

**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, March 23, 2023

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

Excused: Commissioner Erick Ostrander

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

CALL TO ORDER

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

ACTION ITEMS

(1) Approval of Agenda

Motion: Motion to amend the agenda to discuss AA#23-01 prior to SR# 23-01 per Mike Morgans request. Commissioner Bates moved to approve the amended agenda and Commissioner Farrow seconded the motion to amend the agenda for discussion.

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

(2) Consideration of the Minutes for the Planning Commission Meeting of January 26, 2023

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

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

(3) Public Hearing and Continuation of AA#23-01, Dana Cardwell for an administrative appeal of the City's approval of Development Permit DP#22-19.

AA#23-01, Public hearing and continuation of an administrative appeal submitted by Dana Cardwell of the City's approval of Development Permit DP#22-19 for the extension of a stormwater management system in the Forest Lawn right-of-way adjacent to Tax lot# 4100, Map 51030DA, a Residential Medium Density (R2) zoned property. The request will be reviewed pursuant to Cannon Beach Municipal Code, Section 17.88.180, review consisting of additional evidence or de novo review and applicable sections of the Zoning Ordinance.

Site Visits were made by Farrow, Sinclair, Bates, Matusick and Moritz.

Robert St. Clair Read the staff report.

Commissioner Bates questioned St. Clair regarding a violation notice sent by Cannon Beach Police Department for non-permitted activity happening on the property. Bates wanted to know what violations were listed on the notice. Chair Newton questioned who had completed the work on the property.

Chair Newton asked Kabeiseman whether the record was opened or closed, it was determined that the record was not closed during the January 26, 2023, meeting as the Committee did not move forward with the 120-day rule. Instead the committee continued the meeting to February, which was cancelled due to weather. The discussion was left open.

Commissioner Sinclair asked how the violation notice affects the appeal in question. Newton explained that the violation happened on the same property as the appeal, it has to do with storm water discharge into the line that the City wants to extend. Moritz mentioned the development agreement between the City and the developer to complete the work on the street, however this work was completed to benefit the developer's property. Bates asked Kabeiseman if the committee found that the work had not been corrected adequately it would be within the committee's right to withhold a decision on the application. Kabeiseman explained that the code enforcement process is handled differently than that of the Planning Commission is to review the application submitted and whether it complies with the applicable criteria.

Sinclair asked for clarification as to whether the committee takes consideration into this occurrence or if it is out of the committee's purview. Newton and the committee agreed that they should take it into consideration, and with that Mr. Larma should be given a chance to speak.

Public Testimony

Applicant: None

Proponent:

Jan Siebert-Wahrmund
PO Box 778
Cannon Beach, OR 97110

What is the 120-day time period date? Her question was answered as April 28, 2023.

Opponent:

Jamie Larma
PO Box 825
Cannon Beach, OR 97110

There was one shovel one man work that was done on March 10, 2023. There was no pipe that was attached to the drain system. There was perforated pipe that was extended east about 20 feet that caught water on the wetland buffer that was draining onto Dorsey's property after she moved her walking path retaining wall that was built on Mr. Pietka's property. At some point a gravel walkway had been built on that property along the side of her house that was on Pietka's property. Underneath the pathway is gravel.

When Dorsey moved the gravel, water was visibly running from her property and onto the wetland buffer on Pietka's property. A pipe was placed in that location that extended 20 feet to stop the water from flooding onto the property. They did not connect any piping to the City's drain system. When the site was visited by the City Planner and Chief of Police on March 14, 2023, it was determined that no further action needed to be taken.

Commissioner Bates questioned Larma where the water was draining now. Larma explained that the water is continuing to run. Larma explained that the Dorsey property is backfilled with gravel and the back yard has drain rock, so the water that drains/runs from her property runs to the low point which is the wetland. The pipe was placed to move that water 20 feet to the east. The pictures that were presented are Dorsey's pipe draining 15-20 feet into Pietka's property.

Staff response: No

Public Record Closed 6:34pm

Chair Newton does not feel that this violation is in purview of the Planning Commission, Kabeisman agreed.

Commissioner Bates questioned the professional report, he believes that the report is based off of Dorsey's property and not the extension with the City connection. St. Clair read the reports. Commissioner Bates wants to know the impact of moving the storm drain 140 feet north. The Commission spoke in regard to the January staff report as well as the first report supplied and if it was/wasn't determined if the run off from the storm water actually made an impact on the actual wetland. Kabeisman explained the verbiage in the second report which specifically states that they do not find surface water indicators indicating surface water is not present in the wetland during full seasonal precipitation.

