was denied. The General Contractor and, we assume the Building Official, directed McEwan Construction to proceed with excavation of the site, in addition to the modifications of the Ash Street ROW to enable truck traffic. During McEwan's work, limbs were torn from the Sitka Spruce. Since there was no Tree Removal Permit and a set of construction drawings that indicated a building that could not be built if the tree remained, allowing the excavation to proceed is questionable, at best. We were told by the General Contractor that McKuen stated they could get a Tree Removal Permit after, or during, the excavation work. The excavation work resulted in a 12' high sheer wall at the shared property line with 755 North Ash, and, in fact, into our property. The over-excavation greatly endangers the structural stability of our home and property. While on travel, we heard that there had been a second arborist look at the tree and that Mr. Robert St.Clair, Planner, had issued a Tree Removal Permit. In any case, this Permit was issued without public notice or review. Upon hearing the Permit had been issued, We, Janet Stastny (Owner of 755 North Ash) filed an Appeal that is now scheduled for a public hearing. Even with the damage done to the Sitka Spruce by the

excavation contractor, the tree remains in good health and should be retained as added value to the Owner and the neighborhood.

7. Over-excavation and resultant 12' high shear wall: After the excavation was nearing completion, the General Contractor commissioned a structural engineer to design a retaining wall to be placed at the side-yard setback line. The structural engineer of record for the building permit was not utilized and it was clear that the General Contractor realized his potential liability and rushed a design that was submitted to the City Building Official. The information in the retaining wall was not included in the original construction documents nor was there sufficient foundation design and engineering to build the foundations for the proposed residence nor is there any indication of the relationship of the retaining wall to the remaining proposed foundation system. Note: there has been no indication of how the foundation structure at the tree would be located or structured--or relationship to the overall foundation system for the proposed residence to the Tree. This would indicate a Building Permit was issued by the City with inadequate and incomplete drawings, calculations and specifications needed to build a house on this difficult sloping site.

8. Situation at present: The Tree Removal Permit issued by Mr. Robert St.Clair has been appealed by Janet Stastny (AA 23-04 Tree Removal Appeal) on behalf of the neighborhood and as a property owner of the adjacent property. Additionally, a letter has been written by Donald Stastny, adjacent property owner and licensed Architect in the State of Oregon, to Mr. Alton Butler, Building Official, requesting that construction on the site cease until resolution of the Tree Removal Permit since the Building Permit is invalid with the Sitka Spruce tree in place.

9. Options available to the Owner: The residence design and siting could be modified to allow the Sitka Spruce to remain in place. The re-design should address all foundations, placement and structural detailing—especially, at or near the root structure of the Tree. The Owner has a site that is 100'x100' and with required front, rear and side lot set-backs still leaves 6300 SF of site area to site a house with a 1000-1100 SF footprint (size of the proposed residence). The geotechnical nature of the site is an abandoned rock quarry and there is good substructure throughout the site allowing for building placement that insures more beneficial use of the site, addresses fire safety between buildings, while saving the Sitka Spruce for generations to follow.

Janet H. Stastny
Donald J. Stastny

Robert St. Clair

From: Robert St. Clair
Sent: Monday, May 22, 2023 8:12 AM
To: Jamie Lerma
Cc: Emily Bare
Subject: RE: 743 N. Ash tree hearing
Attachments: 230502 TRP 743 N Ash.pdf

Good Morning,

A copy of the approved tree removal permit is attached. Additional information may still be introduced and distributed to the Planning Commission before the meeting and during the hearing when the Commission is hearing testimony. Regarding the house plans, the Planning Commission has not reviewed them as the development permit for this project was not appealed.

Regards,

Robert



Robert St. Clair

Planner

City of Cannon Beach

p: 503.436.8041 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | e: stclair@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: Jamie Lerma <jamie@redcrowgc.com>
Sent: Sunday, May 21, 2023 3:48 PM
To: Robert St. Clair <stclair@ci.cannon-beach.or.us>
Subject: 743 N. Ash tree hearing

Hi Robert,

I've got a couple of questions about the upcoming tree removal permit appeal for 743 N. Ash:

1. Can you send me a copy of my approved tree removal application?
2. Has the deadline passed for the introduction of evidence/material?
3. Related to the above, do you know whether the planning commission members have reviewed the approved plans? In addition to the foundation footing being only 10" from the tree, there is a 4' cantilevered deck at the second floor of the SE corner of the house that provides the only access to the deck above the garage.

Thanks,

Jamie

--

Jamie B. Lerma

President
Red Crow, LLC
(503) 849-0258
PO BOX 825
Cannon Beach, OR 97110
CCB#226835



DEAN N. ALTERMAN
ATTORNEY

D: (503) 517-8201
DEAN@ALTERMAN.LAW

Via e-mail to stclair@ci.cannon-beach.or.us and bare@ci.cannon-beach.or.us

Cannon Beach Planning Commission
PO Box 368
Cannon Beach, Oregon 97110

May 25, 2023

Re: AA 23-04
Janet Stastny appeal of tree removal permit at 743 N Ash Street
Our clients: Janet and Don Stastny
Our File No. 5580.001

Dear Chair Newton and Commissioners:

I'm submitting this letter on behalf of the appellant, Janet Stastny, and her husband Donald Stastny, who own the house and land at 755 North Ash Street, immediately north of the subject property. You will be hearing Ms. Stastny's appeal tonight.

The applicant has applied to remove the most significant tree on the subject property, a 60-foot Sitka spruce. For her request the applicant is relying on CBMC 17.70.020, which authorizes the city to issue a tree removal permit "in order to construct a structure or development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q)."

In this case, however, the developer obtained permission to construct the structure without applying for or obtaining permission to remove the Sitka spruce. Despite how the developer has framed her application to remove the tree as being necessary to build the house, the tree is not in the way of the house – if it were, the developer would have applied to remove the tree at the same time that she applied for a building permit, instead of beginning to build the house before applying to remove the tree.

Others have pointed this uncomfortable fact out to you. Exhibit D-4 in your packet is an e-mail from Kathleen Weckwerth, another Ash Street resident, in which she writes, "The home owner, Jacqueline Bennett, and the designer, Vito Cerelli have known since 2019 that the Sitka spruce tree was essentially in the center of the property. Hasn't that been enough time to design a house that incorporates such a valuable tree? If saving the tree wasn't their intention, why wasn't an application for tree removal submitted at the same time as the application for the building permit?" Ms. Weckwerth doesn't cite the code but her comment reflects the purpose of

805 SW BROADWAY
SUITE 1580
PORTLAND, OREGON 97205

T: (503) 517-8200

WWW.ALTERMAN.LAW

Sections B and Q of CBMC §17.70.030. Your staff report quotes those sections in full on page 3 of the report, which is page 16 of your meeting packet.

Section B is straightforward: “For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).” Section B implies that the city can issue a tree removal permit before it issues the building permit, but the property owner cannot remove the tree until after the property owner obtains the building permit for the structure. Property owners cannot use a potential structure as an excuse to remove a tree if the owners don’t get a building permit for the structure.

Please look closely at the wording of Section Q and especially the words that I’ve emphasized in subsection Q.1. Section Q states that an application for a tree removal permit “for removal of a tree(s) to construct a structure” must include certain information. Subsection Q.1 requires the applicant to submit a site plan that shows “the location of the tree(s) proposed for removal, the location of the **proposed** structure or development, and the location of any other trees six-inch DBH or larger * * * whose root structure might be impacted by excavation associated with the **proposed** structure * * * .”

You can read Subsection Q.1, as I do, to require a property owner who wants to remove a tree to construct a structure to apply for the tree removal permit while the structure is still a **proposed** structure, certainly before the owner starts to build the structure and probably in conjunction with obtaining the building permit for the structure. This makes sense and is good policy: Sections B and Q are saying that the city wants to know what trees an applicant wants to remove **before** it approves the structure, and certainly before the applicant starts to build the structure, so that the city can evaluate the structure and the tree removal together.

Under this plain reading, because the applicant has already obtained a permit and started to build the structure, her time to apply for a permit to remove the Sitka spruce under CBMC 17.70.020.D has come and gone. As Ms. Weckwerth’s comment implies, if it were truly necessary to remove the Sitka spruce to build the structure, the owner would have applied to remove the tree when she applied to build the house. That the owner applied to build the house without mentioning the tree is a concession that it isn’t necessary to remove the tree to build the house.

This interpretation of Sections B and Q is consistent with the purpose stated at CBMC 17.70.010, which is not just a tree removal ordinance; it is also a tree **protection** ordinance:

A. The purpose of this chapter is to establish protective regulations for trees within the city in order to better control problems of soil erosion, landslide, air pollution, noise, wind and destruction of scenic values and wildlife habitat, and to protect trees as a natural resource which establishes the wooded character of the city.

B. The intent is not to prohibit the removal of trees completely, or to require extraordinary measures to build structures; rather the intent is to stop the wanton and oftentimes thoughtless destruction of that vegetation which has a beneficial effect on the value of property, and on the city in general.

Two other facts deserve your attention. First is that the Sitka spruce contributes to the stability of the hillside. See the March 13, 2023 letter from arborist Joe Balden, at page 29 of your meeting packet, and the May 1, 2023 letter from arborist Jeff Gerhardt, at page 30 of your meeting packet. Mr. Balden wrote that “the tree is significant in that the tree root system presents a major component to slope stability on the east side of the property.” Mr. Gerhardt wrote that “the tree is hugely beneficial in anchoring the slope.”

To the extent that the city relied on any engineering or structural reports in approving the house that in turn relied on the anchoring and slope stability that the tree’s root system supplies, those reports are now in question.

Second is that the section of your code that protects trees from unnecessary removal also restricts pruning of large trees. CBMC § 17.70.030.J requires that trees of this size be pruned only in accordance with the International Society of Arboriculture ANSI A300 Pruning Standards, issued in 2008. Here is a recent picture of the Sitka spruce, showing recent removal of branches by the property owner’s contractor, which is “pruning” under the referenced standard:



I quote only a portion of those standards, which by the reference in CBMO §17.70.040 form part of your city code. Standard 5.3.2 states that “a pruning cut that removes a branch at its point of origin shall be made close to the trunk or parent limb, without cutting into the branch bark ridge or collar or leaving a stub.” Standard 5.3.4 states that “the final cut shall result in a flat surface with adjacent bark firmly attached.”

Those violations of code are not directly before you tonight, but will become relevant to the city if you should grant the appeal and revoke the tree removal permit. I mention them now only for completeness.

Since the developer has started to build the house with the Sitka spruce in place, and since nothing in the record states that the house would occupy the space that the Sitka spruce now occupies, CBMC §17.70.020.D does not authorize or require the city to issue a tree removal permit. The developer’s evidence is directed at CBMC §17.70.020.A, which governs removal of a tree that poses a safety hazard. If the tree now poses a safety hazard, it’s because the applicant cut the roots of the tree. One should not be able to intentionally cut the roots of a tree and then claim that it’s now a safety hazard.

In summary: you may reasonably read your code to require people who want to remove trees to build structures to identify which trees they want to remove when they apply for the building permit, before they start construction, consistent with your stated intent “to better control problems of soil erosion [and] landslide,” and “to protect trees as a natural resource which establishes the wooded character of the city.” CBMC §17.70.010.A. To grant a permit to remove this tree would violate the purpose, intent, and language of your code.

Here is a finding that you could adopt if you agree with the Stastnys’ position:

The City finds that, consistent with the purpose statement of CBMC §17.70.010, CBMC §17.70.020.D authorizes the City to issue a tree removal permit in order to construct an approved structure only if the tree’s location is required for the structure itself or for required vehicular and utility access that City code requires the structure to provide. CBMC §17.70.020.D does not authorize the City to issue a tree removal permit for a tree that is intentionally damaged during construction of an approved structure.

You should grant the appeal and revoke the permit.

Very truly yours,

ALTERMAN LAW GROUP PC

Dean N. Alterman

Dean N. Alterman

Copy: Janet and Don Stastny (e-mail only)

June 15, 2023

**AA#23-04 - Continuance
Opposition Exhibit #1 (Bennett/Lerma)**

Red Crow, LLC
PO Box 825
Cannon Beach, OR 97110
Attention: Jamie Lerma

Phone: (503) 849-0258
E-mail: jamie@redcrowgc.com

**Subject: Engineering Geologic Visual Reconnaissance
 Single Family Residential Lot
 743 North Ash Street
 Cannon Beach, Clatsop County, Oregon
 EEI Report No. 23-114**

Dear Mr. Lerma:

At your request, **Earth Engineers, Inc. (EEI)** is providing this report presenting the results of our limited visual reconnaissance to observe the condition of the slope and existing Sitka spruce tree at the above referenced property. The spruce tree is located near the proposed southeast building corner of the residence currently under construction, and the tree has been proposed for removal. Our services were conducted in accordance with EEI Proposal No. 23-P193 dated May 30, 2023, which you authorized on May 31, 2023.

PROJECT BACKGROUND INFORMATION

Our current understanding of the project is based on the information you provided to EEI Principal Engineering Geologist Adam Reese, C.E.G. Briefly, we understand that you have applied for, and have been issued a tree removal permit to remove the subject spruce tree; however, the neighbor to the north of 743 North Ash Street subsequently appealed the permit with the City of Cannon Beach Planning Commission. We further understand that at the Thursday, May 25, 2023, Planning Commission meeting, the Commission delayed a decision on the tree removal permit and appeal, pending a request for additional information about the impact of the removal of the tree on the stability of the slope, and how the slope can be stabilized if necessary. The Commission is requesting a slope stability assessment report prior to the June 22nd, 2023, meeting and we understand that a follow-up public hearing regarding this issue will occur at the time of the meeting.

In conjunction with your request to prepare this engineering geologic visual reconnaissance report, we reviewed the following:

- Engineering Geological Hazard Report, Jackie Bennett Property, Proposed Two Lot Residential Division Project, 732 North Ash Street, Uppermost Parcel, Cannon Beach, OR prepared by G2 Associates, Inc., dated September 28, 2018.
- City of Cannon Beach Tree Removal Application for 743 N. Ash Street, Cannon Beach, OR, map/tax lot number 51019AA05602. Approved May 2, 2023 by Planner Robert St. Clair.
- Bennet Residence, TBD Ash Street, Cannon Beach, Oregon, prepared by Cerelli Design, Project D22-07, dated October 6, 2022.
- Opposition Exhibits, AA#23-04, Appeal of Tree Removal Permit at 743 N. Ash, dated May 25, 2023.
- Preliminary retaining wall drawing SK-1, prepared by Iron Oak Engineers for the Bennet Residence, 732 N Ash St, Cannon Beach, Oregon, Project 23056.00, dated June 6, 2023.

PURPOSE AND SCOPE OF SERVICES

The purpose of our engineering geologic visual reconnaissance was to observe the existing condition of the slope and the subject Sitka spruce tree that has been previously approved for removal by the City of Cannon Beach, and comment qualitatively on the potential impacts to slope stability if the tree is replaced with a permanent engineered retaining structure. Our scope of services did not include a subsurface investigation and laboratory testing to better define the soil, rock and groundwater properties at the project location.

SITE OBSERVATIONS

The following is a summary of our visual reconnaissance performed by Principal Engineering Geologist Adam Reese, C.E.G., Senior Engineering Geologist, Jake Munsey, C.E.G., and Geologist Carson Rittel, R.G. on June 7, 2023. Approximately 1 hour was spent viewing the slopes on and adjacent the project site, as well as the area around the Sitka spruce proposed for removal. The following is a summary of our observations.

1. As part of our visual reconnaissance, we observed the slope along with eastern property line, downslope to a 5- to 10-foot-wide bench that runs parallel to the slope (Photo 1). This bench appears to be an abandoned road that was historically cut into the slope. In the vicinity of the Sitka spruce proposed for removal, the slope was observed to be approximately 45 degrees (1Horizontal:1Vertical; 1H:1V) down to the bench. Downslope from the bench, the slope averaged approximately 30 degrees (1.75H:1V). At the time of

our visual reconnaissance, we did not observe evidence of recent slope movement or substantive erosion, and the existing slope conditions appeared to be stable. Mature trees on this slope were generally observed to be growing upright and straight. The soils observed at the ground surface consisted of recent fill and topsoil (Photo 2).

2. In the recent cut for the house foundations on the property, we observed that bedrock was exposed within the excavation (Photo 3).



Photo 1: Slope and Sitka spruce proposed for removal along the eastern portion of the lot. The bench parallel to the slope appears to be an abandoned road (shown with red arrow). View looking northwest towards Ash Road.



Photo 2: View of existing Sitka spruce, looking east from Ash Street.



Photo 3: Bedrock exposed during construction. View looking northwest towards Ash Street.

CONCLUSIONS

Based on our surficial reconnaissance observations, we recommend that the proposed removal of the Sitka spruce for construction of the single-family residence appears to be acceptable from a slope stability perspective, as long as permanent measures for slope stabilization are completed. We anticipate that such measures would include an engineered retaining wall.

In general, mature trees have a positive effect on slope stability, primarily due to their impact on the soil water regime (e.g., tree canopies serve to dissipate water falling onto slopes, and root systems can act as “pumps” to control groundwater). In addition, trees provide some reinforcement of the near-soil through their root systems. However, trees in areas of shallow bedrock (as observed at this site) may also be more susceptible to potential wind throw. **We recommend that an engineered retaining wall, if properly designed, will provide a greater improvement to slope stability (i.e. increasing the factor of safety by providing greater resisting forces to counteract the driving forces of the soil) than the tree that is being removed.** The removal of the tree will also protect the residence currently under construction, as well as the residences downslope, from potential damage if the tree or large limbs fall from storm damage or blowdown.

Assessing the specific extent of the of potential impacts of single tree removal on the property to is beyond the scope of this reconnaissance-level evaluation and would require subsurface explorations to comprehensively investigate the specific soil and rock conditions. We understand that Iron Oak Engineers has preliminarily designed a retaining wall, assuming that the Sitka spruce will be removed. Once more detailed plans are available for the proposed retaining wall, and if additional subsurface data (soil and rock conditions) is collected in the location of the proposed retaining wall, then we should be provided that information so that we can update our recommendations as necessary.

The ground surface conditions that we observed at the time of our site visit were generally consistent with those described in the 2018 G2 report, with the exception of the house construction underway and the removal of vegetation (Photo 2 & 3).

Note that just because the slopes appear stable at this time and do not show past signs of sliding, slope stability can change over time. Landscape maintenance and controlling drainage on the property are both important to maintaining slope stability. In addition, our evaluation of the slopes was based solely on visual observation; we did not perform a subsurface investigation that would better evaluate the slopes. Developing a sloping property inherently carries more risk than developing a slightly sloping or level property.

Our observations and recommendations about slope stability in this report are not intended to direct the contractor's methods, techniques, sequences, or procedures. Furthermore, the scope of this limited engineering geologic visual reconnaissance does not include geotechnical engineering recommendations for safety precautions, site preparation, excavations, grading, shoring, retaining wall design, or foundations for the residence or any proposed retaining structures.

LIMITATIONS

The engineering geologic recommendations presented in this report are based on the available project information described in this report. If any of the noted information is incorrect, please inform EEI in writing so that we may amend the recommendations presented in this report if appropriate and if desired by the client. EEI will not be responsible for the implementation of its recommendations when it is not notified of changes in the project.

This report has been prepared for the exclusive use for Red Crow, LLC, for the specific application to the residence located at 735 North Ash Street, Cannon Beach, Oregon. EEI does not authorize the use of the advice herein nor the reliance upon the report by third parties without prior written authorization by EEI.

We appreciate the opportunity to perform this engineering geologic evaluation. If you have any questions pertaining to this report, or if we may be of further service, please contact Adam Reese at 360-567-1806 (office) or 503-502-2726 (cell).

Sincerely,
Earth Engineers, Inc.



A handwritten signature in cursive script that reads "Jake Munsey".

A handwritten signature in cursive script that reads "Carson Rittel".

