

Fort Kennedy Vision Statement

On Tiny Houses

We would like to comment on affordable housing, with efforts to create transition shelters/housing and very low cost (affordable) housing, **where we can move more people/families, affordably off of our streets.**

The focus of Fort Kennedy has been initially on creating encampments, with Transitional Shelters and Semi-Permanent Housing (Tiny Houses) for our Homeless Veterans.

We have Veterans and non-Veterans and how we (as society) attempt to create conditions, that address various reasons and core causes of the lack of housing and homelessness, there will always be an open wound.

Senior Housing is equally a problem/opportunity, which needs to be addressed positively.

We have significant segment of people without adequate housing that have Mental Health Issues, many with PTSD and a lot who are addicted and self-medicate and that is a major problem/opportunity.

We have look to all transitional opportunities to move people from being dependent on society, to where they are self-supporting, that includes addressing all educational opportunities including job training.

We would also like to talk about the "Not In My Back Yard" (NIMBY) issue, of where and how we create/locate - locations, for the full spectrum of people priced out of housing opportunities, including opening up the UGB.

Paul Edgar, Board Member of Fort Kennedy, 501(c) (3)

To give everyone a better idea of what a 20-unit planned community for Homeless Veterans - Housing, using this Oregon City company might cost, We gathered following information.

Better Built Barns, 13781 S. Forsythe Rd. Oregon City provide me a quote on these Tiny Houses.

We asked them to spec-out a 10' x 20' units (200 sq. ft.) in their Country Barn style, with 7' base walls. (Floor to ceiling peak, would be approximately 13' high, providing a lot of cube.)

We asked for it to be upgraded where these Tiny House Units would be built on Post and Beam, with 2' x 6' Construction and with a pressure treated material for the floors.

The roof would be 4' in height above the walls, to the initial bend and would then go up an additional 2' to the peak, providing a floor to ceiling height of 13' and have one 5' wide dormer, and in addition to 4 roof vents.

Each of these Tiny Housing units would have two 3.0' man doors, four 3' x 3' windows, and two 2' x 2' windows.

Each housing unit would have an 8' x 10' sleeping loft and below it 8' x 10' walled in room (Handicap accessible bedroom, or have two bunk-beds.)

The preliminary estimated cost is based on building 20 of these Tiny House units (all material and labor) at one site. The cost would be \$8,500 per structure or \$170,000 in total. (This would be achieved as a result of, gaining a 10% volume discount, by building all structures at one location)

There would be no plumbing, electrical and wall heating units, but that could be easily added, hopefully by donation.

They would be ready for standard insulation and hard board interior walls possibly over sheet-rock, to prevent damage.

This same Tiny House units could be designed to where they could have a 8' x 10' kick-out on the back side, if there was a need for a future bathroom and/or micro kitchen. (This would make the structures 280 Sq. Ft. and add \$3,000 more and would open the door to SDC Fees and other Impact Fees being assessed.)

Each of these Tiny House structures could easily sleep up to four (4) people comfortably and more in emergency conditions.

What we are attempting to build are Post and Beam Structures, which are in a size, which is below a size (200 Sq. Ft.) of what requires Building Permits and is additionally assessed with SDC Fees or other Impact Fees.

To make this vision complete, we see a need for a central commissary, kitchen, meeting space, toilets and showers. This building should be envisioned, as part of creating an effective planned community.

Centralizing outreach efforts, where effective peer-to-peer intervention can take place, in combination with counseling, we can transition Homeless Veterans into a sustainable life and will prevent suicides.

Pete Walter

From: Debbie Chelson <dchelson@gmail.com>
Sent: Wednesday, July 18, 2018 1:47 PM
To: Pete Walter
Subject: Sufficient Cell Phone Towers for Proposed Growth Plans

Dear Mr. Walter –

I've just reviewed the proposals for amendments to the Oregon City Municipal Code as posted at <https://www.oregoncity.org/planning/housing-and-other-development-and-zoning-code-amendments>.

I'm in agreement that we need a variety of affordable housing options, but am concerned that the city also ensures sufficient cell phone towers for this growth. As it is, there are many low or spotty signal strength areas, particularly in the residential neighborhoods. As we add more people to the area I think we must plan for an abundance of cell coverage. This is not only important for the day-to-day cell usage of individuals and businesses, but essential in times of emergencies when first responders need to stay connected to each other and the citizens.

Thank you for taking this into consideration as we plan for additional options and opportunities in Oregon City.

Kind regards,

Debbie

Debbie Chelson
11524 Shelby Rose Drive
Oregon City, OR 97045
971-678-5680 (cell)
dchelson@gmail.com

Pete Walter

From: Mark J. Matheson <mark.matheson@drteamsint.com>
Sent: Monday, July 23, 2018 3:05 PM
To: Pete Walter
Subject: Fwd: For the record - Planning Commission -
Attachments: Matheson v. City of Oregon City Amended Petition for Writ of Review and Amended Complaint FINAL 07182017.pdf; Petitioner-Plaintiffs' Response in Opposition to Respondent's Motion for Reconsideration-Case No. 17CV25621-1.pdf; Norby Ltr re 17 CV25621 Matheson v City of Oregon Cityunderlined.pdf; Norby Ltr re17CV25621 Resp Motion for reconsideration.pdf; ocroofpolice.pdf; ocroofreply.pdf; OCstats.JPG

I forgot that you were the POC for the planning commission

----- Original Message -----

Subject:For the record - Planning Commission -

Date:2018-07-23 14:44

From:"Mark J. Matheson" <mark.matheson@drteamsint.com>

To:Laura Terway <lterway@ci.oregon-city.or.us>, Denyse McGriff <guttmcg@msn.com>, Kattie Riggs <kriggs@orcify.org>

Cc:Miranda Sierra <sierra318@gmail.com>, Patti Webb <Pdqboxerrescue@yahoo.com>, Gary Avery <gavery@gavery.net>, Karla Laws <karla.laws@gmail.com>, Mike Simon <mike1e4e5@gmail.com>, Al Snell <classiccycleinc@yahoo.com>, Gordon Wilson <gordon@gkwphoto.com>, Tom O'Brien <tom.obrien4@comcast.net>

For the record

I would like to suggest postponing any unnecessary changes to the code's until the elections are over.

As someone who has an authentic reason to question the motivations behind City decisions, and someone who happens to be a candidate for Mayor of Oregon City I stand adamantly against any changes to the code for three (3) reasons

1. Damon Mabee, a Planning Commissioner has declared his intention to run for Mayor and should stay neutral until after the elections
2. Dan Holladay has not declared his intention to run for Mayor yet and the proposals under his Administration should be treated as a lame duck initiatives
3. There is a pattern of abuse and inconsistency when it comes to applying the code

I am submitting the material emblematic of "code practices gone wild" and information the Planning Commission should consider. The material led Honorable Norby's from Clackamas County Circuit Court to make the conclusion ***"the lawfulness of the Stop Work Order is also irreparably compromised"*** pg 5, paragraph 4, last sentence, and the conclusion the ruling by the Oregon City Municipal Court ***"on the scope of the project and the legality of the Stop Work Order"*** that it was unnecessary to review any other part of the complaint. Pg 6, last paragraph first sentence. Both conclusion coming from ignoring and/or mishandling the administrative policy and/or the municipal code.

The above facts are from a settled case. The legal battles currently being waged in Circuit Court are the efforts of the 6 attorney's the City retained to defend the indefensible, stemming out, in part from the illegal action. The City took an aggressive action and is actively attempting downplay the fact they illegally used a Stop Work Order on someone. A recent hearing can support the fact the City insists the reversal was caused by a clerical error from mishandling the recordings. An idea that has been consistently shot down by the facts.

<https://www.youtube.com/watch?v=vXhZe1KoEfl&feature=youtu.be>

For the record the action the City took against my wife was reversed in part because of the questionable legality of the Stop Work Order. It was claimed I stated in September 19, 2016 letters I sent in response to the violation. For the record, Mike Roberts, Chris Long and David Mueller lied under oath about receiving the Sept. 9, 2016 letters. They were forced to recant their testimony after being presented with copies of the letters they said they had not seen. ***In my view if City agents are willing to lie under oath to win a code enforcement case then the entire process has cascaded into a corrosive process and extremely untrustworthy.***

I believe the OC Planning Commission should seriously review the motivation behind the code changes, how they are applied, who they are directly or indirectly benefiting, and their impact to the community. In light of Tom O'Brien's stellar investigation published in the Oregon City News, the Planning Commission has more than enough reason to question the process.

<https://pamplinmedia.com/cr/28-opinion/400555-296115-oregon-city-mayor-commissioners-asked-to-resign>

Mr. O'Brien clearly establishes a connection between Dan Holladay and the real estate industry by the fact he "received over \$6,165 from four developers, Dan Fowler (former mayor and real-estate developer), Mark Handris (ICON Construction & Development LLC), Richard Langdon (Oregon Real Estate Investment LLC) & Scott T. Parker (Parker Development Company)"

The Planning Commission should move beyond a code's intent or the revenue it may generate and resolve the abuse and inconsistency. In the MUC portion alone it ignores the fact that it excludes 30 homes in Barclay Hills from residential mortgage products because it does not include residential homes in its zoning language. The Container Housing being proposed for Barclay Hills neighborhood was told building in Container Houses in Oregon City was a turnkey process, and was not subject to any public comments. Dan Holladay openly declared and without any due process that a house on Roosevelt Street could be converted into a commercial facility, and unilaterally annex property into the City against the Planning Commission's recommendation. It seems the Planning Commission would be doing the community a favor by agreeing to stay unnecessary decisions until after the elections.

Higher density housing models work when the underlying property values can sustain an above average housing market and support the impact for improving roads and infrastructure amenities. The average home in the Oregon City is approximately \$254,000 whereas Happy Valley is \$411,300. Without any in-depth analysis, when the City Administration sacrifices the volume of residential permits over the quality, and absent of any conversations about creating jobs, the City will rapidly slide into a bedroom community and be forever dependent on fees, increases in local taxes, and the County government as its only industry.

Sincerely,

Mark J. Matheson

--

Mark J. Matheson, Founder and CEO
The Advantage Group, LLC NW
www.drteamsint.com
503.953.0250

CONFIDENTIALITY NOTICE

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Mark J. Matheson
Anna Marie Matheson
855 Molalla Avenue
Oregon City, Oregon 97045
(503) 954-0250
mark.matheson@drteamsint.com
On behalf of Petitioner/Plaintiffs, *Pro Se*

**IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS**

ANNA MARIE MATHESON,

Petitioner/Plaintiff,

MARK J. MATHESON, THE ADVANTAGE
GROUP, LLC, NW, an OREGON LIMITED
LIABILITY COMPANY, OREGON CITY
COMMUNITY EMERGENCY RESPONSE
TEAM, an OREGON NONPROFIT
CORPORATION, and A BETTER
OREGON CITY COALITION, an OREGON
NONPROFIT CORPORATION,

Plaintiffs,

vs.

CITY OF OREGON CITY, an Oregon
municipal corporation formed under the
laws of the State of Oregon,

Respondent/Defendant,

DAN HOLLADAY, the City of Oregon City
Mayor, in his official and personal capacity,
and ANTHONY J. KONKOL, III, the City of
Oregon City Manager, in his official and
personal capacity,

Defendants

Case No.: 17CV25621

**AMENDED PETITION FOR WRIT OF
REVIEW; AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT;
COMPLAINT FOR VIOLATIONS OF 42
U.S.C. § 1983 AND 42 U.S.C. § 1985;
NEGLIGENCE; FALSE LIGHT;
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; BREACH OF
DUTY OF GOOD FAITH AND FAIR
DEALING; INTENTIONAL
INTERFERENCE WITH CONTRACTUAL
RELATIONS; INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE**

**FEE AUTHORITY ORS 21.160(1)(d) and
ORS 21.105(2)**

**NOT SUBJECT TO MANDATORY
ARBITRATION**

DEMAND FOR JURY TRIAL

1 Petitioner/Plaintiffs hereby amend the Petition for Writ of Review and Complaint
2 for Declaratory Judgment filed on June 20, 2017, demand a jury trial with regard to their
3 civil rights and tort claims, and allege:
4

5 **A. PARTIES; JURISDICTION; VENUE**

6 1.

7 At all times material to this Amended Petition for Writ of Review and Complaint
8 (Amended Petition and Amended Complaint), Petitioner/Plaintiff Anna Marie Matheson
9 (Mrs. Matheson) and Plaintiff Mark J. Matheson (Mr. Matheson), are husband and wife,
10 and are residents of Clackamas County, Oregon.
11

12 2.

13 At all times material to this Amended Petition and Amended Complaint, Plaintiff
14 The Advantage Group LLC, NW (TAG) is an Oregon limited liability company with a
15 principal place of business located at 855 Molalla Avenue, Oregon City, in Clackamas
16 County, Oregon. Mr. Matheson is a member/manager of TAG.
17

18 3.

19 At all times material to this Amended Petition and Amended Complaint, Plaintiff
20 Oregon City Community Emergency Response Team (OC CERT) is an Oregon
21 nonprofit corporation with a principal place of business located at 855 Molalla Avenue,
22 Oregon City, in Clackamas County, Oregon. Mr. Matheson is the Registered Agent,
23 Incorporator and Vice President of OC CERT.
24
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27

1 4.

2 At all times material to this Amended Petition and Amended Complaint, Plaintiff A
3 Better Oregon City Coalition (ABOCC) is an Oregon nonprofit corporation with a
4 principal place of business located at 855 Molalla Avenue, Oregon City, in Clackamas
5 County, Oregon. Mr. Matheson is the Secretary and Incorporator of ABOCC.
6

7 5.

8 Petitioner/Plaintiffs are collectively and individually a “person” as defined in 42
9 U.S.C. § 1983, 42 U.S.C. § 1985, ORS 28.130 and common law.
10

11 6.

12 At all times material to this Amended Petition and Amended Complaint, the
13 Respondent/Defendant the City of Oregon City (the City) is a municipal corporation duly
14 organized and existing under the laws of the State of Oregon and is a corporate entity
15 capable of suing and being sued.
16

17 7.

18 At all times material to this Amended Petition and Amended Complaint,
19 Defendant Dan Holladay (Holladay) is the elected Mayor of the City with a term from
20 January 1, 2015 to December 31, 2018. Holladay is made a Defendant in both his
21 official and personal capacities.
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1 8.

2 At all times material to this Amended Petition and Amended Complaint,
3 Defendant Anthony J. Konkol, III (Konkol) is the City Manager. Konkol has served as
4 the City Manager since March 2016. Konkol is made a Defendant in both his official
5 and personal capacities.
6

7 9.

8 The Respondent/Defendants are collectively and individually a “person” as
9 defined in 42 U.S.C. § 1983, 42 U.S.C. § 1985, ORS 28.130, and common law.
10

11 10.

12 Respondent/Defendants were timely notified of the Petitioner/Plaintiffs’ intent to
13 file tort claims against them as required by the Oregon Tort Claims Act, a set forth in
14 ORS 30.275 (hereafter, the OTCA).
15

16 11.

17 This Court has jurisdiction over this Amended Petition and Amended Complaint
18 under the provisions of 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), ORS 455.475, ORS
19 34.030, ORS 31.230, ORS 28.010 to ORS 28.160, ORS 183.484, Oregon Residential
20 Specialty Code (ORSC) at Section 104.6 and 105.2, Oregon Structural Specialty Code
21 (OSSC) at Section 104.6, Title 17 of the Oregon City Municipal Code (OCMC), OCMC
22 1.24.180, OCMC 1.24.190, OCMC 2.30.060 and OCMC 16.020. In particular, ORS
23 34.030 requires the Petitioner/Plaintiff Mrs. Matheson to file the Amended Petition with
24 this Circuit Court.
25
26
27

12.

Venue in this Court is proper because the acts and omissions, decisions and determinations that occurred giving rise to this Amended Petition and Amended Complaint arose in Clackamas County, Oregon.

B. GENERAL FACTUAL ALLEGATIONS

13.

At all times material to this Amended Petition and Amended Complaint, the City has a “Council-Manager” form of government. The Mayor is part of the Council. The Council members (the Commission) are the leaders and policy makers and the legislative body; the Commission are also the decision makers. Power is centralized in the elected Council, which approves the budget and determines the tax rate, for example. The City Manager is appointed by the Commission to carry out policy and ensure that the entire City community is being served.

14.

In accordance with the City’s “Council-Manager” form of government at the City, the City’s Mayor, Commission, and Manager constitute a policy-development and management team. The City Mayor acts as the key political leader and policy developer on the Commission.

15.

At all times material to this Amended Petition and Amended Complaint, the Mayor, the Commission and the Manager are the final decision-makers and policy makers with regard to the improved safety and livability of the City by ensuring the

1 City's policy that building construction in the City is safe and built to code requirements.
2 The Mayor, the Commission and the Manager are also the final decision-makers and
3 policy makers with respect to the City's Police Department's duty to maintain public
4 order and protect all lives and property in the community within the City.
5

6 16.

7 At all times material to this Amended Petition and Amended Complaint, the
8 Commission, Holladay, as the Mayor, and Konkol, as the Manager, were acting under
9 the color of City, State and federal law as the final decision-makers and policy makers.
10

11 17.

12 The City's "Building Inspection Operating Plan" dated March 2015 provides, in
13 relevant part:

14 As provided in ORS 455.475 **an applicant for a building permit may**
15 **appeal the decision of a building official on any matter relating to the**
16 **administration and enforcement of the department**. The appeal must
17 be in writing. A decision by the department on an appeal filed under this
18 subsection is subject to judicial review as provided in ORS 183.484. An
19 appeal of a decision of the Building Official unrelated to code provisions is
20 reviewed by the Community Development Director (emphasis added).

21 18.

22 At all times material to this Amended Petition and Amended Complaint, Mrs.
23 Matheson is the owner of property located at 855 Molalla Avenue, Oregon City, in
24 Clackamas County, Oregon (the Property). Mrs. Matheson resides in a residential
25 house that was built in 1916 at the Property with her husband, Mr. Matheson
26 (collectively, the Mathesons). The Mathesons have lived together at the Property for
27 over twenty-five (25) years.
28

19.

At all times material to this Amended Petition and Amended Complaint, Mrs. Matheson granted a General Power of Attorney to Mr. Matheson, which includes, but is not limited to, a power of attorney to act as her “attorney-in-fact” with respect to claims and litigation on her behalf (the Power of Attorney). On information and belief, none of the Respondent/Defendants, acting through their officers, servants, agents, employees and assigns, ever requested proof of the Power of Attorney, nor did they ask if Mr. Matheson was acting as attorney-in-fact on behalf Mrs. Matheson at any time material to this Amended Petition and Amended Complaint.

20.

At all times material to this Amended Petition and Amended Complaint, Plaintiffs TAG, OC CERT and ABOCC (collectively, the Plaintiff Businesses) use the trailer as a technology platform to remotely operate, train and educate people and is located next to the residential home on the Property.

21.

