

**Minutes of the  
CANNON BEACH PLANNING COMMISSION**  
Thursday, January 25, 2024

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

Excused:

Staff: City Manager Bruce St. Denis, Director of Community Development Steve Sokolowski, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair and Administrative Assistant Tessa Pfund

**CALL TO ORDER**

Chair Newton called the meeting to order at 6:00 p.m.  
Newton asked if we wanted to review the agenda as we have a few new items to consider regarding the voting of officers and public comment. Conversation ensued as to the organization of the items.

Motion: Moritz motioned to approve; Farrow seconded.  
Vote: Chair Newton, Commissioners Ostrander, Bates, Sinclair, Moritz, Farrow, and Matusick voted AYE; the motion passed.

**PUBLIC COMMENT**

Chair Newton introduced the new procedural step for public comment and added that public comments be limited to three minutes and all interested parties raise their hand to be acknowledged by the Chair who would then invite them up to the podium.

Jan Siebert-Wahrmund, PO Box 787 Cannon Beach  
Came forward to thank the committee for this opportunity for Public Comment.

**ACTION ITEMS**

**(2) Election for Officers**

Motion: Farrow moved to nominate Newton for Chair; Moritz seconded.  
Vote: Commissioners Ostrander, Bates, Sinclair, Moritz and Matusick voted AYE; the motion passed.  
Chair Newton abstained.

Motion: Bates moved to nominate Moritz for Vice Chair; Farrow seconded.  
Vote: Chair Newton, Commissioners Ostrander, Bates, Farrow, Sinclair, and Matusick voted AYE; the motion passed.  
Commissioner Moritz abstained.

**(3) Public Hearing of ZO 24-01, City of Cannon Beach request for a text amendment to Municipal Code Chapter 17, Zoning**

ZO 24-01, City of Cannon Beach request for a text amendment to Municipal Code Chapter 17, Zoning. The text amendment request will be reviewed against the criteria of the Municipal Code 17.86.070(A) Amendments, Criteria and the statewide planning goals.

No one objected to the jurisdiction of the Planning Commission hearing 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 any ex parte contacts to declare. There were none.

St. Clair read the staff report.

Marcy McNelly, Representative of Urbsworks

Came forward to explain the development of this code into a single code and provided a brief recap of what meetings have occurred with the city thus far. A document that did not make it in time for the packet was dispersed to the commission emphasizing adjustments to the code. This item was shared on the screen for everyone to see. Questions were posed as McNelly talked through the items.

Keith Liden, Representative of Urbsworks

Referred to amendments in the code that are out of date. He proceeded to go through the code item by item and how they would need to be updated.

Ostrander asked to clarify the changes to the presently distributed packet in relation to the items in the distributed back from last week.

Moritz posed clarifying questions of Liden. Liden said they are trying to remove as much duplication as possible and invite discussion. Moritz asked if there would be a separate discussion in the future to address her other questions, McNelly said yes. Moritz said she will hold her questions until that time and thanked her for her work.

Bates asked if there will be a point where they accept what they have and make the recommendation to council. Sokolowski said that would be now, as we are at the point of making a recommendation to the Council for them to review the framework and substance of this code. Conversation followed. Farrow asked for clarification as to whether we can address the substance later. Liden asked if we felt the reorganization made sense and was content neutral as possible, and proceeded to unpack what would follow. After this they will be working on the wetland's ordinance. Perhaps when they get to the wetlands, they will find something with the procedure that doesn't make sense, and if so, they will address it then. He feels there will be many opportunities to make those changes as they push forward.

Chair Newton asked for clarification on the timing constraints. McNelly said if they recommend this to the City Council tonight, then it would start the clock. McNelly proceeded to explain the plan while Liden provided additional information. Moritz posed questions relating to Article 2 regarding procedure. Farrow shared concerns regarding this process. Moritz asked if we adopt this as is, would that mean they agree to every word in here. Sokolowski pointed out that we can continue this so everyone can take a closer look before making a recommendation to the council. Farrow iterated that this change is being understated by Urbsworks. Conversation followed. Moritz said she was focused on the administrative procedures, as that is where most of the changes had been applied. She would like to come back to knowing the language and content to a fuller extent. Ostrander agreed with Moritz and noted that it is extremely difficult and time

consuming for a non-code expert to follow. Bates would like to continue the item to ensure they had time to do their due diligence. Conversation followed relating to the desired adjustments and timing. Newton asked if they wanted to schedule a work session. Several commissioners confirmed they wanted that. Ostrander added that the city's recently updated link to the municipal code is more difficult to navigate than what it was before. This led to further discussion.