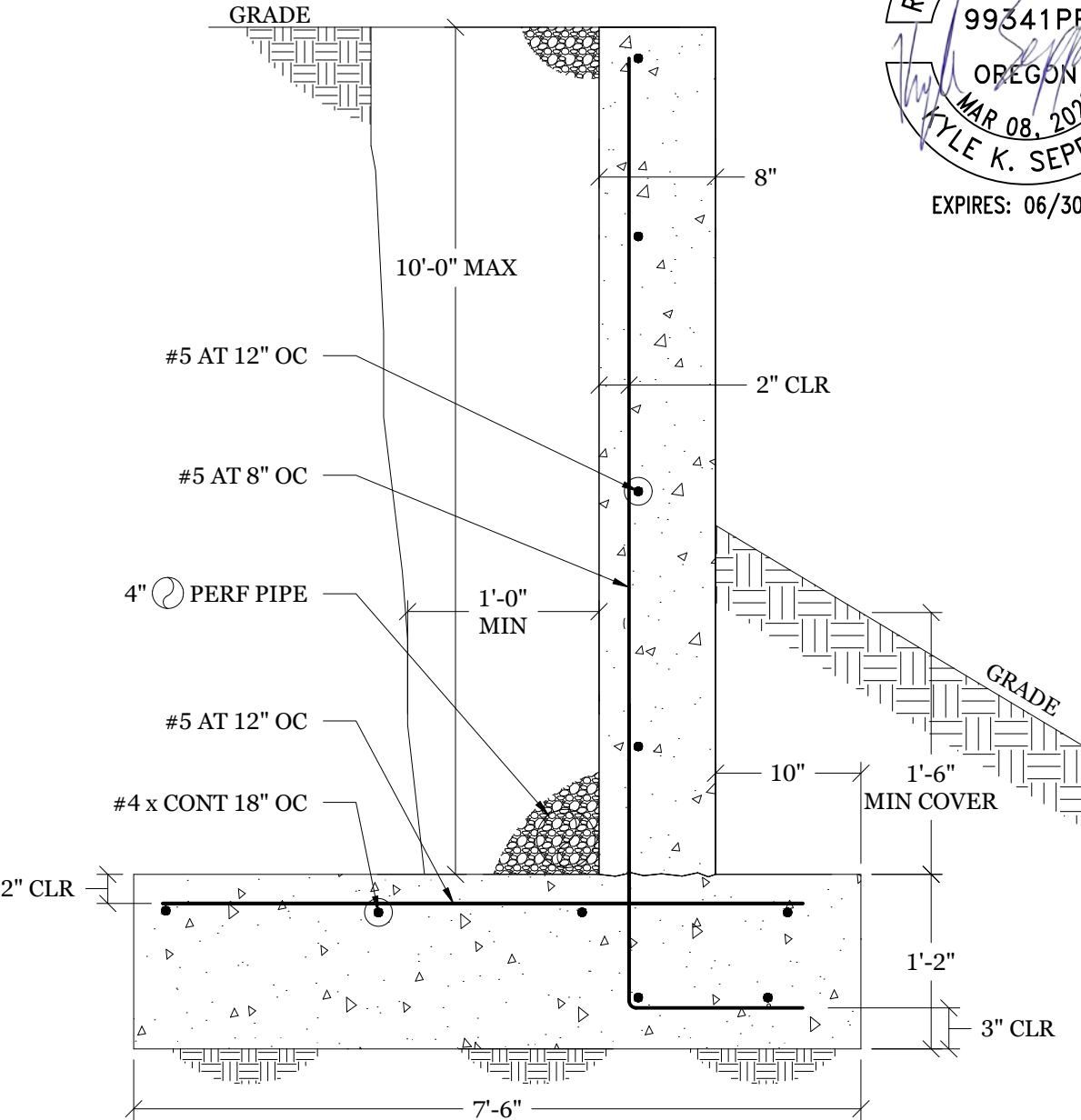
Adam Reese, C.E.G.
Principal Engineering Geologist

Jake Munsey, C.E.G.
Senior Engineering Geologist

Carson Rittel, R.G.
Senior Geologist

Distribution (e-mail only):
Addressee

AA#23-04 Continuance
Opposition Exhibit 2A
(Bennett/Lerma)



1 RETAINING WALL
SK-1 NTS



BENNETT RESIDENCE
732 N ASH ST.
CANNON BEACH, OR

SK-1

PROJECT NO: 23056.00
DATE: 06/06/2023



AA#23-04 Continuance
Opposition Exhibit 2B
(Bennett/Lerma)

STRUCTURAL CALCULATIONS

BENNETT RESIDENCE RETAINING WALL



Jamie Lerma
732 North Ash Street
Cannon Beach, Oregon

June 6, 2023
Project # 23056.00



Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Code Reference

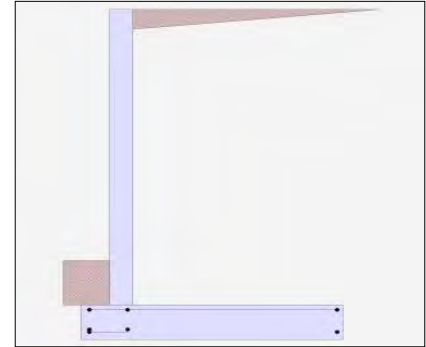
Calculations per IBC 2021 1807.3, ASCE 7-16

Criteria

Retained Height	=	10.00 ft
Wall height above soil	=	0.00 ft
Slope Behind Wall	=	0.00
Height of Soil over Toe	=	18.00 in
Water table above bottom of footing	=	0.0 ft

Soil Data

Allow Soil Bearing	=	1,500.0 psf
Equivalent Fluid Pressure Method		
Active Heel Pressure	=	35.0 psf/ft
Passive Pressure	=	150.0 psf/ft
Soil Density, Heel	=	110.00 pcf
Soil Density, Toe	=	110.00 pcf
Footing Soil Friction	=	0.300
Soil height to ignore for passive pressure	=	12.00 in



Surcharge Loads

Surcharge Over Heel	=	50.0 psf
Used To Resist Sliding & Overturning		
Surcharge Over Toe	=	0.0
NOT Used for Sliding & Overturning		

Axial Load Applied to Stem

Axial Dead Load	=	0.0 lbs
Axial Live Load	=	0.0 lbs
Axial Load Eccentricity	=	0.0 in

Lateral Load Applied to Stem

Lateral Load	=	0.0 #/ft
...Height to Top	=	0.00 ft
...Height to Bottom	=	0.00 ft
Load Type	=	Wind (W) (Service Level)
Wind on Exposed Stem	=	0.0 psf (Strength Level)

Adjacent Footing Load

Adjacent Footing Load	=	0.0 lbs
Footing Width	=	0.00 ft
Eccentricity	=	0.00 in
Wall to Ftg CL Dist	=	0.00 ft
Footing Type	=	Spread Footing
Base Above/Below Soil at Back of Wall	=	0.0 ft
Poisson's Ratio	=	0.300



Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Design Summary

Wall Stability Ratios

Overturing	=	4.87	OK
Sliding	=	1.51	OK
Global Stability	=	2.61	

Total Bearing Load	=	10,317	lbs
...resultant ecc.	=	0.30	in

Eccentricity within middle third

Soil Pressure @ Toe	=	1,222	psf	OK
Soil Pressure @ Heel	=	1,272	psf	OK
Allowable	=	1,500	psf	

Soil Pressure Less Than Allowable

ACI Factored @ Toe	=	1,711	psf	
ACI Factored @ Heel	=	1,781	psf	
Footing Shear @ Toe	=	0.2	psi	OK
Footing Shear @ Heel	=	5.0	psi	OK
Allowable	=	82.2	psi	

Sliding Calcs

Lateral Sliding Force	=	2,359.8 lbs	
less 100% Passive Force	-	458.3 lbs	
less 100% Friction Force	= -	3,095.0 lbs	
Added Force Req'd	=	0.0 lbs	OK
....for 1.5 Stability	=	0.0 lbs	OK

Vertical component of active lateral soil pressure IS considered in the calculation of soil bearing pressures.

Load Factors

Building Code	
Dead Load	1.200
Live Load	1.600
Earth, H	1.600
Wind, W	1.600
Seismic, E	1.000

Stem Construction

Design Height Above Ftg

ft =	Stem OK	0.00
Wall Material Above "Ht"	=	Concrete
Design Method	=	SD
Thickness	=	8.00
Rebar Size	=	# 5
Rebar Spacing	=	8.00
Rebar Placed at	=	Edge

Design Data

fb/FB + fa/Fa	=	0.884
---------------	---	-------

Total Force @ Section

Service Level	lbs =	
Strength Level	lbs =	3,054.5

Moment.....Actual

Service Level	ft-# =	
Strength Level	ft-# =	10,606.1

Moment.....Allowable	=	11,990.5
----------------------	---	----------

Shear.....Actual

Service Level	psi =	
Strength Level	psi =	41.1

Shear.....Allowable	psi =	60.6
---------------------	-------	------

Anet (Masonry)	in2 =	
----------------	-------	--

Wall Weight	psf =	100.0
-------------	-------	-------

Rebar Depth 'd'	in =	6.19
-----------------	------	------

Masonry Data

f'm	psi =	
Fs	psi =	
Solid Grouting	=	
Modular Ratio 'n'	=	
Equiv. Solid Thick.	=	
Masonry Block Type	=	
Masonry Design Method	=	ASD

Concrete Data

f'c	psi =	3,000.0
Fy	psi =	60,000.0

Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Concrete Stem Rebar Area Details

Bottom Stem	Vertical Reinforcing	Horizontal Reinforcing
As (based on applied moment) :	0.4016 in ² /ft	
0.0018bh : 0.0018(12)(8) :	0.1728 in ² /ft	Horizontal Reinforcing Options :
	=====	<u>One layer of :</u> <u>Two layers of :</u>
Required Area :	0.4016 in ² /ft	#4@ 13.89 in #4@ 27.78 in
Provided Area :	0.465 in ² /ft	#5@ 21.53 in #5@ 43.06 in
Maximum Area :	1.0059 in ² /ft	#6@ 30.56 in #6@ 61.11 in

Footing Data

Toe Width	=	0.83 ft
Heel Width	=	6.67
Total Footing Width	=	7.50
Footing Thickness	=	14.00 in
Key Width	=	0.00 in
Key Depth	=	0.00 in
Key Distance from Toe	=	0.00 ft
f'c = 3,000 psi	Fy =	60,000 psi
Footing Concrete Density	=	150.00 pcf
Min. As %	=	0.0018
Cover @ Top 2.00	@ Btm.=	3.00 in

Footing Design Results

	Toe	Heel
Factored Pressure	= 1,711	1,781 psf
Mu' : Upward	= 590	31,178 ft-#
Mu' : Downward	= 141	38,264 ft-#
Mu: Design	= 450 OK	7,087 ft-# OK
phiMn	= 14,485	15,880 ft-#
Actual 1-Way Shear	= 0.17	4.95 psi
Allow 1-Way Shear	= 82.16	82.16 psi
Toe Reinforcing	= # 5 @ 12.00 in	
Heel Reinforcing	= # 5 @ 12.00 in	
Key Reinforcing	= # 4 @ 12.00 in	
Footing Torsion, Tu	=	0.00 ft-lbs
Footing Allow. Torsion, phi Tu	=	0.00 ft-lbs

If torsion exceeds allowable, provide supplemental design for footing torsion.

Other Acceptable Sizes & Spacings

Toe: #4@ 7.93 in, #5@ 12.30 in, #6@ 17.46 in, #7@ 23.80 in, #8@ 31.34 in, #9@ 39.68 in, #10@ 50.39 in

Heel: #4@ 7.93 in, #5@ 12.30 in, #6@ 17.46 in, #7@ 23.80 in, #8@ 31.34 in, #9@ 39.68 in, #10@ 50.39 in

Key: No key defined

Min footing T&S reinf Area 2.27 in²
Min footing T&S reinf Area per foot 0.30 in² /ft

If one layer of horizontal bars:

#4@ 7.94 in
#5@ 12.30 in
#6@ 17.46 in

If two layers of horizontal bars:

#4@ 15.87 in
#5@ 24.60 in
#6@ 34.92 in

AA#23-04
Opposition Exhibit 3
(Bennett/Lerma)



Todd Prager & Associates
LLC

MEMORANDUM

DATE: June 12, 2023

TO: Jamie Lerma (Red Crow, LLC)

FROM: Todd Prager, RCA #597, ISA Board Certified Master Arborist

RE: Tree Assessment at 743 N. Ash Street, Cannon Beach

Summary

The pruning of the Sitka spruce at 743 N. Ash Street is not anticipated to significantly impact the health or longevity of the tree. The impacts to slope stability as a result of the tree's removal are best addressed by a geotechnical engineer. A retaining wall will be constructed to retain the slope in the vicinity of the tree as described in the geotechnical engineer's report.

Background

This report includes my assessment of health impacts from the pruning that occurred to a 42-inch diameter (DBH) Sitka spruce (*Picea sitchensis*) and potential slope stability impacts from the tree's removal at the 743 N. Ash Street project in Cannon Beach, Oregon.

I visited the tree and site on June 5, 2023. The tree was in good health condition and good structural condition at the time of my site visit. It was approximately 60 feet tall with a 27 foot crown radius.

The house on the lot was under construction, and the tree had 15 branches between 4.5- to 6-inches in diameter broken off by construction equipment and later correctively pruned along the west side of its trunk to approximately 20 feet above ground level (see Figure 1). The tree is located on an approximately 70 percent slope (see Figure 2) and



Figure 1: Subject tree with pruning cuts

is proposed for removal for the proposed house foundation, 9- to 10-foot-tall retaining wall, second floor deck, and roof deck.

The assignment requested of my firm for this project was to provide my assessment of the tree's health condition given the pruning that has occurred and provide my opinion of potential slope stability issues if the tree is removed.

Pruning Assessment

During construction, approximately 15 branches between 4.5- to 6-inches in diameter were broken off by an excavator and later correctively pruned to the trunk of the tree to 20 feet above ground level along the west side of the tree.

Of these 15 branches, seven had bark damage to the branch collar. The branch collar is an enlarged area at the base of a branch where it joins the trunk. This area is important to protect from damage during the pruning process because of a chemical barrier inside the branch collar which helps prevent the spread of decay into the trunk¹ (see Figure 3).

The total percentage of live foliage that was removed from the tree as a result of the pruning is estimated to be approximately 20 percent or less. The historical tree care industry guideline was to prune no more than 25 percent of the live foliage of a tree in an annual growing season with adjustments made based on tree health, age, and other factors.² For example, young trees or trees in good health may have more than 25 percent of their live foliage pruned.

My assessment of the health impacts to the subject tree are based on two primary factors. First, the damage that occurred to seven branch collars has negatively impacted the tree's ability to compartmentalize potential decay that could enter the pruning cut and spread into the trunk. However, based on the good health of the tree and limited number of pruning cuts, it is not clear whether the damage will significantly impact the longevity of the tree or its overall health in the long term. I anticipate the tree will remain in good



Figure 2: Slope on east side of tree



Figure 3: Branch collar damage

¹ Lilly, Sharon J., Edward F. Gilman and E. Thomas Smiley. 2002. Revised 2019. *Best Management Practices: Pruning (Third Addition)*. International Society of Arboriculture, Champaign, IL. 63p.

² American National Standards Institute. 2017. *American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Management – Standard Practices (Pruning)* (A300, Part 1). Tree Care Industry Association, Manchester, NH. 33pp.

health condition in the near term and the pruning will minimally impact the tree's longevity or overall health in the long term.

The other factor is the amount of live foliage that was removed from the tree, which is estimated to be 20 percent or less. This amount of pruning is acceptable considering the resilient species of tree, its good health condition, and overall good vigor. I expect there to be negligible short or long term health impacts based on the percent of live foliage removed from the tree.

Slope Stability Assessment

The other aspect of my assignment is to provide an opinion on the slope stability impacts as a result of the tree removal. Slope stability is a factor best addressed by a geotechnical engineer, and outside the area of expertise of consulting arborists. My understanding is that the owner has hired a geotechnical engineer to provide an opinion on this issue so I will defer to their expertise rather than provide my own opinion. It is also my understanding is that the retaining wall to be constructed in the vicinity of the tree is intended to mitigate any slope stability impacts that may result from the tree removal.

Conclusion

The pruning of the Sitka spruce is not anticipated to significantly impact the health or longevity of the tree. The impacts of tree removal to slope stability are to be addressed by a geotechnical engineer. A retaining wall will be constructed to retain the slope in the vicinity of the tree.

Please contact me if you have questions, concerns, or need any additional information.

Sincerely,



Todd Prager

*ASCA Registered Consulting Arborist #597
ISA Board Certified Master Arborist, WE-6723B
ISA Qualified Tree Risk Assessor
AICP, American Planning Association*

June 19, 2023

Dear Planning Commissioners,

First, I would like to thank you for your service to the city. You are tasked with very important work.

Next, our house is located on the lot directly East of 743 North Ash St. Between our house and the proposed structure is a very steep slope. The tree you are discussing lies near the top of this steep slope. We are concerned that damaging or removing that tree will destabilize the slope possibly resulting in a landslide or silting of the creek that is at the bottom of that slope. This creek is a tributary to Logan Creek.

The Cannon Beach Comprehensive Plan states, "The City shall regulate the removal of trees in order to preserve the City's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards." This is incorporated into the following Cannon Beach City Code:

17.70.010 Purpose.

A. The purpose of this chapter is to establish protective regulations for trees within the city in order to better control problems of soil erosion, landslide, air pollution, noise, wind and destruction of scenic values and wildlife habitat, and to protect trees as a natural resource which establishes the wooded character of the city.

B. The intent is not to prohibit the removal of trees completely, or to require extraordinary measures to build structures; rather the intent is to stop the wanton and oftentimes thoughtless destruction of that vegetation which has a beneficial effect on the value of property, and on the city in general.

17.04.560 Tree removal.

"Tree removal" means the cutting down of a live tree or an act which causes a tree to die within a period of two years, including, but not limited to, damage inflicted upon the root system by machinery, storage of materials, and soil compaction; changing the natural grade above the root system or around the trunk; damage inflicted on the tree permitting infection or pest infestation; excessive pruning; paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the tree.

Up until now we had not been concerned about construction on this site, because we couldn't imagine anyone would even consider removing or damaging this beautiful tree and run the risk of destabilizing a steeply sloping hillside. Having looked closely at the property there appears to be sufficient space on this double lot to build without removing the tree.

Yet what has been happening, even during early construction, causes us significant concern. There appears to be disruption around that tree already. Therefore, our request is that the building plans and siting be reviewed to make sure that no potential problems exist. The tree is part of the established eco system and intrinsic to the

integrity of the space. We would hope any licensed architect would recognize the significance of this tree and could design a structure that would not require the removal of this tree.

We invite you to make a site visit to our deck to see the tree and slope from our angle.

Thank you for your consideration.

Sincerely,
Stacy Benefield

June 21, 2023

VIA EMAIL
PLANNING@CI.CANNON-BEACH.OR.US
STCLAIR@CI.CANNON-BEACH.OR.US

Cannon Beach Planning Commission
PO Box 368
Cannon Beach, OR 97110

Subject: AA #23-04 - Health of Tree Calls for the Stastny Appeal to be Upheld

Dear Planning Commissioners:

This firm represents Haystack Rock, LLC, the owner of the historic Oswald West Cabin in Cannon Beach. We write to request that the Planning Commission uphold the Stastny appeal based on the health of the Spruce tree at issue and the problems with the geotechnical report(s) for the development which are no-longer current. No evidence in the record shows that this large Spruce tree cannot be saved and no geotechnical report in the record reflects the current status of the property and plans regarding this tree.

Before the City gets to the issue of the health of this tree, the first question is does the tree need to be removed in the first instance. None of the arborist reports conclude that the tree cannot be saved. If necessary, the building should be adjusted to fit the tree instead of removing the tree to accommodate the building (or deck). When the applicant previously proposed development and vegetation removal on this site including abutting right of way, this tree’s roots should have been protected under the tree protection zone (“TPZ”) standards in CBMC 17.70.030(Q)(3) and (4). The code specifies that, “[v]ehicular traffic, **excavation** and storage of materials shall be **prohibited** within the TPZ.” CBMC 17.70.030(Q)(4). Emphasis added. The purpose of the Tree Code is expressly to “protect trees as a natural resource.” CBMC 17.70.010. Similarly, the geologic report is supposed to including findings and conclusions for vegetation removal under CBMC 17.50.040(A)(2), which is missing in the current situation. This is especially important on this site where professionals have noted the importance of the tree’s roots for site stability.

Proper application of the Tree Code is vital for the future of Cannon Beach. Applicants, such as the developer underlying this appeal and the Robertses next to unimproved Nenana in DP#22-06, are wrongly circumventing the TPZ in their initial development plans, then coming back to request removal of those trees in a foreseeable fashion. This is exactly what is proposed by the tree removal permit underlying this appeal and exactly what the Robertses are doing at their development site. For example, in the attached Vegetation Removal Plan, the Robertses propose to “retain” large trees just four feet north of proposed excavation for a foundation. The applicant underlying AA #23-04 and Robertses need to submit plans that reflect a TPZ protecting those areas “where a tree’s root structure might be impacted by excavation” as required by CBMC 17.70.030(Q).

We encourage Planning Commissioners, the Stastnys, and others who care about this issue to submit written and oral comments for the City Council hearing on July 10 on DP#22-06 when the Council will consider how to apply its Tree Code and to comment in support of the City requiring developers to protect trees as called for in the code.

We respectfully request that the Planning Commission uphold the Stastny appeal and deny the requested tree removal permit until these issues are resolved.

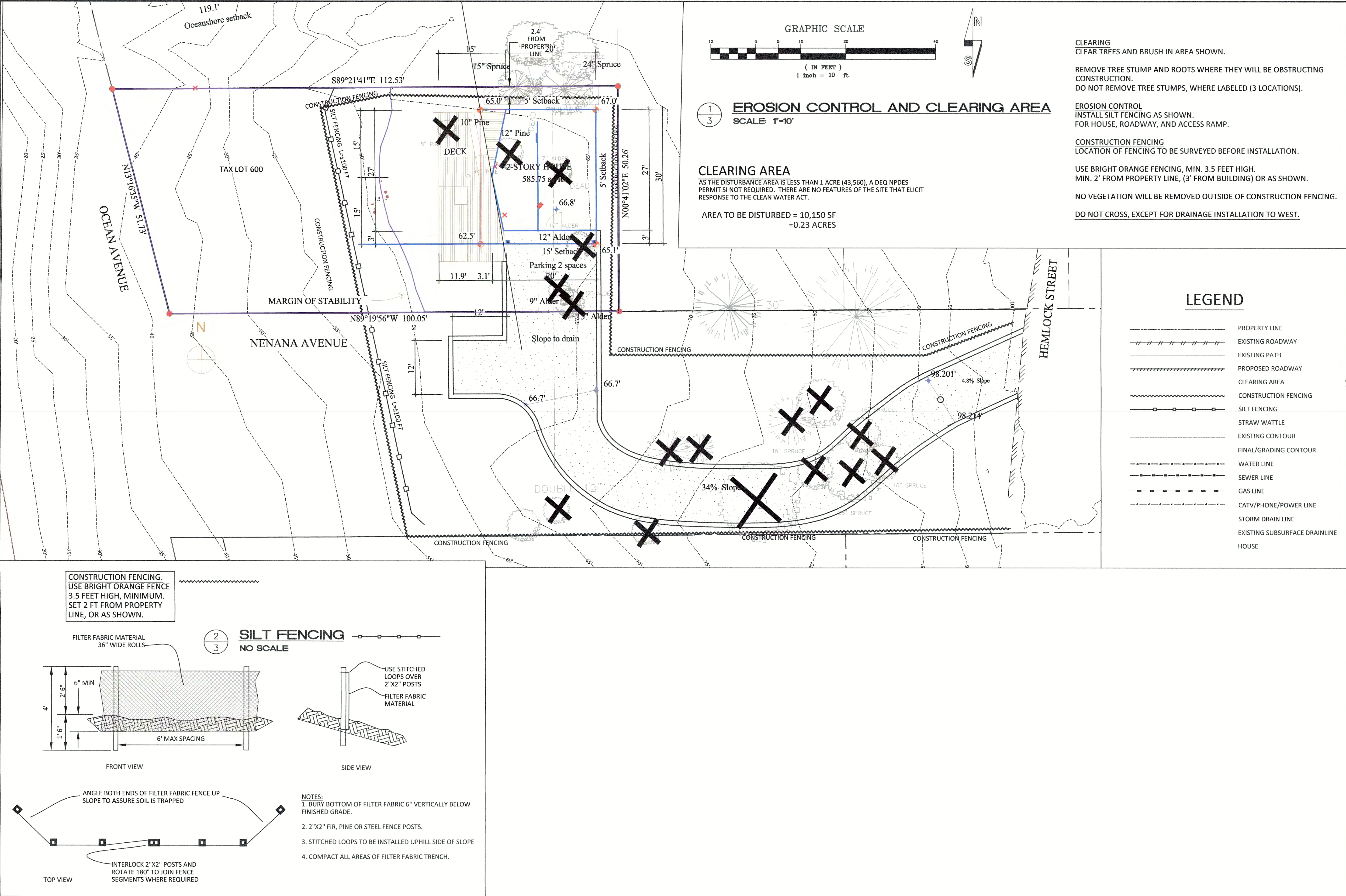
Very truly yours,

A handwritten signature in blue ink, appearing to read 'W. L. Rasmussen', is written over a light blue rectangular background.

