

**Minutes of the  
CANNON BEACH PLANNING COMMISSION**  
Thursday, February 24, 2022

**Present:** Chair Daryl Johnson and Commissioner Barb Knop in person  
Commissioners Mike Bates, Charles Bennett, Clay Newton, Lisa Kerr and Anna Moritz via Zoom

**Excused:**

**Staff:** Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair, and Administrative Assistant Katie Hillenhagen

**CALL TO ORDER**

Chair Johnson called the meeting to order at 6:00 p.m.

**ACTION ITEMS**

**(1) Approval of Agenda**

**Motion:** Kerr moved to approve the agenda as presented; Bennett seconded the motion.

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

**(2) Consideration of the Minutes for the Planning Commission Meeting of January 27, 2022**

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

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

**(3) Public Hearing and Consideration of CU# 21-03, Jacqueline O. Brown request, for a Conditional Use Permit for shoreline stabilization at 116 N. Laurel St.**

Jacqueline O. Brown Revocable Trust request for a Conditional Use permit to replace approximately 50 cubic yards of sand that has eroded the bank on the west side of the property. The property is located at 116 N. Laurel St. (Tax Lot 04000, Map 51019DD) in a Residential Medium Density (R2) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.14.030 Conditional Uses Permitted, 17.42.060 Specific Standards and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

This item was postponed until the March 17 Planning Commission meeting.

**(4) Public Hearing and Consideration of AA# 22-01, Greg Hathaway request, on behalf of Jeff & Jennifer Harrison for an Appeal of an Administrative Decision to approve a building/development permit for Harding-Bouvet at 534 N. Laurel Street**

Jeff and Jennifer Harrison appeal of the City's approval to issue a development/building permit for 534 N Laurel Street. The property is located at 534 N Laurel Street (Tax Lot 07002, Map 51019AD), and in a Residential Medium Density (R2) zone. The request will be reviewed pursuant to Municipal Code, Section 17.88.160, Review consisting of additional evidence or de novo review and applicable sections of the zoning ordinance, conditions of approval of the Cannon Beach Preservation Planned Development Subdivision and approved plat.

Chair Johnson asked if anyone opposed the jurisdiction of the Planning Commission to hear this matter at this time.

Bates asked if amended portions of the appeal were included in the hearing. He opposed including the living wall, he did not think that they had jurisdiction to hear anything related to the living wall.

Kabeiseman said there was no issue with them raising the issue of the wall. He noted that, after hearing their arguments, the Commission can decide whether or not to dismiss it.

Bates said that the living wall was approved too long ago.

Moritz and Kerr said they thought they had jurisdiction. Chair Johnson agreed.

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

Kerr asked about the continuance.

Kabeiseman said they should move forward with the hearing tonight, then they can leave the record open and continue the hearing in March.

Adams read his staff report (see staff report in packet for full details). Adams read the language related to two story garages. He noted that the question is whether the garage has two stories and whether it is attached. He said that Cannon Beach does not define *story* or *detached* in the municipal code. Adams said that the appellant argues that the structure is 2-stories, according to Oregon Building Code. Adams discussed the comments that he provided on the initial building permit submittal (see packet addendum dated 2/24/2022 for details). He pointed out that the original garage was very different and that many revisions were made based on his comments. He reiterated that it boils down to two different things. The first is the *story*, which is related to the under flooring and crawlspace. The City determined that the space under the garage is not a story. The appellant argues that it is because of the height. The second component is whether or not the garage is *detached*. Adams said that the City's building official usually considers a garage to be attached if it shares a load bearing wall with the main structure. The applicant has

submitted an alternative set of plans that uses a load bearing wall to connect the garage and the main structure. Adams said that they could require that connection in their conditions of approval.

Chair Johnson noted that the garage and the house are attached by a deck and a roof. He asked if that would qualify as attached.

Adams said that they did not make that determination because they did not see the garage as being two stories.

Moritz asked how the two buildings in the proposed alternative share a load bearing wall in the drawing. She said that she is new to reading plans

Adams said they have not made a determination on that.

Kerr asked if the breezeway would put the square footage over the limit.

Adams said that that would depend and they would need more details. He also said that the PC could account for that in their conditions.

Moritz asked for guidance in the next meeting on whether or not the proposed revisions would qualify the garage as attached.

