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October 29, 2020

Via Email

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

Re: Oregon Coast Alliance Open Record Testimony regarding the Roberts Appeals, AA 20-02, AA20-03, and AA20-04.

Dear Members of the Planning Commission,

Oregon Coast Alliance (ORCA) is a nonprofit Oregon corporation whose mission is to protect coastal natural resources and work with residents for community livability. On behalf of ORCA, please accept this open record testimony in opposition to the appeals filed regarding the Roberts House AA 20-02, AA20-03, and AA20-04. For the reasons set forth below, the applicant fails to carry its burden of proof and is inconsistent with the applicable law.

To say the least, the application is anachronistic and out of place amidst the adjacent, historic Oswald West Cabin. In fact, the Oswald West Cabin is listed on the National Register of Historic Places. The proposal is clearly inconsistent with the historical and natural surroundings, as is evident from the National Register's description of the property is nothing short of inspirational and dramatic, as noted in others' prior testimony.

The City denied the application because the oceanfront setback rules prohibit the proposal. Indeed, the applicant submitted a survey that conceded the violation. Notably, the applicant's argument that the property does not abut the ocean shore strains credulity in the absence of more evidence[1]. The mere existence of a public right of way is not dispositive. Rather, the issue is contingent upon how the right of way was created. Indeed, that very issue is before LUBA at this time. *See LandWatch Lane County (Smith).*, __ Or LUBA __ (LUBA No. 2020-079). To say the very least, the matter is not settled at this time, and, therefore, the applicants' appeal rests on tenuous ground. Moreover, to the extent that the applicant argues that

[1] It is undisputed that the applicant must carry its burden of proof. Here, the applicant has failed to do so.

the right of way is a buildable or developable "lot," the applicant must demonstrate that the lot was lawfully established (i.e., that it is a legal lot). *See Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001); *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006); *Friends of Yamhill County v. Yamhill County*, 229 Or App 188, 211 P3d 297, 302 (2009). Finally, the applicant has not demonstrated that the right of way is even capable of development.

The applicant also argues against the oceanside setback requirement. The applicant attempts to infuse the requirement with ambiguity where none exists. The applicant specifically takes issue with the phrase "Oregon Coordinate Line," which is well known to refer to the western boundary of all lots abutting the ocean shore. *See Save Oregon's Cape Kiwanda v. City of Tillamook*, 177 OR App 347, 349, 34 P3d 745 (2001); *State Highway Comm'n v. Bauman,* 16 Or App 275, 277, 517 P2d 1202 (1974). The coordinate is established pursuant to ORS 390.770, and, therefore, this case is not unlike *SE Neighbors v. City of Eugene,* __ Or LUBA __ (LUBA No. 2013-004, July 12, 2018), *aff'd* 259 Or App 139, 314 P3d 1004 (2013). There, LUBA and the Court of Appeals upheld a local code provision[2] from attack, despite acknowledging even some slight ambiguity, because the provision was intended to be clear and objective. The applicant in that case argued that "nothing in EC 9.8325(5) or the city's comprehensive plan or other land use regulations specify how the applicant must demonstrate and how the city determines the 'portions' of a development site that exceed a 20 percent slope." *SE Neighbors*, slip op at 6. LUBA, however, determined, despite the ambiguity therein, that the City was "merely giving effect to the language of EC 9.8325(5)":

> "In instructing applicants on how to measure slope, the city is not arbitrarily applying EC 9.8325(5) or otherwise engaging in 'subjective, value-laden analyses' but merely giving effect to the language of EC 9.8325(5) that prohibits grading on 'portions of the development site' that meet or exceed 20 percent slope. That EC 9.8325(5) requires some interpretation in order to apply the 20 percent slope standard does not necessarily mean that EC 9.8325(5) is not clear and objective, or that it requires a subjective, value-laden analysis."