William L. Rasmussen

Enclosures:

Roberts Vegetation Removal Plan



**MORGAN CIVIL
ENGINEERING, INC.**

PO BOX 358
MANZANITA, OR 97130
(503) 801-6016
www.morgancivil.com

JOB NO.
19-02-PAT
DATE
MAR. 7, 2022

RENEWAL DATE: DECEMBER 31, 2022

STANLEY ROBERTS
TAX LOT 600 - NENANA AVENUE
VEGETATION REMOVAL - EROSION CONTROL

CANNON BEACH/MAP 5N 10W 31

SHEET
C4
OF

Robert St. Clair

From: Jamie Lerma <jamie@redcrowgc.com>
Sent: Thursday, June 22, 2023 9:07 AM
To: Steve Sokolowski; Robert St. Clair
Subject: Fwd: Bennett Residence Retaining Wall at Spruce Tree
Attachments: Bennett Residence 9ft Retaining Wall Detail.pdf; Retaining Wall.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Steve and Robert,

Please see email cover letter from structural engineer Kyle Seppala regarding the retaining wall design at the Bennett Spruce tree (AA#23-04). This cover letter was inadvertently left out of the information that I submitted on June 15. It contains some pertinent information about the configuration of the retaining wall as it relates to the slope.

The cover letter states that the width of the retaining wall footing must be 7'-6" with a 6' heel on the inside of the wall, and an 10" toe on the outside of the wall. The size of the toe is limited by the slope and required backfill coverage.

Thank you,

Jamie

----- Forwarded message -----
From: Kyle Seppala <Kyle@ironoakengineers.com>
Date: Tue, Jun 6, 2023 at 5:49 PM
Subject: Bennett Residence Retaining Wall at Spruce Tree
To: Jamie Lerma <jamie@redcrowgc.com>
Cc: Destiny Tavares <Destiny@ironoakengineers.com>

Hi Jamie,

Please see attached detail and calculations for the retaining wall for the Bennett Residence assuming the spruce tree is removed. The retaining wall needs to go deep enough to ensure a 1'-6" minimum clear cover over the toe of the wall to grade. The overall width of the retaining wall needs to be 7'-6" which will interfere with the existing spruce tree if it is to remain. Based on the slope, it isn't realistic or feasible to extend the toe to reduce the heel width to avoid conflicting with the spruce tree. It remains our recommendation that the spruce tree needs to be removed as shown in the drawings.

Thank you,



Kyle Seppala | President

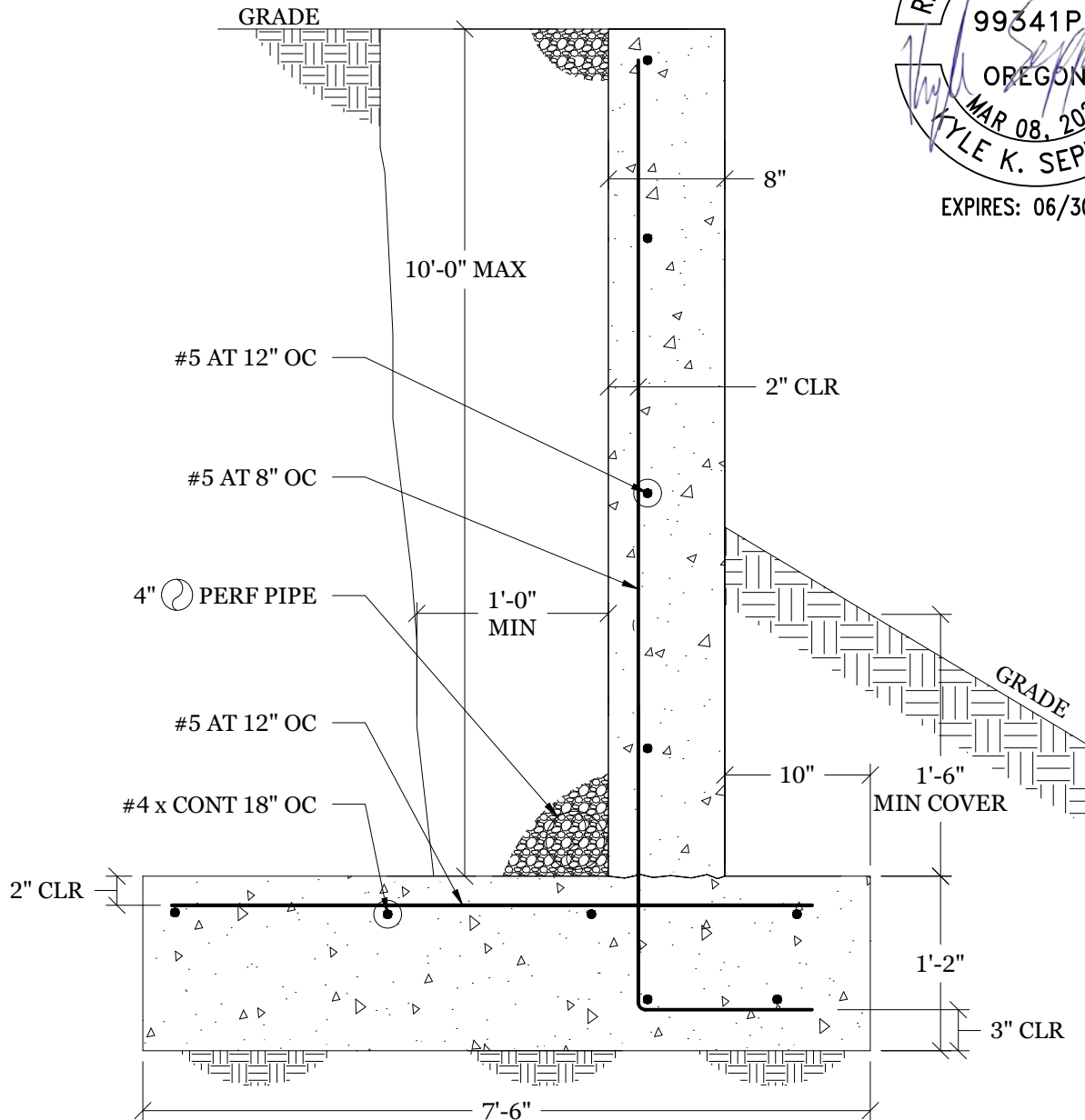
**Vancouver, WA 98662
T: 360-228-2444 | Ext. 100**

C: 360-624-6023

Ironoakengineers.com

--

**Jamie B. Lerma
President
Red Crow, LLC
(503) 849-0258
PO BOX 825
Cannon Beach, OR 97110
CCB#226835**



1 RETAINING WALL
SK-1 NTS



BENNETT RESIDENCE
732 N ASH ST.
CANNON BEACH, OR

SK-1

PROJECT NO: 23056.00
DATE: 06/06/2023



STRUCTURAL CALCULATIONS

BENNETT RESIDENCE RETAINING WALL



Jamie Lerma
732 North Ash Street
Cannon Beach, Oregon

June 6, 2023
Project # 23056.00



Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Code Reference

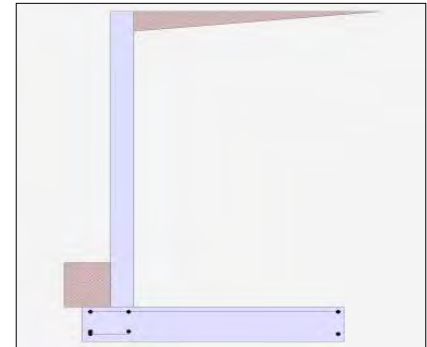
Calculations per IBC 2021 1807.3, ASCE 7-16

Criteria

Retained Height	=	10.00 ft
Wall height above soil	=	0.00 ft
Slope Behind Wall	=	0.00
Height of Soil over Toe	=	18.00 in
Water table above bottom of footing	=	0.0 ft

Soil Data

Allow Soil Bearing	=	1,500.0 psf
Equivalent Fluid Pressure Method		
Active Heel Pressure	=	35.0 psf/ft
Passive Pressure	=	150.0 psf/ft
Soil Density, Heel	=	110.00 pcf
Soil Density, Toe	=	110.00 pcf
Footing Soil Friction	=	0.300
Soil height to ignore for passive pressure	=	12.00 in



Surcharge Loads

Surcharge Over Heel	=	50.0 psf
Used To Resist Sliding & Overturning		
Surcharge Over Toe	=	0.0
NOT Used for Sliding & Overturning		

Axial Load Applied to Stem

Axial Dead Load	=	0.0 lbs
Axial Live Load	=	0.0 lbs
Axial Load Eccentricity	=	0.0 in

Lateral Load Applied to Stem

Lateral Load	=	0.0 #/ft
...Height to Top	=	0.00 ft
...Height to Bottom	=	0.00 ft
Load Type	=	Wind (W) (Service Level)
Wind on Exposed Stem	=	0.0 psf (Strength Level)

Adjacent Footing Load

Adjacent Footing Load	=	0.0 lbs
Footing Width	=	0.00 ft
Eccentricity	=	0.00 in
Wall to Ftg CL Dist	=	0.00 ft
Footing Type	=	Spread Footing
Base Above/Below Soil at Back of Wall	=	0.0 ft
Poisson's Ratio	=	0.300



Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Design Summary

Wall Stability Ratios

Overturing	=	4.87	OK
Sliding	=	1.51	OK
Global Stability	=	2.61	

Total Bearing Load	=	10,317 lbs	
...resultant ecc.	=	0.30 in	

Eccentricity within middle third

Soil Pressure @ Toe	=	1,222 psf	OK
Soil Pressure @ Heel	=	1,272 psf	OK
Allowable	=	1,500 psf	

Soil Pressure Less Than Allowable

ACI Factored @ Toe	=	1,711 psf	
ACI Factored @ Heel	=	1,781 psf	
Footing Shear @ Toe	=	0.2 psi	OK
Footing Shear @ Heel	=	5.0 psi	OK
Allowable	=	82.2 psi	

Sliding Calcs

Lateral Sliding Force	=	2,359.8 lbs	
less 100% Passive Force	=	458.3 lbs	
less 100% Friction Force	=	3,095.0 lbs	
Added Force Req'd	=	0.0 lbs	OK
....for 1.5 Stability	=	0.0 lbs	OK

Vertical component of active lateral soil pressure IS considered in the calculation of soil bearing pressures.

Load Factors

Building Code	
Dead Load	1.200
Live Load	1.600
Earth, H	1.600
Wind, W	1.600
Seismic, E	1.000

Stem Construction

Design Height Above Ftg

ft =	Stem OK	0.00
Wall Material Above "Ht"	=	Concrete
Design Method	=	SD
Thickness	=	8.00
Rebar Size	=	# 5
Rebar Spacing	=	8.00
Rebar Placed at	=	Edge

Design Data

fb/FB + fa/Fa	=	0.884
---------------	---	-------

Total Force @ Section

Service Level	lbs =	
Strength Level	lbs =	3,054.5

Moment.....Actual

Service Level	ft-# =	
Strength Level	ft-# =	10,606.1

Moment.....Allowable	=	11,990.5
----------------------	---	----------

Shear.....Actual

Service Level	psi =	
Strength Level	psi =	41.1

Shear.....Allowable	psi =	60.6
---------------------	-------	------

Anet (Masonry)	in2 =	
----------------	-------	--

Wall Weight	psf =	100.0
-------------	-------	-------

Rebar Depth 'd'	in =	6.19
-----------------	------	------

Masonry Data

f'm	psi =	
Fs	psi =	
Solid Grouting	=	
Modular Ratio 'n'	=	
Equiv. Solid Thick.	=	
Masonry Block Type	=	
Masonry Design Method	=	ASD

Concrete Data

f'c	psi =	3,000.0
Fy	psi =	60,000.0

Cantilevered Retaining Wall

Project File: Bennett Residence Retaining Wall.eci

LIC# : KW-06015622, Build:20.23.05.25

Iron Oak Engineers

(c) ENERCALC INC 1983-2023

DESCRIPTION: 10FT Retained Height

Concrete Stem Rebar Area Details

Bottom Stem	<u>Vertical Reinforcing</u>	<u>Horizontal Reinforcing</u>
As (based on applied moment) :	0.4016 in2/ft	
0.0018bh : 0.0018(12)(8) :	0.1728 in2/ft	Horizontal Reinforcing Options :
	=====	<u>One layer of :</u> <u>Two layers of :</u>
Required Area :	0.4016 in2/ft	#4@ 13.89 in #4@ 27.78 in
Provided Area :	0.465 in2/ft	#5@ 21.53 in #5@ 43.06 in
Maximum Area :	1.0059 in2/ft	#6@ 30.56 in #6@ 61.11 in

Footing Data

Toe Width	=	0.83 ft
Heel Width	=	6.67
Total Footing Width	=	7.50
Footing Thickness	=	14.00 in
Key Width	=	0.00 in
Key Depth	=	0.00 in
Key Distance from Toe	=	0.00 ft
f'c = 3,000 psi	Fy =	60,000 psi
Footing Concrete Density	=	150.00 pcf
Min. As %	=	0.0018
Cover @ Top 2.00	@ Btm.=	3.00 in

Footing Design Results

	<u>Toe</u>	<u>Heel</u>
Factored Pressure	= 1,711	1,781 psf
Mu' : Upward	= 590	31,178 ft-#
Mu' : Downward	= 141	38,264 ft-#
Mu: Design	= 450 OK	7,087 ft-# OK
phiMn	= 14,485	15,880 ft-#
Actual 1-Way Shear	= 0.17	4.95 psi
Allow 1-Way Shear	= 82.16	82.16 psi
Toe Reinforcing	= # 5 @ 12.00 in	
Heel Reinforcing	= # 5 @ 12.00 in	
Key Reinforcing	= # 4 @ 12.00 in	
Footing Torsion, Tu	=	0.00 ft-lbs
Footing Allow. Torsion, phi Tu	=	0.00 ft-lbs

If torsion exceeds allowable, provide supplemental design for footing torsion.

Other Acceptable Sizes & Spacings

Toe: #4@ 7.93 in, #5@ 12.30 in, #6@ 17.46 in, #7@ 23.80 in, #8@ 31.34 in, #9@ 39.68 in, #10@ 50.39 in

Heel: #4@ 7.93 in, #5@ 12.30 in, #6@ 17.46 in, #7@ 23.80 in, #8@ 31.34 in, #9@ 39.68 in, #10@ 50.39 in

Key: No key defined

Min footing T&S reinf Area 2.27 in2
Min footing T&S reinf Area per foot 0.30 in2 /ft

If one layer of horizontal bars:

#4@ 7.94 in
#5@ 12.30 in
#6@ 17.46 in

If two layers of horizontal bars:

#4@ 15.87 in
#5@ 24.60 in
#6@ 34.92 in



DEAN N. ALTERMAN
ATTORNEY

D: (503) 517-8201
DEAN@ALTERMAN.LAW

Via e-mail to stclair@ci.cannon-beach.or.us and bare@ci.cannon-beach.or.us

Cannon Beach Planning Commission
PO Box 368
Cannon Beach, Oregon 97110

June 22, 2023

Re: AA 23-04
Janet Stastny appeal of tree removal permit at 743 N Ash Street
Our clients: Janet and Don Stastny
Our File No. 5580.001

Dear Chair Newton and Commissioners:

I'm submitting this letter on behalf of the appellant, Janet Stastny, and her husband Donald Stastny, who own the house and land at 755 North Ash Street, immediately north of the subject property. I'm writing to respond to the additional information that the applicant provided to you on June 15, and then to put that information into the context of your tree protection ordinance.

The additional information that Red Crow, LLC provided is consistent with the basis for the Stastnys' appeal.

First, the tree is healthy and in good structural condition. The developer's pruning of the tree last month "is not anticipated to significantly impact the health or longevity of the tree." (Prager letter, p. 1.)

Second, mature trees generally "have a positive effect on slope stability" because their canopies dissipate rainwater and their root systems can control groundwater. Mature trees also provide "some reinforcement of the near-soil through their root systems." EEI report, page 5.

The new information is consistent with the earlier information from the applicant that demonstrated that the Sitka spruce contributes to the stability of the hillside. Joe Balden, one of the applicant's arborists, wrote on March 13 that "the tree is significant in that the tree root system presents a major component to slope stability on the east side of the property."¹ Jeff Gerhardt, the applicant's other arborist, wrote on May 1 that "the tree is hugely beneficial in anchoring the slope."²

¹ Page 29 of the packet for your first meeting.

² Page 30 of the packet for your first meeting.

805 SW BROADWAY
SUITE 1580
PORTLAND, OREGON 97205

T: (503) 517-8200

WWW.ALTERMAN.LAW

{00157264}

Limitations of the new information

Please note two limitations or exclusions from the applicant's new information.

First, EEI did not assess "the specific extent of potential impacts" on the property of removing this tree, EEI report, page 6, which EEI said would require more investigation than it was hired to do.

Second, Mr. Prager did not express an opinion on the tree's contribution to soil stability, on which he deferred to EEI.

You have an underlying policy question to decide

Red Crow submitted information to show that if Red Crow removes the tree, it would be possible to design, excavate for, and build a concrete retaining wall to provide at least the same level of slope stabilization that the tree provides now. The statements from Red Crow's engineer presuppose that the tree must be removed. The applicant did not respond to the underlying policy question, which is how to apply Chapter 17.70 of your code consistently with its stated purpose in CBMC 17.70.010. I quoted that purpose in my earlier letter. I'll repeat its purpose here:

A. The purpose of this chapter is to establish protective regulations for trees within the city in order to better control problems of soil erosion, landslide, air pollution, noise, wind and destruction of scenic values and wildlife habitat, and to protect trees as a natural resource which establishes the wooded character of the city.

B. The intent is not to prohibit the removal of trees completely, or to require extraordinary measures to build structures; rather the intent is to stop the wanton and oftentimes thoughtless destruction of that vegetation which has a beneficial effect on the value of property, and on the city in general.

In this case, the applicant wants to remove a tree under CBMC 17.70.020(D), which allows "removal of a tree(s) in order to construct a structure or development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).

This application presents you with a basic policy question: Does the tree protection ordinance allow or require the city to issue a permit to remove a healthy tree because the landowner proposes to build the building near but not on top of the tree's location, or may the city implement the purpose of CBMC 17.70.010 by requiring the applicant to build the structure farther from the tree?

Let's look at more of the code. Section 17.70.030(B) answers the question.

Section 17.70.030(B) states that “tree removal shall occur only after a building permit has been issued for the structure **requiring** the removal of the tree(s).” The word “required” implements the city’s policy of protecting trees against unnecessary removal. The applicant here has not shown that building the structure **requires** cutting down the tree. The building footprint does not include the tree. The city has issued a permit to build a structure, but the structure can be built without removing the tree. In fact, the contractor has already built the foundation without removing the tree.

Put another way, to give meaning to the word “requiring,” the city can issue the permit to cut this Sitka spruce only if building the structure **requires** the developer to cut the tree. It’s not enough for the developer to show that building the structure merely makes it **desirable** to cut the tree. It’s not enough for the developer to substitute a retaining wall for the tree, which is not the standard in your code.

Proposed Finding

In my first letter, I offered this finding that you could adopt if you agree with the Stastnys’ position:

The City finds that, consistent with the purpose statement of CBMC §17.70.010, CBMC §17.70.020.D authorizes the City to issue a tree removal permit in order to construct an approved structure only if the tree’s location is required for the structure itself or for required vehicular and utility access that City code requires the structure to provide. CBMC §17.70.020.D does not authorize the City to issue a tree removal permit for a tree that is intentionally damaged during construction of an approved structure.

In the alternative, you could adopt this finding if you agree with our statement of the broader policy question:

The City finds that, consistent with the purpose statement of CBMC §17.70.010, CBMC §17.70.020.D authorizes the City to issue a tree removal permit in order to construct an approved structure only if the tree's location is required for the structure itself or for required vehicular and utility access that City code requires the structure to provide. CBMC §17.70.020.D does not authorize the City to issue a permit to remove a tree if the applicant can reasonably build an allowed structure for a permitted use on another part of the property without undertaking extraordinary measures to build the structure.

You should grant the appeal and revoke the permit.

Very truly yours,

ALTERMAN LAW GROUP PC

Dean N. Alterman

Dean N. Alterman

Copy: Janet and Don Stastny (e-mail only)

**Minutes of the
CANNON BEACH PLANNING COMMISSION
Thursday, May 25, 2023**

Present: Chair Clay Newton and Commissioners Anna Moritz, Mike Bates, Les Sinclair, Erik Ostrander, Dorian Farrow, and Aaron Matusick via Zoom

Excused: None

Staff: Land Use Attorney Bill Kabeiseman, City Manager Bruce St. Denis, City Planner Robert St. Clair, and Community Development Administrative Assistant Emily Bare

CALL TO ORDER

Chair Newton called the meeting to order at 6:02 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Commissioner Moritz moved to approve the agenda as submitted; Commissioner Sinclair seconded the motion.

Vote: Sinclair, Matusick, Bates, Moritz, Bennett, Ostrander, and Chair Newton voted AYE; the motion passed 7:0.

(2) Consideration of the Minutes for the Planning Commission Meeting of March 23, 2023

Motion: Commissioner Ostrander moved to approve the minutes; Commissioner Moritz seconded the motion.

Vote: Sinclair, Bates, Moritz, Matusick, Farrow, Ostrander, and Chair Newton voted AYE; the motion passed 7:0.

(3) Public Hearing and Consideration of AA#23-04, Janet Stastny administrative appeal of the City's approval of a tree removal permit.

AA #23-04 Janet Stastny administrative appeal of the City's approval of a tree removal permit in conjunction with the construction of a new single-family dwelling at 743 N. Ash St (Tax Lot #05602, Map 51019AA) in a Residential Lower Density (RL) Zone. The appeal will be reviewed pursuant to Municipal Code 17.88.180, Review Consisting of Additional Evidence or De Novo Review and Applicable Sections of the Zoning Ordinance.

Commissioner Moritz excused herself from the deliberation/hearing.

Site Visits were made by Commissioners Bates, Farrow, Ostrander, and Chair Newton.

Robert St. Clair read the staff report.

