

Eric Elerath  
419 Clinton St.  
Ashland, OR 97520  
(310) 429-8063

August 10, 2020

Planning Department  
City of Ashland  
51 Winburn Way  
Ashland, OR 97520  
(541) 488-5305

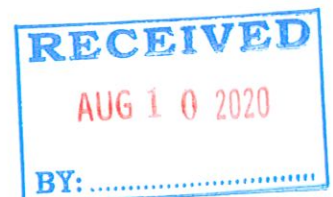
**PLANNING ACTION: #PA-APPEAL-2020-00011 (APPEALING PA-  
T1-2020-00109)**

**PLANNING ACTION:** PA-APPEAL-2020-00011  
**SUBJECT PROPERTY:** 345 Clinton St.  
**OWNER:** Paul Mace & Kathleen Kahle  
**SUBJECT:** Notice of Appeal of Planning Decision  
**STAFF DECISION:** June 30, 2020  
**APPEALED:** July 13, 2020

**Issues De Novo**

**1. Due Process Failure to Notice Betsy McLane**

One of the two Appellants, Betsy A. McLane (McLane), did not receive any notice of this hearing. Page 132 of the packet 2020-08-11\_PC\_PACKET-web.pdf lists the record for the current action. The chart header indicates the Date, Item, and Page # for each record item and the third line shows that Appellants Submittals were received on 7/13/2020 and begin on page 5. The document image on page 5, (or 137), shows two names listed as Appellants. 1. is Eric Elerath and 2. is Betsy McLane. Under D, both persons named in A.1 and A.2 qualify because they affirmed having received notice of the planning action. Page 6, (.pdf 138) shows that the Appeal Fee was paid, and the stamp on both pages shows that the copy is a conformed copy. The document shows Eric Elerath's handwritten signature in blue ink and the space above Betsy McLane's is unsigned on the document that the City chose to display.



Enclosed exhibits also show Betsy McLane's qualification as a separate party:

A. An email that Elerath sent to Planning staff on July 13 to show McLane's intent to be included as a party to the Appeal.

B. A receipt for payment, showing Betsy's name appearing on the receipt.

Betsy McLane is a person I trust. Incoming mail from the Post Office is scanned before delivery, and Betsy receives previews of the scanned envelopes by email. She has told me that, to the best of her memory, she did not receive an email with a scanned image of an envelope from the City of Ashland bearing her name, nor did she receive an paper letter of the Notice.

Attached is a copy of the envelope that Elerath received containing his Notice of Appeal, dated July 29, 2020. It is addressed to: "ELERATH ERIC J ET AL" followed by the 419 Clinton Street address. The term "et al" is not a catch-all substitute to include unnamed parties, but an abbreviation referencing parties to a case, not to identify them. Betsy McLane's name does not appear on the envelope, and Elerath requests a new hearing be scheduled pursuant to A.M.C.

## **2. Due Process Under the 14<sup>th</sup> Amendment**

"... nor shall any state deprive any person of life, liberty, or property, without due process of law;"

While health concerns may warrant the closure or partial closure of some government offices, there is no provision in the U.S. Constitution that requires an Oregon land use authority to approve a preliminary plat map within 120 days during a declared national pandemic and health emergency. However, due process is a basic requirement.

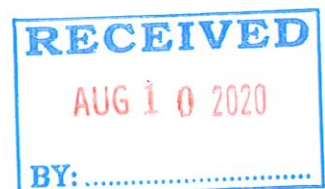
## **3. Equal Protection under the 14<sup>th</sup> amendment**

"... nor deny to any person within its jurisdiction the equal protection of the laws."

The processes created, judged and enforced through this Planning action may be exactly what this clause was intended to prevent. By allowing land use approvals to be made on incomplete information, additional conditions may be brought through after approval, and architects, engineers, attorneys and other professionals may overrule 150 years worth of civil rights advancement in a week or two on that property. That must not happen.

Under Oregon law, a property owner may have a right to have their lot adjustment speedily approved after three years of preparation, but the public also has a right to be sure that the process doesn't allow pernicious and illegal covenants to be recorded during a period of national health emergency. Currently, it appears that the City is favoring its relationship with one pair of property owners over a duty to serve the public interest.

Director Molnar did not address Elerath's request, and the requests by others, for a time extension. Instead, the City deferred to Oregon statutes which impose a time limit. There is an inherent conflict of interest here. The City should be mediating the rights of the public against the rights of a property owner, but the public now confronts a City which lacks the judicial





authority or will to do that. This seems to violate the principle that the judicial branch of government has authority over legislative branches. Since the Planning Commission is an adjudicative body, it might declare the 120 day LUBA time frame to be arbitrary and capricious and that higher principles govern, considering the circumstances. The Applicants could then appeal to have that overturned at a higher court.

#### **4. Additional Time**

In his initial filing on May 28, Elerath asked to personally inspect relevant application documents and he asked for additional time to respond, but he received no reply from the City. He asked for both because the documents provided to the public did not match the descriptions of the documents described in the Notice. Further confusion resulted from various statements that the Development Director and others made which are not, and were not, supported by facts in evidence at the time. In his report of June 30, the Director's report states, in part:

"The planning application materials were posted on "What's Happening in my City" on the City web site,"

There is no singular place as a "web site" nor is there a singular set of documents, nor did the documents I find referenced by the link match any document titled 'Application'. This is not a trivial or irrelevant concern. The Federal PACER system, in contrast, requires registration, login, searching, retrieval and download. Logs are kept, directories have indexes, receipts are given to confirm what documents were downloaded, etc. The Director's statements about what documents were available when was not true for this Petitioner.