Adams continued to go over the staff report. He noted that the City does not review agreements between private parties in easements or other agreements. He said they should reject this basis for appeal, it is not for the Planning Commission to decide. This is the same for the living wall. The City does not have the right to refuse to issue a building permit that otherwise meets its code. They can, however, take other forms of enforcement. Adams read the conclusion from the staff report and noted that Planned Developments have been removed the Cannon Beach Municipal Code.

Moritz asked if Adams reviews these conditions while reviewing a building permit.

Adams said that he does, but not all of them. The conditions of approval for the PUD should already have been taken care of in the past. Adams explained how planned developments typically work. He said that planned developments should be the plat. Everything else should be in a development agreement. He noted that the ones that he has worked with in the past have had a development agreement. He also reiterated that planned developments have been removed from the code.

Kerr asked about Adams being able to enforce conditions of approval when reviewing the permit. Kerr said that there is nothing that says they can or cannot.

Adams said he will let Kabeiseman take that question.

Kabeiseman said that the city is not in the place to enforce the terms of an easement. The City can, and did, require that they record an easement. However, the condition in the PUD only required them to record the easement, not to enforce it.

Kerr said that it is different for the living wall because that is a condition and not an easement.

Kabeiseman tried to recall the LUBA ruling related to the living wall. He suggested that staff speak to that before the next meeting.

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

Dean Alterman spoke on behalf of the applicant Paul Bouvet (see submitted written comments in packet for full details and images). Alterman said that at its heart this is the same as the Najimi case. Can someone use an application for a building permit on a legally approved subdivision as a way to relitigate a 5-year old approval for the same subdivision? He said that LUBA has very clearly said that the answer is no. Alterman said that the comprehensive plan is not a standard of approval for a building permit. He noted that the comprehensive plan calls for structures to be small in character and pointed out that this 600SF dwelling is small in comparison to other structures in the area. Alterman then spoke about the easement for the common area open space. He said that these are rights individual owners have to use the common open space. They can plant in this space, they can put in decks and walkways, and they can do other things that are non-exclusionary. Alterman noted that the proposed drywell is underground. It will not block anything or prevent people from using that space. He said that the drywell could potentially be covered by a patio or a deck. Alterman also pointed out that city policy encourages people to take care of runoff in the area, the drywell does just that. Alterman said that people outside the subdivision are not party to the easement, that is a private matter between the people who own the lots in the subdivision. He then moved on to the garage. Alterman said that if they find that it is an attached garage, it does not matter if it has two stories or not. If they find that it is not attached and that it has two stories, Mr. Bouvet can attach the garage. Alterman argued that to find the crawl space as a story it would need a floor. He said that this building does not have floors on different levels. It has one floor. He also said that Mr. Bouvet could make it an open-air parking area because then it would not be a garage.

Alterman said that Mr. Bouvet has tried to design a house that complies with the code and the PUD. He has tried to build something responsible by dealing with stormwater and retaining trees. He said that he could move the drywell to his property, but that would require him to cut down trees.

Moritz asked about the SAMA (Shared Access and Maintenance Agreement).

Alterman said that the city is given the power to ask the property owners to comply.

Moritz asked if they could access the full document.

Alterman said that it could be provided.

Newton asked if the area under the garage was going to be a dirt surface.

Alterman said that he is leaving the slant and putting the garage above the slope, with no floor underneath.

Bates said that the nature of the garage makes it look like it is two stories and that could be incompatible with the neighborhood.

Alterman said that the state requires cities to adopt comprehensive plans and codes and that these codes have to be approved. He noted that the code is what people use as a standard.

They discussed the role of the comprehensive plan in relation to the code.

They confirmed that the front elevation of the garage is 17 feet.

Jeff Harrison noted that a lot of last-minute material came in so they have asked for a continuance. Harrison read his comments (exhibits Harrison's comments are attached at the end of these minutes). He said that the issue is the detached two-story garage. He said that the structure is two stories and detached. He believes that the crawl space meets the definition of a story according to building code. He read the definition from the building code. He said that he considers the revised plans as still depicting a detached garage. He said that they believe the drywell is exclusionary. Harrison added that they do not believe that it should matter that they are not part of the PUD. He said that the City is part of the PUD so they can deny a building permit. Harrison then went over the living wall. He said that staff approves anything that the code does not prohibit. He said that when there is a discrepancy they should look to the comprehensive plan. He does not think that this is a good lot for a garage.