On information and belief, Respondent/Defendants knew that the Plaintiff Businesses used the trailer as a principal resource for business for at least two (2) years before the filing of this Amended Petition and Amended Complaint, and certainly at all times material to this Amended Petition and Amended Complaint. On information and belief, Respondent/Defendants also knew that the residential home at the Property was used solely as a residence at all times material to this Amended Petition and Amended Complaint.

22.

On or about June 10, 2016, Mr. Matheson started a public discussion on the social media website Nextdoor.com under a thread entitled "Oregon City Armory" (the OC Armory thread). Motivated by his political and ethical beliefs, Mr. Matheson stated: "Over the last 6 months the City officials have been hammering Col. Norman Stewart (ret) with a silent campaign to discredit his work at the OC Armory because John Lewis, the Public Works Director can build an operation center. Mr. Lewis has obfuscated his interest in taking over the OC Armory while intending to get the State of Oregon National Guard to sell the facility to the City. Seventy-five percent of the Col. Stewarts operation directly services veterans, but Mr. Lewis insinuated that Mr. Stewart's operation was attracting the wrong type of people during a CIC meeting. I'm interested in helping Col. Stewart is there anyone else who wants to help?"

23.

On or about June 30, 2016, Mr. Matheson wrote a letter to the Oregon Military Department. Motivated by his political and ethical beliefs, Mr. Matheson stated that he objected to the City's Public Works Director's plans to use the Oregon City Armory, and that he was planning a rally to protest it. Mr. Matheson closed the letter by saying, "A small group of people are taking formal steps to remove a specific Oregon City official from office because we're tired of the BS." Although Mr. Matheson did not state with specificity which "Oregon City official" he was referring to, given that Mr. Matheson stated in the letter that he intended to run for Mayor of the City, a reasonable person,

1 exercising ordinary and common judgment, could infer that Mr. Matheson was referring
2 to Holladay.

3
4 24.

5 On or about July 1, 2016, Mr. Matheson, acting on behalf of ABOCC, filed a petition
6 for a ballot measure to recall Holladay as the City's Mayor (the petition for recall).
7 ABOCC was formed specifically to file the petition to recall. There are two (2) other
8 individual Incorporators of ABOCC: Al Snell and Mike Simon. Of the three (3)
9 Incorporators, Mr. Matheson is the most vocal. On information and belief, the
10 Respondents/Defendants did not retaliate against Snell and Simon for exercising their
11 free speech rights.
12

13
14 25.

15 Motivated by his political and ethical beliefs, on or about July 3, 2016, Mr.
16 Matheson started a public discussion on Nextdoor.com under a thread entitled "Recall
17 Dan Holladay" (the recall thread) to inform citizens that the petition for recall had been
18 filed.
19

20
21 26.

22 On or about July 6, 2016, the City approved the petition for recall.

23
24 27.

25 On or about July 7, 2016, Holladay posted a message directly to Mr. Matheson
26 on the recall thread, as follows: "Mark, I am confused [sic] what exactly is broken that
27 needs to be fixed?" Holladay signed the post as "Mayor Dan Holladay" (emphasis

1 added). On information and belief, Holladay had not participated on the Nextdoor.com
2 website before the petition for recall was filed.

3 28.

4
5 On or about July 7, 2016, Mr. Matheson posted a link on the recall thread to an
6 article that had been published in the *Portland Tribune* about the recall petition. In
7 response, and on the same date, Holladay posted: "Mark, [sic] Once again what exactly
8 is broken that needs to be fixed? Mayor Dan Holladay" (emphasis added).

9
10 29.

11
12 At or near the same time the petition for recall was approved, Mr. Matheson hung
13 a large "Recall Mayor Holladay" banner (the banner) in front of the residential house
14 where he lives with Mrs. Matheson at the Property. As of the date of the filing of this
15 Amended Petition and Amended Complaint, the banner remains prominently displayed
16 on the Property. On information and belief, Holladay lives in the same neighborhood as
17 the Mathesons and presumably sees the banner frequently.

18
19 30.

20 On or about July 7, 2016, *The Clackamas Review*, a local newspaper, published
21 an article about the petition for recall. Mr. Matheson posted the link to the article on the
22 recall thread.

1 31.

2 On or about July 8, 2016, Holladay offered Mike Acosta (Acosta) a position on
3 the Urban Renewal Commission on the recall thread. Acosta had made several
4 comments in support of Holladay on the recall thread.
5

6 32.

7 On or about July 9, 2016, Holladay posted a link on the recall thread
8 without comment. The link was to a Trustee's Notice of Sale (the foreclosure
9 notice). The foreclosure notice had been filed against Mrs. Matheson on or
10 about June 22, 2016 concerning the Property.
11

12 33.

13 On or about July 9, 2016, Mr. Matheson responded to Holladay's July
14 9 posting on the recall thread, in relevant part, as follows: "I see Dan is picking
15 on my wife now. And your lack of taste may be satisfying to you, and the
16 special interests, but you just devastated my wife." Although Mr. Matheson
17 went on to explain that the Mathesons were in the process of obtaining an
18 injunction against the foreclosure on the grounds that their lender was
19 predatory and that there is no subset of standard Mixed-Use District
20 classifications within the City that would allow a financial institution to
21 underwrite the Property, this was hours after Holladay posted the foreclosure
22 notice. On information and belief, the foreclosure notice had been seen by
23 several members of the public before Mr. Matheson could respond and/or
24 clarify. As of the date of the filing of this Amended Petition and Amended
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26
27

1 Complaint, the Mathesons have yet to resolve their problems with their
2 mortgage servicer but did receive a twelve (12) month injunction.

3
4 34.

5 On information and belief, Holladay did not reply to Mr. Matheson or otherwise
6 acknowledge Mr. Matheson's comment on the recall thread concerning the foreclosure
7 notice.

8
9 35.

10 On or about July 10, 2016, Mr. Matheson posted on the OC Armory thread, that:
11 "The Armory issue has moved beyond the local politics. John Lewis bending of the truth
12 has seen to that. The matter is now being looked at by the state agencies, and the fed's
13 are involved because I'm involved." Mr. Matheson made that comment because of his
14 political and ethical beliefs.

15
16 36.

17 The following day, July 11, 2016, motivated by his ethical and political beliefs, Mr.
18 Matheson posted on the OC Armory thread that: "With a volunteer mayor at the helm,
19 its [sic] unsettling to more than a few people how this is getting slammed through like
20 there are no other alternatives."

21
22 37.

23 On or about July 11, 2016, Holladay posted a direct reply to Mr. Matheson on the
24 OC Armory thread: "One simple question MRK [sic] ARE YOU A VETERAN [sic] HAVE
25 YOU SERVED [sic] BECAUSE I HAVE." On information and belief, Holladay

1 deliberately used all capital letters with the intent to “shout” at¹ and humiliate Mr.
2 Matheson because he is not a Veteran like Holladay allegedly is.

3
4 38.

5 Rather than respond directly to Holladay, on the same date, Mr. Matheson
6 replied: “It seems Holladay is campaigning again.” Holladay replied directly to Mr.
7 Matheson: “Simple question have you severed [sic] your Nation in uniform? I thought
8 not.” Mr. Matheson responded: “If there [sic] is only one way to serve a country is to put
9 on a uniform, I hear China has a dress code.”

10
11 39.

12 On information and belief, all of Holladay’s postings on Nextdoor.com set forth
13 herein were made in his official capacity as the Mayor.

14
15 40.

16 On or about July 11, 2016, Mrs. Matheson received a “Notice of Code
17 Enforcement Complaint” (Notice #1) regarding the banner. Within Notice #1, the City
18 alleged that the banner did not meet City code requirements and must be removed.
19 Notice #1 stated that even if the banner met requirements, Mrs. Matheson must pay a
20 \$50 fee to hang the banner. Notice #1 was signed by Chris Long (Long), a Building
21 Department official. Notice #1 did not notify Mrs. Matheson whether she had a right to
22 appeal the Notice. Within ten (10) days of the date Mrs. Matheson received Notice #1,
23 Mr. Matheson moved the banner from in front of the residential home to the trailer used
24

25
26
27 ¹ https://en.wikipedia.org/wiki/All_caps

1 for work purposes. The City pursued no further action against Mrs. Matheson for any
2 alleged code violations related to the banner.

3 41.
4

5 On or about August 10, 2016, Mr. Matheson's first editorial concerning the
6 petition for recall was published in *The Clackamas Review*. Within the editorial, Mr.
7 Matheson explained in detail why he and the ABOCC filed the petition for recall.
8 Motivated by his political and ethical beliefs, Mr. Matheson stated that he had concerns
9 about Holladay's adherence to election laws and ethics rules. Mr. Matheson also
10 explained that Holladay needed to be able to demonstrate "economic expertise." Mr.
11 Matheson concluded his editorial by saying, "The recall of Holladay is meant to give the
12 community an opportunity to change the leadership and begin rebuilding cooperative
13 relationships."
14

15 42.
16

17 At or near the end of August 2016, Mr. Matheson began performing roof repairs
18 at the residential home he shares with Mrs. Matheson at the Property. The roof repair is
19 a restoration project, which means that Mr. Matheson was using like materials. Mr.
20 Matheson has worked over a decade in designing, managing, and oversight
21 responsibility for major and minor road reconstruction, water, sewer and storm
22 construction, historical reconstruction, beatification projects, property development and
23 maintenance programs, as a government civil engineer and as a civil engineering
24 designer for the private sector.
25
26
27

1 43.

2 On or about September 6, 2016, Mr. Matheson sent a letter to City
3 Commissioner Rocky Smith, Jr. (Commissioner Smith) concerning his reservations
4 about Acosta's nomination to the URC. Motivated by his ethical and political beliefs,
5 and with knowledge that Holladay had previously offered Acosta the position on the
6 Nextdoor.com website, Mr. Matheson stated that Holladay "is using his status as
7 the...Mayor of Oregon City to reward Michael Acosta for joining his special interest
8 group." Of major concern to Mr. Matheson was that Acosta's behavior at Neighborhood
9 Association meetings "was clearly an attempt to influence and intimidate people who
10 could be supporting the recall initiative."
11

12 44.

13 On or about September 9, 2016, the City, by and through its Building
14 Department, sent a letter to Mrs. Matheson (Notice #2). Notice #2 incorrectly stated
15 that "unauthorized construction" had been "completed" at Mrs. Matheson's residential
16 home without "obtaining the required permits." Notice #2 also incorrectly cited the
17 OSSC at Section 105.1, which does not apply to residential property.
18

19 45.

20 Notice #2 stated that "required permits must be applied for and obtained within
21 10 days from [sic] date of this letter." Notice #2 went on to say that: "All decisions and
22 orders are appealable to the City of Oregon City Building Official." Notice #2 was
23 signed by Long.
24
25
26
27

1 46.

2 As of September 9, 2016, Mr. Matheson had only started—and had not
3 completed—the roof repair restoration project. Mr. Matheson had been performing the
4 roof repair work for approximately three (3) weeks.
5

6 47.

7 On information and belief, the City deliberately used the incorrect code so that
8 Mr. Matheson would be forced to stop the roof repairs and so that the City could justify
9 the need for full access to the residence at the Property. “Full access,” meaning
10 inspection of the entire Property, not just the roof of the residential home.
11

12 48.

13 At or near the same time Mrs. Matheson received Notice #2, the Building
14 Department demanded to obtain full access to inspect the entire residential home
15 without “reasonable cause” as required by Section 104.6 of the OSSC. Mr. Matheson
16 and Mrs. Matheson refused to grant access.
17

18 49.

19 On or about September 12, 2016 at approximately 9:43 a.m., the City’s Building
20 Department posted a “stop work notice” (Notice #3) on the residential home at the
21 Property. Notice #3 stated: “ALL PERSONS ARE HEREBY ORDERED TO **STOP**
22 **WORK** ON THIS PROJECT LOCATED AT 855 Molalla Ave. Permits are Required Prior
23 to starting work” (emphasis in original). Notice #3 went on to say: “**ALL PORTIONS**
24 **OF WORK ARE TO BE DISCONTINUED. THIS WORK STOP ORDER TO BE**
25 **REMOVED ONLY UPON AUTHORIZATION FROM THE CITY OF OREGON CITY**”
26
27

1 (emphasis in original). Notice #3 did not cite a code, ordinance, statute or rule upon
2 which the City relied, nor did Notice #3 state that it is appealable. Notice #3 was
3 signed by Long.
4

5 50.

6 On or about September 14, 2016, the City's Police Department mailed a "Notice
7 of Violation" to Mrs. Matheson, notifying her that she is required to obtain a permit (Notice
8 #4). Notice #4 stated that: "Prior to any additional work occurring at this property, all
9 applicable permits must be obtained...." Notice #4 further provided that "[f]ailure to obtain
10 all applicable permits by 5 PM on Monday, September 19, 2016 will result in a citation to
11 the Municipal Court (emphasis in original). Although Notice #4 listed the codes and
12 statutes on which it relied, it did not state that it is appealable. Notice #4 was not signed,
13 although it referenced "Investigator Mueller." Of note, the City e-mailed a copy of Notice
14 #4 to Mr. Matheson. On information and belief, by e-mailing a copy of Notice #4 to Mr.
15 Matheson, the City tacitly acknowledged that Mr. Matheson was acting as attorney-in-fact
16 on behalf of Mrs. Matheson.
17
18
19

20 51.

21
22 On or about September 19, 2016, Mr. Matheson, acting as attorney-in-fact on
23 behalf of Mrs. Matheson, faxed and e-mailed a letter to the City's Building Department,
24 asking the City to clarify with specificity what law the City relied upon when issuing
25 Notice #3, the "stop work notice." Mr. Matheson's letter stated that the City's Notice #3
26 was issued illegally and, for that reason, "is being ignored." Mr. Matheson's
27

1 communication to the City's Building Department was made within the ten (10) day
2 deadline set forth in Notice #2 and by the deadline set forth in Notice #4. The Building
3 Department did not respond to either Mrs. Matheson or Mr. Matheson, nor did the
4 Building Department acknowledge receipt of the letter.
5

6 52.

7 On or about September 19, 2016, Mr. Matheson, acting as attorney-in-fact on
8 behalf of Mrs. Matheson, faxed and e-mailed a letter to the City's Police Chief, informing
9 the Police Chief that he considered Notice #3, the stop work notice, to be issued
10 illegally. Mr. Matheson asked that the Police Department investigate the "fishing
11 expedition" that was being conducted by the Building Department. Mr. Matheson
12 stated that the code enforcement action was in retaliation for his political activities. The
13 Police Department did not respond to Mr. Matheson or Mrs. Matheson and, on
14 information and belief, did not investigate Mr. Matheson's claims.
15
16

17 53.

18
19 On or about September 19, 2016, Mr. Matheson, acting as attorney-in-fact on
20 behalf of Mrs. Matheson, faxed and e-mailed a letter to Mike Roberts (Roberts) at the
21 Building Department. Within the letter addressed to Roberts, Mr. Matheson again asked
22 that the City specify "what triggered" Notice #2 and Notice #3, the stop work notice. Mr.
23 Matheson stated that "unless you clarify the reason, or under what context you are
24 applying the code," the City's stop work notice is illegal and is "a misuse of government
25 office and racketeering." Roberts and/or the Building Department did not respond to Mr.
26
27

1 Matheson or Mrs. Matheson. Hereafter, all of the letters Mr. Matheson sent to the City
2 dated September 19, 2016 are referred to as the September 19 letters.

3
4 54.

5 On or about September 20, 2016, the City filed a Complaint, Case No. CE-
6 19613-16 (the Complaint), against Mrs. Matheson in the Oregon City Municipal Court
7 (the Municipal Court). Within the Complaint, the City alleged that Mrs. Matheson failed
8 to obtain a permit before beginning roof repairs at her residential home located on the
9 Property. The City also alleged that Mrs. Matheson failed to comply with the “stop work
10 notice” contained in Notice #3.

11
12 55.

13 On or about November 21, 2016, Mr. Matheson reported to the City’s Police
14 Department that a trespasser had been at the Property and had threatened to burn his
15 house down. The following day, November 22, 2016, Mr. Matheson provided the
16 license plate number of the truck the trespasser had been driving to the Police
17 Department. On information and belief, the Police Department did not investigate Mr.
18 Matheson’s claim.

19 56.

20 Between November 28, 2016 and June 1, 2017, Mr. Matheson repeatedly
21 requested a copy of the police report concerning the trespasser and threat to burn his
22 home. The Police Department did not provide a copy to Mr. Matheson, nor did the
23 Police Department provide any substantial response to Mr. Matheson concerning his
24 report of a crime on the Property.
25
26
27

1 57.

2 On or about November 30, 2016, Mr. Matheson's editorial concerning the recall
3 petition was published in *The Clackamas Review*. Motivated by his political and ethical
4 beliefs, Mr. Matheson stated that "[t]he level of lather created by the recall initiative
5 triggered the need to set aside a number of responsibilities to editorialize my personal
6 perspective and experience over the last 90 days." Mr. Matheson, who believed the
7 Respondent/Defendants retaliated against him for his political activities, closed the
8 editorial by writing: "Legitimizing Holladay's political ambitions depends on administering
9 a corrosive style of governing to fend off any opposition." Mr. Matheson subsequently
10 withdrew the recall petition. Mr. Matheson and the ABOCC filed a second recall
11 petition, which Mr. Matheson also withdrew.
12
13

14 58.

15 On or about February 24, 2017, the City's Code Enforcement Division of the
16 Police Department mailed a Notice to Mrs. Matheson concerning "possible code
17 violations" at the property (Notice #5). Like Notice #3, the stop work notice, Notice #5
18 does not list a code, citation, statute or ordinance upon which the City relies, nor does
19 Notice #5 state that it is appealable.
20
21

22 59.

23 On or about April 6, 2017, a hearing was held before the Honorable Laraine
24 McNiece (the Honorable McNiece) at the Municipal Court concerning the Complaint. At
25 the hearing, Mrs. Matheson argued through her attorney that she was denied due
26 process because the City failed to cite the correct law in both Notice #2 or Notice #3,
27

1 and because the City proceeded with the Complaint without providing her the
2 opportunity to contest, appeal or otherwise remonstrate the validity of Notice #2, Notice
3 #3 and Notice #4. Finally, Mrs. Matheson argued that ORSC, Section 105.2 exempted
4 her from applying for a permit for roofing repairs, so long as less than fifteen percent
5 (15%) of the roofing sheath had been removed on her residential home.
6

7 60.

8 At the April 6, 2017 hearing, the Court admitted Mr. Matheson as a witness on
9 behalf of Mrs. Matheson. Mr. Matheson testified that he personally measured the
10 roofing sheeting that had been removed, and that it came out to be approximately two
11 percent (2%) to five percent (5%) of the skip sheeting, less than half of what ORSC,
12 Section 105.2 requires for an exemption from applying for a permit. Yet and still, in
13 support of Mr. Matheson's testimony, Mrs. Matheson presented an expert witness who
14 testified that in his professional opinion, less than fifteen percent (15%) of the plywood
15 sheeting had been removed.
16
17

18 61.