Commissioner Moritz questioned if we have enough information regarding the storm water drainage. Bates doesn't believe that the prior Community Development Director ever properly addressed the utility and storm drainage issues. Bates expressed his concerns and believed that this should be a conditional use permit and not a development permit.

Kabeisman reiterated that storm water overlay regulates use and activities in the wetlands, this is not a use or activity in the wetland. This activity occurs outside of the wetland and outside of the wetland buffer. Cannon Beach Municipal Code Section 17.43.050 Standard (a) and (j)

- A. General Standards. Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.
- J. Stormwater Management. Management of stormwater flowing into protected wetlands or wetland buffer areas is subject to the following standards:

Chair Newton explained the issues with the way that the development permit was written. Kabeisman explained that they can agree to disagree, but that is not how he would read the code and advise.

Sinclair believes that the Planning Commission's focus should be on the extension of the line at 140 feet and if the information the City has provided us gives us the confidence that the impact on the wetlands will have

an adverse effect. We asked the City to ask experts on what would happen with the extension of the 140 foot line.

Sinclair expressed his understanding on the current situation, we requested expert information, but we are not taking it because we don't like it or because it is not decisive enough, Farrow believes the Committee needs more decisive information and shouldn't rush into a decision.

Sinclair summarized the group's sentiment that we don't agree that this permit was properly done, and we vote to send the appeal back due to legitimate concerns that have not yet been addressed by the new data that was provided to the committee. Farrow agrees with Sinclair.

Kabeiseman explained the applicant retains the burden of proof in the event of tie. The city would probably be better served to use the 120-day rule.

Motion: Bates moves that the appeal is upheld and if the City believes a development permit is required then they must provide the required information with the permit so the public can see that the process was followed. Farrow seconded the motion.

Vote: Sinclair No; Matusick No; Bates Yes; Farrow Yes; Moritz No; Newton Yes. The vote was 3:3.

Moritz is concerned at how we are reading the requirements in an overlay zone versus outside the overlay zone. Continued discussion regarding the City right-of-way property, and if the right-of-way is a wetland lot of record. Kabeiseman answered questions about separating the development permits away from the rest of the project, ORS 27175.

The commission discussed the expert reports presented to the committee.

Kabeiseman explained the conditions around being hopelessly deadlocked versus continuing to the next meeting. A deadlock would result in the denial of the appeal. He also reviewed the mandamus process and rights of the applicant.

Sinclair wants storm water management input. Moritz wants this to go to the City Council. Bates stated that Caldwell will not appeal.

Motion: Bates moved that the Commission finds itself hopelessly deadlocked resulting in the denial of the original permit. Sinclair seconded the motion.

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

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

SR 23-01, Mike Morgan, on behalf of Jeff and Miriam Taylor, application to allow a setback reduction to reduce the back yard setback from the required 15'0" to 5' in order to build a small porch of 72 square feet to be used as an emergency access. The property is located at 1956 S.

Hemlock. (Tax Lot 04300, Map 51030DD), and in a Residential Medium Density (R2) Zone. The request will be reviewed against the Municipal Code, Section 17.645.010, Setback Reduction, Provisions Established.

Sinclair, Moritz and Newton made site visits.

St. Clair read the staff report.

Presentation by applicant:

Mike Morgan
PO Box 132

Morgan first noted his appreciation for comments included in the staff report, “with the exception of the Public Works and Rick Hudson letter, which [he had] not seen.” He stated that the entirety of the setback will be on private property, and that the seismic valve should not be affected as it will be placed within the City right-of-way (ROW). Morgan recalled that the new construction’s footprint would be essentially the same as the former dwelling, with minor changes that still maintained a low floor area ratio (FAR). He then explained his understanding that the exit in question would be used in the event of an emergency, rather than for everyday activities or parking, and suggested that La Bonte had not thought her decision through.

Commissioner Moritz asked if there was any way to lessen the amount of the setback requested. Morgan explained that this is a “no big deal type of request. You could ask for a smaller space, but why? It is a three-story building that needs to have access”. Morgan stated that the right-of-way is very large, because of the angle of the east wall, they are asking for a variance of 10-feet.

Jeff and Miriam Taylor
2005 W Huntsville
Broken Arrow, OK 74001

The homeowner wanted to add that the distance of the porch is just to bridge the gap between the stairs and the retaining wall.

Sinclair wanted to clarify that the existing stairs that go down are only five feet from the property line on that side. Taylor agreed. The committee agreed that the drawings in the packet were misleading and appeared about twelve feet from the property line. Taylor explained that they just wanted to go to the edge of the wall.