Additional information was received and distributed to the commissioners, parties of interest as well as posted to the City's website on or around 2pm.

Public Testimony

Applicant:

Dean Alterman
805 SW Broadway Suite 1580
Portland, OR 97205

Mr. Alterman discussed his viewpoint that the developer obtained permission to construct the structure without applying for or obtaining permission to remove the Sitka spruce. As stated in the Attorney's letter, despite how the developer has framed his application to remove the tree as being necessary to build the house, the tree is not in the way of the house – if it were, the developer would have applied to remove the tree at the same time that he applied for a building permit, instead of beginning to build the house before applying to remove the tree.

Mr. Alterman also noted that the Sitka spruce contributes to the stability of the hillside, and quoted Joe Balden, "the tree is significant in that the tree root system presents a major component to slope stability on the east side of the property." Mr. Gerhardt wrote that "the tree is hugely beneficial in anchoring the slope."

Mr. Alterman spoke to the section of Cannon Beach Municipal Code that protects trees from unnecessary removal and restricts pruning of large trees, which the developer did.

Commissioner Bates asked Alterman if he was satisfied that there wasn't any encroachment upon his client's property. He said he was not necessarily satisfied, yet he had not taken a measuring tape to check the measurements.

Donald Stastny
2309 SW 1st Ave
Portland, OR 97201

Mr. Stastny worked as a licensed architect for many years and has been on many worksites, he expressed his concerns with this jobsite. He spoke to the ravine behind his and another neighbor's property, as well as the old rock quarry that is part of that property.

Mr. Stastny discussed the records submitted for the building permit as well as the paperwork for the variance. The Geotech report that was completed was to determine if two houses could be built, not what the story of the land on that lot was about.

Fire suppression issues as well as past fires in the area were spoken to with great concern with the proximity of the houses in that area of town.

Mr. Statsny discussed the retaining wall that was put in which caused encroachment onto their land and destroyed a sprinkler system. He believes that the structure of his house has been compromised.

Statsny believes that the tree removal permit should have been completed at the beginning of the project.

Robert Necker
PO Box 1021
Cannon Beach, OR 97110

Mr. Necker spoke about the tree being damaged before it can even be killed. Where do we go from here? He believes that the person building this house is ruining this community.

Jan Siebert-Warhmund
PO Box 778
Cannon Beach

Mrs. Siebert-Warhmund asked if we could find a way to save the significant tree please do so.

Opponent:

Jamie Lerma
PO BOX 825
Cannon Beach, OR 97110

Mr. Lerma went through the packet of information provided to the committee this afternoon. Copies of the building permit, Geotech report, as well as photographs of the tree. Lerma walked the committee through the pictures of the jobsite, he has been in contact with both Geotech, structural and earth engineers.

The timeline was discussed and the communication between city staff and applicant was discussed. The hope was to save the tree, if possible.

Lerma explained that they had to excavate the north end to see what the slope on the south end would be. This made it necessary to complete a retaining wall. The crew was using heavy equipment when it became necessary to prune some of the limbs of the tree.

Commissioner Farrow asked if the architect could have designed a different house to save the tree.

Commissioner Bates asked what the product was used for back fill.

Chair Newton asked what was the thinking process and were the plans modified? The answer was no, so why not get a tree removal permit at the beginning of the building permit process. The builder explained that the original layout of the land was very different before it was cleared out. There were different spoils

that were placed there. The builder explained that they need to remove the tree to set the appropriate footing to get a safe foundation.

Commissioner Bates asked if the Geotech report was based on saving the tree and stabilizing the land.

Commissioner Sinclair asked if the tree is critical for the stabilization of the slope.

Commissioner Bates wants a new Geotech if the slope has changed.

Jo Baldwin
760 Astor St
Astoria, OR 97103

Mr. Baldwin has been a consultant with the city for many years. When Mr. Lerma first came to look at the tree, he knew that the tree couldn't be saved. He sent a memo to the architect Mr. Cerelli and to Mr. Lerma hoping for a plan. But with the size of the house and the slope of the land the tree could not be saved. They didn't know what the cutouts of the land were going to be in the beginning of the project.

Commissioner Bates questioned the arborist if other foundation systems could have been used.

Ostrander asked if the tree in question can survive the damage that has already been done.

Sinclair asked if the arborist could speculate how far the building would need to move to save the tree. Mr. Baldwin speculated 15 feet further west and north. Sinclair asked if the tree were to be removed how would the slope be affected? The roots on the tree are essential to slope retention.

Ostrander asked if Lerma had stopped work on the property near the tree.

Staff response: No

Public Record Closed 7:33 pm.

Bates agreed that Lerma is in a bad position. He is concerned that everything in the packet says that the tree is holding up the slope. He feels that we need a Geotech report to make a determination regarding the slope. Bates believes that the commission needs to move to continuation so they can get the information they need.

Sinclair believes that the commission needs to do what they need to save the tree.

Farrow believes that the architect who designed the home on that property had to have known that the tree needed to be removed.

Ostrander believes that with the decks there should have made it obvious that the tree needs to be removed.

Bates agreed that Lerma has few choices. Remove the tree and see what happens. Build around the tree but that may cause dangerous conditions.

Farrow believes that there really is no way to preserve the tree. Newton said that we can't ignore it if the tree is an anchor to the slope.

Sinclair believes that in normal business the tree removal permit should have been submitted in the beginning. The real concern is how to approach the slope concern.

Farrow asked what the outcome would have been if the TRP was presented at the beginning of this process. St. Clair said it would have been approved due to code.

Motion: Commissioner Bates moved to continue this item and requested a geotechnical report with oral and written testimony limited to the geotechnical report and the health of the tree on June 22, 2023, at 6pm. Farrow seconded the motion.

Vote: Sinclair, Matusick, Ostrander, Bates, Farrow and Chair Newton voted AYE; the motion passed 6:0.

(4) **Public Hearing and Continuation of SR#23-01, Mike Morgan request on behalf of Jeff and Miriam Taylor for a Setback Reduction for a porch addition to allow emergency access at 1956 S. Hemlock St.**

SR 23-01, Mike Morgan, on behalf of Jeff and Miriam Taylor, application to allow a setback reduction to reduce the back yard setback from the required 15'0" build a porch to be used as an emergency access. The property is located at 1956 S. Hemlock. (Tax Lot 04300, Map 51030DD), and in a Residential Low Density (RL) Zone. The request will be reviewed against the Municipal Code, section 17.64.010, Setback Reduction, provisions established.

Site visits by Sinclair, Farrow, Bates, Newton, Moritz, and Ostrander.

Proponents:

Mike Morgan
PO Box 132
Cannon Beach, OR 97110

The setback reduction is at Six and a half feet. The old footprint will be used to save three trees, the arborist report does not suggest moving any further down the slope.

Bates clarified questions regarding the "bridge" of the retaining wall. Mr. Morgan explained that the structure will not go out any further than the retaining wall/steps attached to the retaining wall.

Sinclair requested that there is reassurance that there is not going to be parking on Hemlock.

Chair Newton questioned a statement in the Geotech report regarding the retaining wall.

Jeff and Miriam Taylor
2005 W Huntsville St
Broken Arrow, OK 74011

If you have questions regarding the stability of the wall, please offer that as a condition and they would be happy to do so.

Opponents:
None

Public Comment:
None

No staff response.

Public Record Was Closed at 8:22pm.

Farrow complimented the homeowner's commitment to get the information requested in a timely manner.

Moritz requested a motion that the area not be a parking area and a condition of approval.

Motion: Moritz moved to approve the setback reduction with condition that there will be a no parking agreement on west side of hemlock and upon approval of the building permit that a Geotech be completed on the retaining wall.

Vote: Sinclair, Matusick, Ostrander, Bates, Moritz, Farrow and Chair Newton voted AYE; the motion passed 7:0.

(5) **Public Hearing and Consideration of SR 23-05 and VAC 23-01, CIDA request on behalf of the City of Cannon Beach for a Setback Reduction and Street Vacation in conjunction with the Cannon Beach Elementary School rejuvenation project at 268 Beaver Ave.**

SR#23-05 and VAC 23-01 CIDA request on behalf of the City of Cannon Beach for a Setback Reduction and Street Vacation for the purpose of reducing the required setback in order to construct a covered entrance canopy and provide space for required off-street parking. The property is located at 268 Beaver Ave. (Tax Lots 4000, 4100, 4101, 4200, and 4301, Map 51020CB) in an Institutional (IN) zone. The request will be reviewed under Municipal Code section 17.64.010, Setback Reduction, and section 12.32, Street and Alley Vacation, provisions established.

Exparte by Ostrander regarding emergency exit with the Fire Chief

Site Visits Sinclair, and Farrow

St. Clair read the staff Report.

Dustin from CIDA

Discussion regarding the reason that they pulled the items from last month, they had been in discussion with Mr. Mahoney but were unable to come to a common place.

After visiting the site with Karen LaBonte and Trevor Mount a new proposal has been brought to the table. Because it is a preexisting two-way street, CIDA is proposing to clear the fifty-foot right-of-way to thirty feet. This is not a final proposal, but they will be meeting with the City Council and Fire Chief in the next several weeks. The original proposal added ninety-degree parking, the new proposal would add 180-degree parking and allow access for Mr. Mahoney to access the side road to his property.

The reason for the vacation request is to increase the sidewalk to 15 feet and a ten-foot loading zone.

Farrow asked if the sidewalk is fifteen feet wide and could homeless camp on the sidewalk. There was a question regarding if this was a building entrance or a city sidewalk. St. Denis explained the city ordinance and how this space could be affected by homelessness.

Sinclair asked how this plan will affect the other businesses and homes on the south side of that property. There may be spaces for three parallel parking spaces.

Public Comment:

Jeffrey Kleinman
1207 SW 6th Ave
Portland, OR

Sequoia Investments LLC. Mr. Maloney has told his attorney that the design works and he does support the project and what was sent May 18, 2023, in the Staff Report Addendum. Mr. Maloney access' is based on a neighbor's easement for the.

The Public Hearing closed at 9:25 pm.

Committee discussion

Motion: Commissioner Bates moved to approve the setback reduction and recommended approval of the vacation to the City Council. Farrow seconded the motion.

Vote: Commissioners Sinclair, Ostrander, Bates, Moritz, Matusick, Farrow, and Moritz all voted AYE; Chair Newton voted no. The motion passed 6:1.

WORK SESSION ITEMS

(6) None

INFORMATIONAL ITEMS

(8) Tree Report

St. Clair went over the March/April tree numbers utilizing the Public Notice Page of the City's website.

(9) Ongoing Planning Items

St. Dennis spoke to the ongoing recruitment for the Community Development Director

(10) Good of The Order

Conversation on leading discussions and bringing a voice to issues that are important to our community.
How the committee can be involved in driving the communication of hot topics in our community.

(11) Adjournment

ADJOURNMENT

The meeting adjourned at 9:45 pm.

Emily Bare
Community Development
Administrative Assistant

**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, June 22, 2023

Present: Chair Clay Newton and Commissioners Mike Bates, Les Sinclair, Erik Ostrander, Dorian Farrow, Aaron Matusick and Anna Moritz via Zoom

Excused: None

Staff: Land Use Attorney Bill Kabeiseman, City Manager Bruce St. Denis, City Planner Robert St. Clair, and Community Development Administrative Assistant Emily Bare

Jake Munsey
Mick Harris
Bill Kabeiseman

CALL TO ORDER

Chair Newton called the meeting to order at 6:04 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Commissioner Bates moved to approve the agenda as submitted; Commissioner Ostrander seconded the motion.

Vote: Sinclair, Matusick, Bates, Moritz, Bennett, Ostrander, and Chair Newton voted AYE; the motion passed 7:0.

(2) Consideration of the Minutes for the Planning Commission Meeting of May 25, 2023

Commissioner Farrow refused to approve the minutes because the City Council was not given the opportunity hear the re-zone and read the letter that the Planning Commission prepared.

Motion: Commissioner Bates moved to approve the minutes; Commissioner Farrow seconded the motion.

Vote: Sinclair, Bates, Moritz, Matusick, Farrow, Ostrander, and Chair Newton voted AYE; the motion passed 7:0.

(3) Public Hearing and Consideration of AA#23-04, Janet Stastny administrative appeal of the City's approval of a tree removal permit.

AA #23-04 Janet Stastny administrative appeal of the City's approval of a tree removal permit in conjunction with the construction of a new single-family dwelling at 743 N. Ash St (Tax Lot #05602,

Map 51019AA) in a Residential Lower Density (RL) Zone. The appeal will be reviewed pursuant to Municipal Code 17.88.180, Review Consisting of Additional Evidence or De Novo Review and Applicable Sections of the Zoning Ordinance.

Commissioner Moritz excused herself from the deliberation/hearing.

Site Visits were made by Commissioners Bates, Farrow, Ostrander, Sinclair and Chair Newton. Sinclair has had conversations with a couple of the neighbors. Commissioner Matusick has had some ex-parte contact.

Robert St. Clair read the staff report.

Additional information was received and distributed to the commissioners, parties of interest as well as posted to the City's website on or around 2pm.

Public Testimony

Applicant:

Dean Alterman
805 SW Broadway Suite 1580
Portland, OR 97205

Mr. Alterman discussed his letter that was submitted this afternoon. He claims that the applicant is requesting to remove the tree as a matter of convenience. The issue is based on a simple code issue 17.03. He doesn't believe that the tree needs to come down as a requirement as construction has already been started. Nothing in our code says that we can cut down any tree we want to. You can cut down any tree in Cannon Beach as long as you pay for the building permit, regardless if you build a structure or not.

Opponent:

Mick Harris

The only question is in interpretation of the tree removal permit. Necessity is the standard. In response to Mr. Alterman's letter, is the tree removal necessary for the building? Both arborists agreed that the tree must be removed. There is no evidence to counter removing the tree. Moving to the letter submitted by Mr. Rasmussen, the letter stated incorrectly that the arborist did not recommend that the tree is not necessary.

Commissioner Bates asked for clarification on Mr. Butler's email regarding the height of the retaining wall and the validity of the permit.

Will Rasmussen
111 SW 5th Ave

Portland, OR

Mr. Rasmussen discussed his interpretation of the tree code and Mr. Alterman's

Jamie Lerma
PO BOX 825
Cannon Beach, OR 97110

The building permit was issued March 23, 2023. With regard to the north retaining wall, it is set by the site conditions, once it was on site the retaining wall needed to be higher in order to be effective. The building official approved it as well as stamped the revision. With regard to the southern retaining wall, the plans have yet to be submitted because we are not aware of what the planning commission. The face of the tree has a 16 inch. the foundation forms and excavation area to install the forms for the foundation. It is impossible to build the foundation with that tree in place.

Commissioner Bates wants to know why the plans cannot be redesigned to accommodate the tree.

Commissioner Farrow asked if the architect could have designed a different house to save the tree. He doesn't understand why the designer didn't know that the tree needed to be removed.

Lerma expressed that the tree needs to be removed for the building to be completed.

Lerma went through the geotechnical report. Bates wanted to know if the geotechnical engineers approved the retaining wall which will actually work as the foundation wall of the home. Mr. Lerma explained that it will be a different set of engineers and approved by the building inspector.

Commissioner Ostrander requested clarification on the retaining wall and building permit process.

Commissioner Farrow asked City Planner St. Clair regarding the appeal process of a building permit.

Jake Munsey
24118 8th Ave
Cambas WA

Mr. Munsey spoke to reasons that he recommended removing the tree vs the retaining wall. Commissioner Bates asked Mr. Munsey about the his report regarding the slope of the property and how he addressed the top of the slope and not the bottom of the slope. Did anyone take any of the neighbors into consideration. Mr. Munsey explained that the root cohesion are not contributing to the slope stability on the down hill side.

Holy shit Mike Bates

Jamie Lerma

Mr. Lerma spoke to the slope of the hillside spoke to the geotechnical report.

Mick Harris
888SW 5th Ave
Portland, OR

Tree removal and how is the ordinance interpreted and structured. At this point all that matters is that there is a necessity to remove the tree as is proven/required to show in the ordinance.

Public hearing closed at 7:04 pm.

Commissioner Farrow can't get over why this tree was not known to have to come down in the beginning, it should have been caught before it got to the city level. Chair Newton questioned the new Community Development Director on how this came about and what could be done to change it. Chair Newton is concerned that the arborist recommendations were taken into consideration.

Commissioner Bates wants to sustain the appeal and reject the permit and have a full engineer for this house. There are citizens who are not comfortable with the building.

Commissioner Ostrander reviewed his understanding of where we are now with where we are at when Bates expressed his concerns regarding an engineering report. The argument was changed from the tree removal permit to an engineering report for the entire hill.

Sinclair spoke to the tree removal permit, the building permit requires that the tree be removed. He is not convinced that he has the purview to deny the tree removal permit. Based on the municipal code the decision that they are faced with making.

Newton wants to address this holistically.

Farrow wants to know if we are just delaying the inevitable.

Bates agrees, but believes that we need more information for the bottom neighbor.

Bill spoke regarding the appeal. You vote to grant appeal and overturn the tree permit or viseversa. Conditions are not an option.

Farrow moved to accept the appeal to not remove the tree

Matusick moves to sustain the appeal based on Alterman's argument

Bates used 17.70.020 construction under purpose of the code as used for construction.

Bates moved to sustain the appeal based on the second of Alterman's letter Farrow seconded the motion. 17.70.020 (d).

Voted 4:2.

WORK SESSION ITEMS

(6) None

INFORMATIONAL ITEMS

(8) Tree Report

St. Clair went over the May/June tree numbers utilizing the Public Notice Page of the City's website.

Three or four branches next to a tree at the Rowley residence. Farrow asked St. Clair to look at the tree last meeting.

(9) Ongoing Planning Items

(10) Good of The Order

(11) Adjournment

ADJOURNMENT

The meeting adjourned at 8:04 pm.

Emily Bare
Community Development
Administrative Assistant



CANNON BEACH CITY COUNCIL

FINDINGS OF FACT AND CONCLUSIONS OF LAW – APP# 23-06

JAY ORLOFF, OF TOLOVANA ARCHITECTS, ON BEHALF OF OWNER PAUL WHITE, APPEAL OF A DESIGN REVIEW BOARD DECISION TO DENY CONSTRUCTION AN ACCESSORY DWELLING UNIT (ADU) IN CONJUNCTION WITH A NEW SINGLE-FAMILY DWELLING ON E. TANANA AVENUE (TAXLOT00600, MAP51032BC).

Agenda Date: November 7, 2023

Prepared by: Steve Sokolowski,
Community Development Director

SUMMARY & BACKGROUND

In DRB 23-08 Tolovana Architects, on behalf of owner Paul White, requested approval for the construction of an accessory dwelling unit (ADU) in conjunction with a new single-family dwelling on an undeveloped parcel, Taxlot 600, on E. Tanana Ave. The applicant is proposing to construct an ADU on the second floor of a detached garage located behind the single-family dwelling. This proposal is brought before the Design Review Board as accessory dwelling units that require exterior modifications to an existing dwelling are subject to review [CMBC 17.54.080(C)].

The City of Cannon Beach Design Review Board (DRB) rendered a decision to deny the construction of the accessory dwelling unit (ADU) in conjunction with a new single-family dwelling on E. Tanana Avenue (TAXLOT00600, MAP51032BC), DRB 23-08, at its August 17, 2023, regularly scheduled Design Review Board meeting.

Jay Orloff of Tolovana Architects, on the behalf of owner Paul White, requested a review of the decision, in an application received September 1, 2023, within the 14-day appeal period, from the date the final order was signed for DRB #23-08 on August 22, 2023.

The City Council held a Scope of Review meeting as a non-public hearing item on September 12, 2023, and determined that the appeal will be heard on the record of the decision made by the Design Review Board, according to Section 17.88.160 of the Cannon Beach Municipal Code, according to Section 17.88.160 of the Cannon Beach Municipal Code.

The City Council rendered a decision to approve, with conditions, the construction of the accessory dwelling unit (ADU) in conjunction with a new single-family dwelling on E. Tanana Avenue (TAXLOT00600, MAP51032BC), APP#23-06, at its October 3, 2023, regularly scheduled City Council meeting.

APPLICABLE CRITERIA

Approval criteria are in the Design Review Standards (17.44) sections of the Municipal Code: These are excerpted below.

17.44.080 Site Design Evaluation Criteria

The City Council finds that the site plan does meet the applicable evaluation criteria, specifically items A, B, C, F which state:

- A. The arrangement of all functions, uses, and improvements has been designed so as to reflect and harmonize with the natural characteristics and limitations of the site and adjacent sites.*
- B. In terms of setback from the street or sidewalk, the design creates a visually interesting and compatible relationship between the proposed structures and/or adjacent structures.*
- C. The design incorporates existing features such as streams, rocks, slopes, vegetation (i.e., making use of a small stream rather than placing it in a culvert).*
- F. The arrangement of improvements on the site do not unreasonably degrade the scenic values of the surrounding area.*

Findings:

The location and design of the proposed house and garage/ADU are proposed to be located on the most buildable portions of the lot because there is a significant slope along the southeast corner of the property. The Council is concerned about the removal of several trees on the property but understands the slope does dictate the available footprint for the house, garage/ADU. The improvements proposed are similar to other homes/properties in this residential neighborhood but the construction of the new house and garage/ADU will impact some of the existing scenic value of the surrounding area. The Council raised concerns about the function of the on-site and off-street parking, but the applicant is meeting the parking requirements. In addition, the Council is concerned about the number of trees that are proposed to be removed as part of this development and whether it will harmonize with the natural characteristics and limitations of the site, as well as whether the improvements on the site could be rearranged to save one of the trees. Accordingly, as discussed further below, the Council is placing a condition on the approval that requires Council review of the tree removal permit.

17.44.090 Architectural Design Evaluation Criteria

The City Council finds that the architectural plans meet the applicable evaluation criteria, specifically items B, C, D, G, H, O which states:

- B. The size, shape and scale of the structure(s) are architecturally compatible with the site and with the surrounding neighborhood. The structure is sufficiently modest in scale to enhance the village character of the community.*
- C. The proposed materials and colors are compatible with the character and coastal setting of the city.*
- D. The design avoids monotony and provides visual interest and charm by giving sufficient attention to architectural details and to such design elements as texture, pattern and color.*
- G. The height of the structure(s) is architecturally compatible with the site and the surrounding neighborhood. The height of the structures contributes to the village scale.*
- H. The height of the structure(s) is such that it does not unreasonably destroy or degrade the scenic values of the surrounding area.*
- O. The design of the project ensures continued privacy for the occupants of adjacent structures.*

Findings:

The home and garage/ADU proposed are similar to the design, colors, materials, heights, etc. of the other homes/properties in this residential neighborhood but the construction of the new house and garage/ADU will impact some of the existing scenic value of the surrounding area.

