



# CITY OF CANNON BEACH

## AGENDA

Meeting: Planning Commission  
Date: **Thursday, September 22, 2022**  
Time: **6:00 p.m.**  
Location: Council Chambers, City Hall

6:00 CALL TO ORDER

6:01 (1) **Approval of Agenda**

6:02 (2) **Consideration of the Minutes for the Planning Commission Meeting of August 25, 2022.**  
*If the Planning Commission wishes to approve the minutes, an appropriate motion is in order.*

ACTION ITEMS

6:05 (3) **Continuation of CD# 22-01 & CU# 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.**

**CD 22-01 & CU 22-03**, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of five single-family dwellings and a fourplex apartment. The property is located on the southwest corner of 1<sup>st</sup> and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

WORK SESSION ITEMS

6:20 (4) **Work Session review of a Zoning Ordinance Amendment request by Will Rasmussen on behalf of Haystack Rock LLC, for a text amendment regarding notice requirements for applications and decisions.**

INFORMATIONAL ITEMS

6:50 (5) **Tree Report**

(6) **Ongoing Planning Items:**  
**Code Audit Update**  
**October 20<sup>th</sup> Boards & Commission Training**

(7) **Good of the Order**  
**Comment from Northwest by Northwest Gallery**

7:00 (8) **ADJOURNMENT**

*Please note that agenda items may not be considered in the exact order listed, and all times shown are tentative and approximate. Documents for the record may be submitted prior to the meeting by email, fax, mail, or in person. For questions about the agenda, contact Administrative Assistant, Katie Hillenhagen at [Hillenhagen@ci.cannon-beach.or.us](mailto:Hillenhagen@ci.cannon-beach.or.us) or (503) 436-8054. 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: August 18, 2022**

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**Minutes of the  
CANNON BEACH PLANNING COMMISSION  
Thursday, August 25, 2022**

**Present:** Chair Clay Newton, Commissioners Barb Knop, Mike Bates, Lisa Kerr and Anna Moritz in person. Charles Bennett and Aaron Matusick via Zoom

**Excused:**

**Staff:** Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair and City Recorder Jennifer Barrett

**CALL TO ORDER**

Chair Newton called the meeting to order at 6:01 p.m.

Newton said tonight is the last night for Kerr after an 8-year service term, adding Kerr brought a passion, fire and diligent heart to every meeting. She made me better and I had to be better prepared in case I didn't agree. Kerr was as a part of several important decisions with the city. Newton said thank you and gave Kerr a certificate for all she's done. Kerr said this has been the most incredible body of people to work with. You are so smart, prepared and on top of everything. I've loved it. Adams and I have disagreed so many times but have always been civil and had respect for each other. Adams added thank you Kerr. If we could have Planning Commission members as dedicated as you are that is all we can ask for.

**ACTION ITEMS**

**(1) Approval of Agenda**

Newton said Haystack Rock is toward the end of the agenda. When they were here last time they stayed until 11 pm or so and I said we'd move them to the top of the agenda and feel we should listen at the beginning or near the beginning.

**Motion:** Kerr moved to move Haystack to the beginning of the agenda; Moritz seconded the motion.

**Vote:** Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

**Motion:** Knop moved to approve the agenda as amended; Bates seconded the motion.

**Vote:** Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

**(2) Consideration of the Minutes for the Planning Commission Meeting of July 28, 2022**

**Motion:** Moritz moved to approve the minutes; Bates seconded the motion.

Vote: Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

**(3) Consideration of the Minutes for the Planning Commission Meeting of August 11, 2022**

Kerr asked if the findings should be attached to minutes, Adams no they are not.

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

Vote: Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

**(7) Work Session review of a Zoning Ordinance Amendment request by Will Rasmussen on behalf of Haystack Rock LLC, for a text amendment regarding notice requirements for applications and decisions.**

Will Rasmussen Miller Nash Land Use Attorney and representative for Haystack Rock LLC.

Rasmussen said I have had the pleasure to have land use applications and processes in Cannon Beach for 12 years now. The last 8 years with Kerr on the commission has elevated the attention to detail that I've brought. Thank you for your services to the community. You are a force of nature and will be missed.

Rasmussen said my request is that you set the item for a hearing. We have paid the fee and did the homework. I wanted to be her in person to answer Bates questions. This is an amendment to enable citizens to request and get a notice of a decision. This came from my clients experience with the Roberts project. If there is application of public interest, if a citizen asks for notice with the decision, then the city will provide it. It's straightforward but super important as it impacts public involvement and the ability for folks to have a say in the community to have their voices heard. Second it changes the process. Roberts small house application was approved with no notice and no opportunity to be heard. Despite us asking and it being in a sensitive area, the appeal period ran under the local code, so we appealed to LUBA. That's not how it should work. It matters for process and public involvement and a request for folks that ask for notice they can receive it. I am asking to set a hearing for consideration.

Newton added we are in the middle of resetting the code and this would be patching a system that needs updating. Is there another way to address your concern or is there another way? I can see this taking a number of months to happen. Rasmussen replied it's the only one, the city could do it but currently says we will do what's required by law. This isn't the first time I've been here for a code revision on notification, and it happened before, but we still didn't get noticed on Roberts. I would be hesitant to roll this into the larger update. I don't know why we should tell folks that want to be involved that they have to wait. Kerr added the code audit will take a long time, and this notice is so important especially with the type of applications coming in. It's fundamental of democracy. I don't think it's a big ask. Newton added there is liability for the city if we trip and someone didn't get a notice. Kerr replied that's true of anyone we send notice to, a discussion ensued regarding the timing of doing this, through the code audit versus doing it now. Knop said I have concern about staff time. We keep continue piling on more for them to do. We need to be concerned with that. In response to Bates question what parts would be notified, Rasmussen replied land use issues such as streets. It's not every application, its largely land use title 17. Newton added it seems like geology,



wetlands, streets, those are critical areas that need special attention. Under what you are proposing it's any person may request electronic notification for any permit? Rasmussen replied that's what it says. If the Commission said we see what you are saying but we want to only make it apply to sensitive areas, my primary concern is getting notices for Robert's application.

Mortiz said can we talk logistics for staff. It would be helpful to know how it would work. Adams replied we have worked with them to do this a year ago. The reason they didn't get notice on Roberts was the application was submitted before that date. There is the notice that is out there, with that process set up with put an electronic public notice on our website. We have an electronic permitting system for building permits, it is very a transparent system, and we are trying to improve that. Regarding staffing, we have at least completed 20 or so public record requests and get a new one every month. It depends on what records they ask for and we have to go back and do research depending on what detail they ask for and it can cover many departments. It's not simply just something we can do. We are small and do our best. The number one reason I asked for the code audit 4 years ago and zoning ordinance changes is because of our process. I understand what Rasmussen's saying and I want changes. I think we are slowing down the process by doing these patchwork changes when we should be working on those zoning ordinance changes and we should do a comprehensive development ordinance change. It's conflicting and a difficult kind of thing. I recommend that it waits for the code audit, so it puts procedure first. It's the procedures that are getting us in trouble. Kerr added its critical and I would like to see it sooner than later. Kerr noted how Accela can be used and how the county uses it such as with building plans. Adams replied we don't have the capacity and equipment to put the building plans online, but we are taking steps moving forward. If anyone ask for notification on anything that is a big ask and would like to ask Rasmussen to show examples from other cities.

Kabeiseman said like a lot of other cities the code was developed like patchwork. That's sort of the purpose fo the code audit to deal with that and the conflict with things that were not put in comprehensible. For tacking and having things available at your fingertips, it's something the city can prioritize, but we are much smaller than Clatsop County. The state has certain requirements for notice, and they are uniform throughout the state. This provision will change it, but what it does is get something that Adams said, it's not so much about staffing but tracking, who knows how many people will request but it allows people to allow any request for anything in the city to request information about any other property in the city. Keeping track of that, when we already don't have that, lets us do the things that Commissioner Kerr identified just adds another layer that when we don't have the technical ability to do. It adds a layer that may be difficult to deal with. Is it technically feasible to do and if it's there, then we are already at the place that Kerr was indicating. Rasmussen said I don't want a database, I want notice on this development. I thought this would be an easy decision. Like three months before this house was approved on Roberts this commission denied the stability beam that three months later was approved through permit and commission had no chance to comment. Kabeiseman added from an individual owner's perspective I want notice of what's happening next door to me is relatively easy but all the others and trying to keep track and don't have the electronic capability to sort of identify that becomes a matter of we you know it's just more complicated on the inside than on the outside. A discussion ensued regarding logistics.

Bennett said Adams and staff have limited resources when you add on to it something on the other side gets less attention. Adding on more work something else will suffer. Bates replied we have a public hearing instead of taking Adams and Rasmussen's word for it. Rasmussen added we can always revise it. Bates replied let's have a public hearing and can have discussion.

Adams said we will put it on next month's agenda.

**(4) Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Comprehensive Plan.**

Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

In response to Bates question did you get Kerr's changes, Adams yes and they will be entered in as recommendation to the Council for changes. Kerr asked you want us to approve TSP without them? Adams replied approve with the recommendations. Kerr added I would feel more comfortable to have the changes in the TSP and not parentheses. They should be in the TSP then we can approve it.

Motion: Kerr moved that the changes made be included in the body of the TSP before you approve it.

In response to Moritz's question can we vote to approve with the changes in the TSP and send it on the City Council, Adams replied it will go to a work session to council. A discussion ensued regarding how to make the changes.

Kerr withdrew motion

Motion: Bates moved to approve the TSP with the recommendation includes for presentation to council; Knop seconded the motion.

Vote: Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

Kerr noted I sent the changes because I was asked at the meeting to write them down and I sent them to everyone and was told that was not a thing to do. If I am asked to write down what we decided on, how is that not ok to do. Adams replied we try not to have any kinds of reply all to be seen as a serial meeting. Kabeiseman added what drives that is the definition of what a public meeting is, giving the definition, a discussion ensued.

Chair Newton stated the project is approved.

**(5) Public Hearing and Consideration of V# 22-01, David Vonada request, on behalf of Cannon Beach BP LLC, for a Variance to allow residential use for 55% exceeding the 50% threshold for mixed use in the General Commercial Zone.**

David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.84.030, Variances, Criteria for Granting.

Newton asked does anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time.

Lolly Champion PO Box 614, Cannon Beach

Champion said talking to neighbor who knew nothing about it, it involves a wetland and I would like it to be postponed to another meeting. Kabeiseman replied the question is if the Planning Commission has the authority to make the decision. For you wanting more time would be in the hearing itself and is something the Commission can consider as the hearing moves forward. I am not hearing a challenge to the jurisdiction of the authority. Champion added as a resident would like to have public input. Newton replied we will consider as part of our deliberations.

Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

St. Clair read his staff report. St. Clair noted the application is limited to the building square footage, the proximity of wetland is not pertinent to the application, however it is noted that the wetland is immediately adjacent to the property and we consider this application a part of the multi-step approval process. A project this nature is subject to various reviews, and we have yet to have final plans submitted and there would be additional information. St. Clair gave an overview of the parking.

Chair Newton asked if there was any additional correspondence. There was none.

St. Clair added I reached out to the Fire department regarding lane width for parking but haven't heard back. St. Clair added the applicant is asking for variance specific to residential space of building and landscaping. There are other considerations such as wetland which doesn't pertain to the square footage or landscape. Those would be reviewed separately. Benett asked is it 55 or closer to 60% and is there a reason for the variance or they want more residential space. St. Clair replied the calculations are 55-60% approximately and the reason for variance is the C2 zoning structure res in conjunction with coming to 50% and also to have a variance to deed restrict the parking.