19 The City testified at the April 6, 2017 hearing that it never measured how much
20 of the roofing sheath had been removed. The City also provided testimony that, based
21 on its naked eye observation of the residential home—an observation that was made
22 from a moving car traveling at approximately 30 miles per hour—the City required
23 Mrs. Matheson to obtain a permit on the basis that more than fifteen percent (15%) of
24 the skip sheeting had been removed. When asked on the stand whether there could be
25 any other reason why the residential home at the Property was getting so much
26
27

1 attention, Roberts testified that “there was no other reason.” The City further conceded
2 in its testimony that although it received all of Mr. Matheson’s September 19 letters, the
3 City did not acknowledge or respond to any of Mr. Matheson’s September 19 letters.
4

5 62.

6 On or about April 20, 2017, the Honorable McNiece issued a Final Order, a copy of
7 which is attached hereto as Exhibit A and incorporated herein by this reference.
8 Notwithstanding that the City acknowledged under oath that it received all of Mr.
9 Matheson’s September 19 letters, the Honorable McNiece ruled that Mrs. Matheson
10 failed to respond to the City’s Notice #2, Notice #3 and Notice #4. Furthermore,
11 notwithstanding Mr. Matheson’s and the expert witness’ testimony, the Honorable
12 McNiece ruled that Mrs. Matheson was required to obtain a permit. Finally, the
13 Honorable McNiece ruled that Mrs. Matheson was not denied due process.
14
15

16 63.

17 OCMC 16.020 provides that each day of penalty requires a fine of \$300.00 per
18 day. Within the Final Order, the Honorable McNiece issued a fine of \$62,100.00 in
19 favor of the City, representing \$300.00 per day from September 14, 2016, the date of
20 Notice #4, to April 6, 2017, the date of the hearing. The Court also issued a fine in favor
21 of the City in the amount of \$10,200.00 for the alleged violation of Notice #3, the “stop
22 work notice.” The April 20, 2016 Final Order incorrectly states that the stop work notice
23 was issued on September 14, 2016; in fact, it was issued on September 12, 2016.
24
25
26
27

1 64.

2 On or about May 27, 2017, Mr. Matheson, acting as attorney-in-fact on behalf of
3 Mrs. Matheson, e-mailed the Municipal Court concerning the recording of the hearing on
4 April 6, 2017. The recording Mr. Matheson received from the Municipal Court was only
5 approximately one and a half (1.5) hours in length, whereas the hearing lasted
6 approximately four (4) hours. The Municipal Court e-mailed Mr. Matheson on or about
7 May 30, 2017, informing him that the recording he received contained “[e]verything the
8 recorder captured.” The recording did not include key elements of Mrs. Matheson’s
9 case in chief. Noticeably absent from the recording was Mr. Matheson’s testimony
10 about his measurements of the roof sheaf that had been removed.
11
12

13 65.

14 On or about June 1, 2017, the City’s Police Chief informed Mr. Matheson by e-mail
15 that no police report had been filed concerning the trespass and threat that occurred in
16 November 2016 “because the officer did not believe that a crime had been committed.”
17 The Police Chief went on to say, “I understand you do not like the result. It is certainly
18 not the first time that unwelcome behavior in a neighborhood ends up being something
19 that is not illegal.” Mr. Matheson responded to the Police Chief’s e-mail on the same
20 day, June 1, 2017. In his response, Mr. Matheson stated, “I want to clarify my position,
21 the concern and actions to follow are about adhering to a procedure and working in
22 regards to the public’s interest.” The preceding statement to the Police Chief was
23 motivated by Mr. Matheson’s political and ethical beliefs.
24
25
26
27

1 66.

2 On or about June 2, 2017 the City's Building Department mailed a notice to Mrs.
3 Matheson (Notice #6). Notice #6 states that the City intends to bring further code
4 violations against Mrs. Matheson, and that she must "cease all work on the roof"
5 because "this work has been legally determined....in a court action to be work requiring
6 a permit from the City..." Notice #6 does not state whether it is appealable. Hereafter,
7 Notice #1, Notice #2, Notice #3, Notice #4, Notice #5 and Notice #6 are collectively
8 referred to as the Notices.
9

10 67.

11 On or about July 15, 2017, Mrs. Matheson received a Motion for Judgment,
12 Affidavit in support and a Final Judgment signed by the Honorable McNiece on July 11,
13 2017 (the Final Judgment). The Final Judgment requires Mrs. Matheson to pay a fine in
14 the amount of \$71,400 plus interest in the amount of nine percent (9%) per annum. A
15 copy of the Final Judgment is attached hereto as Exhibit C and is incorporated herein
16 by this reference.
17

18 68.

19 Within the Affidavit attached to the Motion for Judgment, the City alleges that the
20 Honorable McNiece issued a Corrected Final Order/Judgment on April 25, 2017, a copy
21 of which is attached hereto as Exhibit B and incorporated herein by this reference. On
22 information and belief, Mrs. Matheson was never served a copy of the Corrected Final
23 Order/Judgment and was not aware of its existence until July 15, 2017. The Corrected
24 Final Order/Judgment corrects the date of the hearing from April 9, 2017 to April 6,
25 2017. It also corrects the amount of fines payable. The Corrected Final
26
27

1 Order/Judgment again incorrectly states that Notice #3, the stop work notice, was
2 issued on September 14, 2016; the stop work notice was actually issued on September
3 12, 2016. Hereafter, the April 20, 2017 Final Order and the April 25, 2017 Corrected
4 Final Order/Judgment are collectively referred to as the Final Orders.
5

6 69.

7 At all times material to this Amended Petition and Amended Complaint, on
8 information and belief, Respondent/Defendants' actions, individually and collectively,
9 constitute single, continuous and ongoing pattern of violations of the
10 Respondent/Defendants' written and/or unwritten policies, and/or de facto policies.
11

12 70.

13 At all times material to this Amended Petition and Amended Complaint, on
14 information and belief, Respondent/Defendants' written and/or unwritten policies, and/or
15 de facto policies are currently in place at the City, with new, current and/or
16 prospective private citizens being subjected to the harms that have already been
17 inflicted upon the Petitioner/Plaintiffs.
18

19 71.

20 At all times material to this Amended Petition and Amended Complaint, on
21 information and belief, any interest advanced by the Respondent/Defendants to support
22 the Notices and/or the Final Orders and Final Judgment related to the suppression of
23 constitutional and statutory rights is minor compared to the infringement of rights
24 worked by the Notices and the Final Order against the Petitioner/Plaintiffs.
25
26
27

1 72.

2 At all times material to this Amended Petition and Amended Complaint, on
3 information and belief, unless and until all Respondent/Defendants are restrained by
4 Order of this Court, Respondent/Defendants, acting through their officers, servants,
5 agents and employees, will continue to attempt to enforce the Notices and/or the Final
6 Orders and Final Judgment.
7

8 73.

9 At all times material to this Amended Petition and Amended Complaint, on
10 information and belief, unless and until this Court declares the Notices, the Final Orders
11 and the Final Judgment unconstitutional, the Respondent/Defendants, acting through
12 their officers, servants, agents, employees and assigns, will continue to attempt to
13 enforce the Notices, the Final Orders and the Final Judgment.
14

15 74.

16 At all times material to this Amended Petition and Amended Complaint, on
17 information and belief, Mrs. Matheson has already been fined once for alleged code
18 violations is at risk to be fined again. Mrs. Matheson reasonably fears that she will
19 continue to be issued illegal code violations and fined for conduct which is prohibited by
20 City and/or State law and/or that is otherwise protected by the U.S. Constitution.
21

22 ///

23 ///

24 ///

25 ///

26 ///

1 **C. CLAIMS FOR RELIEF**

2
3 **FIRST CLAIM FOR RELIEF BY PETITIONER MRS. MATHESON AGAINST THE**
4 **RESPONDENT THE CITY**
5 **AMENDED PETITION FOR WRIT OF REVIEW**

6 75.

7 Mrs. Matheson realleges and incorporates paragraphs 1. through 74. as though
8 fully set forth herein.

9 76.

10 This Amended Petition for Writ of Review (Amended Petition) is brought pursuant
11 to ORS 34.010 to ORS 34.100.

12 77.

13 The Municipal Court's Final Orders and Final Judgment are "judicial" or "quasi-
14 judicial" as defined in ORS 34.040 and is subject to this form of review.

15 78.

16 The original Petition for Writ of Review was filed on June 20, 2017, within 60 days
17 of the date the April 20, 2017 Final Order was issued. As such, there can be no dispute
18 that this Amended Petition is timely filed, even though this Amended Petition is filed
19 outside the 60-day statute of limitations. See, e.g., *Meury v. Jarrell*, 16 Or. App. 239,
20 517 P.2d 1221 (1974), aff'd 269 Or. 606, 525 P.2d 1286 (1974). Moreover, this
21 Amended Petition is filed within 60 days of the date the Final Judgment was
22 issued on July 11, 2017.

1 79.

2 Mrs. Matheson has standing to seek this Amended Petition because she was a
3 party to the proceedings in the Municipal Court below and because she suffered injury
4 to a substantial interest as a result.
5

6 80.

7 Mrs. Matheson's fundamental due process rights were violated and were
8 significantly impaired by the City, acting through its officers, servants, agents,
9 employees and assigns, by issuance of the Notices, and by issuance of the Final
10 Orders and Final Judgment, in one or more of the following particulars:
11

- 12 • By exceeding its jurisdiction – to wit, by issuing code violations that are not
13 applicable to Mrs. Matheson's residential home in order to obtain full
14 access to inspect the entire Property without reasonable cause;
15
- 16 • By failing to follow the procedure applicable to the matter before it – to wit,
17 deliberately refusing Mrs. Matheson the opportunity to contest the Notices
18 and deliberately refusing to acknowledge Mr. Matheson's September 19
19 letters written as attorney-in-fact on behalf of Mrs. Matheson, thereby
20 prohibiting Mrs. Matheson the ability to appeal Notice #2, Notice #3 and
21 Notice #4;
22
- 23 • By making a finding or order not supported by substantial evidence in the
24 whole record – to wit, ruling that Mrs. Matheson failed to communicate
25 with City officials, when the evidence clearly establishes otherwise, and by
26

1 ruling that Mrs. Matheson is required to obtain a permit, notwithstanding
2 evidence that clearly establishes she is not required to do so;

- 3 • By improperly construing the applicable law – to wit, ruling that Mrs.
4 Matheson is required to obtain a permit when the evidence clearly
5 establishes otherwise and ruling that Mrs. Matheson’s due process rights
6 were not violated, when the evidence clearly establishes otherwise; and
7
- 8 • By rendering a decision that is unconstitutional – to wit, ruling that Mrs.
9 Matheson was not denied due process of law, when the evidence clearly
10 establishes otherwise.
11

12 81.

13 Mrs. Matheson suffered substantial injury as a result of the City’s actions in that
14 she was denied procedural and substantive protections under City, State and federal
15 law. Mrs. Matheson is also being forced to pay illegal fines to the City.
16

17 82.

18 On information and belief, this Amended Petition constitutes an exhaustion of all
19 administrative remedies available to Mrs. Matheson.
20

21 83.

22 Mrs. Matheson has no plain, speedy, or adequate remedy other than the review
23 prayed for herein.
24
25
26
27

1 84.

2 Mrs. Matheson is entitled to an Order issuing a Writ of Review directed to the
3 Respondent/Defendant, commanding the Respondent/Defendant to return the Writ with
4 a certified copy of the entire record and proceedings in this matter for review by this
5 Court in substantially the form attached hereto as Petitioner/Plaintiff's proposed Order
6 for Writ of Review.
7

8 85.

9 Mrs. Matheson is entitled to an Order staying all proceedings related to the
10 Notices, the Final Orders and the Final Judgment.
11

12 **SECOND CLAIM FOR RELIEF BY PLAINTIFF MRS. MATHESON AGAINST THE**
13 **DEFENDANT THE CITY**
14 **AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

15 86.

16 Mrs. Matheson realleges and incorporates paragraphs 1. through 74. as though
17 fully set forth herein.
18

19 87.

20 Mrs. Matheson requests a Declaratory Judgment under ORS 28.010 to ORS
21 28.160 for the purpose of determining a question and actual controversy between the
22 parties.
23

24 88.

25 Mrs. Matheson contends that the Notices, the Final Orders and the Final
26 Judgment violate her due process rights and are illegal. Mrs. Matheson further
27

1 contends that she should not be required to pay the fines issued by the Honorable
2 McNiece in the Final Orders and Final Judgment.

3
4 89.

5 The City has stated its intent to enforce the Notices, the Final Orders and the
6 Final Judgment against Mrs. Matheson. Therefore, a current controversy exists
7 between the parties.

8
9 90.

10 Mrs. Matheson requests that this Court issue a Judgment declaring that all
11 Notices issued by the City and the Final Orders and Final Judgment issued by the
12 Honorable McNiece are invalid and void because they violate City, State and federal
13 law.

14
15 91.

16 Mrs. Matheson has no plain, speedy, or adequate remedy.

17 **THIRD CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS AND**
18 **ABOCC AGAINST ALL DEFENDANTS FOR VIOLATION OF CIVIL RIGHTS UNDER**
19 **COLOR OF LAW – 42 U.S.C. § 1983**
(FIRST AMENDMENT TO THE U.S. CONSTITUTION – FREEDOM OF SPEECH)

20
21 92.

22 The Mathesons and ABOCC reallege and incorporate paragraphs 1. through 74.
23 as though fully set forth herein.

24
25 93.

26 The First Amendment to the U.S. Constitution prohibits the Defendants from
27 abridging citizens from their guaranteed right to freedom of speech.

1 94.

2 Mr. Matheson's letter to the Oregon Military Department, the banner displayed at
3 the Mathesons' Property, the recall petitions filed by ABOCC and Mr. Matheson, Mr.
4 Matheson's comments and postings on Nextdoor.com on the OC Armory and recall
5 petition threads, Mr. Matheson's editorials in the *Clackamas Review*, Mr. Matheson's
6 letter to Commissioner Smith, the September 19 letters Mr. Matheson wrote as attorney-
7 in fact for Mrs. Matheson, and the June 1, 2017 e-mail Mr. Matheson wrote to the Police
8 Chief, are all speech protected by the First Amendment to the U.S. Constitution.
9

10 95.

11 Mr. Matheson's speech was made in the capacity of a private citizen on matters
12 of public concern.
13

14 96.

15 Mr. Matheson's free speech rights outweigh any interest of the Defendants in
16 suppressing that speech.
17

18 97.

19 Defendants, by and through their officers, servants, agents, employees and
20 assigns, including, but not limited to, Holladay, acting in his official capacity as Mayor,
21 violated Mr. Matheson's right to free speech and retaliated against ABOCC, Mr.
22 Matheson and Mrs. Matheson in one or more of the following particulars:
23

- 24 • By maliciously and publicly humiliating Mr. Matheson on a public social media
25 website simply because he was not a Veteran;
26

- 1 • By maliciously and publicly humiliating the Mathesons on a public social media
- 2 website by posting a link to the foreclosure notice;
- 3
- 4 • By deliberately interfering with and/or terminating ABOCC and Mr. Matheson's
- 5 political activities concerning the recall petition, effectively chilling Mr. Matheson
- 6 from exercising his free speech rights;
- 7
- 8 • By deliberately and maliciously retaliating against Mr. Matheson, the most vocal
- 9 of the Incorporators of ABOCC, both in his individual capacity and as an
- 10 Incorporator of ABOCC, and not retaliating against the other two (2)
- 11 Incorporators of ABOCC who were less vocal than Mr. Matheson;
- 12
- 13 • By intentionally failing and/or refusing to follow their own written or unwritten
- 14 policies and procedures concerning the alleged code violations;
- 15
- 16 • By deliberately and maliciously issuing all of the Notices against Mrs. Matheson;
- 17
- 18 • By insisting on full access to the Mathesons' Property for inspection without
- 19 reasonable cause;
- 20
- 21 • By deliberately and maliciously imposing illegal code violations against Mrs.
- 22 Matheson without due process;
- 23
- 24 • By deliberately and maliciously ignoring Mr. Matheson's September 19 letters,
- 25 which were written as attorney-in-fact on behalf of Mrs. Matheson, effectively
- 26 prohibiting Mrs. Matheson the right to appeal the imposition of the illegal code
- 27 violations;
- 28

- By deliberately and maliciously refusing to investigate Mr. Matheson's report of illegal code violations, in violation of their duty to maintain public order and protect lives and property in the community;
- By maliciously prosecuting Mrs. Matheson for alleged code violations without due process of law;
- By falsely testifying at the April 6, 2017 hearing that there was "no other reason" why the City was targeting the Property;
- By falsely testifying at the April 6, 2017 hearing that Mrs. Matheson was required to obtain a permit for the roofing repairs, based solely on the City's naked eye observation of the Mathesons' residential home—**an observation that was made from a moving car traveling at approximately 30 miles per hour;**
- By maliciously and deliberately refusing to investigate and/or create a report concerning a crime reported by Mr. Matheson, in violation of their duty to maintain public order and protect lives and property in the community; and
- By continuing to issue and/or threaten to issue illegal code violation notices to Mrs. Matheson after the Final Orders and Final Judgment were issued.

98.

The list in the above paragraph is not exhaustive or inclusive. The Mathesons and ABOCC reserve the right to amend this Amended Writ of Review and Amended Complaint should they learn of any other actions by any of the Defendants that show that the Defendant(s) violated the ABOCC, Mr. Matheson's or Mrs. Matheson's right to free speech and/or that shows by a preponderance of evidence that any of the

1 Defendants retaliated against either or both Mr. Matheson and Mrs. Matheson and
2 ABOCC due to their exercise of free speech rights.

3 99.

4
5 The proximity and closeness in time of each of the above-listed events to Mr.
6 Matheson and ABOCC's political activities and exercise of free speech is too
7 coincidental to be a mere coincidence. Mr. Matheson's and ABOCC's exercise of their
8 free speech rights were clearly a substantial or motivating factor in the Defendants'
9 retaliatory adverse actions against both the Mathesons and ABOCC. The Defendants'
10 malicious and retaliatory conduct is continuing and ongoing as of the date this Amended
11 Petition and Amended Complaint is filed.

12
13 100.

14 Defendants acted intentionally and with callous disregard for Mr. Matheson's and
15 ABOCC's clearly established constitutional free speech rights. Simply put, it was not
16 objectively reasonable for the Defendants, by and through their officers, agents,
17 servants, employees and assigns, including, but not limited to Holladay, acting in his
18 official capacity as Mayor, to refuse to protect Mr. Matheson's and ABOCC's right to free
19 speech and to retaliate against both the Mathesons and ABOCC simply because Mr.
20 Matheson and ABOCC exercised their free speech rights. This conduct on the part of
21 all Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were
22 undertaken under color of law.
23
24
25
26
27

101.

To the extent the Commission, Holladay and Konkol, the policy making Defendants in this action, had the policies, whether written or unwritten, or a de facto policy and affirmative duties as set forth herein, the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy-makers can reasonably be said to have been deliberately indifferent to the need for new and/or additional training.