Morgan added that because of the angle of the northeast corner wall, they are also asking for a variance of four and a half feet into the setback which is eleven feet from the property line. They were unable to find the property line under the large spruce tree. Morgan felt that it was obvious that the building needed to be closer to the setback than fourteen feet.

Proponents: None

Opponents:

Karen La Bonte
Public Works Director

The City Public Works Department is in the middle of a \$15 million project with Windsor Engineering to design and engineer a plan for construction to install seismic valves on each of the City's drinking water reservoir's as well as placing them in strategic locations within town. These valves will allow the water system to detect seismic activity and automatically shut the valves on the reservoirs to save the loss of the City's drinking water system. The purpose of this system is to provide drinking water to the community within seventy-two hours of a catastrophic event. When La Bonte reached out to the engineering firm which is comprised of both seismic and geotechnic engineers she asked what the effect of this request would have on the initial construction and future maintenance of the water system. The engineering team expressed their concerns and told her to not allow the request to happen. La Bonte spoke with both the Fire Chief and the Emergency Manager who felt that this was not a request that should be approved.

Bates, Chair Newton, and Farrow had questions regarding the placement and size of the seismic valves, as well as what effects it would have on private property. La Bonte explained that the concerns are with the accessibility of the location for repairs or replacement of failed equipment. La Bonte has offered to get further information and coordinate with the engineers to answer any questions that the committee has.

Questions to Kabeiseman regarding if there is a mechanism for the homeowner to indemnify/hold the City harmless if they had to tear down the stairs to fix the seismic valve. Chair Newton expressed his concerns regarding that process. Kabeiseman agreed. La Bonte reiterated to the group that access may need to happen for maintenance, not just in case of an emergency.

La Bonte also talked to the architect firm and asked if there are any alternatives and how catastrophic would this be to the homeowner if the City resisted this project. The architect, David Vonada stated that he thought there were some other alternatives for the homeowners to move forward.

Applicant: Jeff Taylor explained his concerns if the city is going to need that much space for the maintenance of the seismic valve. The goal of the house design was to stay within or near the current footprint of the dwelling.

Mike Morgan expressed that the porch could remain in the footprint of the current porch as seen in the aerial pictures on GIS Mapping. The retaining wall is not going away, the Geotech report showed the wall is probably holding up the city's right away. Morgan gave options of how the committee should move to approve this request with conditions. The drawing from David Vonada was submitted with this application.

Bates asked Morgan about the variance he was requesting and mentioned earlier in the presentation, is it mentioned anywhere in the application? Morgan commented that it was included in his finding, but not included in the staff report. The variance is a little over eleven feet into the setback.

Public Comment: None

No staff response.

Public Record Closed 8:15pm

Commissioner Bates requested more information from Public Works, which would give the homeowner a chance to update/complete their application to include the variance mentioned in the presentation.

The committee is requesting additional information and would like the application to be corrected with the variance of the northeast corner. Moritz would like to hear from the engineers regarding the seismic sensors and ensure we are not impinging on potential community safety. She also reminded the committee that the architect David Vonada told La Bonte that there were alternative designs, so there may be a safer alternative to have a design without a necessary setback reduction to make the house beautiful.

Chair Newton spoke to the applicant and homeowners requesting additional information including more extensive plans and submittal (application) of the variance requested to the northeast corner of the property. Newton asked if they would agree to extending the decision process. The homeowner agreed.

Kabeiseman explained details of the extension and provided clarity to the applicant that this is a decision that is entirely within the applicants control, you can request the City to make the decision within the timeline, but if you are willing to extend the 120-day deadline, that may give the Planning Commission a better chance to make a better decision. The homeowner agreed. Kabeiseman and St. Clair agreed that the extension of three weeks should be sufficient so the requested information could be included into the packet of the next planning commission meeting. Kabeiseman informed the applicant and homeowner that the agreement to the extension would need to be in writing, please submit to St. Clair stating you agree to extend the 120-day deadline by thirty days.

Motion: Commissioner Moritz moved to continue the decision to April 27, 2023. Seconded by Bates.

Vote: Commissioners Farrow, Moritz, Sinclair, Matusick, Bates and Chair Newton. All voted in favor 6:00.