Moritz asked for clarification on the term non-exclusionary. Is it read as only benefiting the single owner, or as excluding use for other members of the PUD?

Harrison said that he thought that the drywell was an exclusionary use.

Bates asked why he cared about the well.

Harrison said it is about how many passes have been given for this property.

Bates said he cannot understand why he is making a point of this, other than to make a point.

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

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

Chair Johnson asked if the applicant wished to make additional statements.

Alterman read the section of the agreement related to the wall. The agreement stated that Nicholson was to produce a contract with a landscape contractor and a timeline before building the wall. The City issued the permit for the wall, meaning that they approved it at that time and felt the agreement had been met. Alterman said that this was 4 years ago and allows for enforcement, but not the withholding of a building permit. He also discussed the difference between exclusionary or exclusive. He said that exclusionary is to keep people out. Alterman said that the drywell does not exclude people from the purpose of this space.

They discussed how to continue the hearing.

Johnson said he would put a limit of 5 minutes for closing arguments at the next meeting.

Newton said that this packet was difficult to read and asked if there had been a change in the process.

They decided that exhibits should be labelled and asked for an additional view showing how the two structures are connected.

Moritz asked for clarification regarding whether the ground under the garage was sloped.

Adams said that it was sloped.

Bates asked if they would be able to enforce the area under the garage as being sloped.

Adams said they would have to follow the plans when building, and the plans show it as sloped.

Kabeiseman went over the 7-7-7 open written record rules.

Chair Johnson closed the hearing

#### INFORMATIONAL ITEMS

##### **(10) Tree Report**

Bates asked how to read the tree report.

The report is done monthly and shows trees removed in the city over that period.

##### **(11) Ongoing Planning Items**

Adams went over some planning updates.

The Code Audit Joint Work Session will be on Wednesday, March 2, 2022. Half will be about how the code audit works and half will be about items left from the fast-track proposals.

An online open house will begin in March.

##### **(12) Good of the Order**

Jan Siebert-Wahrmund said that she was concerned about the number of trees that came down in January. She asked them to look at strengthening the tree ordinance during the code audit.

Newton said that it might be good to have training for new Planning Commission members.

Kabeiseman agreed that that is a great suggestion. Especially with new members joining in the coming months.

Johnson brought up two accessory structures that were an issue that have not been resolved.

Adams said that a development permit is in and surrounding landowners will get notice when it is complete.

#### ADJOURNMENT

The meeting adjourned at 7:38 pm.

A handwritten signature in black ink, appearing to be 'Katie Hillenhagen', is written over a horizontal line.

