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July 27, 2022

VIA EMAIL

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William Kabeiseman
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Re: Commissioner Bates Article – P 22-01/CU 22-02

Dear Mr. Kabeiseman:

At the initial Cannon Beach Planning Commission hearing on June 23, 2022 for the above-referenced land use matter, Commissioner Bates disclosed that he had authored an article that was published in Hipfish Monthly. He indicated that the article let the public know the subject land division application was coming up and encouraged them to get involved if interested. The referenced article is titled “When is a Wetland not a Wetland” and it was published in the February 2022 Hipfish Monthly publication. A copy of the article is attached to this letter.

While the article references an earlier eight-lot subdivision concept rather than the three-lot partition application currently pending before the Planning Commission, the article goes far beyond merely encouraging the public to get involved. Instead, the article provides a detailed history and description of the property and claims that the wetland on the subject property is “now under imminent threat of development.” In the article Commissioner Bates states that he “is not a fan of development,” and disparages the applicant and makes assumptions about their motives. Finally, he contends that “the decision is political” rather than based upon applicable approval criteria after a consideration of the evidence on the record. In short, the article describes Commissioner Bates’ close personal connection with the property, and reveals his opposition to future development on the subject property.

Pursuant to Cannon Beach Municipal Code Section 17.88.070, a land use applicant is entitled to an impartial review, and no member of the hearing body shall participate in discussion of the proposal or vote on the proposal if the member has a direct private interest in the proposal, or if for any valid reason the member has “determined that participation in the hearing and decision cannot be done in an impartial manner.”

As a result of the content of the Hipfish article, we respectfully request that at the beginning of the continued hearing on July 28th, Commissioner Bates reaffirm for the record that he is not biased and is capable of making an impartial decision based solely on the evidence in the record of the partition currently pending before the Planning Commission and not based on his comments of opposition in the published article. If Commissioner Bates is unable or unwilling to make the declaration of impartiality, it

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would be appropriate for him to recuse himself pursuant to the requirements of the Cannon Beach Municipal Code.

As an applicant, we are required to raise this issue on the record as it has the potential to lead to procedural error. It is also important for all parties in this proceeding and other future proceedings to rely on the integrity of a land use review and public hearing process that is based on the evidence in the record and free from bias.

Thank you for providing Commissioner Bates an opportunity to further explain his article in the Hipfish Monthly before deliberating on this proposal.

Best regards,



Renee M. France

Attachment

cc: Jeff Adams via email: adams@ci.cannon-beach.or.us

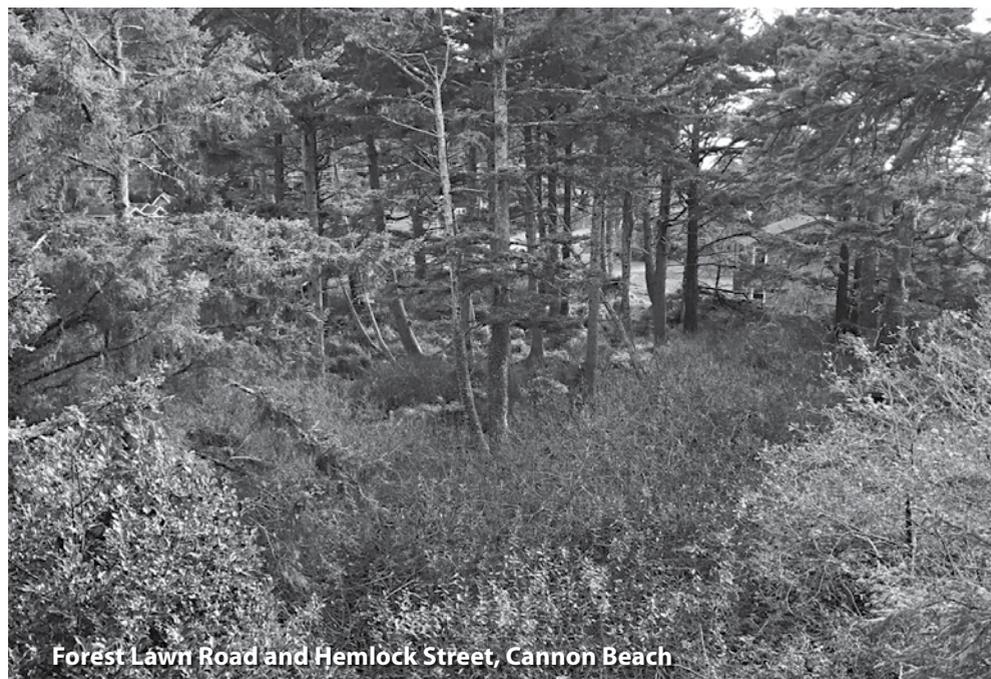
CHANGING WOMAN stepped back from her composition and brought her hand to her chin in contemplation. Something was missing from the scene, something important. She raised her medicine bundle over the massif of basalt looming over the surf. And with it, she traced a pattern in the air across the tidal plain to the sandy bluff that stood in the event horizon between land and sea, and then north along the bluff to a point just south of a small stream that emptied its crystalline water into the sea, its braided channels spilling out across the sand in rivulets of gold.