There were concerns expressed regarding short term rental of the new home. CBMC 17.54.080 provides regulations regarding accessory dwelling units and restricts their use as a short-term rental. Item J of this section states:

The property owner shall annually submit a notarized sworn statement that the accessory dwelling has been rented for periods of thirty calendar days or more.

The City Council found that the proposed ADU is not available for short term rental use and that it does address some of the affordable housing issues the City of Cannon Beach is trying to address.

17.44.100 Landscape Design Evaluation Criteria

The City Council finds that the landscape plan meets the applicable evaluation criteria, specifically item A, and B which states:

- A. *The design substantially complements the natural environment of Cannon Beach and the character of the site.*
- B. The design harmonizes with and enhances the architectural design.

Findings:

As noted above, the City Council has concerns that the landscape plan as submitted requires the removal of multiple Sitka Spruce trees of varying diameter to accommodate the proposed development. Two (2) existing Hemlock trees would be retained at the southern portion of the property and two (2) new Vine Maples would be planted on the northern portion of the property. Additional understory vegetation would be planted in the front yard area between the house and vine maples. In addition, the Council wanted the applicant to see what can be done to save the existing tree located at the northeast corner of the property adjacent to the driveway access near the street, labelled as tree “S-1” on the site plan attached to this decision. The Council is requiring a condition of approval that the Tree Removal Permit is reviewed by the City Council and not just staff.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Councilor Hayes seconded by Councilor McCarthy, the Cannon Beach City Council unanimously moved to approve with conditions the Paul White application to construct an accessory dwelling unit (ADU) in conjunction with a new single-family dwelling on E. Tanana Avenue (taxlot00600, map51032bc), **APP# 23-06**, as discussed at this public hearing subject to the following condition:

1. Prior to issuance of a building permit, if the applicant seeks to remove the tree labelled S-1 on the attached site plan, the tree removal application shall be reviewed by the City Council to determine whether removal of S-1 would be consistent with the requirements of Chapter 17.44 of the City Code.

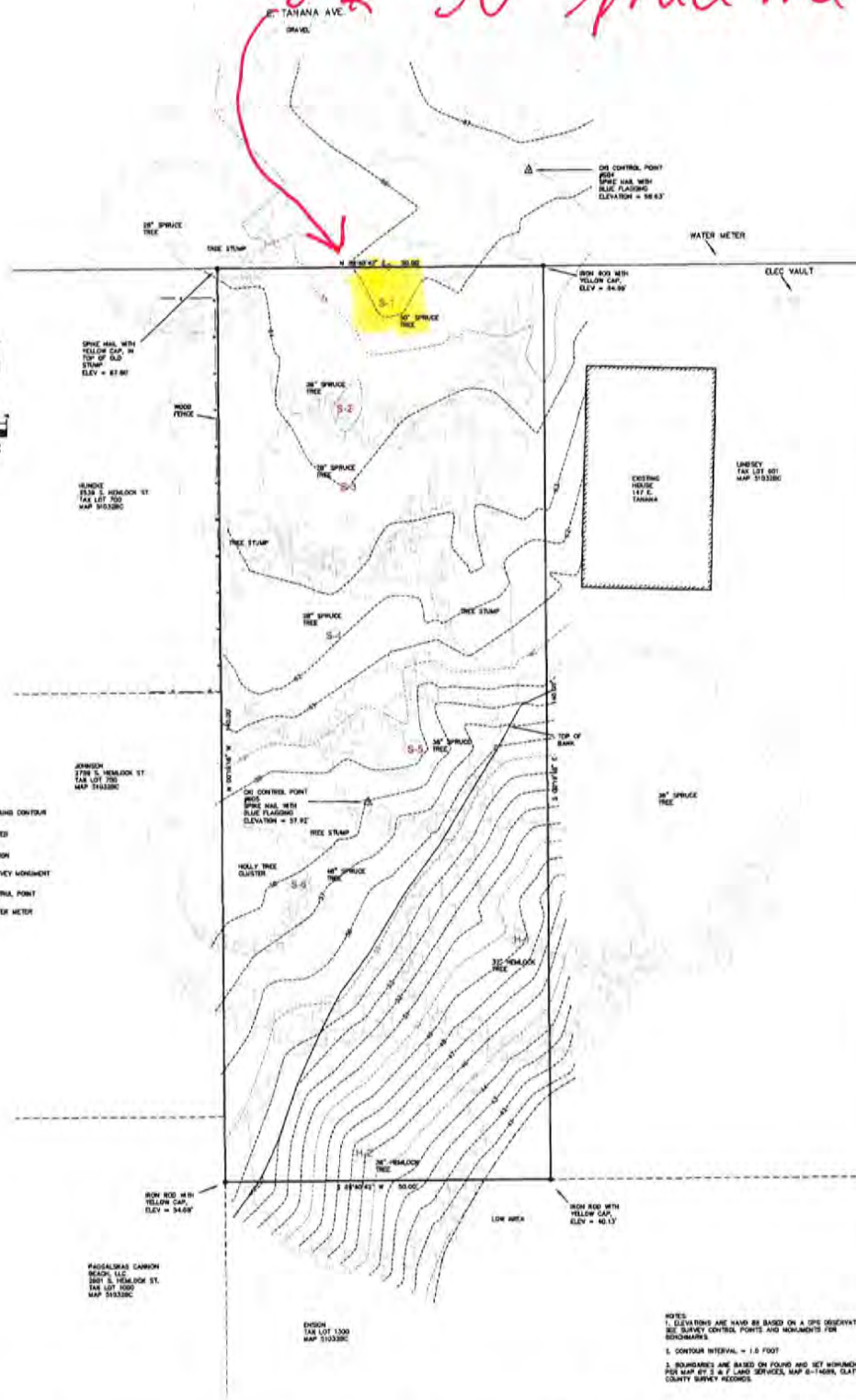
5-2 - 50" Spruce Tree



GRAPHIC SCALE
1 inch = 8 ft.

LEGEND

- 10' --- EXISTING GROUND CONTOUR
- TREE AS NOTED
- SPOT ELEVATION
- △ EXISTING SURVEY MONUMENT
- △ SURVEY CONTROL POINT
- △ EXISTING WATER METER



NOTES:
1. ELEVATIONS HAVE BEEN BASED ON A GPS OBSERVATIONS
2. SURVEY CONTROL POINTS AND MONUMENTS FOR
RECORDING
3. CONTOUR INTERVAL = 1.0 FOOT
4. BOUNDARIES ARE BASED ON FOUND AND SET MONUMENTS
FOR MAP #12 & 13 LAND SERVICES, MAP 8-THEIR, CLATSOP
COUNTY SURVEY RECORDS



PO BOX 3699
CEARHART, OR 97138
PH: 503 738 4320
FAX: 503 738 7854

TOPOGRAPHIC SURVEY
FOR
PAUL WHITE
E. TANANA STREET, CANNON BEACH, OREGON

SCALE	VERT. 1" = 8'	DATE	JANUARY 19, 2023	LOCATION	CANNON BEACH, OR
SECTION	TWP. 33N	RANGE	5N	10W	600
REGISTERED PROFESSIONAL LAND SURVEYOR OREGON JAMES R. JOY 503 738 4320 503 738 7854 RENEWS 12/31/23					
DATE		NO.	REVISION	BY	
DESIGNED		BY			
DRAWN		BY			
CHECKED		BY			



CANNON BEACH CITY COUNCIL

BEFORE THE CITY COUNCIL OF THE CITY OF CANNON BEACH

IN THE MATTER OF AN APPEAL OF A DESIGN REVIEW BOARD DECISION REGARDING CONSTRUCTION AN ACCESSORY DWELLING UNIT (ADU) IN CONJUNCTION WITH A NEW SINGLE-FAMILY DWELLING ON THE FOLLOWING PROPERTY:

Paul White Appeal of a Design Review Board Decision Regarding APP# 23-06 for construction of an accessory dwelling unit (ADU) in conjunction with a new single-family dwelling on E. Tanana Avenue (Taxlot 51032BC00600)

FINDINGS OF FACT, CONCLUSIONS AND ORDER NUMBER – SR#23-05

Applicant: Paul White
P.O. Box 726
Cannon Beach, OR, 97110

Zone: Residential Moderate Density (R1) Zone

The above-named applicant applied to the city for the construction of an accessory dwelling unit (ADU) in conjunction with a new single-family dwelling. The property is referred to as Tax lot # 51032BC00600 which is an undeveloped parcel on E. Tanana Avenue. The property is owned by Paul White

The proposed ADU was reviewed against the criteria of the Municipal Code, Section 17.54.080, Accessory Dwelling and Section 17.44, Design Review Standards.

The public hearing on the above-entitled matters was opened before the Design Review Board (DRB) on August 17, 2023; the Design Review Board closed the public hearing at the August 17, 2023, meeting and concluded that the ADU be denied. The applicant sought review of the Design Review Board's decision by the City Council.

The City Council held a Scope of Review meeting as a non-public hearing item on September 12, 2023, and determined that the appeal will be heard on the record of the decision made by the Design Review Board, according to Section 17.88.160 of the Cannon Beach Municipal Code, according to Section 17.88.160 of the Cannon Beach Municipal Code.

The public hearing on the appeal was opened before the City Council on October 3, 2023; the City Council closed the public hearing at the October 3, 2023, meeting and approved with conditions the construction of the ADU.

THE CITY COUNCIL HEREBY ORDERS that the proposed ADU is APPROVED and adopts the findings of fact, conclusions and conditions contained in Exhibit "A." The effective date of this ORDER is 21 days following the signing of this order, subject to the findings contained in Exhibit "A."

This decision may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by an affected party by filing a notice of intent to appeal a land use decision within 21 days after the date of the decision sought to be reviewed becomes final.

All information submitted to and utilized by the Design Review Board and City Council to make this decision are adopted by reference (including but not limited to applications, plans, documentation, written and oral testimony, exhibits, etc.).

The complete case, including the final order is available for review at the city.

CANNON BEACH CITY COUNCIL

Mayor Barb Knop

Date



CANNON BEACH CITY COUNCIL

STAFF REPORT

SCOPE OF REVIEW DETERMINATION FOR CIDA INC., ON BEHALF OF OWNER CITY OF CANNON BEACH, TO APPEAL A DESIGN REVIEW BOARD DECISION TO DENY THE REDEVELOPMENT OF THE FORMER CANNON BEACH ELEMENTARY SCHOOL BUILDINGS AND NECUS PARK SITE FOR USE AS A TOURISM ORIENTED FACILITY AT 268 BEAVER ST (TAX LOTS 4000, 4100, 4101, 4200, 4301, AND 5700, MAP 51020BC).

Agenda Date: November 7, 2023

Prepared by: Steve Sokolowski,
Community Development Director

BACKGROUND

At their October 19, 2023, meeting, the City of Cannon Beach Design Review Board (DRB) rendered a decision to deny an application by CIDA Inc., on the behalf of owner City of Cannon Beach, to reuse and remodel the former elementary school facility into a tourism-oriented facility at 268 Beaver Street (TAX LOTS 4000, 4100, 4101, 4200, 4301, AND 5700, MAP 51020BC). The property is zoned Institutional (IN).

CIDA Inc., on the behalf of owner City of Cannon Beach, requested a review of the decision in an appeal application received by the City on October 27, 2023, within the 14-day appeal period from the date the final order was signed for DRB #23-09 on October 25, 2023.

The City Council is to hold a Scope of Review meeting to discuss, as a non-public hearing item, the terms under which it wishes to review the matter, according to Section 17.88.160 of the Cannon Beach Municipal Code. The City Council shall use the application and request for review, under the guidance of 17.88.140 and 150, to inform its decision on whether to grant the review on the record or if it deems additional materials are warranted, or the matter requires a de novo hearing, or remand of the matter to the DRB for additional consideration.

The applicant has requested that the matter be reviewed on the record.

List of Attachments

- A. Notice of Appeal of Design Review Board Application, DRB# 23-09, CIDA Inc. on behalf of owner City of Cannon Beach, received and dated October 27, 2023.

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS {...}

17.88.140 Request for review of decision.

B. A decision of the design review board may be appealed to the city council by a party to the hearing by filing an appeal within fourteen consecutive calendar days of the date the final order is signed. The notice of appeal filed with the city shall contain the information outlined in Section 17.88.150

17.88.150 Requirements of a request for appeal of a development permit, design review board or planning commission decision.

An appeal of a development permit, design review board or planning commission decision shall contain the following:

- A. An identification of the decision sought to be reviewed, including the date of the decision;
- B. A statement of the interest of the person seeking the review. For a review of a decision by the design review board or planning commission, a statement that he/she was a party to the initial proceedings;
- C. The specific grounds relied upon for review. For a review of a decision by the design review board or planning commission, a statement that the criteria against which review is being requested was addressed at the design review board or planning commission hearing;
- D. For a review of a decision by the design review board or planning commission, if a de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.88.180.

17.88.160 Scope of review.

- A. An appeal of a permit or development permit shall be heard as a de novo hearing.
- B. In an appeal of a design review board or planning commission decision, the reviewing body may determine, as a nonpublic hearing item, that the scope of review, on appeal will be one of the following:
 - 1. Restricted to the record made on the decision being appealed;
 - 2. Limited to the admission of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter;
 - 3. Remand the matter to the hearing body for additional consideration;
 - 4. A de novo hearing on the merits.

17.88.170 Review on the record.

A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include the following:

1. A factual report prepared by the city manager;
 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review;
 3. The final order and findings of fact adopted in support of the decision being appealed;
 4. The request for an appeal filed by the appellant;
 5. The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.
- B. All parties to the initial hearing shall receive a notice of the proposed review of the record. The notice shall indicate the date, time and place of the review and the issue(s) that are the subject of the review.
- C. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.
- D. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.
- E. The appellant shall bear the burden of proof. (Ord. 89-3 § 1; Ord. 79-4 § 1 (10.083))

17.88.180 Review consisting of additional evidence or de novo review.

- A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:
1. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or
 2. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and
 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
- B. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of Sections 17.88.010 through 17.88.100.
- C. All testimony, evidence, and other material from the record of the previous consideration shall be included in the record of the review.



CITY OF CANNON BEACH

NOTICE OF APPEAL OF DESIGN REVIEW BOARD DECISION

Appellant's Name: CIDA (Attn: Dustin Johnson)
Email Address: dustinj@cidainc.com
Mailing Address: 15895 SW 72nd Ave, #200
Portland, OR 97224
Telephone: 503.226.1285

1. Appeal of Design Review Board decision of DRB 23-09, regarding: CRB Rejuvenation denial for Site, Landscape and Architecture.
2. Interest/Involvement in initial proceedings: CIDA is the architect for the project and was at both DRB hearings presenting the project in person.
3. Specific grounds relied upon for review and criteria addressed at Design Review Board hearing against which review is being requested:
Please see attached comments against DRB hearing grounds.
4. Type of Review/Appeal Requested:
☒ On the Record _____
☐ Hearing on Specific Issue or Issues _____
☐ De Novo Hearing _____

If you are requesting a hearing on a specific issue or issues, or a de novo hearing, please state the reason(s) for requesting such a hearing (refer to page one of General Information Sheet and note a specific reason from Section 17.88.180 of the Municipal Code):

Please attach additional pages, if needed, and any other relevant information.

FEE: \$1,000

Appellant Signature: _____ Date: 10/27/2023

For Staff Use Only:

Date Appeal Received: _____ By: _____

Appeal Fee Paid On: _____ Receipt No.: _____

(Last revised March 2021)

APPEALING A DESIGN REVIEW BOARD DECISION GENERAL INFORMATION

Decisions of the Design Review Board may be appealed to the City Council. The appeal must be submitted on the form provided by the City. The appeal must be received by the City within fourteen consecutive calendar days of the date that the Design Review Board order was signed.

In order to file an appeal, a person must have:

1. Participated in the Design Review Board hearing, either through oral testimony or by correspondence.
2. Raised the issues on which the appeal is based at the Design Review Board hearing.

An appeal must contain the following information:

1. The Design Review Board decision that is being appealed. [See Item 1 above](#)
 2. A statement that the person making the appeal participated in the Design Review Board hearing. [See Item 2 above](#)
 3. The basis for the appeal, citing which criteria of the Design Review Board findings of fact were in error.
 4. A statement that the criteria on which the appeal is based were addressed at the Design Review hearing.
- [See attached Memo dated 10.27.23 addressing Items 3 & 4](#)

There are three types of appeals to the City Council:

1. On the Record Established by the Design Review Board. In this type of an appeal the City Council reviews the findings of fact adopted by the City Council, as well as the information on which those findings are based. The City Council does not hold a new public hearing. The person making the appeal, as well as others who participated in the Design Review Board hearing, may summarize the arguments they made before the Design Review Board. However, no new evidence may be presented to the City Council.
2. De Novo Hearing. In this type of an appeal the City Council holds a new public hearing. In addition to the testimony received at the public hearing, the City Council also considers the record of the Design Review Board hearing.
3. A New Hearing on Specific Issues. This type of an appeal is similar to a de novo hearing, except that new evidence is considered only on a specific issue or issues. The remainder of the appeal is based on the findings of fact established by the Design Review Board.

Generally, the City Council hears appeals based on the record established by the Design Review Board. In addition to the general information required for an appeal, a request for a de novo appeal, or a new hearing on specific issues appeal must demonstrate that one of the following apply:

1. There is a valid reason why the additional evidence could not be presented at the Design Review Board hearing;
or
2. A new hearing is required to properly evaluate a significant issue relevant to the proposal.

The City Council will determine, as a non-public hearing item, whether or not to accept a request for a de novo hearing, or a new hearing on a specific issue. If the City Council does not grant the request, the appeal will be heard on the record established by the Design Review Board.

The fee for an appeal of a Design Review Board decision is \$200.00 for an on the record appeal or \$400.00 for a de novo appeal.



15895 SW 72ND AVE
SUITE 200
PORTLAND, OR 97224
PHONE: 503.226.1285
FAX: 503.226.1670
INFO@CIDAINC.COM
WWW.CIDAINC.COM

Project Memorandum

Project No: 220039.01

Date: 10.27.23

Project Name: CBE Rejuvenation

Subject: DRB Appeal (DRB 23-09)

By: CIDA Inc.

To: City Council

ITEM 3 – BASIS FOR APPEAL

17.44.080 Site Design Evaluation Criteria

The Design Review Board finds that the site plan does not meet the applicable evaluation criteria, specifically items A, B and H which state:

- A. The arrangement of all functions, uses, and improvements has been designed so as to reflect and harmonize with the natural characteristics and limitations of the site and adjacent sites.*

DRB Comment: It was necessary to have the Planning Commission and City Council alter established rules:

- Reducing setback requirements by 40%.
- Vacating established streets.
- Reducing off-street parking by more than 77%.
- All to "... bring the proposed project closer to compliance with the code..."

Applicant's Response: These decisions were made through the appropriate public processes by the City Council and Planning Commission in order to create a project that many feel is important to the community. Actually, the old school site was never in compliance with building heights, density or setbacks at any time in its' history. The dilemma the city council was faced with was that designing a project to comply with all aspects of the code would make the project unfeasible. Ultimately some hard decisions had to be made by the City Council to make the project possible.

- B. In terms of setback from the street or sidewalk, the design creates a visually interesting and compatible relationship between the proposed structures and/or adjacent structures.*

DRB Comment: Setbacks and street widths were reduced 40% bringing portions of the project and traffic extremely close to existing structures.

Applicant's Response: This was done through a public hearing process attended by many residents at a Planning Commission meeting. Paved traffic lanes are not proposed to be reduced and setbacks have been increased compared to existing conditions given the adjusted right-of-way.

- H. Where appropriate, the design includes a parking and circulation system that encourages a pedestrian rather than vehicular orientation, including a separate service area for delivery of goods.*

ARCHITECTURE
ENGINEERING
PLANNING
INTERIORS



15895 SW 72ND AVE
SUITE 200
PORTLAND, OR 97224
PHONE: 503.226.1285
FAX: 503.226.1670
INFO@CIDAINC.COM
WWW.CIDAINC.COM

ARCHITECTURE
ENGINEERING
PLANNING
INTERIORS

DRB Comment: Parking is considerably less than would be required of a private developer.

Applicant's Response: We understand the comment about there being less parking than might be required for a private developer, but this design serves to encourage pedestrian rather than vehicular circulation as the criterion contemplates. There is a turnout at the entrance to facilitate deliveries and drop-offs.

17.44.090 Architectural Design Evaluation Criteria

The Design Review Board finds that the architectural plans do not meet the applicable evaluation criteria, specifically items D, E, F, G, and H which state:

- D. The design avoids monotony and provides visual interest and charm by giving sufficient attention to architectural details and to such design elements as texture, pattern and color.*

DRB Comment: The new style roof of the half-round structure would provide monotony and lack charm.

Applicant's Response: We intend to use a standing seam roof to make the roof more aesthetically discrete than using lower cost but less aesthetically pleasing asphalt shingles. The white roof is an existing condition that has been in place for several years. The white roof is a standard construction material that performs well in a marine climate, is energy efficient and is considered "green" technology. The roof material is an existing condition on an existing building and is not part of the project scope.

Additionally, it was clarified during the hearing that the Project Team is aiming to preserve a large cedar tree on the East side of the gym which, if able to be kept, will help to avoid visual monotony of the existing barrel vault shape from the Fir Street frontage.

- E. If the project includes a large structure or structures, such as a large motel or condominium, the design avoids a monolithic expanse of frontages and rooflines and diminishes the massing of the buildings by breaking up building sections, or by the use of such elements as variable planes, projections, bays, dormers, setbacks, or changes in the roofline.*

DRB Comment: The highly modified version of the existing half-round gym building fails this criteria.

Applicant's Response: Modifications to the large Gym Building are proposed that help address this code criteria, including new canopies, architectural articulation of the north and south end walls which are currently featureless, a new prominent feature wall for community art display, a perimeter wainscoat wall to visually scale down the Gym's mass, and significant improvements to landscaping along main frontages.

In response to DRB's suggestion that new dormers on the barrel vault roof would help address this criteria, the project team pointed out that some of the schematic design iterations did include clerestory dormers, however after



15895 SW 72ND AVE
SUITE 200
PORTLAND, OR 97224
PHONE: 503.226.1285
FAX: 503.226.1670
INFO@CIDAINC.COM
WWW.CIDAINC.COM

thorough analysis of the existing structural systems the project's structural engineer who is uniquely qualified to evaluate and determine the most appropriate engineering solutions recommended against it.

