

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

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

Excused: None

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

Jake Munsey
Mick Harris
Bill Kabeiseman

CALL TO ORDER

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

ACTION ITEMS

(1) Approval of Agenda

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

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

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

Commissioner Farrow objected to approving the minutes because the City Council was not given the opportunity to hear the re-zone and read the letter that the Planning Commission prepared regarding the Moon re-zone ZO #23-01. Sokolowski explained to Commissioner Farrow that the correct procedural process was not followed regarding noticing the re-zone hearing. Because of this, the hearing had to be delayed accommodating the proper noticing. Farrow was assured the City Council members would receive the recommended denial as well as the letter from the Planning Commission as part of their packet for the re-zone hearing.

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

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

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

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

Commissioner Moritz excused herself from the deliberation/hearing.

Site Visits were made by Commissioners Bates, Farrow, Ostrander, Sinclair and Chair Newton. Sinclair has had conversations with a couple of the neighbors. Commissioner Matusick has had some ex-parte contact that was not biased.

Robert St. Clair read the addendum to the staff report.

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

Public Testimony

Appellant:

Dean Alterman
805 SW Broadway Suite 1580
Portland, OR 97205

Mr. Alterman discussed his letter that was submitted this afternoon. He claims that the applicant is requesting to remove the tree as a matter of convenience. The issue is based on a simple code issue of 17.70.03 (B). He doesn't believe that the tree needs to come down as a requirement as construction has already been started. Nothing in our code says that we can cut down any tree we want to and replace it with a retaining wall. Alterman continued to summarize his letter to the committee.

Opponents:

Mick Harris
Tonkon Torp
888 SW Fifth Ave
Portland, OR 97204

Mr. Harris stated that the only question remaining is in interpretation of the tree removal permit. Necessity is the standard. In response to Mr. Alterman's letter, is the tree removal necessary for the building? Both

arborists agreed that the tree must be removed. There is no evidence to counter removing the tree. Moving to the letter submitted by Mr. Rasmussen, the letter stated incorrectly that the arborist did not recommend that the tree is not necessary. He also incorrectly wrote/interpreted the purpose and meaning of the tree protection zone. The focus of the meeting today was supposed to be on the geotechnical report and the slope stability and the health of the tree.

Commissioner Bates asked for clarification on Mr. Butler's email regarding the height of the retaining wall. This comment was to ensure that the retaining wall met criteria and the validity of the permit. Mr. Bates asked additional questions from Mr. Harris regarding an additional geotechnical and/or engineering report.

Chair Newton verified with Kabeiseman that the committee wasn't veering off their agreed path of the scope of tonight's meeting. It was noted in the minutes that the scope was to stick to the geotechnical report and health of the tree. Therefore, discussing the validity of the building permit as it associates to the retaining wall was not planned/agreed to be part of tonight's discussion.

Will Rasmussen
111 SW 5th Ave
Portland, OR 97204

Mr. Rasmussen discussed his interpretation of the tree code, and he believes that Mr. Alterman's interpretation of the spirit and letter of the municipal code.

Applicant

Jamie Lerma
PO BOX 825
Cannon Beach, OR 97110

The building permit was issued March 23, 2023. Regarding the north retaining wall, it is set by the site conditions, once it was on site the retaining wall needed to be higher to be effective. The building official approved it as well as stamped the revision. Regarding the southern retaining wall, the plans have yet to be submitted because we are not aware of what the planning commission will be deciding.

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

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

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

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

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

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

Jake Munsey
24118 8th Ave
Cambas WA

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

Jamie Lerma

Mr. Lerma spoke of the slope of the hillside of the property as well as the old logging road going through the hillside.

Mick Harris
888SW 5th Ave
Portland, OR

The interpretation of the tree ordinance needs to be in plain language, a rational and reasonable interpretation that shows that it is a mandatory grant. At this point the plain language makes it clear, there is a necessity and there is recorded evidence showing necessity.

The public hearing closed at 7:04 pm.

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

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

Commissioner Ostrander reviewed his understanding of where we are now with discussion regarding the tree removal permit versus Bate's discussion regarding an engineering report for the stability of the entire hill.

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

Newton wants to address this holistically.

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

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

Kabeiseman spoke regarding the appeal. The vote will be to grant an appeal and overturn the tree permit or vice versa. Conditions are not an option.

Farrow moved to accept the appeal to not remove the tree.

Matusick moved to sustain the appeal based on Alterman's argument.

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

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

Vote: Chair Newton, Commissioners Farrow, Bates and Matusick voted in favor, Commissioners Ostrander and Sinclair voted against motion 4:2.

WORK SESSION ITEMS

(6) None

INFORMATIONAL ITEMS

(8) Tree Report

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

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

(9) Ongoing Planning Items

(10) Good of The Order

(11) Adjournment

ADJOURNMENT

The meeting adjourned at 8:04 pm.

Emily Bare
Community Development
Administrative Assistant