There, she summoned the cardinal winds, and a vortex rose up from the spot, pulling in sand from the surrounding area and piling it atop the bluff into a promontory. It seemed a rather insignificant addition for such a grand panorama, but as with everything Changing Woman does, it was created with an eye on the big picture. She knew the promontory would divert water running off the spur of a mountain to its south and east into the basin she formed in its southern flank with the pad of her thumb, and there it would collect, sparing the creek nutrients carried in the run-off that might foul its water. She called the basin a wetland, and she made the things of the forest take root there, knowing that, over time, her children would visit the wetland to contemplate its mysteries and consult with the spirits of the past.

We're fortunate that the wetland remains with us today, right where Changing Woman created it, within the city limits of what is now Cannon Beach, just south of the Hallmark Resort and Spa where Forest Lawn Road intersects with Hemlock Street. It's not much to look at, a little more than an acre in size and filled with moss-covered Sitka spruce and a smattering of alder, willow, elderberry, and elm, together with groundcover of sedge, fern, peltatum, cornus, salal, and twinberry. The fact that it is noticeable at all is testament to Changing Woman's foresight. It is conspicuous these days as home to the only intact grove of Sitka spruce west of Hemlock Street, from the presidential blocks all the way to Tolovana, with as many as thirty-five of the venerable old giants gracing the property.

However, it is now under imminent threat of development. Sometime over the next several months, the Cannon Beach Planning Commission will take up a proposal to

When is a Wetland not a Wetland?



Forest Lawn Road and Hemlock Street, Cannon Beach

turn it into a new subdivision called "Haystack Views." If the proposal goes through, the wetland will be divided into eight five thousand square foot parcels, seven of them to contain a dwelling of approximately one thousand square feet each, together with common ingress and egress, off-street parking, and other amenities marketed to the lucrative vacation, or second, home market.

I'm not a fan of development. I don't know anybody who is, frankly, except the people who stand to profit from it. That said, I don't feel like I have the right to dictate what other people do on their own property. The land on which the wetland is located was put on the market, at a fraction of what a lot of comparable size would cost anywhere else in the city, I might add, and some enterprising entrepreneur with an eye for a quick buck snapped it up for pennies on the dollar. The new owners are entitled to do whatever they want with the property, even if it feels to me like the kind of speculative get-rich-quick scheme that serves nobody in the community but the developer and its builders.

Unless, of course - and it's a very big unless, the land is the kind that is entitled by law and/or in the public interest to preservation. Sitka wetlands used to be among the most prevalent landscapes along the Oregon coast, and now, I'm told, they're among the rarest. It seems to me we should be preserving what remains of our natural heritage, not developing it in the name of the almighty dollar.

You might object to my reference to Changing Woman as pandering to native American culture, or worse, misappropriating it for a purpose for which it was never intended. I'm sensitive to the criticism, but I'm just naïve enough to believe that the native American experience is the only relevant vehicle to explore our relationship with the natural world.

Indigenous peoples have lived on this land for thousands of years, and they continue to live on it to this day. Their stories resonate with a sense of the passage of time that eludes our own with our emphasis on the last six thousand years. They are based upon close observation of the patterns of nature that we've either ignored in our presumed dominion over the natural world or forgotten. They start with the proposition that the natural world needs no independent justification for its existence, nothing remotely like it's worthless unless it can be picked up for pennies on the dollar and packed with houses to turn a quick profit. They address the practical aspects of our relationship with nature, like food and shelter, while remaining true to the spiritual and emotional component. And they are adaptable, capable of taking on new and richer meaning as our understanding of our environment improves in ways our own creation myth forecloses.

These days, science has given us a whole new lexicon with which to speak. Its beyond dispute, for example, that wetlands serve as habitat for simple microscopic organisms

and other primitive creatures that exist at the bottom of the food chain. Wetlands provide sustenance and shelter for wildlife, birds, and insects that help keep our environment vital and healthy. Wetlands filter harmful substances from run-off that might spoil watersheds, aquifers, and in our case, the ocean. And, we're just beginning to appreciate the vital role wetlands play in sequestering carbon from the atmosphere.

And me?

I'm just happy for the opportunity to walk past that wetland knowing that some small part of this environment remains as it was before our kind arrived this region, or very close to it. I had my first close encounter with the Roosevelt elk that bless this area when I stumbled on a bull as it dined in the wetland among the willow. I take special thrill from the appearance of pussy willow erupting on the perimeter of the wetland each spring as a harbinger of summer, followed close on by the blossoms of wild berry. I've made myself acquainted with the black-tailed doe that uses the thickets each year to shelter her brood of fawns. And I've learned to identify the migratory birds that roost in the bushes and trees, their morning song accompanied by the playful bark of squirrels and chipmunks and the discordant croak of frogs.

So, when is a wetland not a wetland?

The city Planning Commission has authority to approve development proposals affecting wetlands, just like any other property, by majority vote. There are procedures developers must follow to get a hearing before the Planning Commission and a handful of zoning ordinances that may influence deliberations. It's doubtful that a project the scope of Haystack Views can proceed without variances from local ordinances. But the decision is political, and the fact that the property is a wetland receives little consideration beyond a simple wetland delineation prepared by the Army Corps of Engineers.

The interests of the property owner, the developer in this case, its architects, builders, and their backers, are clear, make a quick buck and run. The benefits to local businesses from increased traffic and pet projects that might benefit from an expanded tax base are speculative, but quantifiable. Unfortunately, the environment gets lost in the noise, and that ever elusive public opinion is rarely if ever consulted. It often comes down to whose voice is the loudest, and therein lies the problem - we have no one to blame but ourselves when we fail to raise our voices in defense of the environment.

Because a wetland is no longer a wetland after it's developed.

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