Administrative Assistant, Katie Hillenhagen

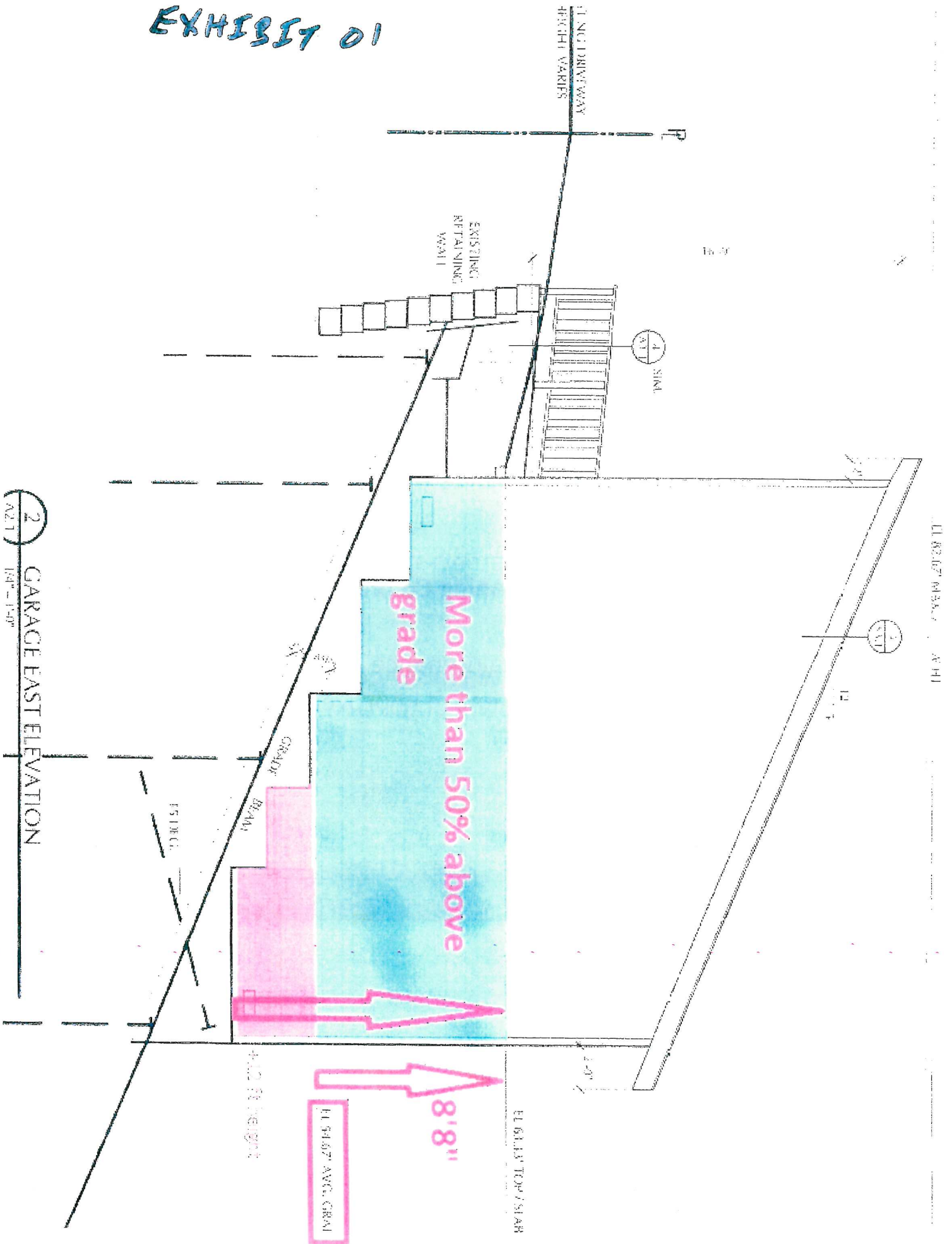




## AA# 22-01 Harrison Exhibits

1. Lot 4 Garage - East Elevation showing more than 50% of lower space above grade and over 6 ft in height.
2. Lot 4 Garage - North Elevation showing more than 50% of lower space above grade and over 6 ft in height.
3. Living Wall – Submitted unsigned estimate accepted instead of, “executed contract with landscape professional” with “timeline for the establishment of plantings on the wall”.
4. Harrison prepared statement – City Council 06/05/2018.
5. Harrison letter to Planning Commission re: “living wall”, 06/25/2020.
6. Shared Access and Maintenance Agreement – Open Space easement uses and allowed improvements.

## THEORY



8'8"

More than 50% above grade

GARAGE NORTH ELEVATION

REV. PERMIT SET

REV. PERMIT SET;

# EXHIBIT 03

VASQUEZ YARD & TREE WORK INC

P.O BOX 273  
Hillsboro, OR, 97123

## Estimate

Date	Estimate #
9/11/2016	1370

Name / Address
JEFF Nicholson 4413 SE 39 th portland OR 97202

			Project
Description	Qty	Rate	Total
Estimate Only		0.00	0.00
JOB 532 N Laurel street Cannon Beach OR 97110		0.00	0.00
Buy 102 3 Gal mahonia Repens cost	102	24.99	2,548.98
and 113 3 Gal Gaultheria shalon Salsal	113	24.99	2,823.87
Buy 23 yards of composted soil	23	45.00	1,035.00
Labor for planting all plants and Graden		0.00	0.00
to finish this project fee	1	7,875.00	7,875.00
<i>includes maintenance &amp; follow up monitoring</i> <i>includes obtain business license in OR.</i> <i>Will to be planted within 6 weeks of completion of wall.</i> <i>Plantings to be established within 12 months of planting.</i>			
<i>X</i> <i>Max Vasquez</i>			
<i>X</i> <i>Max Vasquez</i>			12 NOV 16
Thank you for your business		Total	\$14,282.85

# EXHIBIT 04

6/5/18

Good evening,

My name is Jeff Harrison, and I'm here on behalf of myself and my wife, Jennifer Harrison. Our mailing address is 11445 NW Permian Dr, Portland, OR, 97229. We also have a home on N Laurel, directly across from the Nicholson Planned Unit Debauch. I'm here tonight to ask you about that issue.