102.

The City's actions, by and through its officers, employees, servants, agents and assigns, were conducted pursuant to the policy, custom or practice of the Building Department and the Police Department. As such, the City is directly liable for the damages to the Mathesons and the ABOCC.

103.

On information and belief, the Commission, Holladay and Konkol, are responsible for establishing the policies, customs, practices, and procedures to be utilized in the operation of their facilities, and is responsible for the implementation of the policies, practices, and procedures questioned in this lawsuit. As such, Holladay and Konkol are each individually responsible for the damages of the Mathesons and the ABOCC.

///

///

///

1 104.

2 Defendants' conduct is well defined by law and each individual Defendant knew
3 or reasonably should have known that their conduct was well below the standard
4 prescribed by law.
5

6 105.

7 The Mathesons and ABOCC are entitled to injunctive relief to restrain the City, its
8 officers, agents, servants, employees and assigns, from engaging in existing and future
9 violations of the First Amendment to the U.S. Constitution.
10

11 106.

12 The Mathesons and the ABOCC are entitled to declaratory relief that the City,
13 Holladay and Konkol's conduct violated their federal statutory rights.
14

15 107.

16 The City's actions, by and through its officers, employees, servants, agents and
17 assigns, were intentional, willful and with reckless disregard of the Mathesons' federal
18 statutory rights. Such conduct exceeds the bounds of social toleration and is of the type
19 that punitive damages deter.
20

21 108.

22 As a direct and foreseeable result of the Defendants' violations of Mr. Matheson's
23 and ABOCC's free speech constitutional rights, and the Defendants' retaliation against
24 both the Mathesons and ABOCC, the Mathesons and ABOCC have suffered severe and
25 substantial damages. These damages include, but are not limited to, fear and
26 apprehension that they will, again, be subject to similar unlawful acts for the purpose of
27

1 limiting and/or preventing protected free speech, for imposed illegal fines, for continued
2 allegations of illegal code violations and/or continued imposed illegal fines, for
3 diminished earnings capacity, lost career and business opportunities, economic loss
4 due to the damage to the Property, emotional trauma, loss of liberty, loss of privacy and
5 irreparable harm to their reputations.
6

7 109.

8 As a further consequence of the Defendants' deprivations, Mrs. Matheson was
9 required to retain counsel to represent her in the code violation proceedings pursued
10 against her; the Mathesons will further incur litigation expenses including attorney fees,
11 expert witness fees, costs and expenses related to this Amended Petition and Amended
12 Complaint.
13

14 **FOURTH CLAIM FOR RELIEF BY PLAINTIFFS**
15 **THE MATHESONS AGAINST ALL DEFENDANTS FOR VIOLATION OF**
16 **CIVIL RIGHTS UNDER COLOR OF LAW – 42 U.S.C. § 1983**
17 **(FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION - DUE**
18 **PROCESS CLAUSE)**

19 110.

20 The Mathesons reallege and incorporate paragraphs 1. through 74. as though
21 set forth herein.
22

23 111.

24 The Due Process clause of the Fourteenth Amendment to the U.S. Constitution
25 prohibits the Defendants from depriving any person of life, liberty or property without
26 due process of law.
27

112.

Notice #3, the stop work notice, and Notice #5 failed to adequately advise, notify, or inform Mrs. Matheson of what alleged code violations Mrs. Matheson was being charged; Notice #1, Notice #3, Notice #4, Notice #5 and Notice #6 also did not advise Mrs. Matheson of her right to appeal. Therefore, on their face, Notice #1, Notice #3, Notice #4, Notice #5 and Notice #6 are unconstitutionally vague as applied or threatened to be applied.

113.

The Defendants violated Mrs. Matheson's guarantee under the Fourteenth Amendment to the U.S. Constitution to due process of law and retaliated against both Mr. Matheson and Mrs. Matheson in one or more of the following particulars:

- By intentionally failing and/or refusing to follow their own written or unwritten policies and procedures concerning the alleged code violations;
- By insisting on full access to the Mathesons' Property for inspection without reasonable cause;
- By deliberately and maliciously imposing illegal code violations against Mrs. Matheson without due process;
- By deliberately and maliciously ignoring Mr. Matheson's September 19 letters, which were written as attorney-in-fact on behalf of Mrs. Matheson, effectively prohibiting Mrs. Matheson the right to appeal the imposition of the illegal code violations;

- By deliberately and maliciously refusing to investigate Mr. Matheson's report of illegal code violations, in violation of their duty to maintain public order and protect lives and property in the community;
- By deliberately and maliciously issuing all of the Notices against Mrs. Matheson;
- By maliciously prosecuting Mrs. Matheson for alleged code violations without due process of law;
- By falsely testifying at the April 6, 2017 hearing that there was "no other reason" why the City was targeting the Property;
- By falsely testifying at the April 6, 2017 hearing that Mrs. Matheson was required to obtain a permit for the roofing repairs, based solely on the City's naked eye observation of the Mathesons' residential home—**an observation that was made from a moving car traveling at approximately 30 miles per hour;**
- By maliciously and deliberately refusing to investigate and/or create a report concerning a crime reported by Mr. Matheson, in violation of their duty to maintain public order and protect lives and property in the community; and
- By continuing to issue and/or threaten to issue illegal code violation notices to Mrs. Matheson after the Final Orders were issued.

114.

The list in the above paragraph is not exhaustive or inclusive. The Mathesons reserve the right to amend this Amended Writ of Review and Amended Complaint should they learn of any other actions by any of the Defendants that show that the Defendants violated Mr. Matheson's or Mrs. Matheson's right to due process of law

1 and/or that shows by a preponderance of evidence that any of the Defendants retaliated
2 against either or both Mr. Matheson and Mrs. Matheson due to a violation of due
3 process of law.
4

5 115.

6 Defendants acted intentionally and with callous disregard for Mrs. Matheson's
7 clearly established constitutional due process rights. Simply put, it was not objectively
8 reasonable for the Defendants, by and through their officers, agents, servants,
9 employees and assigns, to refuse to protect Mrs. Matheson's right to due process and
10 to retaliate against both the Mathesons. This conduct on the part of all Defendants
11 represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken
12 under color of law.
13

14 116.

15 To the extent the Commission, Holladay and Konkol, the policy making
16 Defendants in this action, had the policies, whether written or unwritten, or a de facto
17 policy and affirmative duties as set forth herein, the need for more or different training is
18 so obvious, and the inadequacy so likely to result in the violation of constitutional rights,
19 that the policy-makers can reasonably be said to have been deliberately indifferent to
20 the need for new and/or additional training.
21

22 117.

23
24 The City's actions, by and through its officers, employees, servants, agents and
25 assigns, were conducted pursuant to the policy, custom or practice of the Building
26
27

1 Department and the Police Department. As such, the City is directly liable for the
2 damages of the Mathesons.

3 118.

4
5 On information and belief, the Commission, Holladay and Konkol, are
6 responsible for establishing the policies, customs, practices, and procedures to be
7 utilized in the operation of their facilities, and is responsible for the implementation of
8 the policies, practices, and procedures questioned in this lawsuit. As such, Holladay
9 and Konkol are each individually responsible for the damages of the Mathesons.

10 119.

11
12 Defendants' conduct was well defined by law and each Defendant knew or
13 reasonably should have known that their conduct was well below the standard
14 prescribed by law.

15 120.

16
17 The Mathesons are entitled to injunctive relief to restrain the City, its officers,
18 agents, servants, employees and assigns, from engaging in existing and future
19 violations of the Fourteenth Amendment to the U.S. Constitution.

20 121.

21
22 The Mathesons are entitled to declaratory relief that the City, Holladay and
23 Konkol's conduct violated their federal statutory rights.

24 122.

25
26 The City's actions, by and through its officers, employees, servants, agents and
27 assigns, were intentional, willful and with reckless disregard of the Mathesons' federal

1 statutory rights. Such conduct exceeds the bounds of social toleration and is of the type
2 that punitive damages deter.

3 123.

4
5 As a direct and proximate result of the Defendants' violations of Mrs. Matheson's
6 due process constitutional rights, the Mathesons both have suffered severe and
7 substantial damages. These damages include, but are not to limited to, fear and
8 apprehension that they will, again, be subject to similar unlawful acts for the purpose of
9 limiting and/or preventing protected free speech, for imposed illegal fines, for continued
10 allegations of illegal code violations and/or continued imposed illegal fines, for
11 diminished earnings capacity, lost career and business opportunities, economic loss
12 due to the damage to their Property, emotional trauma, loss of liberty, loss of privacy
13 and irreparable harm to their reputations.

14
15 124.

16
17 As a further consequence of the Defendants' deprivations, Mrs. Matheson was
18 required to retain counsel to represent her in the code violation proceedings pursued
19 against her; the Mathesons will further incur litigation expenses including attorney fees,
20 expert witness fees, costs and expenses related to this Amended Petition and Amended
21 Complaint.

22 **FIFTH CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS AND**
23 **ABOCC AGAINST ALL DEFENDANTS FOR VIOLATION OF CIVIL RIGHTS UNDER**
24 **COLOR OF LAW – 42 U.S.C. § 1985(2)(3)**
(OBSTRUCTION OF JUSTICE AND CONSPIRACY)

25 125.

26 The Mathesons and ABOCC reallege and incorporate paragraphs 1. through 74.
27 as though set forth herein.

126.

Under color of law, the Defendants, individually and collectively, conspired and entered into express and/or implied agreements, understandings, or meetings of the minds amongst themselves for the purpose of impeding, hindering, obstructing and defeating the Mathesons and ABOCC, with the intent to deny the Mathesons and ABOCC equal protection of the laws.

127.

As a direct and foreseeable consequence of this conspiracy, the Mathesons and ABOCC were deprived of their rights under the First and Fourteenth Amendments to the U.S. Constitution and were subjected to retaliation by the Defendants in one or more of the following particulars:

- By maliciously and publicly humiliating Mr. Matheson on a public social media website simply because he was not a veteran;
- By maliciously and publicly humiliating the Mathesons on a public social media website by posting a link to the foreclosure notice;
- By deliberately interfering with and/or terminating ABOCC and Mr. Matheson's political activities concerning the recall petition, effectively chilling Mr. Matheson from exercising his free speech rights;
- By deliberately and maliciously retaliating against Mr. Matheson, the most vocal of the Incorporators of ABOCC, both in his individual capacity and as an Incorporator of ABOCC, and not retaliating against the other two (2) Incorporators of ABOCC who were less vocal than Mr. Matheson;

- By intentionally failing and/or refusing to follow their own written or unwritten policies and procedures concerning the alleged code violations;
- By insisting on full access to the Mathesons' Property for inspection without reasonable cause;
- By deliberately and maliciously issuing all of the Notices against Mrs. Matheson;
- By deliberately and maliciously imposing illegal code violations against Mrs. Matheson without due process;
- By deliberately and maliciously ignoring Mr. Matheson's September 19 letters, which were written as attorney-in-fact on behalf of Mrs. Matheson, effectively prohibiting Mrs. Matheson the right to appeal the imposition of the illegal code violations;
- By deliberately and maliciously refusing to investigate Mr. Matheson's report of illegal code violations, in violation of their duty to maintain public order and protect lives and property in the community;
- By maliciously prosecuting Mrs. Matheson for alleged code violations without due process of law;
- By falsely testifying at the April 6, 2017 hearing that there was "no other reason" why the City was targeting the Property;
- By falsely testifying at the April 6, 2017 hearing that Mrs. Matheson was required to obtain a permit for the roofing repairs, based solely on the City's naked eye observation of the Mathesons' residential home—**an observation that was made from a moving car traveling at approximately 30 miles per hour;**

- By maliciously and deliberately refusing to investigate and/or create a report concerning a crime reported by Mr. Matheson, in violation of their duty to maintain public order and protect lives and property in the community; and
- By continuing to issue and/or threaten to issue illegal code violation notices to Mrs. Matheson after the Final Orders were issued.

128.

The list in the above paragraph is not exhaustive or inclusive. The Mathesons and ABOCC reserve the right to amend this Amended Writ of Review and Amended Complaint should they learn of any other actions by any of the Defendants that show that the Defendants entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing and defeating the Mathesons, with the intent to deny the Mathesons the equal protection of the laws, and/or that shows by a preponderance of evidence that any of the Defendants retaliated against either or both Mr. Matheson and Mrs. Matheson as a result of the obstruction of justice and conspiracy.

129.

As a direct and proximate result of the Defendants' obstruction of justice, conspiracy and retaliation, the Mathesons both have suffered severe and substantial damages. These damages include, but are not limited to, fear and apprehension that they will, again, be subject to similar unlawful acts for the purpose of limiting and/or preventing protected free speech, for imposed illegal fines, for continued allegations of illegal code violations and/or continued imposed illegal fines, for diminished earnings

1 capacity, lost career and business opportunities, economic loss due to the damage to
2 their Property, emotional trauma, loss of liberty, loss of privacy and irreparable harm to
3 their reputations.

4
5 130.

6 As a further consequence of the Defendants' deprivations, Mrs. Matheson was
7 required to retain counsel to represent her in the code violation proceedings pursued
8 against her; the Mathesons will further incur litigation expenses including attorney fees,
9 expert witness fees, costs and expenses related to this Amended Petition and Amended
10 Complaint.

11 **SIXTH CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS AGAINST**
12 **THE DEFENDANT THE CITY FOR NEGLIGENCE**

13 131.

14 The Mathesons reallege and incorporate paragraphs 1. through 74. as though
15 set forth herein.

16
17 132.

18 As a direct and proximate result of the Final Judgment, the Final Orders and all
19 Notices, the Mathesons have been unable to complete the repairs to their roof, causing
20 significant property damage to their residential home.

21 133.

22 The City, by and through the actions of the officers, servants, agents, employees
23 and assigns of the City's Building Department and Police Department, negligently
24 breached its duty owed to the Mathesons to maintain public order and protect their lives
25
26
27

1 and property in the community; it also negligently breached its duty owed to the
2 Mathesons to maintain improved safety and livability as residents of the City.

3
4 134.

5 The City is vicariously liable for the actions of its officers, servants,
6 agents, employees and assigns, that caused the property damage under the
7 common-law doctrine of *respondeat superior* for the following reasons:

- 8 • At all times material to this Amended Petition and Amended Complaint, the
9 officers, servants, agents, employees and assigns of the City's Building
10 Department and Police Department were employed by the City and were acting
11 in the course and scope of their employment with City;
- 12 • At all times material to this Amended Petition and Amended Complaint, the
13 actions of the officers, servants, agents, employees and assigns of the City's
14 Building Department and Police Department that caused the property damage
15 occurred substantially within the authorized limits of time and space of their
16 employment with the City; and
- 17 • At all times material to this Amended Petition and Amended Complaint, the
18 actions of the officers, servants, agents, employees and assigns of the City's
19 Building Department and Police Department that caused the property damage
20 were motivated, in whole, or at least in part, to serve their employer, the City.

21
22
23
24 135.

25 The City is subject to liability to the Mathesons for property damages in an
26 amount to be proven at trial. The Mathesons also seek attorney fees, costs and

1 disbursements, pursuant to ORCP 68, and prevailing party fees, pursuant to ORS
2 20.190 and any and all other statutes or rules that apply.

3 **SEVENTH CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS**
4 **AGAINST DEFENDANTS THE CITY AND HOLLADAY IN HIS OFFICIAL CAPACITY**
5 **FOR FALSE LIGHT**

6 136.

7 The Mathesons reallege and incorporate paragraphs 1. through 74. as though
8 set forth herein.

9 137.

10 On information and belief, when Holladay posted the foreclosure link on the recall
11 thread on or about July 9, 2016, he was acting in his official capacity as Mayor.

12 138.

13 On information and belief, when Holladay made the disparaging comments about
14 Mr. Matheson's Veteran status on the OC Armory thread on or about July 11, 2016, he
15 was acting in his official capacity as the Mayor.

16 139.

17 Even to the extent the information in the foreclosure link and Mr. Matheson's
18 Veteran status is true, Holladay knew or should have known that his public comments
19 on a social media website would place the Mathesons in a false light before the public
20 and would be highly offensive to a reasonable person.

21 140.

22 The fact that Holladay posted the link under the recall thread establishes that
23 Holladay intended to place the Mathesons in a false light in retaliation for Mr.

Matheson's free speech activities. Furthermore, the fact that Holladay made the disparaging comments about Mr. Matheson's Veteran status on the OC Armory thread in direct response to Mr. Matheson's comment about his views about the Mayor also establishes retaliation for Mr. Matheson's for Mr. Matheson's free speech activities.

141.

Holladay's actions caused emotional injury to both of the Mathesons, including, but not limited to, embarrassment, helplessness, and irreparable harm to their reputations in the community.

142.

The City is vicariously liable for Holladay's actions under the common-law doctrine of *respondeat superior* for the following reasons:

- Holladay clearly posted the foreclosure notice link and made the comment about Mr. Matheson's veteran status in his official capacity as the Mayor of the City, and not as a private citizen;
- Holladay's activities on Nextdoor.com occurred substantially within the authorized limits of time and space of the Mayor's elected position with the City; and
- Holladay's actions were motivated, in whole, or at least in part, to serve the City as the City's elected Mayor.

143.

The City is subject to liability to the Mathesons for economic and non-economic damages in an amount to be proven at trial. The Mathesons also seek attorney fees,

costs and disbursements, pursuant to ORCP 68, and prevailing party fees, pursuant to ORS 20.190 and any and all other statutes or rules that apply.

144.

The City's actions, by and through Holladay, were intentional, willful and with reckless disregard of the Mathesons' statutory and constitutional rights. Such conduct exceeds the bounds of social toleration and is of the type that punitive damages deter. The Mathesons hereby give notice of their intent to amend this claim to include punitive damages.

**EIGHTH CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS AGAINST
DEFENDANTS THE CITY AND HOLLADAY IN HIS OFFICIAL CAPACITY
FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

145.

The Mathesons reallege and incorporate paragraphs 1. through 74. as though fully set forth herein.

146.