SE Neighbors, slip op at *8 (citing to *Rudell v. City of Bandon,* 249 OR App 309, 319, 275 P3d 1010 (2012)) (city's interpretation of a defined timer in its code is sufficiently clear and objective for purpose of ORS 197.307(6) (2009)). In *SE Neighbors*, despite the acknowledged ambiguity, LUBA and the Court of Appeals determined that EC 9.8325(5) remained clear and objective (and thus applicable), consistent with the purpose of EC 9.8325(5). The same conclusion should be reached here with regard to the oceanside setback standard and the coordinate line. The applicant's strained attempt to find ambiguity where it was not intended and where it does not exist is unavailing.

Next, the applicant has not established the requirements of the needed housing statute apply to the subject property. For example, the needed housing statute's requirements apply to cities with a population greater than 2,500. *See* ORS 197.303(5)(a). Here, the city's population does not appear to reach that threshold, and, therefore, there is no reason to entertain arguments about whether applicable standards and criteria are clear and objective. Moreover, the City

[2] The provision at issue there prohibited grading on slopes that meet or exceed 20%.

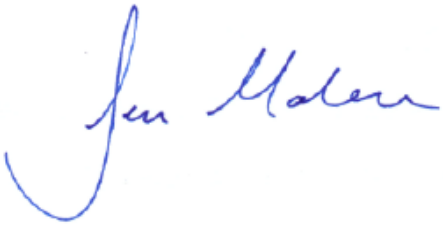
should not entertain arguments under the needed housing statute regarding unreasonable cost or delay, again, because they are not applicable in Cannon Beach.

Applicant argued at the October 22, 2020, Planning Commission hearing that the City applying its oceanfront setback results in a 'wipeout' of their property value and a takings because it might leave only a two story house with 500-600 square feet per floor. Applicant's argument ignores the prevalence and value of such homes in Cannon Beach. Attached is information on two similarly sized Cannon Beach properties that sold in the last year for $899,000 and $1,215,00. This data is from Clatsop County's property information website at https://apps.co.clatsop.or.us/property/. The sale of 4688 Logan Lane for $1,215,00 is particularly relevant. As shown in the attached County records, that house built in 1966 is tall and skinny with 576 sq. ft. floors on a small, sloped lot. A similar but new house, on applicant's parcel with stunning views of Haystack Rock would certainly be even more valuable. This is not a total wipeout of value.

As is typical of many development proposals that are denied, the applicant throws every possible constitutional claim. This case is no different, and it is nothing more than grasping at straws. The applicant essentially proffers the argument that what is occurring here is an unlawful, regulatory taking. Not so. This is not a Measure 49 claim for takings from a land use regulation, because the regulation at issue has been in place for decades. Moreover, the applicant was aware or should have been aware of the applicability of the oceanfront setback standard.

In conclusion, ORCA agrees with the staff report and opponents of the application that the appeals should be denied.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

4688 Logan Ln, Cannon Beach OR

Account 2206

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Property Details | Improvements | Assessments | Sales History | Taxes | Payments | Documents

General Information

Property Address	4688 Logan Ln, Cannon Beach OR
Legal Description	Metes & Bounds
Account ID	2206
Tax Map Key	41006CB03403
Property Status	Active
Property Type	Real Property Residential Improved Residential Land