Chair Newton called for Public Testimony.

Jan Siebert-Wahrmund PO Box 778

She is concerned about this content and agrees with those who want to look at this more closely. She wants to know if there will be a paper copy of our present code, and will it be kept somewhere where it can be referenced? Sokolowski said yes.

Jay Orloff, Tolovana PO Box 563

Does not take issue to the framework but does have concern with the ambiguity of the document. A few items are moving from the Planning and Building Official to the City Manager. Even the Public Work's drains are falling under the City Manager's authority. He would like everyone to take a closer look and is in support of a special work session.

Sokolowski offered feedback to Orloff's question and invited Liden to chime in. He directed everyone's attention to the code reorganization section 17.10 relating to planning participants. Liden unpacked the section to the committee. Questions were posed to Liden. Moritz asked if this would be more user friendly, as far as directing users to who they need to reach out to for the questions. It seems logical to be more specific, so people know what department they need to speak to.

Chair Newton closed the floor to public testimony.

The committee discussed what they would want from a work session. Newton asked how much time Urbsworks required. McNelly said four weeks. Farrow said the language is fine, and they should look at the way it is presented today. It would be less of a burden to Urbworks and they would only have to clean up their version. Newton asked if McNelly felt she had enough input from the committee. McNelly came forward to ask for clarification on their questions. Moritz said it would be efficient if they could assemble questions in advance to pass on to Urbsworks for final preparations. Newton summarized that the bulk of the committee's concerns were related to the administrative details. Liden responded and highlighted what sections everyone should key in on based upon their concerns.

Motion: Moritz moved to continue this hearing and hold a work session to address concerns surrounding the code reorganization; Bates seconded the motion.

Ostrander asked if we needed to pick a date now. Sokolowski mentioned that we will have to re-notice the hearing. Newton shared that they should all have their questions submitted in three weeks for Urbsworks. Conversation followed. Moritz clarified that we want to make sure we understand, and that the committee is not ready to move forward as they do not fully understand at this moment.

Chair Newton asked if there were further questions. There were no questions.

Vote: Chair Newton, Commissioners Ostrander, Matusick, Bates, Sinclair and Moritz voted AYE;  
The motion passed.

The committee took a five-minute break.

**(4) Continuation of Public Hearing of CU#23-04, Red Crow LLC on behalf of Patrick/David LLC for a Conditional Use Permit.**

CU #23-04 Red Crow LLC/Jamie Lerma application on behalf of Patrick/Dave LLC for a Conditional Use Permit for the purpose of creating a private use boardwalk spanning a delineated wetland and its buffer area. The property is located on Forest Lawn Road, Taxlot 51030DA04100 and is zoned (R2) Residential Medium Density. The request will be reviewed under Municipal Code Section 17.80, Conditional Uses.

No one objected to the jurisdiction of the Planning Commission hearing this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. Bates interjected to comment on the conversation that occurred last week regarding the possibility of his bias on this item. Bates pointed out that he does not have a financial interest in the matter. He addressed that he will be recusing himself on this matter, as he has respect for this committee and the process and doesn't want to become a distress to the committee. Farrow asked if they could refuse. Bates reminded them he did not want to be a distraction. Chair Newton respected his comments and addressed Kabeiseman. Kabeiseman said they cannot be denied their right to recuse themselves. Chair Newton asked if Bates needed to leave the dais, Kabeiseman said he was free to leave the room. Commissioner Bates left the room. 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.

Sokoloski gave the staff report in brief, as this is a continuation of an item from the previous meeting.