The City, by and through its officers, servants, agents, employees and assigns, including Holladay, acted with the intent to inflict emotional distress to both Mr. Matheson and Mrs. Matheson, or knew with substantial certainty that their actions would inflict extreme emotional distress to the Mathesons, in one or more of the following particulars:

- By maliciously and publicly humiliating Mr. Matheson on a public social media website simply because he was not a veteran;

- By maliciously and publicly humiliating the Mathesons on a public social media website by posting a link to the foreclosure notice;
- By deliberately interfering with and/or terminating ABOCC and Mr. Matheson's political activities concerning the recall petition, effectively chilling Mr. Matheson from exercising his free speech rights;
- By deliberately and maliciously retaliating against Mr. Matheson, the most vocal of the Incorporators of ABOCC, both in his individual capacity and as an Incorporator of ABOCC, and not retaliating against the other two (2) Incorporators of ABOCC who were less vocal than Mr. Matheson;
- By intentionally failing and/or refusing to follow their own written or unwritten policies and procedures concerning the alleged code violations;
- By insisting on full access to the Mathesons' Property for inspection without reasonable cause;
- By deliberately and maliciously imposing illegal code violations against Mrs. Matheson without due process;
- By deliberately and maliciously issuing the Notices against Mrs. Matheson;
- By deliberately and maliciously ignoring Mr. Matheson's September 19 letters, which were written as attorney-in-fact on behalf of Mrs. Matheson, effectively prohibiting Mrs. Matheson the right to appeal the imposition of the illegal code violations;

- By deliberately and maliciously refusing to investigate Mr. Matheson's report of illegal code violations, in violation of their duty to maintain public order and protect lives and property in the community;
- By maliciously prosecuting Mrs. Matheson for alleged code violations without due process of law;
- By falsely testifying at the April 6, 2017 hearing that there was "no other reason" why the City was targeting the Property;
- By falsely testifying at the April 6, 2017 hearing that Mrs. Matheson was required to obtain a permit for the roofing repairs, based solely on the City's naked eye observation of the Mathesons' residential home—**an observation that was made from a moving car traveling at approximately 30 miles per hour;**
- By maliciously and deliberately refusing to investigate and/or create a report concerning a crime reported by Mr. Matheson, in violation of their duty to maintain public order and protect lives and property in the community; and
- By continuing to issue and/or threaten to issue illegal code violation notices to Mrs. Matheson after the Final Orders were issued.

147.

The City is vicariously liable for the actions of its officers, servants, agents, employees and assigns in both the Building Department and the Police Department, under the common-law doctrine of *respondeat superior* for the following reasons:

- At all times material to this Amended Petition and Amended Complaint, the officers, servants, agents, employees and assigns of the City's Building Department and Police Department were employed by the City and were acting in the course and scope of their employment with City;
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department that caused the emotional distress to the Mathesons occurred substantially within the authorized limits of time and space of their employment with the City; and
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department that caused the extreme emotional distress to the Mathesons were motivated, in whole, or at least in part, to serve their employer, the City.

148.

The City is vicariously liable for Holladay's actions that caused the Mathesons' extreme emotional distress under the common-law doctrine of *respondeat superior* for the following reasons:

- Holladay clearly posted the foreclosure notice link and made the comment about Mr. Matheson's veteran status in his official capacity as the Mayor of the City, and not as a private citizen;

- Holladay's activities on Nextdoor.com occurred substantially within the authorized limits of time and space of the Mayor's elected position with the City; and
- Holladay's actions were motivated, in whole, or at least in part, to serve the City as the City's elected Mayor.

149.

As a direct and proximate result of the City's actions, by and through its officers, employees, servants, agents and assigns, the Mathesons suffered severe emotional distress, medical costs, emotional trauma, emotional injury, mental anguish, degradation, embarrassment, and irreparable harm to their reputations in the community, for which Mathesons seek compensation in an amount to be proven at trial. The City is subject to liability to the Mathesons for all economic and non-economic damages in an amount to be proven at trial. The Mathesons seek costs and disbursements, pursuant to ORCP 68, and prevailing party fees, pursuant to ORS 20.190, and any and all other statutes and rules that apply.

**NINTH CLAIM FOR RELIEF BY PLAINTIFFS THE MATHESONS
AGAINST DEFENDANTS THE CITY AND HOLLADAY IN HIS OFFICIAL CAPACITY
FOR BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

150.

The Mathesons reallege and incorporate paragraphs 1. through 74. as though fully set forth herein.

151.

The City, by and through its officers, servants, agents, employees and assigns, owed a common-law duty of good faith and fair dealing to the Mathesons, which required the City to act in accordance with reasonable expectations.

152.

The City breached its duty of good faith and fair dealing owed to the Mathesons in one or more of the following particulars:

- By maliciously and publicly humiliating Mr. Matheson on a public social media website simply because he was not a Veteran;
- By maliciously and publicly humiliating the Mathesons on a public social media website by posting a link to the foreclosure notice;
- By deliberately interfering with and/or terminating ABOCC and Mr. Matheson's political activities concerning the recall petition, effectively chilling Mr. Matheson from exercising his free speech rights;
- By deliberately and maliciously retaliating against Mr. Matheson, the most vocal of the Incorporators of ABOCC, both in his individual capacity and as an Incorporator of ABOCC, and not retaliating against the other two (2) Incorporators of ABOCC who were less vocal than Mr. Matheson;
- By intentionally failing and/or refusing to follow their own written or unwritten policies and procedures concerning the alleged code violations;
- By insisting on full access to the Mathesons' Property for inspection without reasonable cause;

- By deliberately and maliciously issuing all of the Notices against Mrs. Matheson;
- By deliberately and maliciously imposing illegal code violations against Mrs. Matheson without due process;
- By deliberately and maliciously ignoring Mr. Matheson's September 19 letters, which were written as attorney-in-fact on behalf of Mrs. Matheson, effectively prohibiting Mrs. Matheson the right to appeal the imposition of the illegal code violations;
- By deliberately and maliciously refusing to investigate Mr. Matheson's report of illegal code violations, in violation of their duty to maintain public order and protect lives and property in the community;
- By maliciously prosecuting Mrs. Matheson for alleged code violations without due process of law;
- By falsely testifying at the April 6, 2017 hearing that there was "no other reason" why the City was targeting the Property;
- By falsely testifying at the April 6, 2017 hearing that Mrs. Matheson was required to obtain a permit for the roofing repairs, based solely on the City's naked eye observation of the Mathesons' residential home—**an observation that was made from a moving car traveling at approximately 30 miles per hour;**
- By maliciously and deliberately refusing to investigate and/or create a report concerning a crime reported by Mr. Matheson, in violation of their duty to maintain public order and protect lives and property in the community; and

- By continuing to issue and/or threaten to issue illegal code violation notices to Mrs. Matheson after the Final Orders were issued.

153.

The City is vicariously liable for the actions of its officers, servants, agents, employees and assigns in both the Building Department and the Police Department, that breached the City's duty of good faith and fair dealing, under the common-law doctrine of *respondeat superior* for the following reasons:

- At all times material to this Amended Petition and Amended Complaint, the officers, servants, agents, employees and assigns of the City's Building Department and Police Department were employed by the City and were acting in the course and scope of their employment with City;
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department occurred substantially within the authorized limits of time and space of their employment with the City; and
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department were motivated, in whole, or at least in part, to serve their employer, the City.

154.

The City is vicariously liable for Holladay's actions that breached the City's duty of good faith and fair dealing under the common-law doctrine of *respondeat superior* for the following reasons:

- Holladay clearly posted the foreclosure notice link and made the comment about Mr. Matheson's veteran status in his official capacity as the Mayor of the City, and not as a private citizen;
- Holladay's activities on Nextdoor.com occurred substantially within the authorized limits of time and space of the Mayor's elected position with the City; and
- Holladay's actions were motivated, in whole, or at least in part, to serve the City as the City's elected Mayor.

155.

As a direct and proximate result of the City's actions, by and through its officers, employees, servants, agents and assigns, including Holladay, the Mathesons suffered economic damages, severe emotional distress, medical costs, emotional trauma, emotional injury, mental anguish, degradation, embarrassment, and irreparable harm to their reputations in the community, for which Mathesons seek compensation in an amount to be proven at trial. The City is subject to liability to the Mathesons for all economic and non-economic damages in an amount to be proven at trial. The Mathesons seek costs and disbursements, pursuant to ORCP 68, and prevailing party fees, pursuant to ORS 20.190, and any and all other statutes and rules that apply.

1 **TENTH CLAIM FOR RELIEF BY PLAINTIFFS MR. MATHESON AND TAG AGAINST**
2 **THE DEFENDANT THE CITY FOR INTENTIONAL INTERFERENCE WITH**
3 **CONTRACTUAL RELATIONS**

4 156.

5 Mr. Matheson and TAG reallege and incorporate paragraphs 1. through 74. as
6 though fully set forth herein.
7

8 157.

9 At all times material to this Amended Petition and Amended Complaint, TAG is
10 an International manufacturing company that holds exclusive rights over a disaster
11 response initiative for the United States and Australia. On an interim basis, it operates
12 from a home office and uses a prototype technology platform to remotely operate, train
13 and educate people on the initiative. As the member/manager of TAG and the owner
14 of its intellectual property, Mr. Matheson operates field services and daily administration
15 needs from a home office and dispatches the technology platform located on the
16 Property. On information and belief, the City was aware that TAG is operated from the
17 Property at all times material to this Amended Petition and Amended Complaint.
18
19

20 158.

21 Prior to September 12, 2016, the date Notice #3, the stop work order
22 was issued, Mr. Matheson and TAG developed a Cooperative Research and
23 Development Agreement and secured an agreement with BMW
24 Manufacturing to develop a dedicated satellite network. The National Disaster
25 Response Infrastructure for the Federal Emergency Management Agency
26
27

1 (FEMA) is the prelude to a dedicated network called BMW Manufacturing
2 network. Mr. Matheson personally worked for over twelve (12) years on the
3 disaster response initiatives and five (5) years to develop a good working
4 relationship with BMW Manufacturing as a technology supplier. The
5 Agreement represents trillions of dollars in equipment, services and support.
6

7 159.

8
9 Until September 12, 2016, TAG performed all of its obligations under the
10 contract, except those obligations it was prevented or excused from performing. That
11 obligation includes, but is not limited to, building a dedicated National Disaster
12 Response Infrastructure that is the prelude to a dedicated network for BMW
13 Manufacturing.
14

15 160.

16
17 From and after September 12, 2016, and continuously as of the date this
18 Amended Petition and Amended Complaint is filed, the existing unit cannot be
19 deployed, because it involves working on a four (4) additional platforms as part of a pilot
20 initiative of the State of Oregon and the first phase in the BMW Manufacturing
21 agreement. These platforms and anything else on the Property is included in the stop
22 work notice issued on September 12, 2016 and in the Final Orders and Final Judgment
23 issued by The Honorable McNiece.
24
25
26
27

161.

From and after September 12, 2016, and continuously as of the date this Amended Petition and Amended Complaint is filed, the City, by and through its officers, servants, agents, employees and assigns, have intentionally disrupted TAG's performance of its initiatives with the State of Oregon, FEMA and BMW Manufacturing by enforcing the illegal stop work notice and the Final Orders and Final Judgment.

162.

The City is vicariously liable for all actions that intentionally interfere with TAG's agreements with the State of Oregon, the FEMA and BMW Manufacturing, under the common-law doctrine of *respondeat superior* for the following reasons:

- At all times material to this Amended Petition and Amended Complaint, the officers, servants, agents, employees and assigns of the City's Building Department and Police Department were employed by the City and were acting in the course and scope of their employment with City;
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department occurred substantially within the authorized limits of time and space of their employment with the City; and
- At all times material to this Amended Petition and Amended Complaint, the actions of the officers, servants, agents, employees and assigns of the City's Building Department and Police Department were motivated, in whole, or at least in part, to serve their employer, the City.

1 163.

2 The City's intentional conduct, by and through its officers, servants, agents,
3 employees and assigns, is a substantial factor in causing Mr. Matheson and TAG to
4 suffer damages in an amount that exceeds this Court's jurisdictional threshold under the
5 OTCA, in amount to be proven at trial.
6

7
8 **ELEVENTH CLAIM FOR RELIEF BY PLAINTIFFS MR. MATHESON, TAG AND OC**
9 **CERT AGAINST THE DEFENDANT THE CITY FOR INTENTIONAL INTERFERENCE**
10 **WITH PROSPECTIVE ECONOMIC RELATIONS**

11 164.

12 Mr. Matheson, TAG and the OC CERT reallege and incorporate paragraphs 1.
13 through 74. as though fully set forth herein.
14

15 165.

16 At all times material to this Amended Petition and Amended Complaint, the OC
17 CERT is a nonprofit company tasked with developing the League of Oregon CERT's
18 initiative. CERT's are federal programs and have the ability to dispatch resources
19 whenever needed. Mr. Matheson is the Registered Agent, Incorporator and Vice
20 President of OC ERT, the author of its implementation plans, subsequent intellectual
21 property being used to promote the League of Oregon CERT's pilot initiate and state-
22 wide Oregon League of CERT's initiatives.
23

24 166.

25 At all times material to this Amended Petition and Amended Complaint, Mr.
26 Matheson holds exclusive rights over a disaster response initiative for the United States
27

1 and Australia. On an interim basis its operating from a home office and using a
2 prototype technology platform to remotely operate, train and educate people for OC
3 CERT which are located on the Property. On information and belief, the City is aware
4 that OC CERT is operated from the Property at all times material to this Amended
5 Petition and Amended Complaint.
6

7 167.

8 Prior to September 12, 2016, the date the stop work notice was issued,
9 the OC CERT was in the process of implementing an economic relationship
10 using the League of Oregon CERT as a pilot initiative to the statewide Oregon
11 League of Oregon CERT's initiatives. On information and belief, the City knew
12 of Mr. Matheson and the OC CERT's potential economic relationship with the
13 League of Oregon CERT pilot program and the statewide Oregon League of
14 CERT at all times material to this Amended Petition and Amended Complaint.
15

16 168.

17 From and after September 12, 2016, and continuously as of the date
18 this Amended Petition and Amended Complaint is filed, Mr. Matheson and
19 the OC CERT is restricted from and is disrupted from entering into
20 agreements or engage its local State Representatives to lead the League of
21 Oregon's CERT or the Oregon League of CERT's.
22

23 169.

24 From and after September 12, 2016, and continuously as of the date
25 this Amended Petition and Amended Complaint is filed, the City, by and
26
27

1 through its officers, servants, agents, employees and assigns, have
2 intentionally disrupted TAG's and OC CERT's ability to enter into
3 prospective economic relationships by enforcing the illegal stop work notice
4 and the Final Orders.
5

6 170.

7 The City is vicariously liable for all actions that intentionally interfere with Mr.
8 Matheson's TAG's and OC CERT's ability to enter into prospective economic
9 relationships, under the common-law doctrine of *respondeat superior* for the following
10 reasons:
11

- 12 • At all times material to this Amended Petition and Amended Complaint, the
13 officers, servants, agents, employees and assigns of the City's Building
14 Department and Police Department were employed by the City and were acting
15 in the course and scope of their employment with City;
16
- 17 • At all times material to this Amended Petition and Amended Complaint, the
18 actions of the officers, servants, agents, employees and assigns of the City's
19 Building Department and Police Department occurred substantially within the
20 authorized limits of time and space of their employment with the City; and
21
- 22 • At all times material to this Amended Petition and Amended Complaint, the
23 actions of the officers, servants, agents, employees and assigns of the City's
24 Building Department and Police Department were motivated, in whole, or at least
25 in part, to serve their employer, the City.
26
27

The City's intentional conduct, by and through its officers, servants, agents, employees and assigns, is a substantial factor in causing Mr. Matheson, TAG and OC CERT to suffer damages in an amount that exceeds this Court's jurisdictional threshold under the OTCA, in amount to be proven at trial.

D. PRAYER FOR RELIEF

WHEREFORE, Petitioner/Plaintiffs pray for the following relief:

- 1) Assume jurisdiction over each of the claims set forth herein;
- 2) Grant a permanent injunction restraining the City, its officers, agents, employees, servants and assigns, from engaging in existing and future violations of the First and Fourteenth Amendment to the U.S. Constitution on such terms as the Court may direct;
- 3) Grant declaratory relief that the City, Holladay and Konkol's conduct violated Plaintiffs the Mathesons' federal statutory and Constitutional rights;
- 4) Order Defendants, individually and collectively, to comply with all federal statutory laws and further order Defendants to participate in training or other remedial actions as the Court may direct;
- 5) Order Defendants to make Plaintiffs whole by compensating them for any and all economic damages in an amount to be proven at trial;
- 6) Order Defendants to make Plaintiffs whole by compensating them for all noneconomic damages in the amount to be proven at trial;

- 1 7) Grant punitive damages against the Defendants for each federal statutory claim
2 for relief in an amount to be determined at trial;
- 3 8) Grant Plaintiffs attorney fees, prevailing party fees, expenses, disbursements,
4 expert witness fees, pursuant to any and all other statutes or rules that apply;
- 5 9) To the extent any amount awarded to Petitioner/Plaintiffs is for damages
6 occurring prior to the entry of judgment, grant Petitioner/Plaintiffs an award of
7 prejudgment interest at the legal rate from the date the damage occurred until the
8 date of judgment;
- 9 10) Grant Plaintiffs post judgment interest on all damages, costs, expenses, and fees
10 from the date of judgment until the date paid;
- 11 11) Issue an Order issuing a Writ of Review directed to the Respondent/Defendant
12 the City, commanding the Respondent/Defendant to return the Writ with a
13 certified copy of the entire record and proceedings in this matter for review by
14 this Court in substantially the form attached hereto as Petitioner/Plaintiff's
15 proposed Order for Writ of Review;
- 16 12) Issue an Order staying any and all further proceedings by the
17 Respondent/Defendant against the Petitioner/Plaintiff, including, but not limited
18 to, the charges and fees imposed by the Final Orders and the Final Judgment;
- 19 13) Upon review, for an Order reversing or annulling any and all proceedings by the
20 Respondent/Defendant against the Petitioner/Plaintiff;
- 21 14) For a declaration that all of the Notices issued by the Respondent/Defendant are
22 invalid and void;
- 23
- 24
- 25
- 26
- 27

1 15)For a declaration that the Final Orders and Final Judgment are invalid and void;
2 and

3 16)For such other relief as may be found just and equitable.
4

5 DATED this ____ day of July, 2017.

6 Respectfully submitted,
7

8
9 _____
10 Mark J. Matheson, *Pro Se*

11 _____
12 Anna Marie Matheson, *Pro Se*

13 **E. DEMAND FOR JURY TRIAL**

14 Plaintiffs demand a jury trial on their tort, statutory and Constitutional claims
15 relief.

16 DATED this ____ day of _____, 2017.
17

18 Respectfully submitted,
19

20 _____
21 Mark J. Matheson, *Pro Se*

22 _____
23 Anna Marie Matheson, *Pro Se*
24
25
26
27

1 _____

2

3 **F. CERTIFICATION PUSUANT TO ORS 34.040**

4 I am an attorney licensed to practice law in the State of Oregon. I certify that I

5 have examined the underlying proceeding in this matter to the extent that it is now

6 available to me, and the Final Orders therein, and that it is erroneous as alleged in the

7 Amended Petition for Writ of Review set forth in the First Claim for Relief above.

8

9 DATED this ____ of July, 2017.

10

11 _____

12 Signature

13 _____

14 Printed Name

15 OSB #: _____

16

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1 FINAL ORDER

2
3
4
5 IN THE MUNICIPAL COURT FOR OREGON CITY
6 COUNTY OF CLACKAMAS, STATE OF OREGON
7

8 CITY OF OREGON CITY, a municipality)
9 formed under the laws of the State of) NO. CE-19613-16
10 Oregon)
11 vs. Plaintiff,)
12)
13) FINAL ORDER
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1 3. Commencing September 9, 2016 it was observed that Defendant was in the process
2 of making significant roof repair to her two story home, including removal of skip sheathing
3 leaving a large hole in the roof.