Chair Newton called for public testimony.

Chair Newton stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked if the applicant wished to make a presentation



David Vonada, Tolovana Architects PO Box 648, Tolovana Park

Vonada said we are asking for variance to make second floor larger in area for a more spacious design for the units themselves. In respect to wetlands, we will make the footprint as small as possible. The wetland delineation indicated certain buildable areas on the site so making the 2<sup>nd</sup> floor larger with a cantilever, giving an overview of how they will be obtaining the additional square feet. We thought 55-60 sq ft would be a reasonable ask it gives more space for unit and weather protection. Bates said it leans over on the back too, Vonada replied yes it does. Part of that is to cantilever the walkway that is servicing the second-floor apartments with idea to stay away from wetland as much as possible. Bates said the drainage stab cantilevers over wetland too, Vonada replied it doesn't, only the walk way. Bates asked about the gabled wall, Vonada replied the foundation will, the building will be founded on piers with drilled anchors rather than pounding a pier in the ground, giving an overview of the beams on top of the piers. Bates asked can that wall carry the weight, Vonada replied the piers carry the weight. Bates said the pier drawing is simple and looks like its outside wall not is in wetland, Vonada replied yes it is outside the wall. Bates asked how many feet, Vonada replied I believe about 4 ft. Kerr said the reason you are asking for a variance on floor coverage is just to make it bigger, Vonada replied yes and more comfortable and a more efficient floor plan. Bates said I am not worried about the front, how long has the gabion wall been in there, Vonada replied a long time and will be replaced with the new wall. Bates discussed the merits of gabion walls, adding I'd like to see a structural engineer. I don't think this is anywhere close enough to review.

Vonada said I would be happy to provide more information. Keer said I would like how many square feet you are adding and isn't it possible to redesign so you don't need a variance? Bates added if you hangover over the wall 4 ft you are over the wetland, Vonada replied they are over it but wouldn't exceed the wetland boundary. Newton asked what's the wetland delineation date, Vonada replied it's within the year. Newton asked are you able to provide more information, Vonada replied I will provide the entire report. Bates asked for soils report, Vonada replied I would be getting one for the building permit. Knop asked what's the existing building footprint, Vonada replied around 1200 square feet. We had an office there for years. Keer asked would you be willing to out a deed restriction for workforce or low income. Vonada replied I would like to revisit with the continuance. I can tell you he recently purchased about three years ago and even though the homeowner is in Cannon Beach he isn't as familiar with workforce housing stipulation and restrictions and as part of the continuance we can discuss it. Newton asked so you are asking for a continuance, Vonada replied yes. As an occupant of the business park I was there to observe traffic patterns and use of buildings so have firsthand knowledge of how parking it utilized. We need to determine what the real parking ratios are. Business parks are not scheduled in the ordinance and part of what needs to happen is some analysis of what parking uses are of the building. The majority of tenants in the business park are not building occupants but building users. They come and go, store building materials, but they'd don't occupy with a business location, noting examples. Staff outlines floor plans and tenants we can provide more data of what those tenants do, and their businesses are. Newton said it would be helpful to understand their parking requirements. Vonada replied I will do a survey of tenants. It's very dynamic. Kabeiseman added if the continuance if something the Planning Commission is considering, we want to have an idea of length and if you are willing to waive 120-day rule. Vonada replied I don't see an objection to the 120-day limit. I've been working with owner for quite some time and can use the time if that's an option. Adams said can we extend by 60 days, Vonada replied yes that's good.

Chair Newton called for proponents of the request.  
There were none.



Chair Newton called for opponents of the request. There were none.

Adams said I suggest that we re-notice and extend the notice to include past the 100 ft, extend to 200 ft. with the notice requirements this would go to November hearing and give them times to get their materials ready.

Took 5 min break at 7:18 pm. Reconvened at 7:25 pm

**(6) Public Hearing and Consideration of CD# 22-01 & CU# 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.**

David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of five single-family dwellings and a fourplex apartment. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits. Matusick said I was involved about 6 months ago under contract to purchase and worked with Vonada but we did not go forward with purchase and I have no bias.

Adams noted we did receive material since packet went out, giving an overview of what was sent out in the addendum as well as what's on the dais.

Adams read his staff report.

Chair Newton asked if there was any additional correspondence. Jeff noted earlier in the meeting.

Chair Newton called for public testimony.

Chair Newton stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked if the applicant wished to make a presentation.

David Vonada PO Box 648 Tolovana Park,

Vonada said I am the original architect for the remodel of Ecola Square which is west of the property, giving an overview of the site's history and potential uses. Vonada added we included information in the packet that shows how the property could be developed and could be developed to this day without a conditional use permit. As Adams pointed out, that particular development would meet the 50% commercial 50% residential ratio. It would however be a much more intense development generating more traffic and users of the property than the actual proposal before you tonight. Clark and Dave Pietka chose not to use this development option. Pietka met with the residents of Ecola Square and determined with them that they would prefer a less intense development and prefer a residential development which was what led us to tonight. The 4 apartments would be enrolled in affordable housing. Not only would the 5 single family residence be affordable, but the 4 apartments be affordable. Moritz asked would there be restrictions on housing and apartments with long term rental or price, Vonada replied I know that Pietka has agree to 4 apartments to be affordable housing, not sure if he considered the 5 single family dwellings as such. In response to Bates question what are the floor plans, Vonada gave an overview. Kerr noted I downloaded all the for sale houses in Cannon Beach now and ones that sold in past month and noted houses about that size, one now for sale for \$1.52M, and another for sale for \$650,000, giving other examples. Without restriction on cost of the 5 houses its likely, and don't understand how a builder would agree to put that kind of stipulation or would they be willing to put affordable housing on these lots. Without it, with the cost of construction would any of them be affordable. Has anyone addressed with them the willingness to make it affordable? Vonada replied I haven't had the concertation with them.

Newton said you have proposal in front of us. It does seem like this site is committed commercial development and the client is making an effort to help with affordability in the community. I think if we were going to stretch, this would be the site to do it. What if we got creative with the site? Is there an openness to considering that? Vonada replied the approach that Pietka gave me to take was really creating beach cottages and scaling them as beach cottages with fenced yard/gardens. That kind of individual intimacy of the property would be counter to a duplex direction I was given. He's really looking for beach cottages and getting back to scale of Cannon Beach history of development. It's a lofty goal. I can't give you a reading on the motives, I don't think it's purely to make money. Kerr noted beach cottages sounds wonderful but not at a million dollars, and with the cost of construction this wouldn't be affordable. Adams added I want to see affordable housing and units, but also parking is part of the ratio to. I wanted to bring up parking being part of the ratio as well. Newton added it's a great site and I appreciate your clients effort. Vonada said as compared to what straight zoning would allow, 50/50 commercial/residential, for this site it makes sense to go entirely residential per his proposal. In terms of retail use, it's a little off the beaten path and surrounded by wetland and parking lot to the north. In terms of appropriateness for commercial is a bit of a stretch. It makes sense the use Pietka is wanting to use the site. Bates said we got an alternative plan today, Pietka is not considering this plan, but wanted to show what was considered it in the past. Vonada added Pietka commissioned an update to the wetland delineation and that's the line we used to layout to the property, it's a meandering line. Bates added the issue there is not a dimension on your map, not sure where wetland sits, there is no way anyone can make a final judgment based on what you gave us. It's a what if. Vonada replied I can provide the information, a discussion ensued. Newton added lets come back on the additional information you would like to see. Bates noted I am not comfortable approving a plan without some of that information. A discussion ensued regarding parking at the US Bank location.

Chair Newton called for proponents of the request.

Chair Newton called for opponents of the request.

Susan Glarum PO Box 108 Cannon Beach

I have not had time to fully research the application. What I do know is I object to the approval of the conditional use permit for the cluster development. I believe wetlands are critically important part of the ecosystem in general and especially in Cannon Beach since there are so few left within the city. I therefore request you not act on permit but continue the public hearing to next month's meeting.

Lolly Champion PO Box 614 Cannon Beach

Champion spoke in opposition, reading from a prepared statement. See attached at the end of the minutes.

Are there other presentations by opponents please?

Jan Siebert Wahrmond and this letter is also from my husband, Wes Wahrmond PO Box 778 Cannon Beach  
Siebert spoke in opposition, reading from a prepared statement. See attached at the end of the minutes.

Staff response – there was none.

Chair Newton asked if the applicant wished to make additional statements. There was none.

Chair Newton Closed the hearing

Bates said it's clear we need to continue it. Newton replied do you want to discuss now or wait for the continuance. Adams said you can go down the conditions. Kerr asked would the applicant be willing to put deed restriction on low income or affordable housing. Bates added you can add no short-term rentals. Kerr noted it will end up being 4 high end houses. Newton added there are two issues affordability and wetland. Kerr noted under current state law needed housing allows them to build on wetlands. Bates replied not if we stop them from building, they can't. Mortiz added if its commercial we don't get a say at all. Kerr added on last one we decided as a commission it didn't fit under definition of needed housing. The affordability drives the rest of the application, a discussion ensued. Newton added they have the US Bank building, the impact on the building lot parking lot is during the day, can we waive parking to get more units and have them park in the lot. There is a lot of ways to get more units and make it more feasible. If there is any bandwidth, then we should look at it. Kerr replied it feels a little like blackmail. You either give us what we want, or else. Knop added I look at it as negotiation. Newton said I didn't get the idea from Vonda that they weren't open to other ideas. Adams added this is the first one we had a true verbal commitment to go affordable housing since Sea Lark. Newton noted to wetland side of it, there are some gaps to be filled in the application. Bates replied I agree. If we are compromising on anything this may be the one as long as we protect the wetland. I am not going to talk about anything until we see the wetland. Mortiz added and we want to be clear that we had solid conditions on approval so it couldn't change it later.

Adams said we are still under the 120-day clock, November 5, 2022 is the deadline. Newton said do you want to state what you want? Bates said I want to update the wetland delineation map with the wetlands marked, tree line, geo report, I think applicant needs to figure out what he is going to offer us to make it palatable and I don't think they've given us their best offer yet. Mortiz said I don't think it's an offer, it's a



conversation, how do we make this for everyone. They can't do that at a loss so where can we meet. Kerr added we don't have as much leverage as you think we have because they can go ahead and build a commercial property. Bates said that wetland looks like flood catch basin from Little Pompey so how are they going to protect them from flooding, a discussion ensued.

Newton said this moves to next month's meeting, with a 7, 7, 7 format. Kabeiseman noted any and all parties can submit any information in any length in writing no later than 7 days from today which is September 1<sup>st</sup>. Any all parties can submit rebut regarding what came in previously until September 8<sup>th</sup>. The applicant has the final 7 days to submit their argument. There is no new evidence. The planning commission meeting is a week later, so you have a week to review materials. The Commission agreed.

**(8) Work Session review of draft letter to be sent to City Council regarding stormwater discharge**

Kabeiseman reported new information came in this afternoon. Earlier today the applicant for Forest Lawn filed an appeal of you decision to City Council. Given issues in letter are intertwined with issues in the Forest Lawn decision, I would suggest it may be useful to delay deliberating and making a decision about this letter until after the appeal is resolved. Don't want to do something in the process with this letter that could prevent the Planning Commission from hearing a remand or hearing related to this in the future. My advice is to hold off a little and come back when that appeal is over. A discussion ensued. Mortiz added I want to be cautious. Kerr replied I don't want to jeopardize in any way. Newton said from my understanding, we have a letter in the public record, is it not ratified since we haven't voted to accept. Why is it a liability? Kabeiseman said no decision has been made, only discussion. consensus to wait.