Chair Newton pointed out that there has been additional correspondence. Sokolowski shared that one letter came in just before the meeting, in addition to the two shared publicly online at 5:10pm. Newton asked Kabeiseman at what time we stop accepting correspondence for review, Matusick also posed the question. Kabeiseman answered by stating this is a public hearing, and the nature of the hearing is that you receive comments. You cannot cut off; however, you need to decide on the information in front of you. Newton referenced that in prior meetings they had a cut off time of 5:00pm for submissions, but such a time limitation like this could result in the loss of critical information. Kabeiseman addressed his comments and questions. Newton asked if they wanted time for the committee to read the last-minute correspondence. They did. The committee took time to read the document.

Chair Newton called for public testimony and noted this item was already continued. There was none.

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

Lerma Lerma, PO Box Cannon Beach, OR

Lerma asked for clarification on how they will view Commissioner Bates' letter now that he has recused himself. Kabeiseman said the letter stays on as part of the record. Lerma continued with his presentation. He highlighted that the size of the boardwalk was questioned last week, and since been corrected to comply with city requirements. Commissioner Bates' letter was addressed, and Lerma apologized for the late application of the rebuttal letter. The contents of Commissioner Bates' letter were then addressed one by one. Mr.

Lerma listed the applications that were previously submitted, and all were contested by only one commissioner. Lerma offered state level sources approving developments like this. Lerma promised to meet whatever restrictions and requirements placed upon them to comply with city regulations. In closing, this has been more than a three-year process. They started out with a seven-lot subdivision and dwindled that down to a five-lot subdivision, then to three lots with access off Hemlock. All were rejected. Now, they feel they have come up with something environmentally responsible and compliant with the city. As such they are asking for approval tonight.

Farrow asked where the designs were. Ostrander directed him to last week's packet. It was pointed out that the plans were currently under review by the Design Review Board. Newton referred to a discussion that occurred last week with Lerma regarding the limitation for access off Hemlock. Conversation followed relating to the access off Hemlock Street.

Newton posed questions relating to the wetland's and this construction. Conversation followed relating to the wetlands and neighboring properties. St. Clair pulled up site plan per Jay Orloff's request. Orloff proceeded to point out the drainage system that will be put in place to comply with the public works requirements. Conversation ensued as to what will happen to the water in the wetlands on this property.

Chair Newton called for proponents. There were none.

Chair Newton called for opponents of the request.

Jan Siebert-Wahrmund PO Box 778

Expressed several concerns she has for this project. She is concerned that we are stretching our rules beyond their intended meaning. Is there a way to access the property that would lessen the environmental impact? The residents of Cannon Beach need to know what is really being proposed. How can the commission decide when they are not sure what the developer is planning. Can you please find a way to stop the development over the wetlands. It felt that it was only last week that the possibility of condominiums was brought to you. Do you all fully understand the code, would there be a plan for a homeowner's association? Who would own the wetland who would own the garage, boardwalk, parking area. It is her understanding that only one house is premitted on wetland property of record according to our code. Can you think about parking on Forest Lawn Road and possible congestion when you make your decision. Can you think of the precedence that will be set here? Please help us set a precedence of respect for this land. Whatever you decide, please be sure document every part of the decision we can hold this developer to the written conditions. Enforcement is a key issue here. I ask you to deny this application for a boardwalk, or at least continue the public hearing if you think it will help you in making your decision. This wetland deserves protection now and for generations to come.

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

Jamie Lerma came forward to discuss the condo aspects, this ownership of these two units would be private, and the HOA would own the boardwalk, garage, and all the land.

Jay Orloff noted that their packet is up for review by the Design Review Board, and they have no intention to deviate from the plans. What you see is what we are doing. Regarding access, the only access available that would not be over wetland is from Hemlock.

Chair Newton Closed the public hearing at 7:57 pm.

Moritz commented that she appreciated the conversation and commended the questions and answers that came about. Newton shared an appreciation for the public testimony and pointed out that this has been a long process for the applicant.

Sokolowski addressed the conversations earlier relating to the conditions of approval. Sokolowski shared that Chief Reckman does not foresee a problem from a fire perspective. Farrow asked if that was a verbal statement or in writing, Sokolowski said it was verbal. Newton paused the conversation to address those persons who asked for a continuance, but this was already a continued, and the commission has a limited time to review these projects. The city council has asked them to limit the number of continuances. Kabeiseman unpacked the ticking clock on this application and potential court time. Newton thanked him, and reminded everyone that the city council has asked them not to send them more applications as their agenda is full.