4 4. On the same date, the city building department sent a letter to Defendant claiming it
5 had been determined that Defendant needed a permit to perform work on the roof. Said letter
6 erroneously cited the Oregon Structural Code.

7 5. Having no response from Defendant, a stop work order was placed on Defendant's
8 residence on September 12, 2016, directing Defendant to communicate with the building
9 officials. The building inspector was directed to leave the premises.

0 5. On September 14, 2016 City Code Enforcement officials mailed a notice of violation
1 to Defendant and emailed a copy to Defendant's husband's email address directing Defendant
2 to obtain a building permit no later than September 19, 2016. Defendant made no attempt to
3 communicate with the building official.

4 6. The Notice of Violation correctly cited the Oregon Residential Specialty Code.

5 7. Defendant made no attempt to communicate with officials.

6 8. On September 20, 2016 Code Enforcement filed a complaint in the above court
7 alleging that Defendant failed to obtain a permit as required by the Oregon Residential
8 Specialty Code and Oregon City Municipal Code and for violating a stop work order issued by
9 the City Building Official.

10 9. Defendant appeared in court and requested continuances of this matter on October
11 8, 2016, November 16, 2016, December 22, 2016, January 12, 2017 and February 9, 2017.

12 10. Defendant's husband acknowledged he continued work on the roof after receipt of
13 the stop work order because it "was an unlawful stop work order".

14 11. Plaintiff states that at least 15% of the skip sheathing on the roof has been
15 removed; defendant's husband states 2%-5% removed; defendant's witness, a building
16

1 inspector, stated approximately 12% had been removed. No actual calculations were made by
2 any witness. The court finds, based upon testimony of the parties and photographic evidence,
3 that 15% of skip sheathing was removed.

4 12. Work continued on the roof after issuance of the stop work order of September 12,
5 2016 until November 8, 2016 . The roof was covered with tarp and no longer visible after
6 November 29, 2016.

7 13. At no time has Defendant or her husband attempted to communicate with building
8 officials or code enforcement officials.

9 ISSUES

10 1. Defendant claims she was denied due process because the initial notice issued to
11 her on September 9, 2016 erroneously cited the Oregon Specialty Cod3e.

12 2. Defendant claims the roof repair is exempt from permit requirements because, under
13 the Oregon Residential Specialty Code 105.2, less than 15% of the roof sheathing has been
14 removed.

15 3. Plaintiff claims that more than 15% of the skip sheathing has been removed and has
16 concerns regarding weight load and damage to the interior, including dry rot, necessitating an
17 inspection and building permit.

18 4. Plaintiff claims that Defendant continued work on the roof after the issuance of the
19 stop work order.

20 CONCLUSIONS OF LAW

21 1. Due Process: Defendant has not been denied due process in this matter. The issue
22 before this court is a complaint filed by Code Enforcement citing failure to obtain a permit
23 pursuant to the Oregon Residential Specialty Code and for disobeying a stop work order issued
24 by the City. Defendant was appropriately cited to this court and granted all requested
25 extensions of time. Defendant was fully aware that the issue before this court alleged a violation
26

1 of the Oregon Residential Specialty Code.

2 2. Permit Requirement. A permit is not required under the Oregon Residential
3 Specialty Code 105.2.18 so long as the roof repair does not involve removal of more than 15%
4 of the skip sheathing. Although the city building official was not allowed access to the property
5 he determined, from observation from the street and plain view of the project, that a permit was
6 required because more than 15% of the skip sheathing was removed.

7 Oregon Residential Specialty Code 105.2 states:

8 "Exemptions from permit requirements of this code shall not be deemed
9 to grant authority for any work to be done in any manner in violation of
this code or any other law or ordinance of this jurisdiction."

10 An exemption from the code does not allow Defendant to make that determination. Once a
11 violation is alleged, it is Defendant's burden to demonstrate compliance or negate the need for
12 a permit. Defendant has failed and refused to do so and this Court finds, based upon the
13 evidence and testimony of the parties, that a permit is required.

14 3. Stop Work Order: ORSC 114.1 provides:

15 "Whenever the building official finds any work regulated by this code
16 being performed in a manner either contrary to the provisions of this code
17 or unsafe, the building official is authorized to issue a stop work order. . ."

18 The city building official determined that a permit was required and that an inspection was
19 required to determine there is no structural damage such as dry rot. Defendant refused to
20 communicate with building officials. While Defendant's husband claims it was "an unlawful stop
21 work order", Defendant was, nonetheless, obliged to immediately stop work on the roof until
22 compliance was determined. As stated above, Oregon Residential Specialty Code 105.2 does
23 not give Defendant license to ignore a stop work order simply because Defendant believes it is
24 "an unlawful stop work order". It is the determination of the building official, not the Defendant,
25 to determine if a stop work order should be issued.

26 4. At all times Defendant has failed and refused to communicate with the Building

1 Official to resolve the issue to obtain any necessary permit and lift the stop work order.

2 5. Defendant continued to work on the property, including replacing tar paper and plywood
3 sheeting from September 12, 2016 (date of Notice of Violation) until November 8, 2016.

4 6. The Oregon Residential Specialty Code, Oregon Revised Chapter 455, Oregon City
5 Municipal Code, and the Operating Plan adopted by the City building department, is designed to
6 ensure compliance with code requirements in the least litigious manner and obtain compliance
7 in a timely manner. Defendant's refusal to communicate and cooperate, as well as repeated
8 requests for continuances in this matter delayed resolution.

9 ORDER

10 1. The Court finds that Defendant is guilty of failing to obtain the proper permit for
11 roofing repair as required by Oregon Residential Specialty Code 104.18(b) and said violation
12 continues and constitutes a civil infraction as described in Oregon City Municipal Code 1.20.030
13 and 15.04.020.

14 2. Defendant is guilty of violating the stop work order issued September 14, 2016 until
15 November 8, 2016 and constitutes a civil infraction as described in Oregon City Municipal Code
16 1.20.030 and 15.04.020.

17 3. Oregon City Municipal Code 16.020 provides that each day of violation carries a
18 penalty of \$300 per day.

19 4. Plaintiff is granted judgment against Defendant in the sum of \$62,100.00 representing
20 \$300 per day (OCMC 16.020) from September 14, 2016 (Notice of Violation) until April 9, 2017
21 (date of hearing) for failing to obtain the necessary permit..

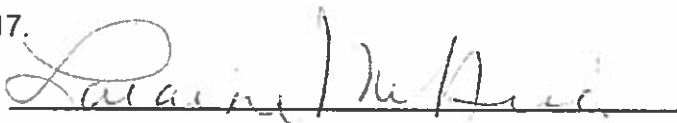
22 5. Plaintiff is granted judgment against Defendant in the sum of \$10,200.00 representing
23 \$300 per day from September 14, 2016 (stop work order) until November 8, 2016.

24 6. This court will suspend \$51,700.00 of the above judgment ON THE CONDITION that
25 Defendant and/or her agent allow inspection of the premises and obtain necessary permits no
26

1 later than May 1, 2017.

2 This Final Order may be appealed or judicially reviewed pursuant to OCMC 1.24.180,
3 1.24.190.

4 DATED this 20 day of April, 2017.

5 
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Laraine McNiece, Judge

1 FINAL ORDER

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4
5 IN THE MUNICIPAL COURT FOR OREGON CITY
6 COUNTY OF CLACKAMAS, STATE OF OREGON

7 CITY OF OREGON CITY, a municipality)
8 formed under the laws of the State of) NO. CE-19613-16
9 Oregon)
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CITY OF OREGON CITY, a municipality)
formed under the laws of the State of) NO. CE-19613-16
Oregon)
Plaintiff,) CORRECTED
vs.) FINAL ORDER/JUDGMENT
ANNA MARIE MATHESON,)
Defendant)

12 A typographical error occurred in the Order entered by this Court on April 20,
13 2017 regarding the date of hearing, which consequently affected the amount of
14 judgment imposed and numbering of findings. This order is entered to correct and
15 replace the April 20, 2017 order of this court:

16 This matter came before the Court on April 6, 2017. Plaintiff, through it's Code
17 Enforcement Department, was present and represented by Rebecca Schaleger;
18 Defendant was present and represented by Gary Kahn.

19 Defendant is charged with violating the Oregon City Municipal Code by failing to
20 obtain a permit for roof repair and for violating a stop work order. Defendant claims she
21 is exempt from the requirement for a permit and that she was denied due process.

22 The Court, having had an opportunity to review the records and files herein
23 including photographic exhibits, to hear the testimony of each witness, observe their
24 demeanor, and determine the weight to be given to the testimony of each witness,
25 makes the following

26 FINAL ORDER

FINDINGS OF FACT

1 1. Anna Marie Matheson is the owner and occupant, along with her husband
2 Mark J. Matheson, of property located at 855 Molalla Avenue, Oregon City, Clackamas
3 County, Oregon.

4 2. This Court has jurisdiction over these proceedings.

5 3. Commencing September 9, 2016 it was observed that Defendant was in the
6 process of making significant roof repair to her two story home, including removal of
7 skip sheathing leaving a large hole in the roof.

8 4. On the same date, the city building department sent a letter to Defendant
9 claiming it had been determined that Defendant needed a permit to perform work on the
10 roof. Said letter erroneously cited the Oregon Structural Code.

11 5. Having no response from Defendant, a stop work order was placed on
12 Defendant's residence on September 12, 2016, directing Defendant to communicate
13 with the building officials. The building inspector was directed to leave the premises.

14 6. On September 14, 2016 City Code Enforcement officials mailed a notice of
15 violation to Defendant and emailed a copy to Defendant's husband's email address
16 directing Defendant to obtain a building permit no later than September 19, 2016.
17 Defendant made no attempt to communicate with the building official.

18 7. The Notice of Violation correctly cited the Oregon Residential Specialty Code.

19 8. Defendant made no attempt to communicate with officials.

20 9. On September 20, 2016 Code Enforcement filed a complaint in the above
21 court alleging that Defendant failed to obtain a permit as required by the Oregon
22 Residential Specialty Code and Oregon City Municipal Code and for violating a stop
23 work order issued by the City Building Official.

24 10. Defendant appeared in court and requested continuances of this matter on
25

26 FINAL ORDER

1 October 8, 2016, November 16, 2016, December 22, 2016, January 12, 2017 and
2 February 9, 2017.

3 11. Defendant's husband acknowledged he continued work on the roof after
4 receipt of the stop work order because it "was an unlawful stop work order".

5 12. Plaintiff states that at least 15% of the skip sheathing on the roof has been
6 removed; defendant's husband states 2%-5% removed; defendant's witness, a building
7 inspector, stated approximately 12% had been removed. No actual calculations were
8 made by any witness. The court finds, based upon testimony of the parties and
9 photographic evidence, that 15% of skip sheathing was removed.

10 13. Work continued on the roof after issuance of the stop work order of
11 September 12, 2016 until November 8, 2016 . The roof was covered with tarp and no
12 longer visible after November 29, 2016.

13 14. At no time has Defendant or her husband attempted to communicate with
14 building officials or code enforcement officials.

15 ISSUES

16 1. Defendant claims she was denied due process because the initial notice
17 issued to her on September 9, 2016 erroneously cited the Oregon Specialty Cod3e.

18 2. Defendant claims the roof repair is exempt from permit requirements
19 because, under the Oregon Residential Specialty Code 105.2, less than 15% of the roof
20 sheathing has been removed.

21 3. Plaintiff claims that more than 15% of the skip sheathing has been removed
22 and has concerns regarding weight load and damage to the interior, including dry rot,
23 necessitating an inspection and building permit.

24 4. Plaintiff claims that Defendant continued work on the roof after the issuance
25 of the stop work order.

26 FINAL ORDER

CONCLUSIONS OF LAW

1 1. Due Process: Defendant has not been denied due process in this matter.

2 The issue before this court is a complaint filed by Code Enforcement citing failure to
3 obtain a permit pursuant to the Oregon Residential Specialty Code and for disobeying a
4 stop work order issued by the City. Defendant was appropriately cited to this court and
5 granted all requested extensions of time. Defendant was fully aware that the issue
6 before this court alleged a violation of the Oregon Residential Specialty Code.

7 2. Permit Requirement. A permit is not required under the Oregon Residential
8 Specialty Code 105.2.18 so long as the roof repair does not involve removal of more
9 than 15% of the skip sheathing. Although the city building official was not allowed
10 access to the property he determined, from observation from the street and plain view of
11 the project, that a permit was required because more than 15% of the skip sheathing
12 was removed.

13 Oregon Residential Specialty Code 105.2 states:

14 "Exemptions from permit requirements of this code shall not be deemed
15 to grant authority for any work to be done in any manner in violation of
16 this code or any other law or ordinance of this jurisdiction."

17 An exemption from the code does not allow Defendant to make that
18 determination. Once a violation is alleged, it is Defendant's burden to demonstrate
19 compliance or negate the need for a permit. Defendant has failed and refused to do so
20 and this Court finds, based upon the evidence and testimony of the parties, that a permit
21 is required.

22 3. Stop Work Order: ORSC 114.1 provides:

23 "Whenever the building official finds any work regulated by this code
24 being performed in a manner either contrary to the provisions of this code
25 or unsafe, the building official is authorized to issue a stop work order. . ."

26 The city building official determined that a permit was required and that an inspection

FINAL ORDER

1 was required to determine there is no structural damage such as dry rot. Defendant
2 refused to communicate with building officials. While Defendant's husband claims it was
3 "an unlawful stop work order", Defendant was, nonetheless, obliged to immediately
4 stop work on the roof until compliance was determined. As stated above, Oregon
5 Residential Specialty Code 105.2 does not give Defendant license to ignore a stop work
6 order simply because Defendant believes it is "an unlawful stop work order". It is the
7 determination of the building official, not the Defendant, to determine if a stop work
8 order should be issued.

9 4. At all times Defendant has failed and refused to communicate with the
10 Building Official to resolve the issue to obtain any necessary permit and lift the stop
11 work order.

12 5. Defendant continued to work on the property, including replacing tar paper
13 and plywood sheeting from September 12, 2016 (date of Notice of Violation) until
14 November 8, 2016.

15 6. The Oregon Residential Specialty Code, Oregon Revised Chapter 455,
16 Oregon City Municipal Code, and the Operating Plan adopted by the City building
17 department, is designed to ensure compliance with code requirements in the least
18 litigious manner and obtain compliance in a timely manner. Defendant's refusal to
19 communicate and cooperate, as well as repeated requests for continuances in this
20 matter delayed resolution.

21 ORDER

22 1. The Court finds that Defendant is guilty of failing to obtain the proper permit
23 for roofing repair as required by Oregon Residential Specialty Code 104.18(b) and said
24 violation continues and constitutes a civil infraction as described in Oregon City
25 Municipal Code 1.20.030 and 15.04.020.

26 FINAL ORDER

1 2. Defendant is guilty of violating the stop work order issued September 14, 2016
2 until November 8, 2016 and constitutes a civil infraction as described in Oregon City
3 Municipal Code 1.20.030 and 15.04.020.

4 3. Oregon City Municipal Code 16.020 provides that each day of violation carries
5 a penalty of \$300 per day.

6 4. Plaintiff is granted judgment against Defendant in the sum of \$61,200.00
7 representing \$300 per day (OCMC 16.020) from September 14, 2016 (Notice of
8 Violation) until April 6, 2017 (date of hearing) for failing to obtain the necessary permit..

9 5. Plaintiff is granted judgment against Defendant in the sum of \$10,200.00
10 representing \$300 per day from September 14, 2016 (stop work order) until November
11 8, 2016.

12 6. This court will suspend \$51,700.00 of the above judgment ON THE CONDITION
13 that Defendant and/or her agent allow inspection of the premises and obtain necessary
14 permits no later than May 1, 2017.

15 This Final Order may be appealed or judicially reviewed pursuant to OCMC
16 1.24.180, 1.24.190.

17 DATED this 25th day of April, 2017

18 
19 _____

20 Laraine McNiece, Judge
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26

FINAL ORDER



OREGON CITY

POLICE DEPARTMENT
CODE ENFORCEMENT

320 Warner Milne Road | Oregon City OR 97045
Complaint Line: (503) 496-1559 | Fax (503) 657-6629

July 13, 2017

Anna Marie Matheson
855 Molalla Ave.
Oregon City, Oregon 97045

RE: CE19613-16 Final Judgment

Attached please find a copy of the final judgement.

PAYMENT OPTIONS:

Payment must be made within the following thirty (30) days from the date of this notice. Non-payment will result in a lien against the property in the full amount, plus the filing fee, including interest at a rate of nine percent (9%).

Please contact the code enforcement office with any questions you may have.

Code Enforcement Division
City of Oregon City
503-496-1559

1 IN THE MUNICIPAL COURT FOR THE CITY OF OREGON CITY
2 COUNTY OF CLACKAMAS, STATE OF OREGON

COPY

3
4 CITY OF OREGON CITY,

5 Plaintiff,

6 vs.

7 Anna Marie Matheson,

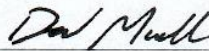
8 Respondent(s)

) Case No.: CE-19613-16
) TLID# : 32E05BB04400
) Address: 855 Molalla Ave.
) Oregon City, Oregon 97045
)
)

) MOTION FOR JUDGMENT
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9
10 COMES NOW, Plaintiff, by and through its officer, David Mueller, and moves the Court
11 for a judgment as follows:

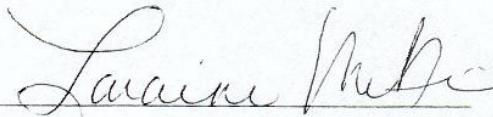
- 12 1) A \$71,400.00 fine, based upon the Final Order/Judgement and respondent's
13 failure to comply with a court order.

14 

15 Code Enforcement Officer

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18 Now Therefore, it is hereby ordered that the Plaintiff's Motion for Judgment be granted.
19

20
21 It is so Ordered this 11 day of July, 2017
22

23 
24

25 Municipal Court Judge

1 IN THE MUNICIPAL COURT FOR THE CITY OF OREGON CITY
2 COUNTY OF CLACKAMAS, STATE OF OREGON

COPY

3
4 CITY OF OREGON CITY,) Case No.: CE-19613-16
5 Plaintiff,)
6 vs.) AFFIDAVIT OF NON-COMPLIANCE
7 Anna Marie Matheson,) AND JUDGMENT
8 Respondent,)
9)
10)

11 I, David Mueller, Code Enforcement Officer for the City of Oregon City, being first duly
12 sworn, depose and say:

13 On April 6, 2017, the parties appeared before Judge Laraine McNiece for a trial.

14 On April 25, 2017, Judge Laraine McNiece entered a Corrected Final Order/Judgment.
15 The property owner was fined \$71,400.00 for violations of the Oregon City Municipal Code.
16 \$51,700.00 will be suspended if necessary permits are obtained and inspections occur by May 1,
17 2017.