**INFORMATIONAL ITEMS**

**(10) Tree Report**

Bates said 45 trees were removed. St. Clair said this is a very special circumstance, brining up aerial of the Pacific Power substation showing the strip of land adjacent to the substation. A tree had collapsed and struck a fence and were concerned about other trees leaning and causing disruptions or potentially a fire. The applicant wanted to do this as emergency removal, we made them go through the process and had Balden do a review. Robert this was a vegetation management to prevent the alder trees from having the opportunity to strike the infrastructure and or make contact with power lines resulting in disruptions to service or possibly even causing fire. Bates asked are you looking at area to plant 45 tree, St. Clair replied Pacific Power is working to do replanting in area and express interested to replant in other areas. Bates said so we can't replant where we clear cut? St. Clair replied it is not a clear cut, it was more of an overgrown thicket. Kerr said kudos to city for making them go through the process.

**(11) Ongoing Planning Items**

September Commission Training – Adams said look at your calendars. I thought about doing it as a work session item for next Planning Commission meeting, but they are getting so packed. If you could you be available the 3<sup>rd</sup> Thursday for DRB since their agendas are not as full. Bates asked would zoom be an option, Adams replied yes.

Adams noted the Code Audit Update Joint Work Session is on September 7th

**(12) Good of the Order**



Adams said you got an article from Kerr on rentals. If we get this kind of information we will put it in good of order.

Kerr said there is a referendum going around with Clatsop County approving unlimited short term rentals in the county, so people in the area have formed the petition and are getting signatures to be on the ballot.

The Commission thanked Kerr for her service.

**Authorization to Sign the Appropriate Orders**

Motion: Knop moved to authorize the Chair to sign the appropriate orders; Mortiz seconded the motion.

Vote: Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

**ADJOURNMENT**

The meeting adjourned at 8:48 pm.

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City Recorder, Jennifer Barrett

August 25, 2022

Dear Cannon Beach Planning Commissioners,  
Regarding the CD 22-01 & CU 22-03 request for a Conditional Use Permit to allow a cluster development consisting of 5 single-family dwellings & a fourplex apartment, as was noticed, for this Public Hearing tonight, we have some concerns:

The application, put forth by David Vonada, on behalf of David Pietka, later mentioned as 'Davidspruce LLC', is said in the summary & background report to be a 'tentative' plan approval request of a subdivision of tax lot #51030AA04402. We'd like to know what the term 'tentative' means, in this case.

The proposed project site is in the Wetlands Overlay Zone. The application, as we understand it, does NOT include the US Army Corps of Engineers' jurisdictional determination. Isn't that document necessary for a complete application?

What constitutes a complete application & what may still be missing? In David Vonada's application, he stated that this development would 'provide much-needed affordable housing in downtown by providing small single-family dwellings & apartments.' What development agreement or deed restriction with the City would control the rental or sale of these proposed properties? Time & time again, we've witnessed supposed affordable housing projects

be promised & then be switched later to regular market-priced housing in Cannon Beach.

It appears there is no soils or geohazard report. Why has this not been required before this application was considered to be complete? Where is the tree removal application & the subsequent review by our City Arborist? Where is the guarantee that no intrusions would be made into the wetland area & buffer areas?

How are we, as a community, guaranteed that this partition would really be used for what the applicant says? What is the guarantee that no further partition or subdivision would be allowed?

With all of the above concerns, we urge you to NOT grant this application an approval. We request that you continue the public hearing to next month's meeting. There seem to be so many unanswered questions.

Thankyou,  
Jan Siebert - Wahmumund  
Wes Wahmumund  
P.O. Box 778  
Cannon Beach, Oregon  
97110.

City of Cannon Beach  
Finance Department

SEP - 1 2022

Received

### **Mitigation.**

**Mitigation - when LLC real estate, wetland developers, as demonstrated by Patrick/Dave, LLC with the Washington and Taft Streets development, attempted development of the Forested Wetland of Forest Lawn with 3 - one million dollar homes and now the Dave of Patrick/Dave as Davespruce, LLC –begins another assault on a wetland they stand assured they will get results and their profits and the city will benefit with property taxes and the losers will be the integrity of our disappearing natural setting we value.**

**How can this conclusion be jumped too? By understand not just Cannon Beach, Clatsop County, but the State of Oregon and the path allow to migrations of all the state's wetlands. (see handout)**

### **The facts:**

**I had an opportunity to hear the head of the Aquatic Resource Plans under the Oregon Department of the State Lands\*, speak. The presentation clearly covered that wetland designations throughout the state and within each country and city are all easy prey for mitigation, if a well used process is used, as was shown in a power point and accompanied handout tutorial.**

**\*(the State owns all the water sources of the State)**

**Cannon Beach years ago plotted within the city boundaries designated sites labeled wetlands.**

**When there is a consideration of development of certain wetlands the Army Corps of Engineers has to give approval that they don't need jurisdiction or involvement, in other words a pass.**

**Then there is an engineering study and eventually a series of development plans. Next - mitigation. The developer talks of boundaries, setbacks, protections, and permits are often first denied and more mitigation and finally the wetland is developed .**

**Drive by Hill Street. Drive by No. Hemlock Street. Take a look at the building on Dawes, then**



wonder how the forested wetland on Forest Lawn will eventually receive mitigation at LUBA possibly and now 1<sup>st</sup> and Spruce, under the guise of Cluster Homes Wait! I have to strike that...because their MO is to tell neighbors adjacent to development one thing, present another and then change again or...perhaps again. It is their strategy – the usual ploy of Dave and Patrick and David Volnad as they play the mitigation game by continually changing the project that will end in greater mitigation....and another wetland hits the dust.

This is still being accomplished while an overwhelming realization across the globe that trees and wetlands are nature's answer to stem global warming and all that term translates to in the destruction of all we currently have taken for granted of our natural world and now the consequences of flagrant misuse...except for here, in Clatsop County and Cannon Beach. It seems global warming is not a factor here. Our TSP plan has not proposed a limitation on polluting traffic, has no significant EV installation plan and we have not moved to institute codes to begin Green Building- for all City Buildings, remodels, new construction requirements and most visible - allowing tree cutting as usual with no signs of replacement. Why?

In Britain they are reversing their destruction of wetland by removing fills & reconstituting wetland areas because of pervasive, first time recorded, severe drought. Checking other countries across the world there are desperate measures being taken to protect and regain wetlands and plant trees in order to stem the tide of droughts, control flooding....and here we continue to cut trees not replaced and allow ... and encourage by offering draining to developers and agreeing to mitigation of our wetlands for exchange for property tax and happy developers....and assisted by the state who are supposed to protect but too often use LUBA to fine for development over the diminishing environment.

**Watch Davespruce, LLC and Patrick/Dave LLC continue their devious ability to tweak plans, change direction and eventually get their profits, as the city and or LUBA allows mitigation of their purchased wetlands property in some agreed plan that will meet a fabricated need for that development. The city and county will sweep in the benefits of more property tax dollars with some more tax dollars not by workforce people but those who afford second homes. expensive or units to allow wink wink family use.**

**This leaves you, the city council, the community to ask, how long will we choose to keep ignoring an impending crisis —climate change— because, as to quote Al Gore, it is an inconvenient truth. Please – don't make it easy for this destruction to occur. Keep denying their petitions. They chose to buy at the cheap - choosing to profit and taking extra steps over participating in sustaining this environment while declaring their love of the community.**

**Please, make it an ongoing untenable and time and expensive attorney fees consuming process.**

*Davey Champion  
P.O. Box 614  
420 Elk Creek #602  
97110*



# Cannon Beach Planning Commission

## Staff Report Addendum, noon, September 15, 2022:

PUBLIC HEARING AND CONSIDERATION OF CU 22-03, DAVIDSPRUCE LLC, REQUESTING A CONDITIONAL USE PERMIT FOR A CLUSTER DEVELOPMENT SUBDIVISION IN THE WETLAND OVERLAY ZONE. THE PROPERTY IS AN UNDEVELOPED PARCEL ON THE CORNER OF SPRUCE STREET AND FIRST STREET (TAXLOT 51030AA04402) IN THE LIMITED COMMERCIAL (C1) ZONING DISTRICT WHERE A SINGLE-FAMILY AND MULTIFAMILY DWELLINGS REQUIRE A CONDITIONAL USE. THE REQUESTS WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE SECTIONS 16.04.130 & 400, CLUSTER DEVELOPMENT SUBDIVISIONS & VARIANCES AND 17.43, CONDITIONAL USES AND ACTIVITIES PERMITTED IN LIMITED COMMERCIAL AND WETLAND OVERLAY ZONING DISTRICTS, APPLICABLE STANDARDS.

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**Agenda Date:** August 25, 2022

**Prepared By:** Jeffrey S. Adams, PhD

### NEW MATERIALS: EXHIBITS

Attached are new materials since the distribution of the agenda and packets, posted August 18, 2022.

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on July 5, 2022, unless otherwise noted.

#### "A" Exhibits – Application Materials

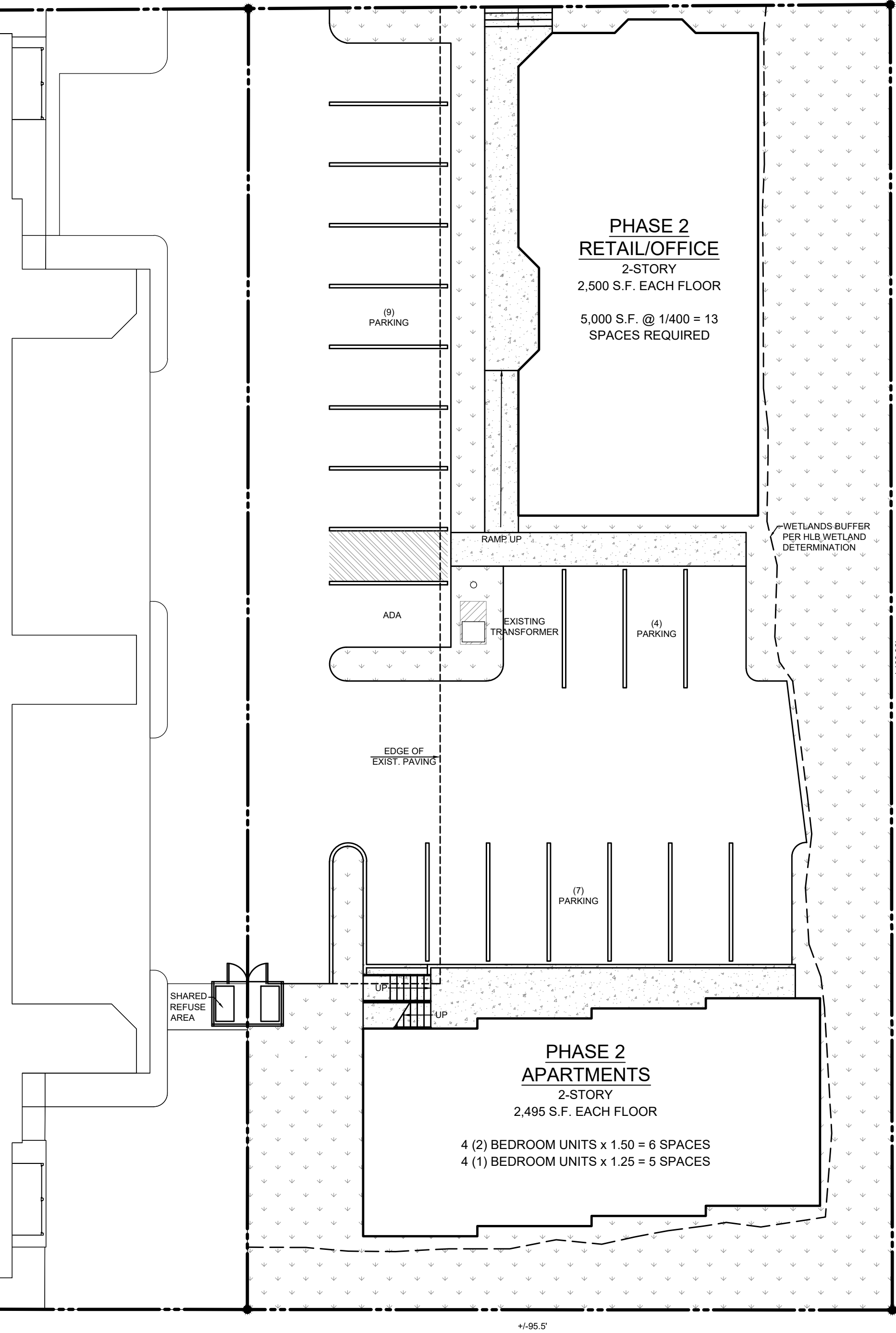
- A-4** Ecola Square Condominiums, Alternate Site Plan, Tolovona Architects, not dated, received via email, August 24, 2022;
- A-5** David Vonada, on behalf of applicant, RE: Conditional Use Applications for Cannon Beach Business Park and Ecola Square East, Email correspondence, dated August 31, 2022;