Owner Information

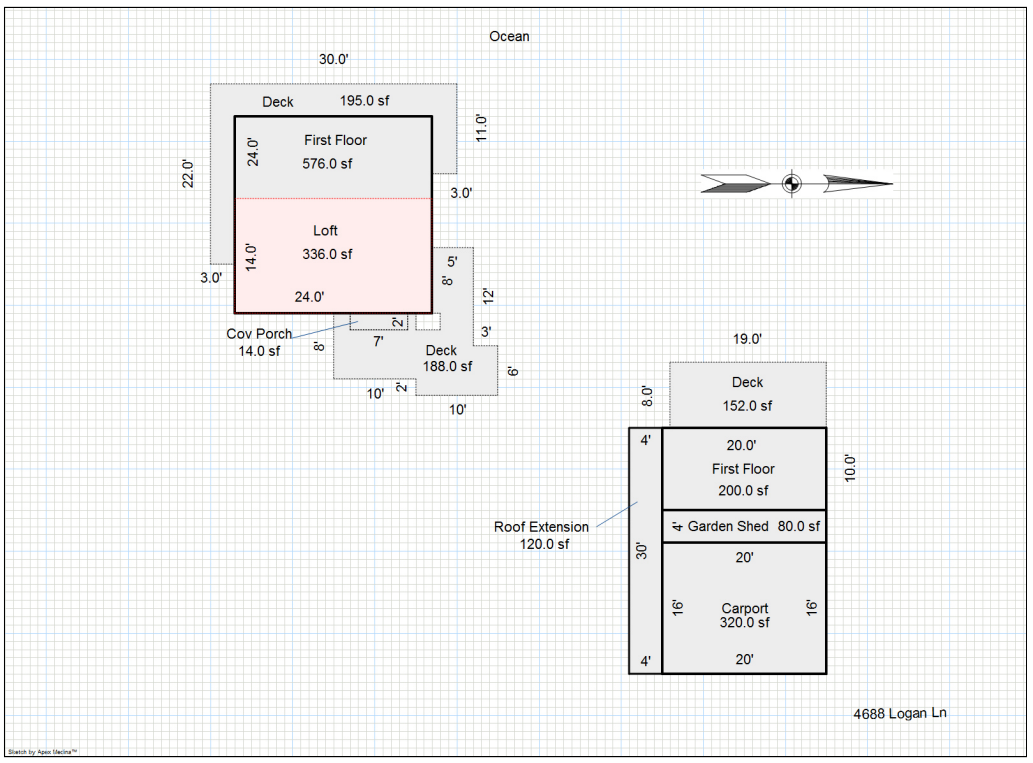
Owner Name	Dinsdale Grace K Thomas Raymond F
Mailing Address	P.O. Box 447 Cornelius OR 97113

→ Request Change of Address

→ Sign up for e-Statements

Year Built	Sq Ft	Type	Stories
1966	200	Single Family	1.0
1966	912	Single Family	1.2

Type	Sq Ft	Bedrooms	Bathrooms
Attic	336	2	0
First Floor	576	1	1
First Floor	200	1	1



Year	Land Value	Improvements Value	Real Market Value	Assessed Value
2020	$1,288,115.00	$145,716.00	$1,433,831.00	$1,004,213.00
2019	$1,275,361.00	$145,569.00	$1,420,930.00	$974,965.00
2018	$1,203,170.00	$138,552.00	$1,341,722.00	$946,569.00
2017	$1,145,877.00	$133,119.00	$1,278,996.00	$919,000.00
2016	$1,169,263.00	$137,025.00	$1,306,288.00	$892,234.00
2015	$1,043,985.00	$123,404.00	$1,167,389.00	$866,247.00
2014	$849,115.00	$426,721.00	$1,275,836.00	$841,017.00
2013	$849,114.00	$399,419.00	$1,248,533.00	$816,522.00
2012	$987,343.00	$291,547.00	$1,278,890.00	$792,741.00
2011	$987,343.00	$291,828.00	$1,279,171.00	$769,653.00
2010	$1,218,942.00	$284,640.00	$1,503,582.00	$747,237.00
2009	$1,434,049.00	$580,899.00	$2,014,948.00	$725,474.00
2008	$1,365,761.00	$598,865.00	$1,964,626.00	$704,344.00
2007	$1,219,430.00	$534,700.00	$1,754,130.00	$683,830.00
2006	$864,843.00	$379,220.00	$1,244,063.00	$663,913.00
2005	$800,774.00	$350,923.00	$1,151,697.00	$644,577.00
2004	$714,977.00	$261,883.00	$976,860.00	$625,804.00
2003	$694,153.00	$175,761.00	$869,914.00	$607,578.00
2002	$631,049.00	$152,836.00	$783,885.00	$589,883.00
2001	$595,330.00	$125,276.00	$720,606.00	$572,703.00
2000	$552,919.00	$195,744.00	$748,663.00	$556,023.00
1999	$570,020.00	$201,798.00	$771,818.00	$539,829.00