It was also noted that the scope of this project is to adaptively reuse an existing gym structure that is recognizable for its Quonset-style roof.

- F. If the project is unusually large, or if it is likely to become a village landmark, or if it is located so as to become part of an introduction/transition to the city or to a particular district or to the beach, the design acknowledges the special impact the project would have on the entire community by addressing the design criteria in an exemplary, standard-setting fashion.

DRB Comment: The highly modified version of the existing half-round gym building fails this criteria.

Applicant's Response: The gym is historically significant to the community and project and is already a landmark. The choice was to do what can be done to improve the existing conditions or remove it from the project. The decision was to make it usable again.

The current design has been presented to the public throughout several public meetings and has received significant public support.

- G. *The height of the structure(s) is architecturally compatible with the site and the surrounding neighborhood. The height of the structures contributes to the village scale.*

DRB Comment: The highly modified version of the existing half-round gym building fails this criteria and exceeds allowable heights according to code.

Applicant's Response: The gym has existed at this height for over 50 years. It is historically significant to the community and project. The decision was made to do what can be done to improve the existing condition and have it contribute to the significance of the school and project in its reuse.

- H. *The height of the structure(s) is such that it does not unreasonably destroy or degrade the scenic values of the surrounding area.*

DRB Comment: The highly modified version of the existing half-round gym building fails this criteria.

Applicant's Response: The gym is historically significant to the community and project. The choice for City Council was to do what can be done to improve the existing condition or remove it from the project. At this point City Council has directed that it remains part of the project.

17.44.100 Landscape Design Evaluation Criteria

The Design Review Board finds that the landscape plan does not meet the applicable evaluation criteria, specifically item A, C, D, and H which state:

- A. *The design substantially complements the natural environment of Cannon Beach and the character of the site.*



15895 SW 72ND AVE
SUITE 200
PORTLAND, OR 97224
PHONE: 503.226.1285
FAX: 503.226.1670
INFO@CIDAINC.COM
WWW.CIDAINC.COM

ARCHITECTURE
ENGINEERING
PLANNING
INTERIORS

DRB Comment: The site most likely has been open historically. If it actually was the very site of the local tribal village, it likely was open to the creek. Many activities would have been pursued there. This could have included harvesting and processing fish runs, storing and launching dugouts, gathering with the tribe and greeting arriving visitors. The site has already been compromised by the addition of fill material and should not be compromised further.

The Welcome Woman concept is not approvable at this time because no image of it was made available. As presented, it appears overly large and domineering over the site. While the tribal representatives present did not complain, the suggested totem-like design is known to be contrary to the local village that we claim to honor.

Applicant's Response: The existing configuration of the creek bank is the result of a fill operation undertaken to create a playground for the school. It is no longer possible to create a historical replica of the site, nor does the criteria require returning a site to its original condition. Areas allowing authentic access to the creek are included in the design.

The Design Team emphasized to the DRB that the Welcome Woman will be similar in design and aesthetic to the existing welcome figure located at the west side of the site and that when designed it would be submitted to DRB for review. It was also expressed that the welcome figure indicated in the submittal was for context only and not the proposed shape or aesthetic of what will be proposed. It is expected that a tribal artist will be procured for the design of the new welcome figure.

- C. The landscape design acknowledges the growing conditions for this climatic zone and the unique requirements that its specific site location makes upon plant selection (i.e., salt, wind and wind exposure, soil condition, light, shade, etc.).

DRB Comment: While the number of plant species has been significantly reduced in the revised version of the landscape plan, the layout remains complex and unlikely to follow local tribal history and custom. Trails run randomly through the landscape rather than looping around the entire site in a coherent single nature trail.

Applicant's Response: The garden aspect of the project has been redesigned/simplified in order to address initial comments from the DRB. These changes were made to allow for more direct access to the open turf area (NeCus' Park) and to preserve view corridors from the Fir Street bridge and associated frontage. Reduction in and modification to landscape variety was made to address the DRB's concerns regarding ease of maintenance and potential for elk-induced damage to the plants.

The proposed garden has been designed in close collaboration with the tribe and is comprised of native plant species that are specifically elk-resistant and of interpretive value for the project. The trail takes the shape of the Thunderbird, which is culturally significant to the Tribe and integral to the interpretive experience of the garden.

- D. *Provision has been made for the survival and continuous maintenance of the landscape and its vegetation.*



15895 SW 72ND AVE
SUITE 200
PORTLAND, OR 97224
PHONE: 503.226.1285
FAX: 503.226.1670
INFO@CIDAINC.COM
WWW.CIDAINC.COM

DRB Comment: This will add greatly to the workload of Public Works if many of these plants are to survive. Native to the region does not mean that all plants will survive direct exposure to salt spray. Appears an arborist or at least an expert gardener and assistants will be required much of the time.

Applicant's Response: The majority of the plants are of a variety that elk do not favor. This is not to say that they won't eat it if there is no other food available. Grass and clover are incorporated in abundance to try to keep the elk away from the garden. A temporary fence to allow the plants to get established is being contemplated.

- H. The hard surface portion of the design makes use of visually interesting textures and patterns.

DRB Comment: Consultations with those experienced in Northwest tribal museums provides guidance that the Thunderbird image is never to be found laying upon the ground, which would signify death. Project tribal representatives appeared unaware of this.

Applicant's Response: This is an unverified comment as no source was given in order for the project team to vet its authenticity. However, Tribal Elder Dick Basch directly addressed the DRB during the 10/19 hearing continuance and affirmed that there are no known negative connotations of the Thunderbird image being on the ground and used as a path in an educational setting. The Tribe has expressed wanting to reach out/ talk to anyone who has expressed otherwise.

ITEM 4 – APPLICANT'S STATEMENT

The criteria noted in the Design Review Board Findings of Fact and Conclusions of Law were submitted in writing by the DRB members to the City and design team and addressed in a memo by City Manager Bruce St. Denis which was submitted with revised drawings to the DRB prior to the 10/19 continuance. These written responses were discussed during the hearing continuance on 10/19/23.

End of memorandum.

ARCHITECTURE
ENGINEERING
PLANNING
INTERIORS



CANNON BEACH CITY COUNCIL

STAFF REPORT

INTERGOVERNMENTAL PARTNERSHIP AGREEMENT (IGA) - EPERMIT SYSTEM AND SERVICES

Agenda Date: November 7, 2023

Prepared by: Steve Sokolowski
Community Development Director

BACKGROUND

Oregon Revised Statute ORS 455.095 provides that the Department of Consumer and Business Services (DCBS) shall develop and implement a system that provides electronic access to building permitting information. The statute also requires DCBS to make the system accessible for use by municipalities in carrying out the building inspection programs administered and enforced by the municipalities.

The purpose of this Agreement is to encourage economic development through construction and to experiment and innovate for administration of building inspection programs. It is in the best interest of the State Building Codes Division (BCD) and City of Cannon Beach leaders to ensure that construction-related development activities proceed in a manner that is quick, efficient, and practical. Having a flexible and responsive system requires sufficient staff and resources to be available to construction businesses. By partnering, BCD and Cannon Beach can explore new ways to maximize the use of scarce resources. This Agreement supersedes and amends and replaces in its entirety any pre-existing intergovernmental partnership agreement for the ePermit System and Services between Cannon Beach and BCD.

The City of Cannon Beach currently has an Intergovernmental Partnership Agreement (IGA) with the State of Oregon (DCBS and BCD) covering usage of the ePermitting system. However, this agreement replaces and supersedes the previous agreement. Over the years there have been slight modifications of the ePermitting IGA's and this replacement IGA makes sure that all of the IGA's are the same, and updates and improves upon terminology used in the previous agreements. In other words, it is largely a "housekeeping" agreement to modernize the terms used.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

A. Intergovernmental Partnership Agreement - ePermit System and Services

INTERGOVERNMENTAL PARTNERSHIP AGREEMENT

ePermit System and Services

THIS INTERGOVERNMENTAL PARTNERSHIP AGREEMENT ("Agreement") is effective when all required signatures have been obtained by and between The State of Oregon, acting by and through the Department of Consumer and Business Services (DCBS), Building Codes Division ("BCD") and the City of Cannon Beach ("Jurisdiction"), a political subdivision of the State of Oregon. BCD and the Jurisdiction may collectively be referred to herein as the Parties and individually as a Party. The Parties enter into this Agreement to cooperate and share services pursuant to the authority granted under ORS 455.185. The purpose of this Agreement is to encourage economic development through construction and to experiment and innovate for administration of building inspection programs. It is in the best interest of BCD and Jurisdiction's leaders to ensure that construction-related development activities proceed in a manner that is quick, efficient, and practical. Having a flexible and responsive system requires sufficient staff and resources to be available to construction businesses. By partnering, BCD and Jurisdiction can explore new ways to maximize the use of scarce resources. This Agreement supersedes and amends and replaces in its entirety any pre-existing intergovernmental partnership agreement for the ePermit System and Services between Jurisdiction and BCD.

DCBS:

Celina Patterson
e-Permitting Manager
1535 Edgewater Street NW
PO Box 14470
Salem, OR 97309
(503) 373-0855

Jurisdiction:

Alton Butler
Building Official
163 E Gower
PO Box 368
Cannon Beach, OR 97110
(503) 436-8046
butler@ci.cannon-beach.or.us

RECITALS

- A. Oregon Revised Statute ORS 455.095 provides that DCBS shall develop and implement a system that provides electronic access to building permitting information. The statute also requires DCBS to make the system accessible for use by municipalities in carrying out the building inspection programs administered and enforced by the municipalities.

- B. The Department of Administrative Services Procurement Office, on behalf of DCBS, issued a Request for Proposal (RFP) for a statewide electronic permit system and associated products and services. Accela, Inc. was the successful proposer. DCBS and Accela Inc. executed a contract in August, 2008 ("ePermit contract"), by which Accela, Inc. licensed to DCBS ePermitting system software, an Integrated Voice Recognition (IVR) system and provided related configuration, implementation and hosting services (collectively the "ePermit System").
- C. The ePermit contract provided that the ePermit System and related Services would be available to municipalities ("Participating Jurisdictions").
- D. BCD is the division of DCBS that implements and administers the ePermitting system.
- E. Jurisdiction has requested that BCD provide access to the ePermitting System and related Services to Jurisdiction and to implement the Jurisdiction as a Participating Jurisdiction as set forth in the ePermitting contract.
- F. BCD is willing, upon the terms of and conditions of this Agreement, to provide access to Jurisdiction to the ePermitting System and related Services and to implement Jurisdiction as provided herein.

1. DEFINITIONS.

- 1.1. As used in this Agreement, the following words and phrases shall have the indicated meanings.
- 1.2. "Agreement" means this Regional Partnership Agreement.
- 1.3. "ePermitting Contract" has the meaning set forth in Recital B and includes all amendments.
- 1.4. "ePermit System" means the entire system including the ePermitting software, licensed, implemented and configured pursuant to the ePermit contract and related Services including hosting, mobile applications and IVR.
- 1.5. "Jurisdiction" has the meaning set forth in the first paragraph of this Agreement.

2. TERM, RENEWAL AND MODIFICATIONS.

- 2.1. Term. This Agreement is effective, and will be considered fully executed, upon signature by both parties, and shall remain in effect until termination of this Agreement as provided herein. Unless otherwise terminated as provided herein, this Agreement will be in effect for the period that Jurisdiction administers and enforces a building inspection program. This Agreement will automatically renew if or when the Jurisdiction's program assumption is renewed for an additional period.
- 2.2. Agreement Modifications. Notwithstanding the foregoing, or any other provision of

the Agreement, BCD may propose a modified Agreement or new intergovernmental agreement for Jurisdiction access to the ePermit System. BCD will propose such modified Agreement or new intergovernmental agreement with at least 60 days written notice prior to expiration of the Jurisdiction's current program assumption period. The new intergovernmental agreement or modified Agreement will be effective on the effective date of the renewal of Jurisdiction's program assumption. If the parties cannot agree to the new intergovernmental agreement or modified Agreement, this Agreement will terminate effective on the renewal date of Jurisdiction's program assumption. Additionally, during the term of this Agreement, BCD may propose modifications to this Agreement; such modifications will become effective upon mutual agreement by the parties in accordance with section 19 of this Agreement.

3. PERFORMANCE AND DELIVERY.

3.1 Responsibilities of BCD.

- 3.1.1. BCD shall use its best efforts to provide Jurisdiction access to the ePermit System and related Services. BCD shall use best efforts to provide the Jurisdiction with satisfactory access on a parity with all other jurisdictions implemented by BCD to the ePermit System.
- 3.1.2. BCD will implement the Jurisdiction's access using the process according to the ePermitting Implementation Methodology set forth in Exhibit E. If a Work Order Contract is used to implement a specific city or county, a copy of that Work Order Contract will be provided in Exhibit D.
- 3.1.3. Upon implementation, Jurisdiction will have access to the System and the functionality, as described in Exhibit E.
- 3.1.4. BCD will provide technical support for the ePermit program. Support is available 8:00 a.m. to 5:00 p.m. Monday through Friday, except for state-observed holidays and from 8:30-10:00 am on Mondays when ePermitting staff holds its weekly staff meeting. The general support structure shall be as follows:
 - 3.1.4.1. State ePermitting team provides technical support to participating city or county.
 - 3.1.4.2. Accela provides technical support to State ePermitting team.

In the event that the State team is unable to communicate a solution to the participating city or county, the State team will facilitate communication between Accela and participant.
- 3.1.5 BCD will provide software that fulfills the Jurisdiction's basic requirement for accepting and reviewing electronic plans.

3.2. Responsibilities of Jurisdiction.

3.2.1. Jurisdiction agrees to the requirements of Exhibit A.

3.2.2. Jurisdiction agrees to abide by the terms and conditions of the Software License set forth in Exhibit B.

3.2.3. Jurisdiction agrees to abide by the implementation model that is identified in Exhibit E.

4. COMPENSATION AND PAYMENT

4.1 Not-to-Exceed Compensation. The maximum, not-to-exceed compensation payable by Jurisdiction to BCD under this contract, which includes any allowable expenses, is \$50,000.00.

4.2 Invoicing. BCD may invoice Jurisdiction for services rendered under Exhibit E. BCD will submit all invoices to Jurisdiction upon completion of the services. Invoices must be paid within 30 days of receipt.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Representations of Jurisdiction. Jurisdiction represents and warrants to BCD as follows:

5.1.1. Organization and Authority. Jurisdiction is a political subdivision of the State of Oregon (or an intergovernmental entity formed by political subdivisions of the State of Oregon under ORS Chapter 190) duly organized and validly existing under the laws of the State of Oregon. Jurisdiction has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder. Jurisdiction has assumed and administers a building inspection program under ORS 455.148 to ORS 455.153.

5.1.2. Due Authorization. The making and performance by Jurisdiction of this Agreement (1) have been duly authorized by all necessary action of Jurisdiction and (2) do not and will not violate any provision of any applicable law, rule, and regulation.

5.1.3. Binding Obligation. This Agreement has been duly executed and delivered by Jurisdiction and constitutes a legal, valid and binding obligation of Jurisdiction, enforceable according to its terms.

5.1.4. Jurisdiction has reviewed the ePermit Contract and ePermit System and is knowledgeable of the ePermit system functionality and performance and has entered into this Agreement based on its evaluation of the ePermit Contract and the ePermit System

5.2. Representations and Warranties of BCD. BCD represents and warrants to Jurisdiction as follows:

5.2.1. Organization and Authority. BCD is a division of DCBS, an agency of the state

government and BCD has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

5.2.2. Due Authorization. The making and performance by BCD of this Agreement (1) have been duly authorized by all necessary action of BCD and DCBS and (2) do not and will not violate any provision of any applicable law, rule, and regulation.

5.2.3. Binding Obligation. This Agreement has been duly executed and delivered by BCD and constitutes a legal, valid and binding obligation of BCD and DCBS; it is enforceable according to its terms.

5.2.4. Performance Warranty. BCD will use its best efforts to provide Jurisdiction access to the ePermit System according to the ePermit contract. Notwithstanding the foregoing, Jurisdiction understands and agrees that the ePermit System is composed of software and services provided by third parties and BCD has no responsibility to Jurisdiction for the functionality or performance of the ePermit System.

5.3. The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

6. ACCESS TO RECORDS AND FACILITIES.

6.1. Records Access. DCBS, BCD, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives may access the books, documents, papers and records of the Jurisdiction that are directly related to this Agreement, for the purpose of making audits, examinations, excerpts, copies and transcriptions.

6.2. Retention of Records. Jurisdiction shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of this Agreement.

6.3. Public Records. Jurisdiction is deemed the Custodian for the purposes of public records requests regarding requests related to Jurisdiction's building inspection program.

7. JURISDICTION DEFAULT.

Jurisdiction shall be in default under this Agreement upon the occurrence of any of the following events:

7.1. Jurisdiction fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.

7.2. Any representation, warranty or statement made by Jurisdiction herein is untrue in

any material respect when made.

8. BCD DEFAULT.

BCD shall be in default under this Agreement upon the occurrence of any of the following events:

- 8.1. BCD fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- 8.2. Any representation, warranty or statement made by BCD herein is untrue in any material respect when made.

9. TERMINATION BY JURISDICTION.

Jurisdiction may terminate this Agreement in its entirety as follows:

- 9.1. For its convenience, upon at least six calendar months advance written notice to BCD, with the termination effective as of the first day of the month following the notice period;
- 9.2. Upon 30 days advance written notice to BCD, if BCD is in default under this Agreement and such default remains uncured at the end of said 30-day period or such longer period, if any, as Jurisdiction may specify in the notice; or
- 9.3. Immediately upon written notice to BCD, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that Jurisdiction no longer has the authority to meet its obligations under this Agreement.

10. TERMINATION BY BCD.

BCD may terminate this Agreement as follows:

- 10.1. For its convenience, upon at least twenty-four calendar months advance written notice to Jurisdiction, with the termination effective as of the first day of the month following the notice period.
- 10.2. Upon termination of the ePermit Contract with such reasonable notice to Jurisdiction as feasible under the terms of the ePermit Contract.
- 10.3. Immediately upon written notice to Jurisdiction if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DCBS no longer has the authority to meet its obligations under this Agreement.
- 10.4. Upon 30 days advance written notice to Jurisdiction, if Jurisdiction is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as BCD may specify in the notice.

10.5. Immediately, in the event that Jurisdiction no longer administers and enforces a building inspection program.

11. EFFECT OF TERMINATION.

11.1. No Further Obligation. Upon termination of this Agreement in its entirety, BCD shall have no further obligation to provide access to the ePermit System and related Services to Jurisdiction.

11.2. Survival. Termination or modification of this Agreement pursuant to sections 8 and 9 above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination, Jurisdiction shall immediately cease all activities under this Agreement, unless expressly directed otherwise by BCD in the notice of termination.

11.3. Minimize Disruptions. If a termination right set forth in section 8 or 9 is exercised, both parties shall make reasonable good faith efforts to minimize unnecessary disruption or other problems associated with the termination.

11.4. Jurisdiction Data. Jurisdiction may obtain a copy of all of its data related to its usage of ePermitting, for usage in a move into a Jurisdiction-administered electronic system, by submitting a written request to BCD as part of Jurisdiction's notice of termination, or within 60 days of termination of this agreement. BCD will request the data from Accela, and Accela will provide the data in the same format as the Accela database.

12. NOTICE.

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Jurisdiction or BCD at the addresses or numbers set forth on page one of this agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against BCD, any notice transmitted by facsimile must be confirmed by telephone notice to BCD's ePermitting Manager. To be effective against Jurisdiction, any notice transmitted by facsimile must be confirmed by telephone notice to Jurisdiction's City Manager. Any communication or notice given by personal delivery shall be effective when actually delivered.

13. SEVERABILITY.

The parties agree that if any term or provision of this Agreement is declared by a

court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. COUNTERPARTS.

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

15. GOVERNING LAW, CONSENT TO JURISDICTION.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between BCD (and/or any other division, agency or department of the State of Oregon) and Jurisdiction that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Jurisdiction, by execution of this agreement, hereby consents to the in personam jurisdiction of said courts.

16. COMPLIANCE WITH LAW.

The parties shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement. All employers, including BCD and Jurisdiction, that employ subject workers who provide Services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

17. ASSIGNMENT OF AGREEMENT, SUCCESSORS IN INTEREST.

The parties agree there will be no assignment or delegation of the Agreement, or of any interest in this Agreement, unless both parties agree in writing. The parties agree that no services required under this Agreement may be performed under subcontract unless both parties agree in writing. The provisions of this Agreement shall be binding upon and shall inure to the parties hereto, and their respective successors and permitted assignees.

18. NO THIRD-PARTY BENEFICIARIES.

BCD and Jurisdiction are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits

enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

19. WAIVER.

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

20. AMENDMENT.

No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required by the Department of Administrative Services and Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Jurisdiction, by signature of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

21. HEADINGS.

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

22. CONSTRUCTION.

This Agreement is the product of extensive negotiations between BCD and representatives of Jurisdiction. The provisions of this Agreement are to be interpreted and their legal effects determined as a whole. An arbitrator or court interpreting this Agreement shall give a reasonable, lawful and effective meaning to the Agreement to the extent possible, consistent with the public interest.

23. INDEPENDENT CONTRACTOR.

The parties agree and acknowledge that their relationship is that of independent contracting parties and that neither party is an officer, employee, or agent of the other as those terms are used in ORS 30.265 or otherwise.

24. LIMITATION OF LIABILITY.

24.1. Jurisdiction agrees that BCD shall not be subject to any claim, action, or liability ARISING IN ANY MANNER WHATSOEVER OUT OF ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF ACCESS OR SERVICE UNDER THIS AGREEMENT. THE STATE SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DIRECT, INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES SUSTAINED BY THE POLITICAL SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, DELAY,

INTERRUPTION OF BUSINESS ACTIVITIES, OR LOST RECEIPTS THAT MAY RESULT IN ANY MANNER WHATSOEVER FROM ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF SERVICE.

24.2. EXCEPT FOR LIABILITY ARISING UNDER SECTION 26 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

25. FORCE MAJEURE.

Neither BCD nor Jurisdiction shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of BCD or Jurisdiction, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

26. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of all under this Agreement.