#### "C" Exhibits – Cannon Beach Supplements

- C-2** Jeff Adams, staff, Email response to applicant, dated September 1, 2022;

#### "D" Exhibits – Public Comment

- D-2** Jack and Patricia Clenaghan, Email correspondence, received August 22, 2022;
- D-3** Ronald M. Shapiro, Email correspondence, received August 23, 2022;
- D-4** Barb Hinthorne, Email correspondence, received August 24, 2022;
- D-5** Susan Glarum, Email correspondence, received August 31, 2022;
- D-6** Cameron La Follette, Oregon Coastal Alliance, Email correspondence, received September 1, 2022;
- D-7** Lolly Champion, petition, dated September 1, 2022;
- D-8** Jan Siebert Wahrmond, letter, dated and received September 8, 2022;



SPRUCE STREET



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**From:** david@tolovanaarchitects.com  
**Sent:** Wednesday, August 31, 2022 8:24 PM  
**To:** Jeffrey Adams  
**Cc:** Jay Orloff  
**Subject:** Conditional use applications for Cannon Beach Business Park and Ecola Square East

Jeff:

I would like this email to be included in the record for both the Cannon Beach Business Park and Ecola Square East Conditional Use Applications for which I am the applicant.

I would like to establish the following:

1. Neither a landscape plan, tree report, or detailed site plan or building construction are required per the City's Conditional Use application form. It is therefore beyond the scope of the planning commission to request this information from an applicant. These items are and should be a part of a Design Review and building permit application. The Planning Commission members need to be reminded of this fact by the planning staff and City's attorney, not the applicant.
2. The City's affordable housing policy only applies to rental housing, not single family dwellings developed for sale. Again, It is not the responsibility of the applicant to educate the Planning Commission members of the City's policy, I will be submitting a revised site plan with more for rent units and less single family dwellings for the Ecola Square property, however I will be advising my client to not commit to an artificially low sales price for the single family dwellings if there is not a policy of financial incentive program from the City.

Thank You,

*David Vonada*

**Robert St. Clair**

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**From:** Jeffrey Adams  
**Sent:** Thursday, September 1, 2022 11:53 AM  
**To:** David Vonada  
**Cc:** Robert St. Clair; Bill Kabeiseman; Jay Orloff  
**Subject:** RE: Conditional use applications for Cannon Beach Business Park and Ecola Square East

David,

Thanks for the comments regarding the applications before the Planning Commission. Although I agree with you that the landscape and detailed site plans might be better served or limited to DRB review, both the Conditional Use and Tentative Plan standards (CBMC 17.80.020(B&C) & 16.04.190(A)(7) give rather broad discretion to what the Planning Commission can ask for under "other information as requested..." and what they "may impose, in addition to those standards and requirements expressly specified for that use, other conditions which it considers necessary to protect the best interests of surrounding property or the city as a whole." Please note that the tree report is required under CBMC 16.04.180(M). I've copied and highlighted the applicable criteria below.

As far as the affordable housing criteria there are really only the housing policies mentioned under the applicable standards of the Subdivision ordinance (CBMC 16.04.130(E)), as the Construction Excise Tax (CBMC 03.20) specifies only that the funds should be utilized to support the city's affordable housing program. I'll be drafting a staff report, which will hopefully respond to and guide the PC's consideration on these matters.

We'll also forward your comments to the Planning Commission for their consideration, as well, and include them in the public record. Please let me know if you have any questions.

Best,  
 Jeff

## **Title 16 SUBDIVISIONS**

{...}

### **16.04.130 Applicable standards.**

{...}

#### **E. Housing Policies.**

1. Housing Policy 1. In order to maintain the city's village character and its diverse population, the city will encourage the development of housing which meets the needs of a variety of age and income groups, as well as groups with special needs.
2. Housing Policy 3. To the extent possible, the city shall endeavor to accommodate **affordable** housing in a manner that disperses it throughout the community rather than concentrating it at specific locations.
3. Housing Policy 5. The city recognizes the importance of its existing residential neighborhoods in defining the character of the community and will strive to accommodate new residential development in a manner that is sensitive to the scale, character and density of the existing residential development pattern.
4. Housing Policy 6. The city shall preserve and enhance the qualities that contribute to the character and liveability of its residential areas. These qualities include limited traffic disruptions, uncongested streets, and a low level of noise and activity.
5. Housing Policy 11. The city will provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.

6. Housing Policy 12. The city will consider the use of cluster development and planned development techniques as a means of preserving common open space, protecting significant natural features, and providing for a variety of **affordable** housing types.

7. Housing Policy 13. To the extent feasible, higher density housing developments should be located in proximity to the city's major employment areas and arterial streets.

#### **16.04.170 Tentative plan—Form.**

The tentative plan shall be clearly and legibly drawn. The size of a subdivision tentative plan shall not be less than eighteen inches by twenty four inches. The partition plan may be on eight and one-half by eleven inch paper, mylar or other material. The map of a subdivision or partition shall be at a scale of one inch equals fifty feet or one inch equals one hundred or at a scale that is sufficient to show the detail of the plan and related data. (Ord. 95-20 § 1)

#### **16.04.180 Tentative plan—Map contents.**

The tentative plan for a subdivision shall contain the following information. The tentative plan for a partition shall contain the following information that is required by the city as is determined at the conference with the partitioner:

- A. Proposed name of the subdivision. The name shall not duplicate, be the same in spelling or alike in pronunciation with any other recorded subdivision;
- B. North point and date;
- C. Location of the subdivision by section, township and range, and legal description sufficient to define the location and boundaries of the proposed tract;
- D. A vicinity map, at an appropriate scale showing adjacent property boundaries and abutting land uses;
- E. Names, addresses and telephone numbers of the owner or owners of the property;
- F. Name, business address, telephone number, and number of the registered engineer or licensed surveyor who prepared the plan of the proposed subdivision and the date of the plan preparation;
- G. Streets existing: location, names, pavement widths, alleys and rights-of-way on and abutting the tract. Source of datum shall be indicated on the tentative plan;
- H. Streets, proposed: location, right-of-way, roadway widths, approximate radius of curves, and grades;
- I. Streets, future: the pattern of future streets from the boundary of the parcel to include other tracts within two hundred feet surrounding and adjacent to the proposed land division;
- J. Easements: location, widths and purpose of all existing or proposed easements on and abutting the tract;
- K. Utilities: location of all existing and proposed storm sewers, sanitary sewers and water lines on and abutting the tract;
- L. Contour lines having the following minimum intervals:
  - 1. Two-foot contour intervals for ground slopes twenty percent or less.
  - 2. Five-foot contours intervals for ground slopes over twenty percent.
- M. **Wooded areas: location of all trees with a diameter six-inch or greater when measured four feet above the ground;**
- N. Flood areas: location of the one hundred year floodplain;
- O. Lots and parcels: approximate dimensions of all lots and parcels, all lot sizes in square foot or acres, and proposed lot and block numbers;
- P. All parcels of land intended to be dedicated or reserved for public use, with the purpose, condition, or limitations of such reservations clearly indicated;
- Q. Existing uses of the property, including scaled location and present use of all existing structures to remain on the property after platting. (Ord. 95-20 § 1)

#### **16.04.190 Tentative plans—Other information.**

- A. Other information required for the tentative plan includes the following:
  - 1. Statement of the proposed use of lots stating type of residential buildings with number of proposed dwelling units, so as to reveal the effect of the development on traffic, and fire protection;
  - 2. Proposed covenants and restrictions;
  - 3. Partial development. If the subdivision proposal pertains to only part of the tract owned or controlled by a subdivider, the city may require a sketch of a tentative layout for streets in the unsubdivided portion;



4. Where required by Chapter [17.50](#), a geologic site investigation report;
  5. Where the site includes wetlands, a wetland delineation with the boundaries of the wetlands shown on the plan map;
  6. If the oceanfront setback for individual lots is to be established as part of the approval of the subdivision, the location of the proposed oceanfront setbacks and a description of the covenants and restrictions which will be applied to the property in order to implement the setback location;
  7. **Other information as requested by the planning commission.**
- B. The city may require any of the following to supplement the tentative plan.
1. A conceptual grading plan;
  2. Appropriate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction. (Ord. 95-20 § 1)

## **Chapter 17.80 CONDITIONAL USES**

{...}

### **17.80.020 Authorization to grant or deny.**

A. Uses designated in this chapter as conditional uses may be permitted, enlarged or otherwise altered upon authorization by the planning commission, or denied by the planning commission. This will be done in accordance with the comprehensive plan, standards for the district, standards in Chapters [17.44](#) through [17.78](#) and [17.90](#), additional zoning provisions, and other city ordinance requirements. The burden is upon the applicant to demonstrate that these requirements can be met.

B. In permitting a conditional use or the modification of an existing conditional use that involves a housing type (e.g., planned unit developments, multifamily, manufactured dwelling park, manufactured dwelling subdivision), the planning commission may impose, in addition to those standards and requirements expressly specified for that use, other conditions which it considers necessary to protect the best interests of surrounding property or the city as a whole. These additional conditions are as follows:

1. Increasing the required lot size or dimensions;
2. Reducing the required height and size of buildings;
3. Controlling the location and number of vehicle access points;
4. Increasing the required off-street parking spaces;
5. Increasing the required street width;
6. Limiting the number, size, location and lighting of signs;
7. Requiring diking, fencing, screening, landscaping, berms or other items to protect adjacent or nearby areas;
8. Designating sites for open space;
9. Specifying the types of materials to be used;
10. Specifying the time of year the activity may occur;
11. Specifying the type of lighting to be used.