18 On May 2, 2017, Chris Long, Oregon City Building Inspector, reported that no permits
19 had been pulled, no inspection had occurred, and there had been no contact with the property
20 owner.

21 As of July 10, 2017, the property owner has failed to obtain required permits, has not
22 allowed inspection by the Building Official, and has failed to appeal the Final Order/Judgment as
23 outlined in the Oregon City Municipal Code 1.24.180 & 1.24.190.
24
25

1 I make this affidavit in support of my motion for entry of judgment filed herein.

2
3 Therefore, on behalf of the City, I request the entry of Judgment and Order as follows:

4 1) A \$71,400.00 fine be imposed.

5
6 Dated this 11th day of July 2017.

7
8
9 Dan Muth
10 Code Enforcement Officer
11 City of Oregon City

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13 State of Oregon

14 County of Clackamas

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Subscribed and sworn to before me this 11th day of July 2017.



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JUDGMENT

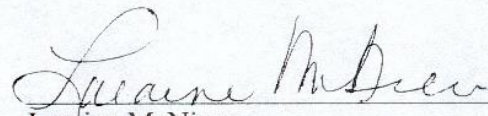
Based upon the above motion and affidavit, and Respondent's failure to comply with Oregon City Municipal Court Order,

IT IS HEREBY ORDERED Respondent's non-compliance be entered of record,

IT IS FURTHER ORDERED Plaintiff shall have judgment against respondent herein:

a) The sum of \$71,400.00, plus interest at 9.% annual simple interest

Dated this 11 day of July 2017.


Laraine McNiece
Municipal Court Judge



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
807 MAIN STREET, ROOM 301
OREGON CITY, OREGON 97045

Susie L. Norby
Circuit Court Judge

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December 29, 2017

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RE: Mark & Anna Marie Matheson v. City of Oregon City, Dan Holladay & Anthony Konkel III
Clackamas Circuit Court Case No. 17 CV 25621

Gentlemen & Ms. Matheson:

This Letter Opinion contains the court's rulings on the Petitioners' Writ of Review.

Contextual Summary

Petitioners ("Husband" & "Wife") reside in a home located at 855 Molalla Avenue, Oregon City, Clackamas County, Oregon. On the home façade hangs a large banner that reads: "Recall Mayor Holladay." In early September 2016, Husband was working to repair a section of the roof, including removing skip sheathing. On Friday, September 9, 2016, a City code enforcement officer drove by and did a sight check of Husband's roof repair. He became concerned that the roof repair may require a permit. He drafted a letter that same day and mailed it. The letter instructed Wife, the title holder, "that the required permits must be applied for and obtained within 10 days from the date of this letter[.]" The letter invoked an incorrect Structural Specialty Code reference as authority for the command.

On Monday, September 12, 2016, the next business day, a City code enforcement officer served a Stop Work Order commanding Husband and Wife to stop work on the roof project, because "permits are required prior to starting work." The Order also instructed the petitioners to contact the City, but they did not. On Wednesday, September 14, 2016, the City issued a Notice of Violation instructing the petitioners that "[f]ailure to obtain all applicable permits by 5PM on Monday, September 19, 2016 will result in a citation by Municipal Court." Petitioners did not apply for a construction permit. Husband did stop work on the open roof, but not immediately. When work stopped, the roof hole was covered with weatherproofing, as it has remained ever since.



On Tuesday, September 20, 2016, the City issued a Citation/Complaint to Wife for failing to obtain a permit and failing to immediately discontinue all work when the Stop Work Order was served. On April 6, 2017, a court trial was held before the Honorable Laraine McNiece. The Judge issued a Corrected Final Order/Judgment on April 25, 2017, which found Wife guilty of (a) failing to obtain a required roofing repair permit, and (b) violating a lawful stop work order. The Judge ordered cumulative fines that totaled \$71,400.00, but allowed that \$51,700.00 of that total would be suspended if petitioners allowed inspection of their roof project and obtained necessary permits by May 1, 2017. They did not.

On June 19, 2017, petitioners filed a Writ of Review challenging the Municipal Court's April 25, 2017 Corrected Final Order/Judgment. This court issued an Order for Writ of Review on August 1, 2017, after petitioners filed the required bond. That Order required the Municipal Court "to make return together with required copy of records/proceeding on or before August 31, 2017." On September 14, 2017, the city filed the transcript and record of proceedings, which it later supplemented with color photographs and emails concerning gaps in the audio record of the trial. Most notably, there is an email exchange between Husband and a Municipal Court employee:

Husband: "I need a complete record. The hearing was 4 hours long and the audio files are only 1.5 hours... they're [sic] big gaps in testimony. I need an unedited version of the transcripts."

Court Employee: "I gave you everything that was recorded. We actually sent the cassettes out to have the sound enhanced but nothing was edited. Everything the recorder captured was given to you."

Petitioners filed their Opening Brief on Writ of Review on October 20, 2017. Respondents filed their Response Brief on November 17, 2017. Petitioners filed their Reply Brief on December 1, 2017. Oral argument was held on December 11, 2017. Mark Matheson argued on petitioners' behalf, and David Lewis argued on behalf of the City of Oregon City.

Assignments of Error & Responsive Arguments

Petitioners claimed error in the proceedings below in three separate categories, as follows:

1. Petitioners were denied due process of law because of misconduct by the City, to wit:
 - (a) Issuance of the legally inaccurate September 9, 2016 notice, which also lacked directions on how to appeal it;
 - (b) Service of a legally insufficient September 12, 2016 stop work order;
 - (c) Issuance of an unjustified September 14, 2016 citation of violation;
 - (d) Unresponsiveness to Matheson letters sent on September 19, 2016;
 - (e) Improper filing of September 20, 2016 Complaint without just cause;
 - (f) Failure to record a significant portion of testimonial evidence presented at the hearing, and inappropriate ex parte contact between the Municipal Judge and the City Attorney.
2. The Municipal Court Judge made rulings not supported by substantial evidence in the whole record:
 - (a) The ruling that 15% of the skip sheathing on the Mathesons' roof was removed (Finding #12);

- (b) The ruling that Mr. Matheson was required to immediately stop working as soon as he was served with the City's stop work order.¹
3. The Municipal Court Judge imposed a fine that is cruel and unusual under all the circumstances and is therefore unconstitutional.

With regard to petitioners' due process concerns, the City responds that, despite a flaw in the September 9, 2016 notice and the absence of friendly communication about the City's concerns prior to serving the stop work order and the Complaint of violation, the Mathesons were given notice of the City's concerns and an opportunity to be heard through the Municipal Court proceedings, which met or exceeded due process standards. Although the City failed to create, or maintain, a full audio record of the Municipal Court proceedings, it argues that Petitioners fall short of showing their due diligence in searching for an audio record, and made no adequate showing that the trial below was unfair, incorrect, or unjust. Therefore under Smith v. Custom Micro, Inc., 311 Or 375 (1991), petitioner did not prove entitlement to a remedy based on the flaw in the audio record sufficient to justify reversal. As to petitioners' claim of improper ex parte contact, the City responds that impermissible ex parte contact only arises from communication about the merits of a case before the judge. Contact between the Judge and a lawyer after the case has been concluded by a Judgment does not fall in that category.

With regard to petitioners' substantial evidence challenges, the City responds that:

- (1) As to the court's finding that the petitioners made no attempt to communicate with the building officials or code enforcement, petitioners' September 19th letters were not received as exhibits or included in the record, therefore their contents could not be considered by the Municipal Judge;
- (2) As to the court's finding that petitioners removed 15% of the skip sheathing on their roof, the testimony of City representatives and the photograph exhibits support the finding, and this court may not second guess a Municipal Judge finding of fact unless no evidence exists in the record to support it;
- (3) As to the ruling about the effect of the stop work order on petitioners' ability to continue working, the petitioners' concession that they did not immediately stop work after service of the order alone supersedes the need for substantial evidence in the record.

With regard to the constitutionality of the fine imposed, the City responds that the fine amount falls within the range set by the City Code, and the Judge gave petitioners the power to dramatically reduce the fine by securing a permit for the work done. It was petitioners' choice not to act to reduce the fine, so they tacitly acquiesced to the full amount ordered.

Analysis

This matter is rooted in a simple conflict over a single issue: did petitioners' roof repair involve 15% or more of their roof and require a permit, or did it involve 14.99% or less of their roof and not require a permit. The Municipal Court Judge found that 15% of the skip sheathing on petitioners' roof was removed. All conclusions flowed from that finding. Finding #12 specified that the Municipal Judge was persuaded by the "opportunity to review the records and files herein including photographic exhibits, to hear the testimony of each witness, observe their demeanor, and determine the weight to be given to the

¹ Petitioners appear to have attempted to add claims of error in their Reply Brief, regarding the Municipal Judge's failure "to make specific and detailed findings" on particular points. It is impermissible to supplement claims of error in a Reply Brief – there is no further opportunity for the respondent to argue thereafter. Therefore, those afterthought claims of error are stricken, and will not be analyzed in this Letter Opinion.

testimony of each witness". This court reviewed the transcript of proceedings, to locate any testimony about the proportion of the roof under repair. The following transcript segments address this question:

p. 4, lines 17-23

RS: Okay. And why did, why did you send this letter?

Long: Because of the roof being open. We wanted to contact them and find out what was the scope of the work.

RS: Okay. So, the purpose of this letter was to what, put the owner on notice that they needed to get a permit? What was the purpose of this letter?

Long: For them to contact us. We could then ask questions, find out what the scope of the work is.

p. 5, lines 11-14

RS: Okay. And why did you go out to the house on September 12?

Long: Uh, with it being as exposed as it was, our concern that permits are required, we didn't have any permits so we wanted to place a Stop Work Order to further get their attention to come discuss with us what their scope of work was.

p. 7, lines 18-22

RS: And what was the substance of that conversation? I'm not asking you to say what he said; I'm simply saying, what was the substance of the conversation?

Long: Let him know that I'm placing a Stop Work Order on the house, reason being for the roof and that he would probably be required to get a permit, and to come talk to us.

p. 27, lines 19-23

GK: I just have one. In light of all this, your conclusion is based on your observations that less than 15% of the space (sic) sheathing was removed and replaced.

Wade: My observation at that time, it appeared to me to be in the realm of 10%.

GK: And if-

Wade: Less than 15.

p. 28, lines 9-15

RS: Mr. Roberts, let's just cut to the chase right now. You testified earlier that more than 15%, uh, that by your visual inspection, more than 15% of the sheathing had been replaced. Do you stand by that testimony after hearing Mr. Wade's testimony?

Roberts: I do.

RS: Why?

Roberts: Based on the evidence in the photographs and by driving by.

Thereafter, beginning on p. 31 of the transcript, the attorneys' closing arguments include references to the extensive unrecorded witness testimony that was not preserved during the evidentiary phase of the trial. Based on the subsequent email exchange between Husband and the Municipal Court employee about the gaps in the transcript, it is apparent that none of the testimony relied on by the City on the question of project scope was recorded. Attorneys' arguments, statements and questions are not evidence. Only witness testimony and exhibits received are evidence.

Therefore, the only evidence in the record on review that could explain the Municipal Judge's conclusion that 15% or more of the roof was involved in petitioners' repair are the words "I do" spoken by witness Roberts on p. 28 in response to the city attorney's summary of his previous unrecorded testimony, and the photograph exhibits. Roberts' words are ambiguous, because the attorney's summary of his prior testimony in her leading question is not evidence, and his response does not adopt her summary, but rather re-adopts his unrecorded testimony. At best, those two words are consistent with witness Long's testimony, which was vague and inconclusive on the project's actual scope.²

This court reviewed the photographs exhaustively. There is no photograph of the back half of petitioners' roof, and no way to know if it has one or more dormers on the back half. There is a dormer on the front half of the roof. Dormers appear to require more roofing than would otherwise fill the same space. The repair work is limited to the edge of the roof on the far left in the photographs, below the chimney. Based on this court's review of the photographs, and inferences about the size and configuration of the un-photographed back half of the roof made in the light most favorable to the Municipal Judge's opinion, they are evidence that less than 15% of the total roof was under repair.

The available evidence on the roof project scope *in the record on review* does not support the Municipal Judge's conclusion that more than 15% of the petitioners' skip sheathing was removed from their roof, necessitating a permit. Without substantial evidence in the record to support that conclusion, the conclusion about the lawfulness of the Stop Work Order is also irreparably compromised.

At oral argument, the City acknowledged its obligation to record the entirety of the trial in Municipal Court, but relied on the decision in Smith v. Custom Micro, Inc., 311 Or 375 (1991) to argue that petitioners cannot use the absence of an audio record to make their case on Review. The Smith court interpreted ORS 19.130(3) to require that an appellant may not secure a reversal of a lower court decision based on the absence of an audio record without first persuading the reviewing court that: (1) there was due diligence in attempting to find and supply a record for the purposes of appeal; and (2) there is a prima facie showing of error, or unfairness in the trial, or that there had been a miscarriage of justice.³

² Although most of the testimony given by the City's witnesses was unrecorded, the parties agree that no City building inspector ever gained access to the roof. No consent to inspect was given, no administrative inspection warrant was procured from a municipal judge, and no ORCP 43 process was invoked to allow the City to take measurements on the roof. If witness Roberts testified contrary to the defense expert (Wade) who did have roof access, then perhaps Roberts' testimony about his expert credentials tipped the balance in favor of his subjective visual assessment. The absence of any testimony corroborating his basis for confidence in his visual scan, however, cannot be overcome.

³ This threshold analysis has been a complete obstacle to appeals rooted in due process and procedurally driven questions. It is unclear whether it also applies when the questions on appeal regard the lack of substantial evidence in the whole record. In an abundance of caution, this court assumes that the precondition always applies.

The record in this case persuades me that there was due diligence in attempting to find and supply a complete audio record for the appeal. The law requires that the Municipal Court generate an audio record and supply it with a transcript to the court on Writ of Review. The record on review includes email messages between Husband and the Municipal Court in which Husband notifies that court about the gaps in the audio record, and urges production of a complete audio record. But the ability to do so is within the Municipal Court's control, not his. This effort by Husband to secure a complete audio record satisfies the due diligence requirement of the Smith court.

The second question is whether petitioners made a prima facie showing of error, or unfairness in the trial, or that there has been a miscarriage of justice. A "prima facie showing" has been interpreted as a legal term of art "commonly defined as '[a] party's production of enough evidence to allow the fact-trier to infer the fact in issue and rule in the party's favor.'" Staten v. Steel, 222 Or. App. 17, 49, 191 P.3d 778 (2008), rev. den., 345 Or. 618, 201 P.3d 909 (2009) (Edmonds, P.J., concurring) (quoting Black's Law Dictionary 1228 (8th ed. 2004)). Generally a prima facie showing is viewed as minimal sufficiency; it does not invite a court to engage in weighing of competing facts or arguments. The testimonial evidence regarding the roof project scope that was captured for the record on review includes:

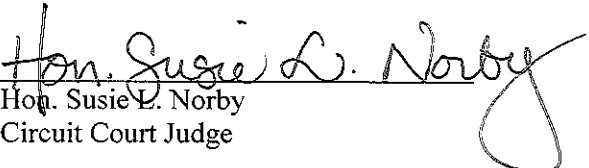
- 1) The statements of city witness Long, who expressed uncertainty about the scope of the roofing project based on his visual appraisal, and who emphasized that the initial letter and Stop Work Order were intended to get the petitioners' attention, and *start* a conversation about the scope.
- 2) The testimony of petitioners' witness Wade, that the roof repair scope was approximately 10%.

The photographic evidence is similarly insubstantial, absent any testimony in the record to guide a judge to view it in a manner that supports a conclusion in the City's favor. It supports a conclusion that petitioners did roof work, but not that 15% of the roof was involved in the project.

I conclude that the testimonial and photographic evidence in the record establishes a prima facie showing of error that satisfies the second pre-requisite created by the Smith court that would otherwise limit a grant of relief on appeal when an incomplete audio record exists of the proceedings below.

Having decided in the petitioners' favor on their claims that there is not substantial evidence in the whole record to support the Municipal Court Judge's rulings on the scope of the project and the legality of the Stop Work Order, it is unnecessary to analyze the petitioners' remaining assignments of error. The Writ of Review challenging the Municipal Court's April 25, 2017 Corrected Final Order/Judgment is granted, and the Corrected Final Order/Judgment is reversed. This case is remanded to the Municipal Court for entry of a Judgment consistent with this opinion. Attorney David Lewis is directed to file a form of Limited Judgment to formalize these rulings.

Very truly yours,


Hon. Susie L. Norby
Circuit Court Judge



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
807 MAIN STREET, ROOM 301
OREGON CITY, OREGON 97045

Susie L. Norby
Circuit Court Judge

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January 31, 2018

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RE: Mark & Anna Marie Matheson v. City of Oregon City, Dan Holladay & Anthony Konkel III
Clackamas Circuit Court Case No. 17 CV 25621

Gentlemen & Ms. Matheson:

This Letter Opinion contains the court's ruling on the Respondent's Motion for Reconsideration.

Contextual Summary

The court issued a Letter Opinion on December 29, 2017 granting the Mathesons' Writ of Review, reversing the Oregon City Municipal Court's April 25, 2017 Corrected Final Order/Judgment, and remanding the case to the Municipal Court for entry of a Judgment consistent with that reversal. On January 16, 2018, Oregon City filed a Motion for Reconsideration. Oregon City argues that a result of reversal is that "the City is prejudiced in its ability to enforce its building codes and potentially protect its citizens."

On January 29, 2018, the Mathesons filed a Response in Opposition to the City's Motion for Reconsideration.

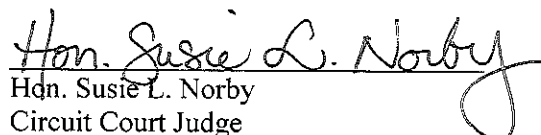
Ruling

The City's Motion for Reconsideration implies that the ruling on Writ of Review in this case sabotages the City's ability to keep citizens safe, by undermining its efforts to enforce protective provisions in its Building Code. To the contrary, the City continues to have substantial power to pursue code enforcement action, as long as it does so in a way that withstands objective review. If the City still believes that circumstances on the Mathesons' roof constitute a code violation, then the City may choose

to begin a new code enforcement action. Code violations occur in slices of time. There is no res judicata or claim preclusion against a future allegation of code violation merely because a previous similar allegation was already concluded. The only relief no longer available to the City after this court's reversal on Writ of Review is the revival of accumulating daily fines that reach back to 2016.

The Motion for Reconsideration is denied. Attorney David Lewis is directed to file a form of Limited Judgment to formalize the rulings on Writ of Review.