27. CONTRIBUTION

27.1. If any third party makes any claim or brings any action, suit or proceeding ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

27.2. With respect to a Third Party Claim for which BCD is jointly liable with the Jurisdiction (or would be if joined in the Third Party Claim), BCD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Jurisdiction in such proportion as is appropriate to reflect the relative fault of BCD on the one hand and of the Jurisdiction on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of BCD on the one hand and of the Jurisdiction on the other hand shall be

determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. BCD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if BCD had sole liability in the proceeding.

27.3. With respect to a Third Party Claim for which the Jurisdiction is jointly liable with BCD (or would be if joined in the Third Party Claim), the Jurisdiction shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by BCD in such proportion as is appropriate to reflect the relative fault of the Jurisdiction on the one hand and of BCD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Jurisdiction on the one hand and of BCD on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Jurisdiction's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

28. AGREEMENT DOCUMENTS IN ORDER OF PRECEDENCE.

This Agreement consists of the following documents that are listed in descending order of precedence:

- This Agreement less all exhibits;
- Exhibit A - Jurisdiction Obligations
- Exhibit B - ePermit License Agreement
- Exhibit C - ePermit Contract (not attached, but made available to Jurisdiction)
- Exhibit D-Work Order Contract
- Exhibit E - Implementation Model

All attached and referenced exhibits are hereby incorporated by reference.

29. MERGER CLAUSE. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and

signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of BCD to enforce any provision of this Agreement shall not constitute a waiver by BCD of that or any other provision.

[Signature on following page]

**JURISDICTION, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT
JURISDICTION HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE
BOUND BY ITS TERMS AND CONDITIONS.**

A. Jurisdiction

By:_____ Date:_____

Printed Name:_____

Title:_____

**B. State of Oregon, Acting by and through its Department of Consumer and Business
Services, Building Codes Division**

Reviewed By:_____ Date:_____

Printed Name: Dawn Bass

Title: Deputy Administrator

Executed By: _____ Date:_____

Printed Name: Miriha Aglietti

Title: Designated Procurement Officer

Exhibit A

Jurisdiction Obligations

Jurisdiction Software

As part of the state hosted system, any software being used by Jurisdiction to support either the building permitting system or any supplemental products being purchased from Accela, must be compatible with the Accela product.

Electronic Document Acceptance

Beginning January 1, 2025, Jurisdiction is required by administrative law to accept electronic plans. Agency will provide software that fulfills the basic ability to meet this requirement; however, Jurisdiction may independently source their own software.

If Jurisdiction uses the Agency-provided software, then Jurisdiction will be required to comply with all third-party agreements associated with the software and must notify Agency promptly of any non-compliance. Jurisdiction must also comply with all Agency-provided instructions on the use of the software, including instruction relating to installation and removal of the software. Jurisdiction must remove or destroy any or all copies of the software at Agency's request.

Product Features

Jurisdiction agrees to sell permits online through the ePermitting Portal. Jurisdiction agrees to offer online and IVR inspection scheduling for permits in an appropriate status.

Jurisdiction agrees to offer online submittal of plan documents at appropriate point(s) in the application process as dictated by the Jurisdiction's workflow associated with each record type.

Permit Numbering Scheme.

As a full-service participant, Jurisdiction agrees to include the pre-assigned three digit prefix to all permits covered by and processed through ePermitting system. Permits for any supplemental products purchased through Accela, hosted in the State of Oregon environment and being serviced through the State of Oregon ePortal must also use the three-digit prefix in the permit number. Permits for supplemental products purchased through Accela that will not be hosted or maintained on the Oregon platform and that are not serviced through the State of Oregon ePortal are not required to use the three-digit prefix.

Status and Result Codes.

All status and result codes such as inspections, plan review, permit issuance status will be pursuant to a statewide uniform system. Jurisdiction shall only use the uniform status and result codes.

Inspection Codes.

Inspection types for code required inspections must be consistent throughout the state. Unique inspection types must be requested through and assigned by the ePermitting staff.

Supplemental Products Purchased by Jurisdiction through Accela.

Any supplemental product such as, but not limited to, Land Use, Enforcement, Licensing, or

other services, may be licensed directly to Jurisdiction by Accela. Support services for the supplemental products fall outside of the scope of this Intergovernmental Agreement and are therefore provided through direct agreement with Accela or other service provider. Installation of supplemental products onto the State hosted servers cannot occur before the State ePermitting team begins active development of the building permitting module.

Version (Product) updates.

Migration from one product version of Accela Automation to another product version will be regulated and coordinated through BCD. Supplemental products will be required to migrate to the same version of the product at the same time as the product version for the building product module. After implementation, Jurisdiction is required to test the configuration against new versions of the product in the timeframe specified by BCD.

Exhibit B Software License Agreement

Note: DCBS through the ePermit Contract has the right to permit Jurisdictions to use the ePermit System software as set forth in Exhibit G, License Agreement, of the ePermit Contract. While the entire software license agreement between the State and Accela, Inc., including the added language in Amendment 7, has been provided here for continuity and ease of use, a participating city or county is only bound by Sections 3.1, 3.2, and 4 as specified in this Agreement.

1. Parties ACCELA	CUSTOMER
Accela, Inc.	State of Oregon
2633 Camino Ramon, Suite	Department of Consumer & Business
120 Bishop Ranch 3	Services P.O. Box 14470
San Ramon, California	Salem, OR 97309
94583 Attention: Contracts	Attention: Building Codes
Administration T: 925.659.3200	Division T: (503)378-4100 F:
F: 925.407.2722	(503)378-3989
e-Mail: contractsadrnin@accela.com	e-Mail: chris.s.huntington@state.or.us

This License Agreement ("LA") is intended for the exclusive benefit of the Parties; except as expressly stated herein, nothing will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

2.1 Term Provided that Customer signs and returns this LA to Accela **no later than August 8, 2008**, this LA is effective as of the date of Customers signature ("Effective Date") and will continue until terminated as provided herein.

2.2 Termination Either party may terminate if the other party materially breaches this LA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this LA, all rights granted to Customer are cancelled and revert to Accela.

3 Intellectual Property

3.1 License The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Software and grants to Customer a perpetual, limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:

3.1.1 The Software is provided for use only by Customer employees. For the purposes of subsections 3.1, 3.2 and Sections 4 of this LA, Customer means: i)

the individual Jurisdiction with respect to its use of the Software, provided that the licensing fee has been paid for such Jurisdiction, and ii) the State of Oregon acting by and through its Department of Consumer and Business Services with respect to its use of the Software.

- 3.1.2 The Software may be installed on one or more computers but may not be used by more than the number of users for which the Customer has named user licenses. For the purposes of this License Agreement, the Customer has unlimited use, per department, of any license covered by this agreement. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software. Accela may audit Customers use of the Software to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Software exceeds its licensed allowance, Customer agrees to pay all costs of its overuse as determined using Accela's then-current pricing; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Software.
- 3.1.3 Customer may make backup copies of the Software only to protect against destruction of the Software. With exception of the Entity Relationship Diagram and any other documentation reasonably-designated and specifically-marked by Accela as trade secret information not for distribution, Customer may copy Accela's documentation for use by those persons described in section 3.1.1, supra, provided that such use is for business purposes not inconsistent with the terms and conditions of this Licensing Agreement. "Trade Secret" has the meaning set forth in ORS 192.501(2)
- 3.1.4 Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by Accela.
- 3.1.5 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1.6 Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (**ORS 30.260 through 30.300**), Customer is liable to Accela for any direct damages incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1.7 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and in counties contiguous to Oregon with populations below 100,000. Customer

may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.

- 3.1.8 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Accela and Customer will execute an Intellectual Property Escrow Agreement within 30 days of Contract execution.
- 3.1.9 All rights not expressly granted to Customer are retained by Accela.
- 3.1.10 Customers are allowed unlimited use, per department, of software products listed in Exhibit A, for in-scope record type categories defined in Attachment 1 to this LA. In addition, each customer is allowed five (5) additional record types for activities that fall outside of the in-scope record type categories defined in Attachment 1 to this L.A., are delivered under the Building Department and are submitted to and approved by DCBS.

3.2 License Warranties

- 3.2.1 Accela warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. If a third party claims that the Software does infringe, Accela may, at its sole option, secure for Customer the right to continue using the Software or modify the Software so that it does not infringe. Accela expressly agrees to defend, indemnify, and hold Customer harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Software, or the Customers use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that Customer shall provide Accela with prompt written notice of any infringement claim. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise; provided, however, Accela shall not settle any claim against the Customer with the consent of Customer.
- 3.2.2 Accela has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by Accela, with the exception of those products identified in Exhibit J. Accela provides no warranty whatsoever for any third-party hardware or software products.
- 3.2.3 Except as expressly set forth herein, Accela disclaims any and all express

and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

3.3 Compensation

3.3.1 License Fees In exchange for the Software described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A3.

3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. The payment terms of all invoices are net forty-five (45) calendar days from the dates of the invoices. Any payment not paid to Accela within said period will incur a late payment in an amount equal to two-thirds of one percent (.66%) per month (eight percent (8% per annum), on the outstanding balance from the billing date. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer. All payments to Contractor are subject to ORS 293.462

4. Confidentiality

4.1 Confidentiality and Nondisclosure. Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this LA, be exposed to or acquire information that is confidential to the other party or the other party's clients. Any and all information clearly marked confidential, or identified as confidential in a separate writing as confidential provided by one party or its employees or agents in the performance of this LA shall be deemed to be confidential information of the other party ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (b) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this LA; (c) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this LA; (d) is obtained from a source other than the discloser without the obligation of confidentiality, (e) is disclosed with the written consent of the disclosing party, or; (f) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

4.2 The recipient of Confidential Information agrees to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and not to copy, reproduce,

sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than as contemplated by this LA or reasonably related thereto, including without limitation the use by Customer of Accela who need to access or use the System for any valid business purpose, and to advise each of its employees and Accela of their obligations to keep Confidential Information confidential.

- 4.3 Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this LA and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.
- 4.4 Each party agrees that, except as provided in this LA or directed by the other, it will not at any time during or after the term of this LA disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this LA each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.
- 4.5 Each party acknowledges that breach of this Article VIII, including disclosure of any Confidential Information will give rise to irreparable injury which is inadequately compensable in damages. Accordingly, each party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other and are reasonable in scope and content.
- 4.6 Customers obligations under this Article VIII shall be subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505.

Exhibit C
ePermitting Contract

The ePermitting contract is available, upon request, for the Jurisdiction to review.

Exhibit D

Work Order Contract

Under the terms and conditions of the ePermit System Agreement, DCBS may enter into a Work Order Contract for implementation services. Should implementation services be used for the implementation of a specific participating city or county, the provisions of that agreement will be provided here.

A Work Order Contract is not being used to implement this jurisdiction.

EXHIBIT E
IMPLEMENTATION
OREGON STANDARD MODEL

Third Party Components

The ePermitting system contains multiple components created and licensed by third parties. BCD cannot guarantee the continued support of these components, and may have to make changes to the system based upon changes made by the third party providers. BCD will provide prompt notice to Jurisdiction upon becoming aware of any necessary changes and will work to provide solutions with the least possible disruption of system usage. .

Oregon Standard Model (OSM) includes:

- Standard Model Permits (records):
 - Commercial Agricultural Equine
 - Commercial Alarm Suppression Systems
 - Commercial & Residential Deferred Submittal
 - Commercial & Residential Demolition
 - Commercial & Residential Electrical
 - Commercial & Residential Investigation
 - Commercial & Residential Mechanical
 - Commercial & Residential Phased
 - Commercial & Residential Plumbing
 - Commercial RV Park or Manufactured Home Park
 - Commercial & Residential Structural
 - Commercial & Residential Research
 - Master Electrical Permits
 - Inquiry
 - Post Disaster
 - Residential 1 & 2 Family Dwelling
 - Residential Manufactured Dwelling
- Standard Model Reports include:
 - Application About to Expire (List and Letters to Applicant and Owner)
 - Permit About to Expire ((List and Letters to Applicant and Owner)
 - Usage
 - Configuration Reports
 - Fee by Account (Summary & Detail)
 - Invoice
 - Out of Balance
 - Payments Applied
 - Payments Not Applied

- Refunds Issued
- Payments Received
- Payments Summary
- School Construction Excise Tax
- Inspection Correction Notice
- Inspection Summary
- Inspections Assigned
- Recent Inspection Activity
- Monthly Permit Summary
- Monthly Permits Issued
- Monthly Permits Issued Valuation Report
- State Surcharge
- State Surcharge Details
- Balance Due
- Building Application
- Building Permit
- Certificate of Occupancy
- Fee Estimate
- Fee by Record
- Phased Authorization to Begin Work
- Plan Review Checklist
- Temporary Certificate of Occupancy
- Work Authorization
- Receipt

Use of “Consistent Form and Fee Methodology”

Use of Elavon “Converge” payment processor with US Bank for internet credit card processing in Accela Citizen Access (ACA); jurisdiction opens and maintains its own account.

- Optional Modules:
 - Onsite
 - Planning Tracking
 - Code Enforcement
 - Public Works

The first time these optional modules are implemented, BCD will provide implementation services at no cost. If for any reason these optional modules need to be reimplemented, BCD may invoice Jurisdiction for the reasonable costs of the implementation. Costs will depend upon the complexity of the work, but will not exceed \$5,000 per module implemented. BCD and Jurisdiction will agree on the costs prior to any implementation.

Oregon Standard Model Implementation includes:

- Importing jurisdiction’s fee schedule into Accela
- Data conversion from jurisdiction’s database

- ePermitting will provide documentation about how the data is to be formatted for loading
 - ePermitting will work with jurisdiction to map the data from existing permitting system to Accela
 - Jurisdiction is responsible for extracting data from existing system
- Address, Parcel, Owner Database Load
 - ePermitting will provide documentation about data format requirements
 - Jurisdiction will provide files containing Address, Parcel, Owner reference data for loading into ePermitting database
- Interfaces to Jurisdiction Systems (optional)
 - Financial
 - ePermitting will provide files with specified fields for interfaces to jurisdiction's on site systems
 - Jurisdiction will upload the files into their on site system
 - GIS
 - ESRI ArcGIS Server 10 or ESRI ArcGIS Server 10 sp 1
 - Future versions of Accela Software may require upgrades to ESRI software to maintain interface operability
- Training
 - ePermitting provides online weekly training via video conference.
 - Jurisdiction's "super users" will train other jurisdictional employees.
 - ePermitting will attend jurisdictions Go Live in person.
- Coordination with Accela
 - If Jurisdiction purchases other modules, such as Planning or Code Enforcement, directly from Accela and has them implemented by Accela, an independent contractor or by Jurisdiction staff, Jurisdiction must coordinate that implementation with ePermitting.
 - Coordination with ePermitting means including ePermitting staff in project management meetings with Jurisdiction and the party implementing the other modules.
- Third Party Jurisdictions
 - If Jurisdiction uses a third party building official and/or inspection agency, Jurisdiction shall run the third-party report provided with OSM and submit it with their program assumption Plans. ORS 455.148 (4).

IMPLEMENTATION OVERVIEW

The following list is a distilled version of the major tasks associated with implementation of ePermitting. The tasks run concurrently and can take varying amounts of time, however, this is a look at the things that Jurisdiction must complete. Of this list, testing is the major responsibility that will take some time to complete. The more thoroughly the Jurisdiction tests the system before Go Live, the smoother the transition will be when ePermitting begins.

Start Up

- Sign IGA
- Send “Contact Information” document and Logo
- Scan and send copies of permit applications
- Provide “Roles and Responsibilities” Document

Training

- Have “super users” complete all of the online training
- Assign targeted online training to specific staff

Finances

- Fill in the three financial documents:
 - General Accounting Practices
 - Settling & Balancing Procedures
 - Refunds
- Provide Project Manager with fee information
- Test fees that have been configured in the database
- Choose data to be included in financial interface,
 - Create or link an ftp site to which the financial data will be uploaded
 - Test and approve the transfer of data through the ftp site and into the financial system
- Set up a Converge account 1-2 weeks before Jurisdiction’s Go Live date.

Addresses

- Work with APO specialist to determine the requirements for the address/parcel file that will be loaded into Jurisdiction’s ePermitting database
- Provide the address file to APO specialist
- Test the addresses that are loaded into Jurisdiction’s database
- Approve the addresses in Jurisdiction’s database

Configuration

- Provide User spreadsheet and Inspector profiles

- Test applications
- Test workflow
- Test inspections

Data Conversion

- Talk with Project Manager about data conversion
- Determine which permits are open
- Map data
- Fill in conversion tables
- Test the converted data
- Approve the converted data

Reports

- Examine the existing reports
- If there are additional reports that you desire, discuss them with your Project Manager
- If additional reports are built, then test and approve them

IVR

- Fill out Set Up document and return to Project Manager
- Test and approve IVR

Training Overview

- ☐ Home Screen and Records Portlet
 - ☐ Orientation to Portlets – User, Quick Links, Alerts or My Tasks, Record List/Detail, My Navigation, and Reports
 - ☐ Alerts portlet – incoming ACA
 - ☐ Searching, sorting, CSV export, Quick Queries
 - ☐ My Navigation vs Go To dropdown menu
- ☐ Applications
 - ☐ Starting new records from the Back Office
 - ☐ Four A's: APO address/parcel/owner, ASI application specific information, Applicant, Automation of fees
 - ☐ Printing an application
- ☐ Fees
 - ☐ Adding and Invoicing fees – NEW fees DELETE vs. INVOICED fees VOID
 - ☐ Invoiced fees and ACA
 - ☐ Making payment and CASH payment types – best practice (payor, recording actual payment amount/change)
 - ☐ Partial payment (applying monies) and Pay More function
 - ☐ Printing/Emailing receipts – generating Invoice – reprinting from Documents
- ☐ Workflow – Permit Lifecycle
 - ☐ Workflow statuses – advancing workflow, TSI task specific info, record status relationship
 - ☐ Withdrawn vs Void
 - ☐ Parallel tasks at Ready for Plan Review
 - ☐ Automated emails notification from Workflow
 - ☐ Supervisor function
 - ☐ Auto-close of EMP at Final Inspection sign-off (optional)
 - ☐ Workflow history – show where it's at, what's included
- ☐ Special Record Types
 - ☐ Revision vs Additional Info Requested
 - ☐ Deferred submittals
 - ☐ Phased permitting
 - ☐ Temp C of O
 - ☐ C of O
 - ☐ CSC Certificate of Satisfactory Completion
 - ☐ Required elements for C of O – how to correct and rerun report
- ☐ Data Management
 - ☐ Cloning vs Copying

- ☐ Related records – at Intake, thru Cloning, after the fact
- ☐ Sets – 3 ways to create – Sets portlet, Record List, Related Records
- ☐ Conditions

- ☐ Reference Data
 - ☐ Reference vs Transactional – importance of making corrections and where, Synch to Reference option
 - ☐ People reference
 - ☐ APO reference – Inspection Districts, Parcel Attributes that should stop issuance

- ☐ “Day in the Life” walk-through
 - ☐ Alerts for Permit Techs and My Tasks for Inspectors/Plans Examiners

- ☐ Inspections
 - ☐ Daily load and printing Inspection Slips
 - ☐ Assigning, reassigning, canceling, deleting if unnecessary for Final
 - ☐ Resulting – introduce options for resulting (back office, Inspector App, IVR)

- ☐ Reports
 - ☐ Demonstrate what reports are available – Financial, Stats, State Surcharge
 - ☐ Quick Queries – information only, not training (as time allows)
 - ☐ Ad-hoc – information only, not training (as time allows)

- ☐ Advanced Money
 - ☐ Change in valuation
 - ☐ Making fee changes – Voiding fees to Credit – adding/voiding fee items that impact State Surcharge – show Assess Fee History and Payment History
 - ☐ Exceptional payment types
 - ☐ Financial batch file –reconciling exceptional payment types and transfers - account codes/GL and Agency financial process
 - ☐ Cash Balancing

- ☐ *SCHEDULE - Contractor Training (in the field) – Coordinated and provided by Jerod Broadfoot at the Agency location*
- ☐ *SCHEDULE - EDR (in the field)*

MEMORANDUM

TO: Cannon Beach City Council
FROM: Ashley Driscoll, City Attorney's Office
CC: City Manager Bruce St. Denis
SUBJECT: City Manager Evaluation
DATE: October 7, 2023

Pursuant to Section 5.C of City Manager's Bruce St. Denis' employment agreement with the City, the City Council shall review St. Denis' performance each year. Prior to the evaluation process, the City Council "shall meet with [St. Denis] to establish the parameters for the performance evaluation."

The timeline for this project is as follows:

- **Tonight:** Review and approve the Proposed 2023 Evaluation Form and Criteria
 - o City Council discusses any amendments to the Evaluation Form and Criteria
 - o City Council adopts Evaluation Form and Criteria by motion
- **November 17, 2023:** City Manager provides Council with self-evaluation
- **DATE – TBD between November 28-30:** City Council meets in executive session with City Attorney to discuss City Manager evaluation using the adopted form and criteria
 - o From past experience it is best to schedule this as a free-standing executive session.
- **DATE – TBD between December 11-22:** City Council and City Manager meet in executive session to discuss City Manager evaluation
 - o Either a free-standing executive session or in conjunction with another meeting.
- **January 2, 2024:** City Council adopts City Manager evaluation and discusses potential merit increase in open meeting.
 - o What information does the Council need prior to making any merit increase decision? Previously I provided a city manager salary survey for Clatsop County (Warrenton, Astoria, Seaside and Mazanita)

Attachments: A. 2023 Proposed Evaluation Form and Criteria
B. Bruce St. Denis Employment Agreement



CITY OF CANNON BEACH

**City Manager
Evaluation
Process & Form**

INTRODUCTION

In order to establish and maintain an effective leadership team for the community, founded on the relationships between the City Council and the City Manager, it is essential the Council establish an ongoing evaluation process. This offers an opportunity for the Councilors and Manager to review the performance of the City Manager, to establish clarity in expectations for achievements and performance on both an annual and on-going basis, to establish the criteria by which the City Manager will be evaluated, to clarify what the City Manager expects of the Council to help the Manager be successful in meeting the expectations, and to jointly review the effectiveness of this joint leadership team.

Specifically, the evaluation process will:

- Allow the City Manager and the Council to test, identify, and refine their respective roles, relationships, expectations of and responsibilities to each other.
- Allow discussion of the City Manager's strengths and weaknesses as demonstrated by past performance with the objective of increasing the City Manager's effectiveness; that is, give the Council the opportunity to provide positive feedback in areas that have been handled well and to outline clearly areas where the City Manager could become even more effective through improved performance.
- If determined by the Council to be necessary, establish a framework for the Council and Manager to address deficiencies in the Manager's performance where the inability to successfully resolve those deficiencies may lead to reconsideration of the City Manager's contract.