C. In permitting a conditional use, or the modification of a conditional use, other than a housing type, the planning commission may impose, in addition to those standards and requirements expressly specified for that use, other conditions which are necessary to protect the adjacent property, an identified resource, or the city as a whole. Such conditions may include those set out in subdivisions 1 through 11 of subsection B of this section, but are not limited thereto. (Ord. 90-10 § 1 (Appx. A § 47); Ord. 79-4 § 1 (6.020))

{...}

### **17.80.110 Overall use standards.**

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

A. A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.



- B. The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.
- C. The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.
- D. The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.
- E. An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.
- F. The site and building design ensure that the use will be compatible with the surrounding area. (Ord. 20-03 § 3)

## Chapter 3.20 CONSTRUCTION EXCISE TAX

{...}

### 3.20.210 Dedication of revenue.

- A. The city may retain up to four percent of the taxes collected for payment toward administrative expenses related to collection and distribution of the tax.
- B. For the tax imposed on residential improvements, the net revenues, after deducting administrative expenses, will be distributed as follows:
1. Fifteen percent of net revenue will be remitted to the Oregon Department of Housing and Community Services to fund home ownership programs.
  2. Fifty percent of net revenue will be transferred to the affordable housing fund to support developer/builder incentives for affordable housing authorized by the city.
  3. Thirty-five percent of net revenue will be transferred to the city's affordable housing fund to support the city's affordable housing program.
- C. For the tax imposed on commercial improvements, one hundred percent of net revenue will be distributed to the affordable housing fund to support the city's affordable housing program. (Ord. 17-7 § 1)



**Jeff Adams**

*Community Development Director*

**City of Cannon Beach**

p: 503.436.8040 | 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](http://www.ci.cannon-beach.or.us) | e: [adams@ci.cannon-beach.or.us](mailto:adams@ci.cannon-beach.or.us)

Get the latest on all Community Development happenings by signing-up for COMMUNITY NOTIFICATIONS, visit our [Sign Up List](#).

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

**From:** david@tolovanaarchitects.com <david@tolovanaarchitects.com>

**Sent:** Wednesday, August 31, 2022 8:24 PM

**To:** Jeffrey Adams <adams@ci.cannon-beach.or.us>

**Cc:** Jay Orloff <jay@tolovanaarchitects.com>

**Subject:** Conditional use applications for Cannon Beach Business Park and Ecola Square East

Jeff:

I would like this email to be included in the record for both the Cannon Beach Business Park and Ecola Square East Conditional Use Applications for which I am the applicant.

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2. The City's affordable housing policy only applies to rental housing, not single family dwellings developed for sale. Again, It is not the responsibility of the applicant to educate the Planning Commission members of the City's policy, I will be submitting a revised site plan with more for rent units and less single family dwellings for the Ecola Square property, however I will be advising my client to not commit to an artificially low sales price for the single family dwellings if there is not a policy of financial incentive program from the City.

Thank You,

*David Vonada*

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**From:** Clenaghan <clenaghan@bendcable.com>  
**Sent:** Monday, August 22, 2022 10:58 AM  
**To:** Jeffrey Adams  
**Subject:** Proposal to develop Wetlands at 1st and Spruce Street

We have owned a house in Cannon Beach for 40 years and have sadly watched some of the most charming parts of the community be consumed by unused million dollar houses and great reduction in open space. Bigger is not better!!! To destroy the wetlands will remove the habitat of many animal species and encourage the further influx of people and development thus more habitat loss. Do you want only rabbits as wildlife in Cannon Beach? We are totally against both further development and the destruction of the wetlands in order for someone outside the community to reap fantastic financial benefits. Jack and Patricia Clenaghan

**From:** Ronald Shapiro <shapiro@shapiroadvisors-llc.com>  
**Sent:** Tuesday, August 23, 2022 9:01 AM  
**To:** Jeffrey Adams; Jennifer Barrett  
**Subject:** Written testimony for August 28 Planning Commission

Please forward the following to members of the Planning Commission. Thank you, Ron Shapiro

### **To the Planning Commission**

**I wish I could join you in person as I did when you heard testimony on the petition regarding development of the Forest Lawn Forested Wetlands area, but I will be out of town- and therefore write this with the hopes it will be included in the record of your August 25 hearing regarding the wetland conditional use permit for the 1st and Spruce Streets wetlands property.**

**Having represented both citizen groups and developers, I write to seek judgment of the Planning Commission in its role as a quasi-judicial authority based upon the facts as they exist. Expert opinion testimony and developer representations should be listened to, but even more important is weighing the actual results, precedents, of developer actions as they have actually unfolded in the past. Saying that only a limited number of trees will be cut or affected and that water courses will not be altered or wetlands materially impaired is one thing, but what actually has happened in prior development projects is quite another. Thus any developer expert testimony or representations should be carefully weighed in light of past results. This point is particularly important because once a tree or trees is damaged or destroyed, and a wetland is drained and filled, the impact of that loss on the community and its wetlands is permanent.**

**Thank you for the role you play in protecting our community.**

**Ron Shapiro, P.O. Box 738, Cannon Beach**

--  
[Ronald M. Shapiro](#), Chairman  
Shapiro Advisors, LLC  
(443) 831-1852





**Jeffrey Adams**

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**From:** barb hinthorne <bhinthor@yahoo.com>  
**Sent:** Wednesday, August 24, 2022 11:08 PM  
**To:** Jeffrey Adams; Planning Group  
**Subject:** Re: 1st and Spruce Street Wetland conditional use

To: The Planning Commission

I want to first commend each member of the Planning Commission for your commitment to the City of Cannon Beach. You have already invested endless hours in reviewing the city's comprehensive plan and codes for development, especially in reviewing conditional use permits for wetlands.

It was evident to me during last month's Planning Commission meeting focused on the conditional use permit request for the wetlands on Forest Lawn and Hemlock, that each Planning Commission member understood the importance of preserving our city's limited wetlands. All pertinent state and local rules and laws were thoroughly reviewed. Citizen input, both written and verbal, was taken into consideration. After much discussion and deliberation, the Planning Commission recommended to deny that specific location request for a wetland conditional use permit.

Your extensive background in state and local wetlands rules and laws and your knowledge about the wetlands environmental significance, will again be the foundation in determining the outcome for the new request for a wetlands conditional use permit for 1st and Spruce Street. Nothing has changed except the wetland location.

The proposal for workforce housing is a guise for development, as was evident from the multiple changes made for the previous wetland conditional request submitted by the same developer for the Forest Lawn and Hemlock wetland.

Please continue to prioritize the positive long term effects of maintaining wetlands versus reducing or eliminating wetlands by permitting short term financial gain for a developer.

Thank you, again, for your dedication to our community.

Respectfully,  
Barb Hinthorne  
POBox 135  
Cannon Beach 97110

[Sent from Yahoo Mail for iPhone](#)

August 31, 2022

Dear Planning Commission members and staff,

I bring to your attention a quote from a letter sent from the Oregon Department of State Lands dated July 19, 2022 addressed to Red Crow, LLC, Attn: Jamie Lerma and signed by Peter Ryan, SPWS, Aquatic Resource Specialist stating "Please be advised that state law establishes a preference for avoidance of wetland impacts."

The wetlands in question are those at the northwest corner of Spruce and 1st Street in downtown Cannon Beach. They are a very narrow band of wetlands along Spruce St, 00.03 acres in size. The proposed area of development on this corner is heavily vegetated with wetland plants including quite a number of willows which shade the wetlands. I find it impossible to imagine how the removal of almost all of this wetland vegetation would not adversely impact these wetlands. The removal of the canopy, as well as the roots of the trees which absorb excess water, would without a doubt cause a major disruption in the wetland ecology. If these wetlands were to dry up due to the loss of vegetation and protection from the drying effects of the sun and wind, I foresee that whole lot flooding during major rain events without the wetlands to absorb the extra water.

Perhaps you can remember just last winter when the bank, Mariner Market and public parking lots flooded during just such an event. Climate change is causing more severe weather events. In our part of the world, that means rain. I foresee major flood events becoming more common. No one is going to want to live in the homes and apartments built on that lot when they become aware of the potential for winter flooding.

Leave the wetlands alone. They exist for a very valuable purpose. Every time humans mess with Mother Nature, they eventually regret it. Please don't make a decision which could potentially put people at risk of damage to or loss of their homes. As badly as Cannon Beach needs workforce housing, I don't believe this is the place to put it. Each and every wetland, no matter how small, benefits us in ways we may not even realize. Please protect this wetland and deny the application to build on this lot.

Sincerely,

Susan Glarum  
PO BOX 108  
Cannon Beach, OR 97110



September 1, 2022

Cannon Beach Planning Commission  
Cannon Beach, OR

Re: CD # 22-01 and CU #22-03, application of David Pietka (Davidspruce LLC) for a development on 1<sup>st</sup> and Spruce Streets

Via email:

Jeff Adams: [adams@ci.cannon-beach.or.us](mailto:adams@ci.cannon-beach.or.us)

Katie Hillenhagen: [hillenhagen@ci.cannon-beach.or.us](mailto:hillenhagen@ci.cannon-beach.or.us)

Dear Chair Newton and Cannon Beach Planning Commission,

Oregon Coast Alliance is an Oregon nonprofit corporation with a mission of protecting coastal natural resources and working to increase community livability. We write you tonight with a concern for the application by David Pietka (Davidspruce LLC) for a development on 1<sup>st</sup> and Spruce Streets.

This is a complex application, and the unanswered questions are many. Perhaps the wisest course at this time is to pose some of the questions the planning commission needs to answer before continuing with this application, and relevant comments.

1. This property is zoned Limited Commercial. Residential uses are allowed as a conditional use. Is residential housing of any type the appropriate use for this property, which is not only zoned Commercial, but lies in a commercial area of the city?
2. Wetlands are not just wet places on the surface of the ground; they have extensive underground or surface water sources that feed the area and provide the water for the wetland to remain healthy. Does this proposal protect the water sources of the wetland, as well as the wetland itself?
3. When is the applicant proposing to provide a Tree Removal Application? The city's decision-makers should not be making a determination without reviewing such an application.

4. Conditional Use standard 17.80.110 (A) requires the planning commission to determine if a demand exists for the use **at the proposed location**. There does not seem to be any indication in the project materials that the proposed residential use at this site is appropriate for a commercial area, or would in any way likely be affordable/workforce housing. What guarantees does the planning commission have, or could it get, that if housing is an appropriate use on this site, it would be affordable, other than the developer's statement?
5. Geotechnical reports might be made available for the planning commission's review before making a decision on the conditional use permit. These are not mere technical reports to be handed in after conditional use approval.
6. Conditional Use Standard 17.80.110 (F) requires the use to be compatible with the surrounding area. Proposing a largely residential development in a commercial area, on a site zoned for commercial uses, raises questions about compatibility of uses that the planning commission needs to visit in detail. This is especially true given the vague assurances that this will be "affordable or workforce housing."

Thank you for the opportunity to testify in this matter. Please place this testimony into the record for this application.

Sincerely,

*/s/ Cameron La Follette*

Cameron La Follette



September 1, 2022

I am submitting 54 names objecting to the development of the 1<sup>st</sup> & Spruce Wetlands by Davespruce, LLC.

This is for the packet and hearing on the above Wetland Conditional Use Permit on September 6<sup>th</sup>

Thank you for including.

Lolly Champion  
P.O. Box 614  
Cannon Beach OR  
97110

City of Cannon Beach  
Finance Department

SEP - 1 2022

Received

## SAY NO TO WETLANDS DEVELOPMENT!

Place your name to support saving wetlands

**First & Spruce Wetland ADJACENT TO ELK PARK**

**5 CLUSTER HOMES & 4-PLEX APARTMENT BUILDING**

proposed for workforce housing with what guarantee - for how long?