I'm not going to give you a history lesson. On March 8, 2016, you gave your final approval for phase 3 of the development despite vociferous, widespread, and extensive opposition, excepting the pink-haired lady and the ship captain. You wrote and approved 17 conditions of approval for the project.

Over 2 years later, where there once a beautiful treed property, that fit the character of our neighborhood, we now see a neglected and mostly denuded lot, with rubble strewn from the demolished 101 year old "historic" cottage, the orange "protective" tree netting lying on the ground, and plastic pipe left out for months. But by far the ugliest component is the 125 foot long, 12 foot tall, interlocking concrete, industrial-looking wall. The wall was and is among the very top concerns we had then, and our fears and intuitions were well founded.

Nicholson promised this would be a living wall, that it would be planted and landscaped, and that you wouldn't even be able to see it. It hasn't been landscaped, it isn't living, and it is now a concrete focal point to the area and a visual testament to your approval. As we said then, it won't fit the character of our neighborhood, or any neighborhood, in Cannon Beach. It is a scar on what was once a beautiful neighborhood. Imagine if you lived next to it.

You yourselves wrote an approval condition for this wall. It is # 17. It reads as follows:

*Before permits for the driveway retaining wall are approved the applicant shall provide to the City an executed contract with a landscape professional responsible for the installation and maintenance of plant materials on the wall and shall provide a timeline for the establishment of plantings on the wall. If plants are not established within those timelines, the City may take any necessary enforcement actions to assure that the requirements of the final plan and this condition are met.*

While we were never given an explanation on why the city chose to go such great lengths to accommodate Nicholson's wishes, at a minimum, we expected you to keep your word and fulfill your promises.

Here are the salient points, and what has happened:

1. Nicholson was to submit an executed agreement with a landscape professional. Mayor Steidel, you may recall the applicant stating that Beth Holland was to be the landscaper. Your response was, "Well, that's good enough for me".
2. Instead, you accepted an unsigned estimate, from a lawn care person, who had no business license.

I think it's pretty fair and reasonable that we should at least be able to expect that you would enforce your own approval conditions and that Nicholson would at least have to follow some of the rules like the rest of us.

I don't want to hear about current letters, or the concept of giving him more time. We have lost confidence. I am here tonight to ask why the permit was issued to build this abomination, when the requirements of your own approval condition, that you wrote, and that you approved, were so clearly not met.

Thank you.



# EXHIBIT 05

Jeff and Jennifer Harrison  
P.O. Box 742  
Cannon Beach, OR 97110

06/25/2020

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

Dear Cannon Beach Planning Commission,

It has been over 4 years since City Council approved the Nicholson PUD. As we predicted, our Cannon Beach experience continues to be degraded as a result. The ugliest component by far is of course the 125 foot long, 12 foot tall, interlocking concrete, industrial-looking wall. The wall was among the very top concerns we had then, and our fears and intuitions were well founded. We appreciate the Planning Commissioners reviewing this issue.

From our perspective, directly across the street from this PUD, here is what has happened since the approval.

1. We were threatened by Nicholson's lawyer with a demand letter, declaring our driveway a hazard. Our driveway has been in its present configuration for 20+ years, and has never been an issue. Nicholson withdrew the letter, but reserved the right to re-instate his threat.
2. Nicholson's big trucks damaged our driveway, so we asked Jeff Adams for relief under PUD Approval Condition #1. After 2 months and 4 emails, we were told we were on our own. We had to pay to fix the damage caused by Nicholson.
3. The PUD was approved for 4 buildings by City Council, but Jeff Adams administratively approved a 5<sup>th</sup> building, 24 feet tall, with 2 stories and 860 sq feet.
  - a. The easement that is being used here was passed out, with small print, to Councilors during the final hearing. It was not disclosed.
  - b. Many of the questions we posed to the City about this structure remain unanswered.
  - c. Our view of the west sunsets is even more obstructed than it should have been.
  - d. Despite CBMC 17.40.080 requiring PUD changes to go through PC, Jeff Adams approved this building administratively.
  - i. It is notable that Bruce St Denis told the Planning Commissioners that when the applicants presented Jeff Adams with a list of 7 approval conditions (which were preliminary), Jeff "wisely went to the files" and discovered the full list of final Approval Conditions. This just isn't true. Jeff Adams initially accepted the incorrect list of 7 preliminary conditions as gospel and issued permits for a garage and studio apartment. It was only when Adams was looking into my complaint re: our driveway

damage that he somehow discovered the LUBA file and the final list of Approval Conditions. See attached email (Adams to St Denis, dated 4/17/2019).