Council Question:

(5) **Public Hearing and Consideration of CU#23-01, Joseph Gaon request on behalf of Stephen and Laurel Day for a Conditional Use Permit for shoreline stabilization at 3216 Pacific St.**

CU 23-01, Joseph Gaon, on behalf of Stephen and Laurel Day, request for a Conditional Use Permit to allow for the placement of vegetated riprap for shoreline stabilization. The property is located at 3216 Pacific St in a Residential Moderate Density (R1) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.12.030 Conditional Uses Permitted, 17.42.060 Specific Standards, and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

Site Visits by Commissioners Farrow, St. Clair, Bates and Moritz.

St. Clair read the staff Report.

No additional correspondence other than those by John Parrish listed in Exhibit-1.

Public Comment

Joseph Gaon
1211 SW 5th Ave Suite 1900
Portland, OR 97204

Homeowner Mrs. Day

Engineers Adam Reese (in person) and Troy Hall (via zoom)

Gaon thanked staff for a very extensive staff report. He wanted to highlight a few points to the committee, one being that this is a conditional use permit to replace the existing riprap seawall that was destroyed about ten years ago. The previous seawall was a lower priority than what is proposed, we are providing a higher priority structure that will provide a level of protection to the property.

The home was constructed was built in 1931, without any shoreline stabilization they will probably lose their property. There has been additional erosion since the pictures provided in the packets were taken. The proposals are consistent as those properties to the north and south; the stabilization will follow the existing revetment and bluff profiles. There won't be any significant loss of public beaches, there will not be any cost to the public and it will be consistent with the character of the beachfront.

Commissioner Farrow inquired about the difference in process from that of the neighbor to the north whose vegetation has failed. The engineer explained that the neighbor used a process called "burrito bags", our process will add significantly more sand for adequate growth. Newton asked why this system was chosen, Reese explained that they started at the softest options and worked their way to the best option. The other properties that are using the same option have sustained their ability to maintain shoreline stabilization. The Days are willing to do what is required to ensure the aesthetics of the project. Moritz asked if there was any way to know if the addition of the riprap would affect the surrounding properties, deflecting more erosion opportunities to other properties. Reese spoke to Moritz's concerns. Since Sinclair asked where they would be sourcing their material from, Reese said it would be as local to the area as possible. Also, how long would there need to be equipment Reese is hoping for, for two weeks.

Troy Thorsen
91594 Youngs River Road
Astoria, OR 97103

Basalt will be the type of rock that will be used, it is the same rocks that are being used in the jetties. The project timeline is greatly determined by the tides. It may take three weeks; all the materials will be coming from the quarry in Astoria. Engineering and building details of the plan were discussed in detail.

Matusick asked about OPRD regarding their approval, the applicant wanted to get through this process first before they contact the State Park System. Reese did have permission for the test pit process.

Proponents

Mike Morgan
PO Box 132
Cannon Beach, OR 97110

Morgan has been involved with many rip-rap projects, trying to satisfy the “Friends of the Dunes” with the king tides, some areas are losing 1 to 2 feet a year. If you do the wall right, like Mr. Thorsen does, it will be done right. He is fully in support of this project.

Staff support the approval with conditions as read by St. Clair.

Public Hearing closed at 9:15 pm.

Committee discussion

Commissioner Farrow believes that it is very strait forward, Chair Newton agrees, and that riprap has never been approved by the Planning Commission. Sinclair expressed his positive impression with this plan. He asked the committee why this was so difficult in the past. Moritz, spoke about the dune habitat and sand movement dynamics. Only homes built before 1977 and subdivided lot prior to that time can be approved for riprap.

Motion: Commissioner Bates moves to approve the plan with the six conditions as stated. Sinclair to second the motion.

Vote: Sinclair, Bates, Moritz, Farrow, Moritz and Chair Norton voted AYE; the motion passed 6:0.

WORK SESSION ITEMS

(6) ZO 23-01 Jeff Moon Plan Amendment & Zone Change Application at Tax lot 51032BC00400

St. Clair introduced ZO 23-01 as a work session item as it applies to our proper rules regarding the official hearing. St. Clair informed the group that the first evidence you are going to hear will be next month. This is an application from Moon’s regarding a proposed plan amendment and zone change for a property on the opposite side of highway 101 near Surfcrest. The property is currently zoned Residential Very Low Density. They are proposing to change the zoning classification to Residential Medium Density. Their purpose in doing that is to divide the property into three separate lots for residential development for family members.

(7) Wetlands Discussion

No Items to discuss tonight.

INFORMATIONAL ITEMS

(8) Tree Report

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

(9) Ongoing Planning Items

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

(10) Good of The Order

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

(11) Adjournment

ADJOURNMENT

The meeting adjourned at 9:49 pm.

Emily Bare
Community Development
Administrative Assistant