NAME	P.O. BOX	ZIP
JAN SIEBERT-WAHRMUND	P.O. B. 778	CB OR 97110
Wes Wahrmond	PO Box 978	CB OR 97110
Lucinda Heyes	PO Box 872	CB OR 97110
SUSAN GLARUM	PO BOX 108	CB, OR, 97110
Gazz Johnson	POB 1374	CB OR 97110
Nancy Johnson	POB 1374	CB OR 97110
Pamela Avila	PO Box 724	CB OR 97110
Diana Byrne	PO Box 1298	CB OR 97110
Nancy Shier	P.O. Box 518	CB OR 97110
Peggy Thom	P.O. BOX 693	C.B. OR, 97110
Tania Coosen	PO Box 19	CB, OR 97110
JAMES Fontaine	PO Box 1354	CB OR 97110
Linda D. Hintz	P.O. BOX 712	CB OR 97110
Nelo Hintz	P.O. Box 712	C.B. OR 97110
John Rippey	PO Box 655	C.B. OR 97110
Betty Seaver	PO Box 137	C.B. OR 97110
Michael Seaver	PO Box 137	C.B. OR 97110
Michael Seaver	PO Box 137	CB OR 97110
Kirsten Massebeau	P.O. Box 603	CB OR 97110
Phil Massebeau	P.O. Box 603	CB 97110

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[illegible]

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proposed for workforce housing with what guarantee - for how long?

NAME	P.O. BOX	ZIP
Lili Frauer	Leglie France PO Box 820	97110
Neil (Roger Neugebauer)	PO Box 244	97110
Bonita Neugebauer	PO Box 244	97110
Linda Mayer	Linda Mayer PO Box 1384	97110
Steven Mayer	PO Box 1384	97110
Scott L Johnson	PO Box 176	97110
Mary Beth Allen	PO Box 492	97110
Anita Deber	PO Box 694	97110
Ken Potter	P.O. Box 492	97110
Katheryn Shapiro	P.O. Box 738	97110
Ronald Shapiro	P.O. Box 738	97110
Barbara Henthorne		
MARK Henthorne		
Jack Clenaghan	P.O. Box 202	97145
Patty Clenaghan	PO Box 202	97145



**SAY NO TO WETLANDS DEVELOPMENT!**

*Place your name to support saving wetlands*

First & Spruce Wetland ADJACENT TO ELK PARK

## 5 CLUSTER HOMES & 4-PLEX APARTMENT BUILDING

proposed for workforce housing with what guarantee – for how long?

[illegible]

September 8, 2022

Dear Cannon Beach Planning Commissioners,

We are concerned, with regard to the CD# 22-01 & CA# 22-03 August 31, 2022, correspondence, or lack thereof, by applicant David Vonada (for Davidspruce LLC), that the Planning Commission has still not been provided the information needed in order to make a sufficiently informed decision that's best for our community.

Where is the 1) tree report & subsequent review by our City Arborist

2) US Army Corps of Engineers jurisdictional determination

3) written development agreement or deed restriction with the City which would control the rental or sale of these proposed affordable or workforce properties

4) soils report

5) geohazard report

6) written guarantee that no intrusions would be made into the wetland area or buffer areas

7) written guarantee that this development would really be used for what the applicant says

8) written guarantee that no further partition or subdivisions would be allowed?

Finally, we are concerned that the 'revised site plan with more for rent units & less single family dwellings' mentioned by David Vonada in his August 31, 2022, correspondence, may necessitate a brand new application & a ~~whole~~ restart of the 120-day rule. How can the developer change this application so substantially so late in the process? How is this to be determined? Process is essential.

Thank you.

Sincerely,

Jan Siebert - Wahmumund  
&

Wes Wahmumund

P.O. Box 778

Cannon Beach, Oregon

97110 \*

\* Please include this letter in the record for the '7.7.7 rebuttal portion' for this application. Thanks.



# Cannon Beach Planning Commission

## Staff Report:

PUBLIC HEARING AND CONSIDERATION OF **ZO 22-01**, WILL RASMUSSEN APPLICATION, ON BEHALF OF HAYSTACK ROCK LLC PROPERTY OWNERS, REQUESTING A TEXT AMENDMENT OF THE CANNON BEACH MUNICIPAL CODE TITLE 17 ZONING REGARDING NOTICE AND PROCEDURAL REQUIREMENTS FOR CITIZENS TO RECEIVE ELECTRONIC NOTIFICATION OF APPLICATIONS PROCESSED BY THE COMMUNITY DEVELOPMENT DEPARTMENT, ADMINISTRATIVE DECISIONS, AND EXPANDED PUBLIC NOTICE FOR PERMITS CONCERNING HAZARD AREAS, ENVIRONMENTALLY SENSITIVE LANDS, AND NEW ROADS. THE REQUEST WILL BE REVIEWED AGAINST THE CRITERIA OF THE MUNICIPAL CODE, SECTION 17.86, AMENDMENT CRITERIA.

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**Agenda Date:** October 27, 2022

**Prepared By:** Robert St. Clair

## GENERAL INFORMATION

### NOTICE

Public notice for this October 27, 2022, Public Hearing is as follows:

- A. Notice was posted at area Post Offices on DATE 2022;
- B. Notice was provided to the Oregon Department of Land Conservation and Development as required by ORS ;

### 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 24, 2022 unless otherwise noted.

#### **"A" Exhibits – Application Materials**

**A-1** Application packet, including ZO 21-02, Received May 24, 2022;

#### **"B" Exhibits – Agency Comments**

None at the time of writing

#### **"C" Exhibits – Cannon Beach Supplements**

**C-1** Cannon Beach Planning Commission Work Session Staff Report, July 28, 2022;

#### **"D" Exhibits – Public Comment**

None at the time of writing



## BACKGROUND

Will Rasmussen, on behalf of Haystack Rock LLC, property owners of 1981 Pacific Ave., is requesting an amendment of the notice requirements of the Cannon Beach Municipal Code. The applicant first approached the city in 2021 with an application seeking to extend surrounding property owner notice mainly with regards to development permits. The applicant worked with staff to offer text amendments that would limit the changes to only those access extensions of public rights-of-way in the oceanfront management zones, stream corridors and wetland overlay area, which was approved and adopted August 3, 2021.

This application proposes an email notification process for all requested properties for all permit applications and decisions concerning a lot, regardless of whether official notice is required. The proposed amendment would allow any property owner or anyone else who resides in the city to request notification for any property in the city, with a duration of 60 days.

## APPLICABLE CRITERIA

### Chapter 17.86 AMENDMENTS

#### 17.86.030 Application

*Property owners or local residents who are eligible to initiate an amendment, or their designated representatives, may begin a request for an amendment by filing an application with the city manager, using forms prescribed by the city.*

#### **Staff Comment:**

The applicant, Will Rasmussen, is the designated representative of Haystack Rock LLC which is the owner of 1981 S. Pacific St. Meets criteria.

#### 17.86.040 Investigation and Report

The city manager shall make or cause to be made an investigation to provide necessary information on the consistency of the proposal with the comprehensive plan and the criteria in Section 17.86.070. The report shall provide a recommendation to the planning commission on the proposed amendment.

#### 17.86.070 Criteria.

- A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:
  - 1. The amendment is consistent with the comprehensive plan;

#### **Staff Comment**

The applicable Comprehensive Plan policy is Citizen Involvement Policy #1 which states:

*Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts by the City, including collection of data and the development of policies.*

The criteria for approval of a zoning ordinance amendment are rather brief. The Planning Commission must only find that the amendments are consistent with comprehensive plan and that they will not adversely affect the city's ability to satisfy land use needs.

At present, members of the public have the ability to obtain information about planning efforts by the City through the following means:

- Notices sent to property owners within 100 feet of properties on which Type 2 and 3 development permits have been administratively approved.
- Notices of public hearing sent to property owners within 100 feet of a property on which an application before the Planning Commission or Design Review Board has been submitted.
- Notices of public hearings are posted on community notification bulletin boards at the Downtown and Tolovana Park post offices.
- Notices of public hearings are posted on the City's website, with copies of all packet materials that have been provided to City Council, Planning Commission, or Design Review Board members.
- All tree permits, development permits, and actions before the Planning Commission and Design Review Board are available through E-Permitting.
- All tree permits, development permits, and actions before the Planning Commission and Design Review Board are available through the Public Notices page on the Community Development Department's section of the City of Cannon Beach's website.
- Information regarding short term rentals, including lists of current permit holders that are updated monthly, is available on the Community Development Department's section of the City of Cannon Beach's website.
- As per Zoning Ordinance ZO 21-01 which was adopted by City Council on August 3, 2021 and became effective on September 2, 2021, notice is provided for development and conditional use permitting when extending access and utilization of public rights-of-way located in Oceanfront Management, Stream Corridor, and Wetland Overlay areas.

The currently used system of public notice distribution provides ample opportunity for members of the public to easily access the information that this application touches upon. Adoption of the proposed text amendment would create significant redundancies, inefficiencies, and opportunities for unintentional error not present in the current system. In fact, an argument could be made that the current system should be evaluated and simplified, not made more cumbersome in a way that would likely expose the City to more legal jeopardy than currently exists. The eight means of information distribution detailed above does not include the approximately 70 Public Records Requests the City responds to each year.

The applicant's argument that additional public notice is necessary relies on the assertion that the City failed to notify under the requirements of ZO 21-01. This argument has the following two deficiencies:

1. ZO 21-01 applies to development and conditional use permitting when extending access and utilization of public rights-of-way. The development permit that triggered this application involved neither of these criteria. The scope of review for the authorization did not include improvements to Nenana Ave and was limited to residential improvements on a privately owned parcel of land. The City's review of proposed improvements to Nenana Ave is happening under a separate process and the development permit in question was conditioned on approval of access improvements.
2. ZO 21-01 became effective on September 2, 2021. The development permit application relevant to this proposed text amendment was submitted to the City on August 3, 2021 and was reviewed under the standards in place at the time of application. Even if the provisions of ZO 21-01 extended outside of the public right-of-way they would not have applied to the development permit in question.



## Procedural Requirements

This application is not subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete, since it is a legislative application.

The Planning Commission's October 27<sup>th</sup> meeting will be the first evidentiary hearing on this revised request. ORS 197.763(6) allows any party to request a continuance. If such a request is made, it should be granted. The Planning Commission's next regularly scheduled hearing date is Tuesday November 22, 2022.

## STAFF RECOMMENDATION

Staff recommends that this application be reviewed under the Code Audit process. This process will include a review of procedures currently in place and identify potential improvements that can be developed and adopted in an orderly and coordinated manner. Proposed procedural changes such as this should not be adopted without a thorough understanding of staff's roles and responsibilities, workloads, and the potential impacts that can result from additional workload that would be generated by the proposed requirements. Adoption of this amendment would require constant tracking of who is eligible to receive notice on any given day. For staff to be required to track and inform what may be a large body of citizens for an unlimited amount of requests for an unlimited number of properties across the City of Cannon Beach is not only impractical, but fails to recognize existing workload, a significant amount of which is already dedicated to meeting public notice requirements and responding to an average of 70 Public Records Requests per year.

Existing resources and assets that the City intends to adopt in the near future should be considered as those resources may address the perceived deficiencies regarding public notice. In Calendar Year 2022 staff began to utilize the State of Oregon's E-Permitting system and the Department is budgeted to adopt and train on the electronic plan review system that integrates with E-Permitting and is used by other jurisdictions in the state.

There is also the concerning potential for a disconnect between what the public may perceive this zoning amendment would provide and the actual implementation of it if adopted. There is an unaddressed question of what happens when notice stops after an individual's 60-day period expires. This may generate situations members of the public falsely accuse the City of failing to comply with the notice requirement when, in fact, they are simply no longer eligible to receive notice. These types of situations would be counterproductive for all parties involved, consume the limited time available to staff and managers responding to them, and consume time in public meetings at multiple levels.