Sales Date	Instrument ID	Sale Amount
May 3, 2019	201902839	$1,215,000.00
June 29, 2005	200507806	$1,000,000.00

Tax Year	Total Billed	Interest	Discount	Total Due
2020	$12,149.85	$0.00	$-364.50	$11,785.35
2019	$11,423.71	$0.00	$0.00	$0.00
2018	$10,827.88	$0.00	$0.00	$0.00
2017	$10,409.41	$0.00	$0.00	$0.00
2016	$8,895.94	$0.00	$0.00	$0.00
2015	$8,540.43	$0.00	$0.00	$0.00
2014	$8,264.58	$0.00	$0.00	$0.00
2013	$8,020.63	$0.00	$0.00	$0.00
2012	$8,143.03	$0.00	$0.00	$0.00
2011	$8,074.41	$0.00	$0.00	$0.00
2010	$7,779.92	$0.00	$0.00	$0.00
2009	$7,625.83	$0.00	$0.00	$0.00
2008	$7,379.48	$0.00	$0.00	$0.00
2007	$7,197.56	$0.00	$0.00	$0.00
2006	$7,018.87	$0.00	$0.00	$0.00
2005	$6,773.92	$0.00	$0.00	$0.00
2004	$6,405.67	$0.00	$0.00	$0.00
2003	$6,162.36	$0.00	$0.00	$0.00
2002	$5,978.77	$0.00	$0.00	$0.00
2001	$5,986.64	$0.00	$0.00	$0.00
2000	$6,021.01	$0.00	$0.00	$0.00
1999	$5,491.92	$0.00	$0.00	$0.00
1998	$5,409.94	$0.00	$0.00	$0.00
1997	$5,480.77	$0.00	$0.00	$0.00

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Total Taxes Due as of October 29, 2020

Current Year Due	$11,785.35
Past Year Due	$0.00
Total Due	$11,785.35

By clicking "Pay Your Bill" below, you agree that you have read our Important Notes regarding fees.

Pay Your Bill

Tax Year	Receipt No	Date Posted	Amount Paid
2019	614209	November 14, 2019	$11,081.00
2018	589213	October 18, 2018	$10,503.04
2017	569455	October 26, 2017	$10,097.13
2016	549485	October 25, 2016	$8,629.06
2015	529196	October 29, 2015	$8,284.22
2014	506341	October 24, 2014	$8,016.64
2013	481475	October 22, 2013	$7,780.01
2012	461825	November 7, 2012	$7,898.74
2011	438029	November 7, 2011	$7,832.18
2010	412440	November 3, 2010	$7,546.52
2009	390153	November 13, 2009	$7,397.06
2008	365293	November 12, 2008	$7,158.10
2007	333123	November 6, 2007	$6,981.63
2006	308157	November 15, 2006	$6,808.30
2005	263684	October 21, 2005	$6,570.70
2004	232294	November 12, 2004	$6,213.50
2003	197088	November 15, 2003	$5,977.49
2002	163883	November 15, 2002	$5,799.41
2001	124857	November 15, 2001	$5,807.04
2000	90021	November 15, 2000	$5,840.38
1999	57781	November 15, 1999	$5,327.16
1998	28038	May 14, 1999	$1,803.30
1998	28037	February 12, 1999	$1,803.32
1998	28036	December 7, 1998	$1,827.36
1997	28035	December 7, 1998	$1,997.42
1997	28034	February 17, 1998	$1,826.93
1997	28033	December 17, 1997	$1,826.93

Annual Appraisal Report

Current Statement

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285 W Tanana Ave, Cannon Beach OR

Account 6612

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Property Details | Improvements | Assessments | Sales History | Taxes | Payments | Documents