CONTEXT

The City Charter establishes the position of City Manager and defines its responsibilities, as well as the Council's responsibilities relative to the Manager's role.

The City Manager's contract sets out an agreement that annual performance evaluations will be performed by the Council.



PROCESS

The City Manager evaluation process initially includes two steps: (1) establishment of the criteria and form to be used for the evaluation; and (2) the evaluation itself.

The criteria and form are adopted by the Council by motion.

The evaluation process is performed in executive sessions. Therefore, written minutes and the Council discussion are protected under the provisions of the Oregon Revised Statutes on executive sessions conducted for the purpose of an employee performance evaluation. (ORS 192.660(2)(i)).

The steps of the evaluation process are:

1. The evaluation process shall occur in the last quarter of each year. However, the Council may conduct an additional evaluation at any time.
2. The Mayor or designee distributes the evaluation forms to all Councilors and the City Manager.
3. Each Councilor and the Mayor reviews the evaluation form and considers the City Manager's performance based on the evaluation criteria prior to the first executive session.
4. Mayor, City Councilors and City Attorney meet in executive session to discuss the City Manager's performance based on the evaluation form and criteria.
5. Mayor or designee records the Council's collective opinion on the City Manager's performance based on the evaluation criteria. This document becomes the Council's written evaluation.
6. Mayor, City Councilors, City Attorney and City Manager meet in executive session to review/discuss the evaluation. Mayor or designee presents the City Manager with the Council's written evaluation.
7. The City Council adopts the City Council's review of the City Manager's performance by resolution in open session.
8. Following the evaluation, the Mayor and Council President will represent the City Council in any contract negotiations with the City Manager.



CITY MANAGER EVALUATION CRITERIA

City Manager _____

Evaluator Name _____

Signature _____

Evaluation Period _____

1. Service Delivery Management –

- a. How well is the City Manager managing the various departments?
- b. How well are those departments performing?

2. Human Resource Management –

- a. How effective are City employees overall?
- b. How responsive are City employees to citizens and business, what is the service orientation, and how is the follow-through?
- c. What is the level of overall morale within the organization?
- d. what is employee retention like?
- e. How well have recruitments been conducted, and have good employees been selected and hired?

3. Risk Management –

- a. How well has general liability been managed?

4. Financial Management –

- a. How efficiently does the organization use its limited financial resources?
- b. How good, and appropriate, is the budget process, presentation, and implementation?
- c. How well is financial planning and management undertaken, and, given relative economic conditions and factors outside the control of the City, is the financial condition of the City improving?

5. Planning –

- a. How well have meaningful goals and objectives been developed?
- b. How well have City programs and projects been developed?
- c. How well has Council policy-making been facilitated by good advance staff work?

6. Accomplishments –

- a. Have established goals and objectives been met?
- b. How well have City programs and projects been implemented?
- c. How well have Council policy directives been carried out?



7. City Council Relationships –

- a. How effectively does the City Manager communicate with Councilors?
- b. How effectively does the City Manager support the Council's policy development and problem solving?

8. Leadership –

- a. Has the City Manager been an effective leader and advocate for Cannon Beach in the regional community?
- b. Has the City Manager led the organization by creating a good example?
- c. Does the City Manager display foresight, imagination, and vision, and demonstrate reasonable risk-taking where rewards may be great?
- d. Does the City Manager display strategic thinking?

9. Communications –

- a. How well does the City Manager communicate orally?
- b. In written form?
- c. How responsive is the City Manager to citizen complaints and inquiries?
- d. How does the City Manager interact with the press

10. Decision-Making, Problem Solving, and Judgment –

- a. Does the City Manager display integrity, honesty, and ethical behavior?
- b. Is the City Manager fair, impartial, and objective?
- c. Are the City Manager's analyses and reports logical, clear, and concise?
- d. How successful are outcomes of various negotiations the City Manager been part of?
- e. Does the City Manager display a good sense of timing?
- f. Does the City Manager exercise good judgment?

11. Personal and Professional –

- a. Does the City Manager approach the job with enthusiasm, energy, and a positive attitude?
- b. Is the City Manager good at self-assessment and improvement?
- c. How good is the City Manager's personal and professional reputation?
- d. How good are the City Manager's listening skills?
- e. Is the City Manager fully engaged in the job, and fully dedicated and committed?
- f. How well does the City Manager handle stressful situations?
- g. How much job knowledge does the City Manager possess, and does the City Manager diligently pursue professional development opportunities?

EMPLOYMENT AGREEMENT

This agreement is made this date by and between the **City of Cannon Beach**, a political subdivision of Clatsop County, Oregon (hereinafter referred to as “City”), and Bruce St. Denis, an individual (hereinafter referred to as “Employee”) both of whom understand and agree as follows.

WHEREAS, Section 22 of the City of Cannon Beach Charter establishes the position of City Manager and authorizes the City Council to appoint an individual to fill that position for an indefinite term and to serve at the pleasure of the City Council; and

WHEREAS, the City desires to employ Employee as City Manager and to provide Employee inducements to remain in said employment; extend certain benefits, establish certain conditions of employment, and to set certain working conditions.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, **IT IS AGREED AS FOLLOWS**:

1. **EMPLOYMENT AND DUTIES.** The City hereby agrees to employ Employee as City Manager. The Employee’s first date of employment is December 1, 2017. Employee agrees to accept said employment and to discharge the duties of City Manager as provided in the City Charter, municipal ordinances, and to perform other legally permissible and proper duties and functions.

2. **TERM.** The term of this agreement shall be for an indefinite period of employment. Employee understands and agrees that he serves at the will and pleasure of the City Council. Termination shall occur as set forth in Section 3.

3. **TERMINATION.**

A. **BY THE CITY.** The parties recognize and acknowledge that Employee is an “at will” employee and agree that the City Council may terminate Employee with or without cause at any time and for any reason. City shall provide Employee with written notice, including the date termination becomes effective, at least 72 hours prior to the effective date. If terminating for cause, the written notice shall set forth the reasons for termination, and provide Employee an opportunity to meet with the Mayor and/or City Council prior to the effective date of termination to address the reasons and to provide more information. If Employee elects to meet with City, City shall provide a subsequent second written notice reconfirming or rescinding termination based upon meeting. For the purposes of this agreement, the term “cause” shall mean a finding by the City Council that Employee has (a) Engaged in conduct that constitutes willful gross malfeasance in office, fraud or theft; or (b) abandoned the position of City Manager; or (c) been convicted of a felony, or any crime involving breach of trust, dishonesty or moral turpitude.

B. **SEVERANCE PAY.** In the event the City elects to terminate Employee for any reason other than “cause,” Employee shall receive a cash payment equal to eight (8) months of Employee’ base salary. Employee shall also receive payment for all accumulated Vacation

Leave. Compensation includes benefits and continued enrollment in the health insurance program offered to management for up to 8 months from the date in which written notice of termination is given. Said sum shall be subject to applicable federal withholding taxes. In consideration of said payment, Employee agrees to execute a release of all claims against the City, its elected or appointed officers, employees or agents, for any claims arising out of Employee's employment or Employee's termination of employment with the City. If Employee is terminated for "cause," Employee shall not be entitled to any termination pay.

4. **RESIGNATION.** In the event Employee elects to terminate employment with the City for any reason, Employee agrees to provide the City with not less than sixty (60) days notice prior to the effective date of said termination of employment.

5. **COMPENSATION AND BENEFITS.**

A. **SALARY.** Employee shall be paid a starting salary of one hundred and thirty thousand dollars (\$130,000) per year, which shall be paid in accordance with the procedures for other employees of the City. In addition, Employee shall receive Cost of Living Adjustments (COLA) as otherwise provided to non-represented employees. As described in section 5B below, and after a satisfactory evaluation by the City Council, an increase in salary may be negotiated by the City Council and the Employee.

B. **HOUSING ALLOWANCE.** If the Employee resides within the city limits of the City of Cannon Beach, the City shall pay the Employee a housing allowance of one thousand two hundred dollars (\$1,200) per month.

C. **PERFORMANCE REVIEW.** Employee's first performance evaluation will occur after the first 6 months of starting the position and shall continue at least annually after the initial performance review. Said review and evaluation shall be based on Employee's performance of assigned duties and responsibilities, and any other matters deemed appropriate by City. The City Council shall meet with Employee to establish the parameters for the performance evaluation. In addition, the City Council may periodically identify any concerns to Employee either by formal or informal discussions with Employee.

D. **MERIT INCREASE.** At the conclusion of the Employee's performance evaluation each year, the City Council shall determine, based on the performance review, whether to grant a merit increase and, if so, the size of the merit increase. The increase shall become effective on the anniversary of the Employee's first date of employment with the City, December 1st.

E. **VACATION.** Employee shall accrue vacation time at a rate of four (4) weeks per year. Employee shall take no more than two (2) weeks vacation consecutively and no more than a total of three (3) weeks vacation in any six (6) month period without the express approval of the City Council.

F. **SICK LEAVE.** Employee shall accrue sick leave on the same basis as other non-represented city employees. Use of sick leave shall be on the same basis as other non-

represented city employees. In the event of resignation, retirement or termination of Employee, there will be no compensation for unused sick leave.

G. OTHER BENEFITS. The City shall provide Employee with all other benefits accruing to non-represented employees, as outlined in the *City of Cannon Beach Employee Handbook*.

H. PROFESSIONAL DEVELOPMENT. It is understood that, for the benefit of the City and for his own professional development, Employee will attend a reasonable number of conferences, training and educational offerings. City agrees to budget and pay the registration, travel, and subsistence expenses of the Employee for professional and official travel, meetings, and occasions deemed necessary or desirable to continue the professional development of the Employee and to adequately pursue necessary official functions of the City. The Employee shall make periodic reports to the council on such activities. City agrees to pay for Employees membership in professional organizations related to the position of city manager, such as the Oregon City/ County Management Association.

I. MODIFICATION OF COMPENSATION AND BENEFITS. The City and Employee may modify the compensation and benefits payable to Employee at any time upon mutual written consent.

5. MOVING EXPENSES. The City shall pay Employee at the end of the first month of employment twelve thousand dollars (\$12,000.00) for relocation expenses conditioned on his moving to Cannon Beach and remaining in the employ of the City for at least one (1) years. In the event Employee resigns from the position within one (1) year, the City shall be reimbursed for the amount of moving expenses.

6. HOURS. The position of City Manager is a salaried position and is an exempt position for purposes of overtime. The position of City Manager is based on a forty (40) hour work week and the City Manager is expected to devote, on average, at least forty (40) hours per week discharging the duties of the position. Employee shall be entitled to paid legal holidays.

7. AUTOMOBILE AND GENERAL EXPENSES.

7.1. The City shall provide a city owned vehicle for Employee's use when conducting city business. The City vehicle may be taken home if the Employee resides in the City of Cannon Beach. The Employee may use the city provided vehicle for incidental personal use. Employee understands that from time to time the use of this vehicle may not be available to Employee if there are other needs of the city which require use of said vehicle.

7.2. City agrees that if aforementioned automobile is unavailable to Employee at a time when business activities require it, Employee may use his personal automobile for City business and be reimbursed by the City at a rate consistent with Internal Revenue Service standards. It is the intent of the City that the City owned vehicle be used whenever possible, and the use of Employee's personal vehicle occur only when the City vehicle is unavailable.

7.3. City shall reimburse Employee for expenditures incurred in the course of conducting City business for meals, lodging and other job-related expenditures as consistent with City policy and Internal Revenue Service guidelines.

8. **RETIREMENT.** City agrees to pay PERS retirement for Employee including employer share and employee share, as is allowed by state law by contract. If PERS benefits are increased for other administrative employees of the City, then Employee shall receive the same benefit of any such increase at the same rate and interval.

9. **BONDING.** In accordance with the Cannon Beach City Charter, the City Manager shall be bonded. City shall bear the full cost of such bonds.

10. **ATTORNEY'S FEES.** In the event of any arbitration proceeding or other suit or action arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs in connection therewith; provided, however, that the prevailing party is not entitled to request, move for or be awarded any "enhanced fees" or fee multiplier in connection with a request or motion for its attorney fees.

11. **OUTSIDE ACTIVITIES.** The employment provided for by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to City and the community, Employee may elect to accept limited teaching, consulting or other business opportunities with the approval of City and the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

12. **INDEMNIFICATION.** The City shall indemnify, insure, and hold Employee harmless, including providing additional legal counsel if the City cannot otherwise provide legal representation for Employee, for any and all civil legal actions brought against Employee arising out of the proper discharge of his duties while acting within the scope of his employment as City Manager.

13. **CONFIDENTIALITY.**

A. Employee recognizes that City has and will have future plans, business affairs, employment, legal, and litigation matters, and other proprietary information that are valuable, special and unique assets of City and need to be protected from improper disclosure. Employee agrees not to, at any time or in any manner, either directly or indirectly, use any information for his own benefit, or divulge in any manner to any third party without the prior written consent of City. Employee will protect the information as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

B. If it appears that Employee has disclosed (or has threatened to disclose) information in violation of this Agreement, City shall be entitled to an injunction to restrain Employee from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. City shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

C. The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

14. **GENERAL PROVISIONS.**

A. **EFFECTIVE DATE.** This Agreement shall become effective upon signatures of both parties.

B. **INTEGRATION.** This agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this agreement.

C. **SEVERABILITY.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

D. **BINDING EFFECT.** This Agreement shall be binding on City and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

E. **MODIFICATION.** The parties agree that this agreement can be amended or modified only with the written concurrence of both parties.

F. **JURISDICTION.** Laws of the State of Oregon shall govern this Agreement.

CITY OF CANNON BEACH

By: 
Sam Steidel, Mayor

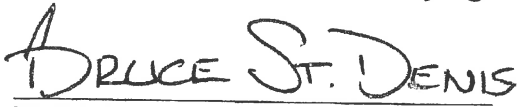
Date: 11-14-17, 2017

APPROVED AS TO FORM:

By: 
for Tamara Herdener, City Attorney

Date: 11/15/, 2017

Bruce St. Denis represents and acknowledges that he has read this agreement in its entirety and has had an opportunity to review the agreement. He further represents and acknowledges that it is his understanding that this agreement has been approved by the attorney for the City of Cannon Beach. By virtue of this passage, he further acknowledges that he has been advised that he has the right to consult independent counsel concerning this agreement, and that by signing this agreement, he acknowledges that he has afforded himself the opportunity to do so, or hereby expressly waives his right to have the agreement reviewed by independent counsel, and agrees to the terms hereof by signing the same.


EMPLOYEE

Date

11/12/17

**City of Cannon Beach
Monthly Status Report**

To: Mayor and City Council
From: City Manager Bruce St. Denis
Date: November 7, 2023

Community Development Monthly Report, September 2023

Planning Commission: The Planning Commission did not meet in September

Design Review Board: The Design Review Board met on September 19, 2023, to consider the following items:

- DRB 23-09 CIDA CBES Rejuvenation Project. Continued until October 19, 2023

The Chair of the DRB, approved minor modifications for the following addresses:

None

Short-term Rentals

Program	Number of permits
14-day permit	151
Lifetime Unlimited permit	45
5-year Unlimited permit	5
Total permits	201
New short-term rentals this month	2
Pending short-term rentals	2

Tree Report

Date	Location	Hazard	Dead	Const.	Health other	Solar	Replant Req.
9/18/23	3947 S Hemlock			16			

Other Planning/Building Matters:

- CD Staff continues to support and work with Urbswork on the Wetlands Amendments and Code Audit.

City Manager Report November 7, 2023

- CD Staff participated with CREST and regional planning partners for the Ecola Creek Design project.
- CD Staff participated with CREST and regional planning partners for Clatsop Regional Housing Task Force.
- CD Staff continues to participate in the Cannon Beach Elementary School, Police Station, and City Hall projects.
- CD Staff continues working with the attorney preparing for the Roberts and Burton LUBA appeals.

Building Department Permit Fees: September 1-30, 2023

Building	Issued	Permit Fees	Value	Affordable Housing Tax Fund*
New SFR	1	\$17,274.69	\$489,000.00	\$4,890.00
Addition		0	0	
Alteration	1	340.94	\$4,000.00	0
Repair	1	260.30	\$1,500.00	0
Replacement	1	0	0	0
Tenant Improvements	0	0	0	0
Commercial	3	\$21,013.38	\$1,765,700.48	Fire Station Repair / 2 Pump Stations (Public Improvement not subject to tax)
Total	5	\$38,889.31	\$2,260,200.48	\$4,890.00

*Affordable Housing Tax Collection is 1% of the value of the building permit and is distributed as follows:

Four percent as an administrative fee to recoup the expenses of the city. After deducting the administrative fee, Fifteen percent is distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance (paid to the state). Fifty percent to fund developer incentives allowed or offered and Thirty-five percent for programs and incentives of the city related to affordable housing. This eighty-five percent goes into the City's Affordable Housing Fund.

Affordable Housing Summary	Month to Date	Year to Date	Total to Date
Residential	\$4,890.00	\$11,618.68	\$327,321.25
Commercial	\$0	\$0	\$64,823.42
Total	\$4,890.00	\$11,618.68	\$392,144.67

Other Permits	Issued	Permit Fees
Mechanical	5	\$820.00
Plumbing	4	\$885.00
Total	9	\$1,705.00

Public Works Department Report – October

Parks:

- Continued installing replacement playground equipment in Main City Park;
- Received new shore pines to plant in Whale Park;
- Planted 2 new pines in City right-of-way between Harrison and Gower

Water:

- Downed tree removed at gate to ECFR.
- Ordered transfer switch controller for Sunset Station.
- Leak detection conducted with OAWU.
- Collecting data for water audit report.
- Educated customers on Eye on Water (Total: 834 signed up).
- Conducted monthly meter reads.
- Updated meter data in Caselle.
- Daily reads and checks completed at PW yard, Filter plant and City Hall.
- Completed weekly locates and work orders.
- Performed standby and callout duties.
- Notified multiple users of water leaks and high use.
- Updated meter data and sent to GeoMoose.
- Entered LTE data into Beacon and Caselle.
- Weather data collected and posted.

Wastewater:

- New generator start-up at Main PS.
- Mowing around the dike around the wetland cells.
- End of summer season main line cleaning cont.
- Construction of the Midway & Siuslaw generator building continued.
- Add Hazard Lighting & Night Lighting on the PW fleet trucks.

- Power wash facility buildings around the treatment plant.
- Peterson CAT technician in Cannon Beach performing the yearly service maintenance.

Roads:

- Fixed and repaved curve in front of Whale Park;
- Refreshed curb markings throughout town;
- Finished annual citywide patching project;
- Cleaned outfalls;
- Picked up trash;
- Began fall mowing and overhead tree trimming;
- Refreshed diagonal parking stripes on Larch St., between 1st/2nd.

Emergency Management – October

- Wayfinding Wednesday –October 4th
- Attend Oregon Emergency Managers Conference OEMA -October 2-6
- Assist forestry partners Nuveenn with showing value of private/public partnerships _October 6
- Neighborhood visit to discuss building resiliency hubs in communities together -October 7
- Resiliency Hub tour with typing exercise – EOC public works -October 17-19
- Great Shake Out exercise for city hall employees -October 19
 - Emergency Volunteers radio exercise
- Cache site barrel opening for all sites - October 21
- Satellite -Starlink review for improved network at cache sites and EOC's -October 25
- Assist Seaside School district eprep team in cache site security and development -October 26

Haystack Rock Awareness Program (HRAP) – October

- September 2023 Total Contacts: 6095
- The last day of our season is scheduled for November 30th. Our program will resume operation on the beach during President's Day Weekend.
- Our Staff and Volunteer Appreciation Party will take place on December 9th at 3:00 PM in the Council Chambers.
- HRAP was awarded a \$5,000 microgrant from the Oregon Department of Transportation (ODOT) for the free wheelchair program. Our FY 2023-2024 budget was amended on October 3rd to account for the increase in funds.
- Our UTV is still being treated/detailed. Once completed, it will be stored within the old elementary school until next season.
- Mylasia Miklas attended the 2023 Peoples Coast Summit.
- Jacie Gregory, a seasonal Rocky Shore Interpreter, attended Astoria High Schools Activity fair on October 19th.

Public Safety Report – September 2023

Staffing:	Authorized	Assigned
Sworn	9	8
Code Enforcement	1	1
Admin/Support	2	2
Parking/Information	6	3
Lifeguards	10	0 (15 incl. fire personnel)

Station Activity:

	2023	2022
CBPD Walk-in	145	176
CBPD Incoming Phone	156	376
SPD Dispatched Calls	181	170
Overnight Camping Warnings	76	72
Local Security Checks	2470	2628
Parking Citations	69	141
Traffic Warnings	264	202
Traffic Citations	32	37
DUII Arrests	3	0
Alarm Responses	6	13
AOA, Including FD	33	62
Citizen Assists	19	19
Transient Contacts	5	18
<u>Total Case File Reports</u>	282	326

Cases of Significance:

Fireworks:	1 Case	Suspicious Circumstance	8 Cases
Trespass 2:	4 Case	Crim Mis II:	2 Cases
Warrant:	1 Case	Weapons Laws:	1 Case
Domestic Disturbance:	1 Case	Child Neglect:	1 Case
Child Neglect 2 nd Degree: 1 cite issued	1 Case	Death Investigation:	1 Case
DUII: 0.14%/0.27%/Test Refusal	3 Cases	Hit & Run:	4 Cases
Interfering w/ FD:	1 Case	Fraud:	1 Case
Theft III:	1 Case	Theft of lost property:	1 Case
Suspended Misdemeanor:	1 Case	MIP Marijuana: 1 citation	1 Case
Welfare Check:	10 Cases	Suicidal:	1 Case
Unsecured Premise:	1 Case		

Traffic Citations:

Driving with Suspended License: (3-Violation, 1-Misdemeanor)			4 Citations
No Proof of Insurance:	1 Citations	Illegal U-turn:	1 Citation
DUII: (blood draw/0.14%/0.27%)	3 Citations	No Operator's License:	2 Citations
Cell Phone Use:	5 Citations	Fail to Display Out of State Plates:	1 Citation
Fail to Yield Pedestrian:	1 Citation	No Operator's License:	2 Citations
Violation of Basic Rule/Speeding:	12 Citations (78/55, 72/55, 71/55, 76/55, 80/55, 81/55, 84/55, 78/55, 77/55, 78/55, 77/55, 74/55)		

Code Enforcement Activities: During this period, **14** municipal code violations were addressed and resolved or pending resolution.