The City of Cannon Beach and the staff of the Community Development Department are committed to transparency and fairness in the implementation of the city's land use development ordinances. We feel that the public will be best served by the notice requirements being reviewed through the Code Audit and the development of practical and effective public notice and engagement strategies that are efficient, minimize complexity and redundancy, and can be reasonably carried with the limited staff resources available to the Department.

## PLANNING COMMISSION ACTION

**MOTION:** Having considered the evidence in the record, based on a motion from Commissioner NAME, seconded by Commissioner NAME, the Planning Commission moves to **tentatively** (approve/approve with conditions/or deny) the Rasmussen application, on behalf of Haystack Rock LLC, for text amendments to Title 17 Zoning, application **ZO#22-01**, as discussed (subject to the following conditions) and requests that staff draft findings for review and adoption, at the next meeting of the Planning Commission of the City of Cannon Beach, Tuesday at 6PM, November 22, 2022 at City Hall.



# CITY OF CANNON BEACH

## AMENDMENT TO THE ZONING ORDINANCE TEXT

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

Applicant Name: Haystack Rock, LLC  
Email Address: c/o Will Rasmussen, Miller Nash LLP  
Mailing Address: 111 SW Fifth Ave, Ste 3400, Portland, OR 97204  
503.224.5858

Telephone: \_\_\_\_\_  
Property-Owner Name: \_\_\_\_\_  
(if other than applicant)

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Property Location: \_\_\_\_\_  
(street address)

Map No.: \_\_\_\_\_ Tax Lot No.: \_\_\_\_\_

### AMENDMENT TO THE ZONING ORDINANCE REQUEST:

1. Description of the proposal.

See attached.

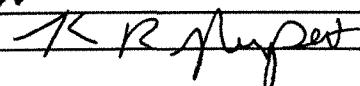
2. Justification for the Zoning Ordinance amendment request. Explain how the request meets each of the following criteria for granting an amendment to the Zoning Ordinance.

See attached.

**Note:** Use extra sheets, if necessary, for answering the above questions.

**Fee:** \$1,500

Applicant Signature:  Date: 05.23.22

Property Owner Signature:  Date: 5-24-22

If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owners.

*For Staff Use Only:*

Received on: \_\_\_\_\_ By: \_\_\_\_\_ Fee

Paid: \_\_\_\_\_ Receipt No.: \_\_\_\_\_

(Last revised March 2021)

PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-8042 • TTY (503) 436-8097 • FAX (503) 436-2050

[www.ci.cannon-beach.or.us](http://www.ci.cannon-beach.or.us) • [planning@ci.cannon-beach.or.us](mailto:planning@ci.cannon-beach.or.us)





**William L. Rasmussen**  
william.rasmussen@millernash.com  
503.205.2308 (direct)

May 24, 2022

**VIA EMAIL**

**PLANNING@CI.CANNON-BEACH.OR.US**

Cannon Beach Planning Commission  
City of Cannon Beach  
PO Box 368  
163 E Gower St  
Cannon Beach, OR 97110

**Subject:** Proposed Amendments to Cannon Beach Municipal Code (CBMC)

Dear Commissioners:

Enclosed is an application for amendments to the CBMC providing for (1) a limited process for citizens to request and receive electronic notification of applications and decisions, regardless of whether official notice is required, and (2) expanded public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.

Although these proposed code amendments are of general application,<sup>1</sup> recent events have demonstrated the urgent need for their adoption. In short, the City's community development director (the "Director") conditionally approved the construction of a residence on the inaccessible vacant lot owned by Stanley and Rebecca Robert ("Applicants") that is 100 feet down the steep, unstable slope under the Hemlock Street S-curves (the "Property") without providing notice required under the City code or even making the decision publicly available until after the time for a local appeal had expired. Applicants' development permit was approved on March 21, 2022 (the "Decision"), but withheld from the public until it was arbitrarily placed in a City Council meeting packet on April 8, 2022.<sup>2</sup>

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<sup>1</sup> The proposed amendments are thus legislative, governed by CBMC 17.86.060.

<sup>2</sup> The meeting agenda did not reference the Decision. It was associated with a discussion item titled "Roberts Driveway Access Easement," a separate proposal made by Applicants.

4854-5730-9471.4

This is particularly troubling for several reasons. First, there is intense public interest in the proposed development of the Property. The application submitted by Applicants on August 3, 2021 (the “2021 Application”) was the latest in a string of applications filed by Applicants,<sup>3</sup> all of which have drawn extensive public participation and have been overwhelmingly opposed. This is because the development would, among other things, destroy oceanfront greenspace managed by the City, convert public right-of-way to private use, create a dangerous intersection on perhaps the most precarious stretch of road in the city, and increase landslide hazards for Hemlock Street and surrounding neighbors.

Given the public’s interest, the planning department set up a webpage last fall that is specifically dedicated to the 2021 Application.<sup>4</sup> The planning department ostensibly placed all supporting materials and communications on the webpage during its review. There are currently 88 application documents and communications.<sup>5</sup> Yet, the Decision approving the 2021 Application was not and still has not been posted or even referenced on the webpage. Thus, the only effect of the dedicated webpage was to lull the public into wrongly believing that a decision had not been made on the 2021 Application.

Next, our client, Haystack Rock, LLC (“Haystack”), asked the Director multiple times to notify them when a decision was made on the 2021 Application. Haystack’s principals would be particularly injured by the unsafe and unsightly development proposed by Applicants. For decades this family has owned, maintained, and even rebuilt the historic Oswald West Cabin that is adjacent to the Property on two sides, as well as the stretch of undeveloped right-of-way that Applicants are demanding be converted to a private driveway. Providing informal

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<sup>3</sup> This is the second proposal for the development. Applicants’ first application was submitted in the summer of 2020, which proposed a residence that violated the City’s oceanfront setback code. Accordingly, that application was denied by the planning commission in November 2020—a decision that has been upheld by City Council, the Land Use Board of Appeals (LUBA), and the Oregon Court of Appeals. Although Applicants still seek to reverse the planning commission’s decision by seeking review from the Oregon Supreme Court, they submitted the new 2021 Application as a “backup” to their preferred design.

<sup>4</sup> <https://www.ci.cannon-beach.or.us/planning/page/alternative-building-permit-submission-behalf-stan-and-becky-roberts-taxlot>.

<sup>5</sup> This includes the Director’s approval of the related stability beam application on September 21, 2021. The planning commission’s reversal of this decision on December 21, 2021, however, was not added to the webpage.



notification of decisions to this type of interested party is a common courtesy observed by planning staff across the state.<sup>6</sup> Even in the absence of such courtesy, Haystack was entitled to official mailed notice under the City's zoning code.<sup>7</sup> It received neither.

The public was also misled by the planning department's inconsistent and contradictory treatment of the 2021 Application. For example, the Director treated the application as a request for a discretionary Type 2 development permit by applying the 120-day deadline imposed by state law and deferring compliance with many criteria as conditions of approval, but then did not follow the notice and other procedural requirements for such a permit.

Finally, the failure to provide the required notice or even make the Decision publicly available is particularly problematic because the 2021 Application is clearly deficient and woefully incomplete. It proposes a new residence and road on an active landslide, as well as a new intersection in the middle of the Hemlock S-curves, but does not include a geotechnical report, traffic study, or grading plan for the development.<sup>8</sup> The 2021 Application also does not address a clear fatal flaw with the development: the Property has no vehicular access or means of obtaining vehicular access that is safe or lawful.<sup>9</sup>

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<sup>6</sup> In statements to City Council, the Director appeared to take the position that it would be improper for the planning department to notify parties of decisions if official notice is not required. There is no basis, however, for such a contention. In fact, LUBA has advised just the opposite. See *Jebosek v. City of Newport*, 51 Or LUBA 93, 106 (2006) (advising petitioner, on remand, to request notice of future permit approvals, and telling the planning staff that providing "some kind of notice to petitioner and opportunity to comment would be prudent, even if the city is not legally required to do so").

<sup>7</sup> Haystack was entitled to notice because the Decision approved grading work, which is described in Applicants' grading permit application, the narrative for the 2021 Application, and other supporting materials. Clearly this extensive cutting and filling work should have triggered notice to Haystack under CBMC 17.88.010(A) which states, "Mailed notice shall be sent to property owners within the following distances \* \* \* 6. Cutting and filling, pursuant to Chapter 17.62: abutting property owners." In Chapter 17.62, the term "fill" is defined broadly as "the deposit of earth material placed by artificial means." The terms "cut" and "fill" are also the only activities described in the code standards for grading work. CBMC 17.62.040.

<sup>8</sup> Instead, Applicants submitted the 2020 reports and plans that are not for the improvements proposed in the 2021 Application, but for an entirely different road and residence footprint and design.

<sup>9</sup> The on-grade, private driveway over public right-of-way proposed in the new application violates Oregon law, attempts to take Haystack's private property rights, and contravenes the expert reports submitted by Applicants in 2020 that explicitly state that a road should not be built on the face of the slope.

Because the Decision was withheld from the public until after the local appeal deadline, the planning commission was deprived of its opportunity to correct the Decision. As a result, Haystack was forced to file a petition with LUBA. The City will now be forced to expend staff time and significant public money on attorney fees to participate in an appeal that will ultimately be a waste of resources for all parties.

In order to avoid similar situations in the future, Haystack proposes the following code amendments, which will ensure that the public is informed of important actions by the planning department going forward.

**A. New code process for requesting electronic notification of permit decisions.**

The first code amendment proposed by Haystack is to create a limited process for interested parties to request and receive electronic notification of applications and decisions concerning the development of a particular property.

This is actually the second time Haystack has proposed a code amendment to address the Director's refusal to provide courtesy notice to concerned citizens. In March 2021, Haystack submitted an application to add a requirement that the planning department notify neighbors of permit decisions when requested, regardless of whether formal notice was required. The Director opposed this code amendment before the planning commission because he felt that it would create too much of an administrative burden. In the staff report and in testimony before the commission, the Director said that this new code provision was not required because the planning department was implementing a new system where applications would have a dedicated webpage on the City's website and "anyone in the community can subscribe to the page or visit the page for the latest postings."<sup>10</sup>

Based on this representation, Haystack agreed to drop its proposal and limit the amendments to code concerning new roads in the oceanfront management zones, stream corridors, and wetland overlay areas.

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<sup>10</sup> Staff Report for planning commission work session on April 22, 2021.



As stated above, the planning department has implemented a webpage system—but does not keep the application pages accurate and up to date. As demonstrated by the 2021 Application, the planning department does not upload all documents or even the ultimate decisions. Thus, the webpages do more harm than good because people rely on the inaccurate information provided. For example, the public was led to believe that a decision had not been made on the 2021 Application because the Decision was not (and still has not) been put on its dedicated webpage. Without code mandating the webpage process, the public will never be able to rely on the accuracy of the application webpages.

To ensure that Cannon Beach citizens are able to participate in the public process for review of development that could impact them, Haystack proposes the following new code section:

## **Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS**

### **17.88.005 Request for Electronic Notification of Permit Decisions**

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

#### **B. Form of Request.**

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

#### **C. Notification Process.**

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

D. Duration of Request.

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

The new section satisfies the two criteria in CBMC 17.86.070(A). First, a process allowing informal notification of permit decisions to be requested by interested parties furthers the Citizen Involvement Policies in the comprehensive plan, especially policies 1 and 4.

1. Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.

\* \* \*

4. Citizens shall receive responses to their comments to decision-makers, either directly at meetings, in the minutes of the meetings, or by written correspondence.

Citizens cannot be meaningfully involved or learn the official response to earlier comments without knowing that decisions are being made and the substance thereof.