General Information

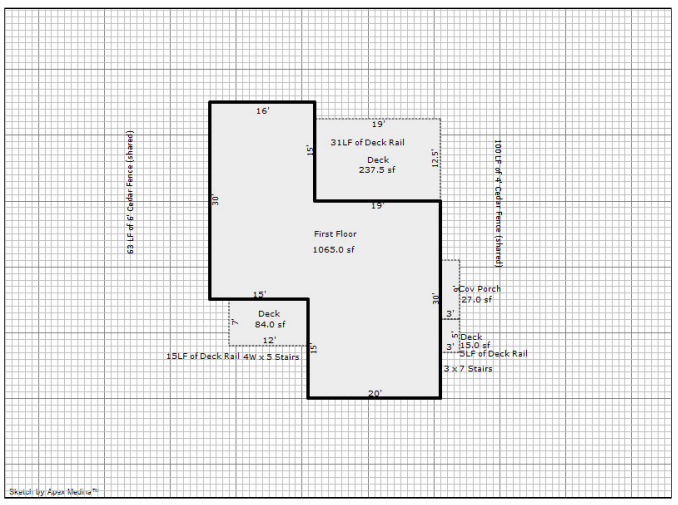
Property Address	285 W Tanana Ave, Cannon Beach OR
Legal Description	TOLOVANA PARK LT 7 EXC E 45' BLK 11
Account ID	6612
Tax Map Key	51031AD07700
Size in Acres	0.11
Property Status	Active
Property Type	Real Property Residential Improved Residential Land

Owner Information

Owner Name	Paulson Patricia
Mailing Address	16133 NW Canterwood Way Portland OR 97229
	→ Request Change of Address
	→ Sign up for e-Statements

Year Built	Sq Ft	Type	Stories
1911	1065	Single Family	1.0

Type	Sq Ft	Bedrooms	Bathrooms
First Floor	1065	3	1



Year	Land Value	Improvements Value	Real Market Value	Assessed Value
2020	$1,074,487.00	$88,445.00	$1,162,932.00	$783,749.00
2019	$1,063,848.00	$87,569.00	$1,151,417.00	$760,922.00
2018	$1,003,630.00	$82,612.00	$1,086,242.00	$738,760.00
2017	$955,839.00	$78,679.00	$1,034,518.00	$717,244.00
2016	$975,346.00	$80,284.00	$1,055,630.00	$696,354.00
2015	$870,845.00	$71,683.00	$942,528.00	$676,073.00
2014	$658,334.00	$206,071.00	$864,405.00	$656,382.00
2013	$658,334.00	$201,581.00	$859,915.00	$637,265.00
2012	$765,505.00	$147,140.00	$912,645.00	$618,705.00
2011	$765,505.00	$147,140.00	$912,645.00	$600,686.00
2010	$945,067.00	$173,772.00	$1,118,839.00	$583,191.00
2009	$1,111,843.00	$354,638.00	$1,466,481.00	$566,206.00
2008	$1,058,899.00	$365,606.00	$1,424,505.00	$549,715.00
2007	$945,445.00	$326,433.00	$1,271,878.00	$533,704.00
2006	$670,528.00	$231,513.00	$902,041.00	$518,160.00
2005	$620,856.00	$216,880.00	$837,736.00	$503,069.00
2004	$554,336.00	$161,851.00	$716,187.00	$488,417.00
2003	$538,191.00	$108,625.00	$646,816.00	$474,193.00
2002	$489,265.00	$94,457.00	$583,722.00	$460,383.00
2001	$461,571.00	$77,424.00	$538,995.00	$446,975.00
2000	$461,571.00	$120,976.00	$582,547.00	$433,957.00
1999	$475,847.00	$124,718.00	$600,565.00	$421,318.00