The request for both additional time and for inspection was a result of the City's posting of a Notice that didn't match the documents available; that was confusing. Elerath again contacted the City by appearing at 51 Winburn Way, but was refused entry, despite Jackson County public buildings - such as the Ashland Branch Library - being open. A call to Mr. Aaron Anderson indicated that he was on vacation. A call to staff on Winburn Way directed him to documents online. The documents online were self-evidently incomplete. Elerath was directed back online, then referred to staff. Two emails from Ms. Smith via Ashland's internal servers to arrange a time were delayed. Elerath was not granted access, and did not actually see the paper files for more than 60 days after his first written request, and after he had paid an appeal fee.

#### **5. Plat map**

In his initial filing of May 28, Elerath wrote:

"What may be the most significant and 'mission-critical' reason to reject this proposal outright would seem to be four lines of text appearing on the survey drawing titled "Tentative Partition Plat." It appears that the surveyor can't locate four easements shown on the Title Report: One of the easements is for "Pole Lines" and another for cable TV lines. While it's possible that there is a simple



mistake - the wrong Title Report, for example - there would seem to be no excuse for ignoring this conflict, especially when the City of Ashland owns adjacent property and has utility easements of its own on the north side.”

The City has not addressed this critical note on the proposed map. Are the easements written down on papers in the back of the surveyor’s truck or in a file folder in his garage? Are there missing benchmarks in the field somewhere? Is there a document in an online map file that doesn’t show up in a document search? What else is missing from the preliminary plat map? With all due respect to the surveyor’s integrity, these are the sorriest excuses for notes on a surveyor’s map, ever, and call into serious question the credibility of the entire map. This is utter nonsense, and the Director’s silence on this speaks volumes.

### Summary

Recent events across the nation, including protests, civil disturbances and sometimes violent demonstrations, have illuminated this country’s history of systemic civil rights violations. One of the more pernicious and insidious elements of this history has been the secret recording of restrictive covenants and the development procedures that allow them to happen. Two years ago, Elerath brought this to the attention of this City in a related action, but the same issue reappears again today. There appear to be systemic problems when hard working and experienced planners and conscientious staff can follow every rule and comply with every applicable ordinance and still be accused of violating the public’s constitutional rights.

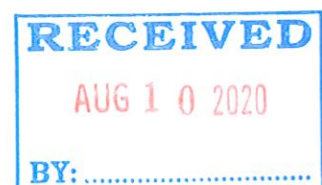
Elerath again asks for time to review the matter under consideration.




August 10, 2020

Eric Elerath

Date



**From:** Eric Elerath eelerath@verizon.net   
**Subject:** Re: Appeal Submittal for 345 Clinton  
**Date:** July 13, 2020 at 3:21 PM  
**To:** April Lucas april.lucas@ashland.or.us, planning@ashland.or.us

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Hi April, Liz and Planning staff

At your suggestion, I'm submitting this appeal electronically.

Please find attached Appeal2020\_Final.pdf. It includes the 2 page cover sheet provided by the City and six pages of re McClane's name is on the cover sheet as an additional Appellant - we share the same home and address - but I was unable to get an electronic signature before submitting. Please proceed with mine only, or I can bring over her signature on the paper for you.

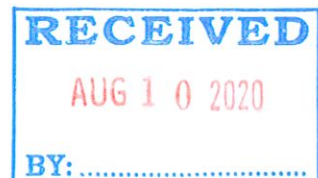
The pdf can be opened, read and printed, but is protected from copying content. Please let me know if there are problems.

As noted on the cover letter page, there are no exhibits attached. I omitted them in the interests of brevity.

Also please call to arrange payment. I prefer Visa, but electronic bank check will work too. If I don't hear from someone, I will call back again.

Thank you for your work and patience!

Eric Elerath  
419 Clinton St.  
(310) 429-8093





City of Ashland  
Community Development  
20 E Main St  
Ashland, OR 97520  
(541) 488-6004

004717-0004

07/13/2020 03:46PM

INVOICE

Elerath/McClane, Eric/Betsy  
PA-APPEAL-2020-00011

2020 Item: INV-00005090

Balance due: 0.00

Balance unpaid: 0.00

Planning Fee - Appeal  
Hearing (Initial Public  
Hear

150.00

150.00

Subtotal

150.00

Total

150.00

CREDIT CARDS COMDEV

150.00

Visa

Ref:000000124909

Auth:013666

Trans ID:000000124909

Entry Method=MANUAL

TRN REF #-580195819484872

*By Phone*

Change due

0.00

Paid by: Elerath/McClane, Eric/Betsy

Thank you for your payment

CUSTOMER COPY



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**ASHLAND**

20 EAST MAIN STREET  
ASHLAND, OR 97520

RETURN SERVICE REQUESTED

stay informed  
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FIRST-CLASS

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