The new code will also “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). This code creates a simple process for the planning department to provide notification of applications and decisions when specifically requested for a particular



property. To address the Director's earlier fears of administrative burdens, the code requires only electronic notification, and the requests for notification are limited in duration.

In fact, the notification process may save time by curing notice violations in those few situations where the planning department fails to provide required notice. The Decision is a good example. If the planning department had provided Haystack with informal notification of the Decision—as it had repeatedly requested—the department's failure to comply with the formal notice requirements would have been harmless. Haystack would have appealed the decision to the planning commission as though notice had been received, and the commission would have been able to fix the errant issuance of the permit. But because courtesy notification was not provided, Haystack did not learn of the Decision until after the 14-day appeal window.<sup>11</sup>

As a result, the City will now be forced to waste time and resources responding to Haystack's appeal to LUBA, which will certainly remand the Decision to the City with an order to provide notice and allow the local appeal—a wasteful and pointless exercise for all parties involved.

**B. Code amendments to expand public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.**

To ensure that the public has an opportunity to participate in planning actions that have the highest potential to detrimentally impact the community, Haystack also proposes code amendments that would require the City to provide notice of permit decisions concerning work within hazard areas or environmentally sensitive lands, as well as permits approving the construction of new roads.

These changes are needed in part because of the planning department's apparent confusion over the distinction between Type 1 and Type 2 development permits, which to a large extent determines when notice is necessary. This is illustrated by the planning department's review of the 2021 Application. At times, the Director applies the procedure for a Type 1 development

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<sup>11</sup> The City then denied Haystack's requests to withdraw and reissue the decision or toll the appeal period, as allowed under Oregon law.

permit, and then in other respects treats the application as a request for a Type 2 permit. For example:

- The Decision states that it approves a Type 1 development permit, but it is issued by the Director, not the “building official” as required for a Type 1 decision.<sup>12</sup>
- The Decision also includes conditions of approval, which are only allowed in a Type 2 decision.<sup>13</sup>
- The Director approved the 2021 Application despite not complying with multiple applicable criteria, instead deferring a showing of compliance for a later time, which is not allowed for a Type 1 permit.<sup>14</sup>
- Yet, despite the above, the Director ignored all of the Type 2 requirements, including public notice and the right to a de novo appeal.

This confusion extended to the planning department’s application of related state law. Although the development permit was determined to be Type 1, reviewed under only objective criteria, the Director applied the state’s 120-day deadline and goalpost rule (i.e., allowing the application of outdated standards), which only apply to applications requesting discretionary

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<sup>12</sup> CBMC 17.92.010(C)(1): “The building official shall issue a development permit \* \* \*.”

<sup>13</sup> CBMC 17.92.010(C)(2)(a) states that “[t]he [Type 2] development permit application shall be reviewed by planning department against the applicable standards contained in this title and the application shall either be approved, *approved with conditions*, or denied.” (Emphasis added.) There is no option for a conditional approval under CBMC 17.92.010(C)(1).

<sup>14</sup> CBMC 17.92.010(C)(1): “The building official shall issue a development permit to the applicant if the building official finds that the work \* \* \* conform[s] to the requirements of this title, and any conditions imposed by a reviewing authority.” There is no option for a deferral of compliance with the zoning code or conditions imposed during an earlier application review.



permit approval.<sup>15</sup> Then, in contradictory fashion, the planning department did not provide the notice and other procedures required for discretionary permits.<sup>16</sup>

To ensure that confusion over the type of permit at issue does not cause future violations of notice requirements for development that could have a significant, detrimental impacts on the community, Haystack proposes the following changes.

## **Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS**

### **17.50.030 Procedure.**

The requirements of this section shall be met prior to the issuance of a building or development permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.

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## **Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL**

### **17.62.030 Grading and erosion control permit.**

#### **A. Development Permit Required.**

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

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<sup>15</sup> The 120-day deadline in ORS 227.178(1) and goalpost rule in ORS 227.178(3) only apply to “permits” as defined in ORS 227.160(2): the “discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation.” (Emphasis added.)

<sup>16</sup> ORS 227.175 provides that the local review of “permits” must observe certain quasi-judicial procedures, such as notice and opportunity for de novo hearings.

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.

3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.

4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

\* \* \*

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)

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## **Chapter 12.36 PUBLIC RIGHTS-OF-WAY**

### **12.36.030 Issuance of permits.**

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

#### **B. Procedure for new street improvements.**

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below, giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

\* \* \*

~~F.~~ G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70,

Tree Removal, which requires a permit from the city prior to any tree removal.  
(Ord. 93-20 § 4)

These proposed changes meet both criteria in CBMC 17.86.070(A). The limited expansion of notice for work in geologic hazard zones, grading in sensitive areas, and construction of new street improvements advance several plan provisions. These include Citizen Involvement Policy 1,<sup>17</sup> General Development policies related to geologic hazards (4, 5, 9, and 12), and all of the Geologic Hazards policies. The applicability and scope of these notice requirements are narrow and will “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). Rather, providing notice and allowing participation by the public will ensure that this type of development will be regulated so that it does not negatively impact the existing and potential land and water in the surrounding areas.

**C. Conclusion.**

The Director’s failure to provide notice, place the Decision on the application webpage, or otherwise make it publicly available undermined significant public interests and prevented the planning commission from correcting the errant Decision. These circumstances evidence a clear and urgent need for the code amendments proposed above.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William L. Rasmussen'.

William L. Rasmussen

cc: Jeff Adams (via email)

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<sup>17</sup> “Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.”



## **EXHIBIT 1 – PROPOSED CODE AMENDMENTS**

### **Cannon Beach, Oregon Municipal Code Title 17 ZONING**

#### **Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS**

##### **17.88.005 Request for Electronic Notification of Permit Decisions**

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

##### **B. Form of Request.**

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

##### **C. Notification Process.**

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

##### **D. Duration of Request.**

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

## **Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS**

### **17.50.010 Purpose.**

The purpose of this chapter is to minimize building hazards and threats to life and property that may be created by landslides, coastal erosion, weak foundation soils and other hazards as identified and mapped by the city. This purpose is achieved by basing city decisions on accurate geologic and soils information prepared by a registered geologist and requiring the application of engineering principles in any construction that occurs where such studies indicate potential hazards.

### **17.50.020 Applicability.**

The following are potential geologic hazard areas to which the standards of this section apply:

- A. In any area with an average slope of twenty percent or greater;
- B. In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;
- C. In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;
- D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or
- E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage.

### **17.50.030 Procedure.**

The requirements of this section shall be met prior to the issuance of a building or development permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.



## Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

### 17.62.030 Grading and erosion control permit.

#### A. Development Permit Required.

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). *However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.*

3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.

4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

#### B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

1. Residential landscaping and gardening activities up to two thousand square feet in area;

2. Forest management undertaken pursuant to Section 17.80.170;

3. Construction which disturbs five acres or more. Such activities are regulated by the Oregon Department of Environmental Quality through its storm water program.

C. Information Required for a Development Permit.

1. An application for a development permit for regulated activities subject to the requirements of this chapter shall include the following:

a. A site plan, drawn to an appropriate scale with sufficient dimensions, showing the property line locations, roads, areas where clearing, grading, excavation or filling is to occur, the area where existing vegetative cover will be retained, the location of any streams or wetland areas on or immediately adjacent to the property, the general direction of slopes, the location of the proposed development, and the location of soil stock piles, if any;

b. The type and location of proposed erosion and sedimentation control measures.

2. The city may require a grading plan prepared by a registered civil engineer where the disturbed area has an average slope of twenty percent or greater, the disturbed area is located in a geologic hazard area, or is part of a subdivision or partition. Such a grading plan shall include the following additional information:

a. Existing and proposed contours of the property, at two-foot contour intervals;

b. Location of existing structures and buildings, including those within twenty-five feet of the development site on adjacent property;

c. Design details for proposed retaining walls;

d. The direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed.

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)



# **Cannon Beach, Oregon Municipal Code Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES**

## **Chapter 12.36 PUBLIC RIGHTS-OF-WAY**

### **12.36.030 Issuance of permits.**

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

#### **B. Procedure for new street improvements.**

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

1. Maintains public safety;
2. Maintains adequate access for public use of the street right-of-way;
3. Maintains or improves the general appearance of the area;
4. Does not adversely affect the drainage or cause erosion of the adjacent property.

All of these criteria must be met in order for the public works department to issue a permit.

~~C.~~ D. Upon issuance of a permit, property owners may plant trees or shrubs or place improvements in the public right-of-way abutting their property so long as the selection, location and planting of such trees or shrubs or the placing of an improvement is in accordance with the permit.

~~D.~~ E. Nothing in the ordinance codified in this chapter shall be construed to prohibit a property owner from watering or fertilizing trees or shrubs or mowing other vegetation in the public right-of-way abutting his/her property.

~~E.~~ F. Any tree, shrub or other object placed in the public right-of-way not in compliance with the provisions of the ordinance codified in this chapter shall be removed at the expense of the person who planted it or placed it there. The city shall direct the abutting property owner to do so under the provisions of Sections 8.04.170—8.04.230 of the Cannon Beach Municipal Code.

~~F.~~ G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70, Tree Removal, which requires a permit from the city prior to any tree removal. (Ord. 93-20 § 4)

[illegible]



Cannon Beach Planning Commission

# Good of the Order



## Jeffrey Adams

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**From:** Jennifer Barrett  
**Sent:** Friday, September 02, 2022 11:08 AM  
**To:** Jeffrey Adams  
**Subject:** FW: Northwest By Northwest Gallery Cannon Beach Oregon/ ECONOMIC VALUE of the ARTS

This was sent for the PC.



### Jennifer Barrett

*City Recorder / Assistant to the City Manager*

#### City of Cannon Beach

**p:** 503.436.8052 | **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](http://www.ci.cannon-beach.or.us) | **e:** [barrett@ci.cannon-beach.or.us](mailto:barrett@ci.cannon-beach.or.us)

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

**From:** [info@nwbynwgalleries.com](mailto:info@nwbynwgalleries.com) <[info@nwbynwgalleries.com](mailto:info@nwbynwgalleries.com)>  
**Sent:** Thursday, September 1, 2022 5:18 PM  
**To:** Jennifer Barrett <[barrett@ci.cannon-beach.or.us](mailto:barrett@ci.cannon-beach.or.us)>  
**Subject:** FWD: Northwest By Northwest Gallery Cannon Beach Oregon/ ECONOMIC VALUE of the ARTS

### Forward Planning Commission

Hi. I am an advocate for the Arts .. NW By NW GALLERY brought 5 public sculptures to Cannon Beach, voted on and selected by the Public. .. Have been on many marketing boards for years... Here are a couple of quotes I feel would enhance promote and protect our community.. "More people visit Art Galleries & Museums than all sporting events put together" The NY Times "Cannon Beach is one of the top 30 Coastal Arts Towns Internationally". US News & World Report the Stephanie Inn uses a quote from US News & World Report which would draw even more traffic to our Chamber site Americans for the Arts states that when the Arts are promoted... Restaurants and retail stay open longer and cash registers ring. Former CEO of the World Bank We need these accolades including Public Sculpture throughout the City of Cannon Beach on our front page ...of the Chamber site This is the very same audience who enjoys birding... "We are the Best Place on the West Coast to see Tufted Puffins. I ask for your help in attracting visitors who will respect who we are and will travel here to support , enjoy and discover for themselves . Joyce Lincoln 35years in business

ps. The head of Travel Portland , Jeff Miller came here and said  
"Art is your brand and you own it".  
Public Sculpture though out the town.  
decades ago the town was called the Carmel of the NW