Sinclair requested to hear the consensus of the group regarding this condominium law. Said this would be a talking point, but not a point that would cause a continuation. Sokolowski apologized for not getting Chief Reckman's comments in writing. Sokolowski proceeded to present items that were referenced as conditions for approval. Newton asked how we would guarantee enforcement of their conditions. Conversation ensued. Ostrander jumped in to share that the Certificate of Occupancy is issued the day the final inspection passes, then they have 30 days. Farrow wants to limit the window for access to Hemlock, as he believes 30-60 days is not acceptable. Newton shared that if it means protecting the wetlands, then he does not view that as a big problem. Newton asked if we made it conditional use only for construction, Farrow expressed worry that it could be misinterpreted. Moritz was concerned with who would take care of the oversight.

Ostrander pointed out that the accessory structure is not labelled as a habitable space. It is labelled as storage, and it's 1200 square feet of storage which could easily be converted if allowed. Moritz addressed that we need assurance from the HOA that the wetlands would be protected. Sokolowski asked clarifying questions. Ostrander questioned the language we might use, especially since the code is undergoing an update. Moritz said the structure would be judged by the code of the day it was approved, but that code (at that time of building approval) was not a grandfathered right for future applications. For example, if one wanted to remove a tree, they wouldn't apply the code regulations from the day the home was built, they would apply the code regulations from the date of that tree removal application.

Newton asked if people liked the drywell idea. Moritz asked the difference between the drywell and the bioswale. Sokolowski offered descriptions of the two methods. The commission discussed the subject.

Newton asked for thoughts on the HOA. Conversation followed. Moritz asked who would be responsible for closing the access. Conversation followed as to the responsibility and enforcement. Questions developed regarding temporary occupancy and reasonable expectations to consider. The commission asked St. Clair a variety of questions.

The Commission took a five-minute break.

Sinclair recalled another development in which the responsibilities were never fulfilled as promised. More questions circulated regarding the HOA. Ostrander pointed out that provision two said we would get a copy of the HOA record agreement. Sinclair shared that our code says duplexes shall not have different owners. Kabeiseman commented that the reality is we cannot prohibit someone from making a condo with separate units. If someone wants to go through the condo process, we cannot require that they remain in the same ownership. However, they cannot break up the land into separate lots. Newton posed questions to Kabeiseman regarding municipal and state code and defining language.

Newton asked if the commission wanted further conversation or were ready to make a motion.

Moritz moved to conditionally approve the CU 23-04 with the following conditions: maximum foot bridge size of 120 square feet; temporary access off of Hemlock only for construction and to be removed at the end of construction; a temporary certificate of occupancy with thirty days to return to its natural state; the owner shall provide a record copy of the HOA agreement to the Community Development Dept. prior to permit issuance; the accessory structure is not to be used as an accessory dwelling unit; and the runoff be collected and retained on site in the least impactful way; final certificate of occupancy will not be issued until all these conditions have been fulfilled; builder must fulfill all obligations for the HOA until such time as the HOA is assigned to a buyer.

Motion: Moritz moved to conditionally approve CU 23-04 with the aforementioned conditions;  
Ostrander seconded the motion.

Vote: Chair Newton, Commissioners Ostrander, Sinclair, Moritz, and Matusick voted AYE;  
Farrow - NAY.

#### INFORMATIONAL ITEMS

##### **(6) Tree Report**

St. Clair reviewed the tree reports for December 2023. No permits were issued.

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

Newton asked for a review of the City's new website. Newton asked if it is protocol to put all items back into the packet for review that have been reviewed in earlier meetings. The question was posed for those who are coming cold to a meeting and don't know all the items that are actively being considered by the commission. Moritz suggested including a comment that prior information can be found at "this" location. Her request was echoed by the committee.

The committee discussed when a special session could be held, and the committee selected February 15<sup>th</sup>. Sokolowski reminded the committee questions must be submitted by the 7<sup>th</sup> for McNelly to review.

The committee agreed to return within a week via Zoom to approve the findings for CU 23-04.

#### ADJOURNMENT

The meeting adjourned at 9:04 pm.

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Tessa Pfund, Administrative Assistant