- e. Despite Approval Condition #16, which states no 2 story garages are allowed on the PUD, and none with living space, Jeff Adams approved this 24 ft tall "garage. Does anyone believe a 2-story, 860 sq ft, ocean view structure, with tall picture windows, finished drywall interior (including ceilings), skylights, 100K BTU furnace, heated floors, over-sized ceiling fan, shower, and toilet, and dryer vent is to be used to park a car and for storage?
  - f. Despite approval condition #15 clearly stating a geo-tech report is required prior to building permits being issued, Jeff Adams approved the building permit without requiring a geo-tech report.
  - g. Accessory structures are not supposed to be allowed on a vacant lot. Councilor Ogilvie was forced to tear down his garage when he divided his property, leaving a garage on a vacant lot. Jeff Adams approved this accessory structure on a vacant lot.
  - h. Despite our code requiring accessory structures to be limited to 120 sq ft and be only 12 ft tall when in a rear yard, Jeff Adams determined the garage was not in the rear yard, even though Approval Condition #16 requires the future house on Lot 1 to face South. How does it make sense for this lot (544 N Laurel St) to have the yard facing N Laurel be the "rear" yard?
  - i. Despite our code requiring accessory structures to be located on the same lot as the "main use", Jeff Adams approved it to be built on a lot with different ownership. The "main use" for this accessory structure is on a different lot with different ownership. CBMC 17.04.010
  - j. Despite the PUD "Shared Access and Maintenance Agreement" stating that common space is to be usable by all owners, the Harding's easement states that anyone on their easement can be cited for trespassing....including the owner of the lot.
4. The 125 ft long, industrial looking concrete abomination referred to as the "Living Wall" is exactly what we feared and predicted. Nicholson promised that you wouldn't even be able to see it because it would be all green. It isn't. It is an ugly concrete eyesore and is a visual testament to Council's approval. As we said then, it won't fit the character of our neighborhood, or any neighborhood, in Cannon Beach. It is a scar on what was once a beautiful neighborhood. Imagine if YOU had to live next to it.
- a. Our Comprehensive Plan says, "the characteristics of a village are fostered and promoted". It also says we will foster, "A rustic streetscape". How could anyone think a massive concrete wall fits these descriptors?
  - b. PUD Approval Condition #17 reads as follows:  
*BEFORE permits for the driveway retaining wall are approved the applicant SHALL provide to the City an EXECUTED contract with a landscape professional responsible for the installation and maintenance of plant materials on the wall and SHALL provide a timeline for the establishment of plantings on the wall. If plants are not established*



*within those timelines, the City may take any necessary enforcement actions to assure that the requirements of the final plan and this condition are met.*

- i. Here is what has happened instead.
  - 1. Nicholson was required to submit an executed agreement.
    - a. Instead, he submitted, and the City accepted, an unsigned estimate. The City issued the permit to build the wall using an estimate....not an executed contract.
  - 2. Nicholson was required to execute an agreement with a landscape professional. When Mayor Sam asked Nicholson who would do the landscaping, Nicholson stated Beth Holland was to be the landscaper. Mayor Sam said, "Well, that's good enough for me!", and Nicholson got Mayor Sam's vote. (audio, 3/1/2016)
    - a. Instead, the City accepted an unsigned estimate, from a lawn care person, who didn't even have a business license.
  - 3. Nicholson's signed agreement was required to have a timeline for the establishment of plantings.
    - a. Instead, there is no timeline because there is no executed agreement.
- c. The wall was built in 2016.
  - i. In June of 2018, I appeared before City Council asking for relief because **NO** plantings had been planted. Soon after, "some" plants appeared.
  - ii. It is now 2020, and we still see mostly concrete.
  - iii. When I asked Jeff Adams about this, he told me he believes they wall **WILL** be all green in 2-3 more years. We were promised 9 months. Now he is suggesting that we wait a total of 7 years.