Sales Date	Instrument ID	Sale Amount
February 10, 2020	202001143	$899,000.00

Tax Year	Total Billed	Interest	Total Due
2020	$9,430.76	$0.00	$0.00
2019	$8,864.06	$0.00	$0.00
2018	$8,399.04	$0.00	$0.00
2017	$8,072.44	$0.00	$0.00
2016	$6,942.94	$0.00	$0.00
2015	$6,665.46	$0.00	$0.00
2014	$6,450.19	$0.00	$0.00
2013	$6,259.80	$0.00	$0.00
2012	$6,355.35	$0.00	$0.00
2011	$6,301.81	$0.00	$0.00
2010	$6,071.95	$0.00	$0.00
2009	$5,951.69	$0.00	$0.00
2008	$5,759.41	$0.00	$0.00
2007	$5,617.45	$0.00	$0.00
2006	$5,477.97	$0.00	$0.00
2005	$5,286.80	$0.00	$0.00
2004	$4,999.38	$0.00	$0.00
2003	$4,809.52	$0.00	$0.00
2002	$4,666.20	$0.00	$0.00
2001	$4,672.37	$0.00	$0.00
2000	$4,699.19	$0.00	$0.00
1999	$4,286.24	$0.00	$0.00
1998	$4,222.26	$0.00	$0.00

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Total Taxes Due as of October 29, 2020

Current Year Due	$0.00
Past Year Due	$0.00
Total Due	$0.00

By clicking "Pay Your Bill" below, you agree that you have read our Important Notes regarding fees.

Pay Your Bill

Tax Year	Receipt No	Date Posted	Amount Paid
2020	626740	October 28, 2020	$9,147.84
2019	617236	December 30, 2019	$2,954.68
2019	615731	November 15, 2019	$5,791.19
2018	596255	November 15, 2018	$8,147.07
2017	579894	January 2, 2018	$5,381.63
2017	572190	November 7, 2017	$2,690.81
2016	564378	May 15, 2017	$2,314.32
2016	561139	February 15, 2017	$2,314.31
2016	554346	November 14, 2016	$2,314.31
2015	544067	May 13, 2016	$2,221.82
2015	541016	February 16, 2016	$2,221.82
2015	536367	November 16, 2015	$2,221.82
2014	522951	May 14, 2015	$2,150.07
2014	518809	February 13, 2015	$2,150.06
2014	513398	November 17, 2014	$2,150.06
2013	497469	May 15, 2014	$2,086.60
2013	493173	February 14, 2014	$2,086.60
2013	484818	November 8, 2013	$2,086.60
2012	475350	May 14, 2013	$2,118.45
2012	471454	February 14, 2013	$2,118.45
2012	466865	November 15, 2012	$2,118.45
2011	452886	May 14, 2012	$2,100.61
2011	449221	February 15, 2012	$2,100.60
2011	443973	November 15, 2011	$2,100.60
2010	425990	May 3, 2011	$2,023.99
2010	423442	February 15, 2011	$2,023.98
2010	412440	November 3, 2010	$2,023.98
2009	404504	May 17, 2010	$1,983.89
2009	399377	February 16, 2010	$1,983.90
2009	392340	November 15, 2009	$1,983.90
2008	379151	May 15, 2009	$1,919.80
2008	374442	February 17, 2009	$1,919.81
2008	369203	November 17, 2008	$1,919.80
2007	353295	May 7, 2008	$1,872.49
2007	348565	February 15, 2008	$1,872.48
2007	341404	November 15, 2007	$1,872.48
2006	299748	October 31, 2006	$5,313.63
2005	264750	October 25, 2005	$5,128.20

Tax Year	Receipt No	Date Posted	Amount Paid
2004	227692	November 2, 2004	$4,849.40
2003	201347	November 17, 2003	$4,665.23
2002	163085	November 15, 2002	$4,526.21
2001	141876	May 17, 2002	$0.01
2001	141487	May 15, 2002	$1,557.46
2001	129448	November 15, 2001	$3,052.62
2000	84558	November 6, 2000	$4,558.21
1999	77929	July 7, 2000	$1,466.84
1999	53708	November 9, 1999	$2,800.35
1998	30041	February 17, 1999	$1,407.42
1998	30040	December 3, 1998	$2,758.55

Annual Appraisal Report

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