We have been disappointed, but not surprised, that Nicholson did not keep so many promises. What has truly been surprising and even more disappointing is the failure of the hired City employees and contractors to enforce even the approval conditions or follow our code on multiple issues for this property. We think the citizens of Cannon Beach deserve better.

Jeff Adams wrote the following in his staff report for this meeting:

Considering the limited details given in the Conditions of Approval and Shared Access & Maintenance Agreement, and the condition of the planted materials, there appears to be little grounds for any enforcement actions. Planning staff will continue to monitor the site annually, with a planting audit of each of the plant cells, and document with photos for at least another three seasons. If the wall continues to show a successful trajectory, the City can downgrade its monitoring status.

We felt betrayed by our City when this development was approved, and we have been continually disappointed re: decisions involving this property ever since.

Those of us who were paying close attention during the Nicholson PUD proceedings remember Nicholson promising what you hear on the attached audio. He said the wall would be all green in 9 months, and we wouldn't even see any concrete. Almost four years later, that is far from the truth. We still see mostly concrete.

On 1/14/2020, Bill Kabeiseman (city land use attorney and principal architect of the Nicholson PUD) said,

*"Certain developments that get tagged for whatever reason early on, and this seems like it was one of them for a variety of different reasons."*

We find it inconceivable that he still doesn't seem to understand why this was just a very bad idea to begin with, and has been compounded by broken promises and little to no enforcement follow-through. The result is just a mess, and we have to live with it.

Tonight, we are asking our Planning Commission to do what our hired officials will not. Fix this wall. It's been almost 4 years. Enough is enough.

**Please enforce Approval Condition #17, and require Nicholson or the current PUD owners to submit an executed agreement with a professional landscaper.**

If the concrete cannot be covered up by plantings, as promised, within 9 months, please declare it a blight.

In general, what we are frequently seeing from our hired officials these days is "approval by omission": "if our code doesn't specifically say you can't do it, then we're going to let you do it." We are also seeing slippery-slope arguments as to why our code somehow doesn't apply. We think that's a big change from the stewardship that used to keep CB special, and we think it's dangerous.

Thank you,

Jeff & Jennifer Harrison  
539 N Laurel St  
PO Box 742  
Cannon Beach, OR 97110

**Attachments:**

- Audio from CC 2/10/2015
- Email (Adams to St Denis) dated 4/17/2019

\*\*\* Please include this in the public record \*\*\*

**Jeff Nicholson speaking to CC, 2/10/2015, regarding the "wall"**

"... in terms of the retaining wall, there is going to be sections of the driveway that feeds the homes and also will go up to Victor and Jane's home also. On that driveway there will be sections where there will be retaining walls. There is some sections where they are going to be a couple ... sections – at least there was one section that was 8 or 9 feet which in a middle of a big space, at first glance, it sounds huge plopped in the middle next to a driveway in the middle of large open space. I went down there with a stick that was that tall and it is amazing how scale has a way of shrinking when in you're in a big open space. Not only that – there is examples of retaining walls that are that tall in the area around ... closer to ... office they have the retaining wall that's taller than that. **One unique, I plan on living at this site – retiring there. I care about what it looks like. The site retaining wall unlike ... Oak Street in Chapman Point where it is like a cement wall that's 5 feet tall, the type of retaining that I would use in the sections that need to have the retaining wall adjacent to the driveway is a wall that has literally built in planters ... nine months the whole thing is going to be green. Literally just meant to just be ... green with planting. ... unlike anywhere else in nine months I think it is going be green – not going be any cement ... anything else.** Basically I want it to look nice because that's where I am going to live."

3. Grant of Common Open Space Easement. Declarant hereby declares a nonexclusive and perpetual Common Open Space Easement on, over, under, and across the portion of the Grantor Property labelled "Common Open Space Easement" on the Plat for the benefit of the Benefitted Parties. Benefitted Parties may use the Common Open Space Easement areas only for purposes of removing non-native vegetation. If agreed upon by all owners of the Four Lots, the Common Open Space Easement areas may also be used by Benefitted Parties for purposes of planting with additional native vegetation, improving with an access trail or other shared facilities, or using in conjunction with outdoor events. The owner of a lot burdened with a Common Open Space Easement area may not construct a building over the Common Open Space Easement area, or fence it, but may generally plant that area or improve it with a trail, patio, deck, or similar non-exclusionary improvement consistent with the terms of this Easement.