Very truly yours,


Hon. Susie L. Norby
Circuit Court Judge



A Better Oregon City Coalition

Al Snell, Michael Simon, Mark J. Matheson
A Better Oregon City Coalition
855 Molalla Ave
Oregon City, Or. 97045

September 19, 2016

Chief Jim Band
Oregon City Police Department
320 Warner Milne Rd
Oregon City, Or. 97045

Re: Code enforcement being used as a political harassment tool

Dear Chief Band,

We won't assume you're aware of every detail of the departments day-to-day activities, at every level under your command. The City's code enforcement impropriety issues aren't typically worthy of the your time, or A Better Oregon City Coalition's time. Moreover, it's unfortunate that code enforcement has been outsourced as a subservient crossover task to law enforcement, which is fueling animosity towards all city officials who use their authority to punish individuals, businesses, and organizations that voice any decent.

In regards to City officials using your department as a harassment tool, not unlike mob bosses sending goons to collect a payment or else, it's easy to dismiss the coalitions concerns as inexperienced, uninformed, or misunderstood. Nonetheless, the issue is not our perspective, depth of information or level understanding, it's the pattern of destructive behavior fueling a large portions of the community to be at odds with each other while officials sit back and watch.

The incident prompting an aggressive posturing originates from the targeted method, and veracity your department followed the building departments lead to illegally gain access to private property. As you'll see by the information we provided, the City of Oregon City has overreached their authority and is misusing their positions to discount and disrespect people. The level of animosity being expressed has left of no other choice than to share our information with the Governor's office, the Attorney General, and the State of Oregon Building Codes Division.



A Better Oregon City Coalition

On September 19, 2016 the City is demanding a permit is needed, which it doesn't, and negligent by using the code as their fishing expedition to up tally tickets. Our building official and civil engineer has reviewed the letter, and the code, and they need to clearly state their process of determination, and how it relates to any work on the property.

If your code enforcement staff are issuing a citation, feel free to mail it to the property owner. Dan Holladay unleashed his special interests, and as a precaution to any unwarranted, or unwanted attempts to enter the property is not appreciated, or welcomed. Less than a year ago, the home owner's husband was contacted by a local attorney who loosely represented the City's interest specifically wrote that he should never underestimate his enemies. Which is enough reason to be concerned about overreaching of any type, by any official.

Sincerely,

Al Snell, Michael Simon, Mark J. Matheson

A Better Oregon City Coalition



A Better Oregon City Coalition

Al Snell, Michael Simon, Mark J. Matheson
A Better Oregon City Coalition
855 Molalla Ave
Oregon City, Or. 97045

September 19, 2016

Mike Roberts
Oregon City Building Official
221 Molalla Ave. Suite 200
Oregon City, Or. 97045

Re: Illegal attempt to gain access onto private property as retribution

Dear Mike Roberts,

On September 12, 2016 a building inspector, Chris Long attempted to illegally place a "stop work order" at 855 Molalla Avenue, Oregon City Oregon. His actions prior to, and after placing the stop order onto the house is equivalence to a "knock and talk" policy, and was ruled unconstitutional years ago. You may try to deny the comparison, nevertheless a code enforcement official used that exact terminology as their policy during a Community Involvement Committee meeting.

I find the practice of officials forcing themselves onto private property to tally up "tickets" is disgusting. The fact that he crossed a caution line without proper protective gear either demonstrated a negligent industry awareness, a lack of respect for people in general, arrogance, or a combination of all. He entered without requesting permission which supports the level veracity and determination to cause financial discomfort. Moreover, the lack of any prior communication, indicates that he was acting on someone orders, and reeks of collusion.

At this point, the city must specified what triggered a letter being sent on Friday, September 9, 2016, which initiated the site visit and prior to getting the letter, and then red tag. The code being used is inappropriate and does not apply. Again, you need to specifically why it does apply.

Unless you clarify the specific reason, or under what context you are applying the code, the stop work order is being characterized as harassment, a misuse of a government office, and racketeering. The illegal stop order is also being ignored.

If you have any questions, please feel free to address them to A Better Oregon City Coalition, which will be reviewed by our building official.

Al Snell, Michael Simon, Mark J. Matheson
A Better Oregon City Coalition

OREGON CITY, OR

&

HAPPY VALLEY, OR

 REMOVE COMPARISON

POPULATION

34,480

1.91% GROWTH

MEDIAN AGE

37.7

MEDIAN HOUSEHOLD INCOME

\$62,858

5.77% GROWTH

POVERTY RATE

11.6%

NUMBER OF EMPLOYEES

16,244

5% GROWTH

MEDIAN PROPERTY VALUE

\$254,000

2.25% GROWTH

POPULATION

16,462

4.9% GROWTH

MEDIAN AGE

37.2

MEDIAN HOUSEHOLD INCOME

\$101,250

0.81% GROWTH

POVERTY RATE

4.55%

NUMBER OF EMPLOYEES

7,864

9.4% GROWTH

MEDIAN PROPERTY VALUE

\$411,300

5.3% GROWTH

1 Mark J. Matheson
2 Anna Marie Matheson
3 855 Molalla Avenue
4 Oregon City, Oregon 97045
5 (503) 953-0250
6 mark.matheson@drteamsint.com
7 On behalf of Petitioner/Plaintiffs, *Pro Se*

8 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
9 **FOR THE COUNTY OF CLACKAMAS**

10 ANNA MARIE MATHESON,

Case No.: 17CV25621

11 Petitioner/Plaintiff,

**PETITIONER/PLAINTIFFS' RESPONSE
IN OPPOSITION TO RESPONDENT'S
MOTION FOR RECONSIDERATION**

12 MARK J. MATHESON, THE ADVANTAGE
13 GROUP, LLC, NW, an Oregon limited
14 liability company, OREGON CITY
15 COMMUNITY EMERGENCY RESPONSE
16 TEAM, an Oregon nonprofit corporation,
17 and A BETTER OREGON CITY
18 COALITION, an Oregon nonprofit
19 corporation,

20 Plaintiffs,

21 vs.

22 CITY OF OREGON CITY, an Oregon
23 municipal corporation formed under the
24 laws of the State of Oregon,

25 Respondent/Defendant,

26 DAN HOLLADAY, the City of Oregon City
27 Mayor, in his official and personal capacity,
28 and ANTHONY J. KONKOL, III, the City of
Oregon City Manager, in his official and
personal capacity,

Defendants

INTRODUCTION

On January 16, 2018, the Respondent the City of Oregon City (the City) filed a Motion for Reconsideration of the Honorable Susie J. Norby's Letter Opinion dated December 29, 2017 in the above-captioned matter (the Letter Opinion). Within the Letter Opinion, Judge Norby ruled that there is no substantial evidence in the record to support Honorable Laraine McNiece's rulings on the scope of the construction project and the legality of the Stop Work Order¹ as set forth in the Corrected Final Order/Judgment issued by Judge McNiece on April 25, 2017 in the City of Oregon City Municipal Court (the Municipal Court). For that reason, Judge Norby ruled that the Corrected Final Order/Judgment shall be reversed.

Judge Norby ordered the City's attorney of record, David C. Lewis, to prepare a Limited Judgment to formalize her rulings. Rather than prepare a Limited Judgment as ordered, the City instead filed a Motion for Reconsideration of the Letter Opinion, which essentially asks the Court to remand this matter back to the Municipal Court to conduct a new hearing because of the City's failure to provide a full recorded hearing as required by law.

As outlined below, the City has failed to establish any reason why Judge Norby should reconsider her decision. Petitioner and Plaintiff Anna Marie Matheson (Mrs.

¹ See Letter Opinion at page 6.

Matheson) and Plaintiff Mark J. Matheson (Mr. Matheson) respectfully request that the Court deny the City's Motion for Reconsideration for the following four (4) reasons.

ARGUMENT

1. The City's Motion for Reconsideration Should Be Denied Because There is No Such Procedural Remedy Allowed Under Oregon Law

First, the City's Motion for Reconsideration should be denied because there is no such procedural remedy allowed under Oregon law. Indeed, former Oregon Supreme Court Chief Justice Edwin J. Peterson said it best when he mused in a concurring opinion:

The so-called "motion for reconsideration" appears neither in the Oregon Rules of Civil Procedure nor in any other Oregon statute. Lawyers filing motions to reconsider after entry of judgment might better denominate such a motion as a "motion asking for trouble" for questions arise concerning whether the filing of such a motion extends the time for appeal.²

Here, it is unclear whether the City has filed the Motion for Reconsideration as a legal tactic to extend the time to file an appeal, or whether the City actually believes that Judge Norby should reconsider her well-reasoned Letter Opinion. The Court of Appeals addressed this dilemma in *Alternative Realty v. Michaels*³:

In *Schmidling*, we admonished lawyers not to file "motions for reconsideration." However, as this case and *Carter v. U.S. National Bank*,

² *Carter v. U.S. National Bank*, 304 Or. 538, 546, 747 P.2d 980 (1987). See also, *Schmidling v. Dove*, 65 Or. App. 1, 5, 670 P.2d 166 (1983) (*Held*: Parties seeking "reconsideration" must do so by means of a motion for new trial under ORCP 64).

³ 90 Or. App. 280, 285, 753 P.2d 419 (1988)

1 supra, show, attorneys continue to do so. The result is confusion as to
2 whether a motion is a request for a new trial so as to extend the time in
3 which to file a notice of appeal or whether the motion serves the narrower
purpose merely to get a trial judge to rethink a decision.⁴

4 The above dilemma is precisely why there is no such procedural remedy as a
5 “motion for reconsideration” under Oregon law. It would seem that the City’s lawyers
6 should already be aware of this; Petitioner/Plaintiffs cannot help but wonder out loud
7 why the City is wasting taxpayer money by filing a motion that is not even authorized by
8 Oregon law. For this reason alone, the City’s Motion for Reconsideration should be
9 denied.
10

11 **2. The City’s Motion for Reconsideration Should Be Denied Because the**
12 **City Failed to Establish That It is Entitled to a New Trial**

13 As the Court held in *Schmidling*, parties seeking a “reconsideration” must do so
14 by filing a motion for a new trial pursuant to ORCP 64. To the extent the Court
15 chooses to treat the City’s Motion for Reconsideration as a motion for a new trial, the
16 City’s argument that it should be entitled to a new hearing based on the lack of a full
17 recording is nonsensical and vexing, given that the City argued *against* remanding to
18 the Municipal Court in both its brief and at the December 11, 2017 hearing before Judge
19 Norby. The City also asserted in its brief that the lack of a full recording did not violate
20 Mrs. Matheson’s due process rights.⁵
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26 ⁴ *Id.*, 90 Or. App. at 284.

27 ⁵ See City’s Response Brief on Writ of Review at page 12:1-3.

1 Yet, now that Judge Norby has ruled in Petitioner/Plaintiffs' favor, the City is
2 reversing its argument, even going so far as to say that "as a result of the incomplete
3 court recording, the City is prejudiced in its ability to enforce its building codes and
4 potentially protect its citizens."⁶ The operative and key word in that sentence is
5 *potentially*.
6

7 "Potential" is defined as follows:

8 1: existing in possibility : capable of development into actuality
9 potential benefits

10 2: expressing possibility; specifically : of, relating to, or constituting a verb
11 phrase expressing possibility, liberty, or power by the use of an auxiliary
12 with the infinitive of the verb (as in "it may rain")⁷

13 To argue that the City should be entitled to a new trial because the City *possibly*
14 may need to protect its citizens from some unknown danger does not establish a valid
15 reason for the Court to grant the City a new trial. Simply put, the City has not shown
16 that it is entitled to a new trial. To quote the City from its own brief:

17 The Oregon Supreme Court has made clear in the appellate courts where
18 the underlying trial court audio record was destroyed, that, to obtain a
19 reverse on that ground, the appellant/petitioner must show (1) due
20 diligence in attempting to find and supply a record; and (2) "must make at
21 least a prima facie showing of error, or unfairness in the trial, or that there
22 has been a miscarriage of justice." *Smith v. Custom Micro, Inc.*, 311 Or
23 375, 379 811 P2d 1371 (1991).⁸

24
25
26 ⁶ City's Motion for Reconsideration at page 2:17-18.

27 ⁷ *Merriam Webster Dictionary*, 10th ed.

28 ⁸ See City's Response Brief on Writ of Review at page 12:20-25.

1 Again, the City's only argument is that its ability to protect the public may
2 somehow, possibly, *may* be compromised if it is not allowed to have a new hearing.
3 That argument is nonsensical, not only because we are talking only about the mere
4 "potential" of having to protect the public, but also because the property at issue is a
5 1916 residence that is private and not even open to the public. Additionally, the
6 argument is nonsensical because the City did not know and will never know the extent
7 and scope of the activities on the Matheson property. The City admitted under oath that
8 it did not know what the extent or scope of the activities were before issuing the illegal
9 Stop Work Order. This was on the part of the hearing that was recorded.⁹ The City also
10 admitted under oath on the recording that not all activities on private property require a
11 permit.¹⁰

14 The City has failed to establish that it is entitled to what it is asking for.¹¹ For
15 this second reason, the City's Motion for Reconsideration should be denied.

22 ⁹ See City's ER-3 at page 22, where Chris Long testified: "The house was opened up and we don't know
23 what the scope is so we need to contact them." See also City's ER-3 at page 31, where Mike Roberts
24 testified he had never been on the property and that his conclusions were based on the photographs and
by driving by.

25 ¹⁰ See City's ER-3 at page 21.

26 ¹¹ Even if the Court were to treat the City's Motion for Reconsideration as a motion for a new trial, we also
27 note that the City's motion is filed prematurely, because a party is not entitled to file a motion for a new
trial until after the judgment has been entered. See ORCP 64 E F(1). There has been no judgment
entered because the City did not follow Judge Norby's instructions. This is another reason why the City's
Motion for Reconsideration should be denied.

1 **3. The City’s Motion for Reconsideration Should Be Denied Because**
2 **Judge Norby Carefully Considered All of the Evidence in the Record**

3 The City implies that Judge Norby would not have ruled in the manner that she
4 did if there had been a full recording of the hearing. For that reason, the City argues
5 that Judge Norby should exercise her power to remand this case to the Municipal Court
6 for a new hearing.

7
8 While it is true that Her Honor has the power to remand this matter pursuant to
9 ORS 34.100, as will be discussed in more detail below, Judge Norby considered that
10 option but instead chose to rule in the manner that she did. More importantly, it is clear
11 from her Letter Opinion that Judge Norby carefully considered all of the parties’
12 arguments and “exhaustively”¹² reviewed the photographic evidence which the City
13 argued established its case against Mrs. Matheson. In fact, in its brief, the City argued
14 that the lack of a full recording was no big deal, because the photographs alone
15 allegedly established that Mrs. Matheson needed to obtain a permit:
16

17 Even a cursory review of those pictures is sufficient to establish that a
18 reasonable person could conclude that more than 15% of the roof had
19 been removed.¹³

20 Judge Norby obviously did not agree with the City’s analysis of the photographs.
21 In particular, Judge Norby pointed out that, viewing the photographs in the light most
22 favorable to Judge McNiece’s rulings, the pictures simply do not establish that more
23

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26 ¹² Letter Opinion at page 5.

27 ¹³ City’s Response Brief at page 15:14-15.

1 than fifteen percent (15%) of the skip sheathing had been removed, necessitating a
2 permit. Unlike Judge McNiece, who failed to articulate why she ruled in the manner
3 that she did, Judge Norby set forth a well-reasoned Letter Opinion, outlining why she
4 made her decision.
5

6 Judge Norby concluded that it was not necessary to address the remainder of the
7 arguments because her ruling that there is no substantial evidence in the record to
8 support Judge McNiece's rulings on the scope of the construction project and the
9 legality of the Stop Work Order is dispositive.
10

11 Judge Norby clearly understood the ramifications of her decision. After
12 judiciously considering all of the arguments, testimony and evidence, Judge Norby
13 determined that the Corrected Final Order/Judgment should be reversed. The City
14 should not be entitled to a do-over merely because it has sour grapes over Judge
15 Norby's careful analysis of the evidence presented. For this third reason, the City's
16 Motion for Reconsideration should be denied.
17

18 **4. The City's Motion for Reconsideration Should be Denied Because Judge**
19 **Norby Already Considered and Rejected the Argument for Remanding**
20 **This Matter to the Municipal Court**

21 Based on her Letter Opinion, Judge Norby already considered whether to
22 remand this matter for a new hearing. Specifically, Judge Norby listed all of
23 Petitioner/Plaintiffs' assignments of error, including the error on the City's part in failing
24
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1 to provide a full recording of the hearing below.¹⁴ Obviously, Judge Norby read the
2 briefs on this issue and listened to Petitioner/Plaintiffs' argument at the December 11,
3 2017 hearing that if the Court refused to reverse the Corrected Final Order/Judgment
4 than this matter should be remanded because of the recording issue.
5

6 In her Letter Opinion, Judge Norby noted that the City conceded at the
7 December 11, 2017 hearing that it was responsible for providing a full recording of the
8 hearing, despite its argument to the contrary in its brief. Judge Norby also summarized
9 the City's argument that Petitioner/Plaintiffs allegedly failed to establish a remedy for the
10 failure to provide a full recording in her Letter Opinion.¹⁵
11

12 On review, Judge Norby held that the Petitioner/Plaintiffs established that Mr.
13 Matheson exercised due diligence in attempting to obtain a full record. Clearly, Judge
14 Norby understood what each party's position was on the issue of remanding the matter
15 to the Municipal Court. Thus, Judge Norby's decision to reverse the Corrected Final
16 Order/Judgment took into account that she could have remanded the matter to the
17 Municipal Court for a new hearing.
18

19 Instead of accepting Judge Norby's Letter Opinion, the City now "flips the script"
20 and argues for the first time that it is entitled to a new hearing based on the City's own
21 failure to provide a full recording of the hearing. For the City to now claim that "if the
22 City were prohibited from re-trying the issues in this case, it could jeopardize not just the
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26 ¹⁴ See Letter Opinion at page 2.

27 ¹⁵ *Id.* at page 3.

current residents of the home, but future residents and first responders”¹⁶ is nonsensical and insulting to Judge Norby’s well-reasoned analysis.

This Court has ruled, as a matter of law, and the Court's decision is not subject to review or reconsideration simply because the lawyers for the City quibble with the Court's analysis. Furthermore, the legal arguments raised simply fail—Judge Norby has already rejected the arguments made with regard to remanding this matter to the Municipal Court, and nothing has been provided to this Court which would merit reconsideration.

Absent any new evidence or controlling law that has changed since the Court was fully briefed on this matter, mere disagreement with Judge Norby's ruling does not provide a valid reason to remand this to the Municipal Court for a new hearing. Judge Norby has already considered and rejected that argument. Therefore, as Chief Justice Peterson famously remarked, the City has made a frivolous "motion asking for trouble." For this fourth and final reason, the City's Motion for Reconsideration should be denied.

CONCLUSION

For the all of the foregoing reasons, points and authorities, the City's Motion for Reconsideration should be denied. Petitioner/Plaintiffs respectfully request that the Court order the City to prepare a Proposed Limited Judgment consistent with Judge Norby's Letter Opinion within seven (7) days of the date the Court denies the City's

¹⁶ City's Motion for Reconsideration at page 2:21-23.

1 Motion for Reconsideration and serve the Proposed Limited Judgment on
2 Petitioner/Plaintiffs pursuant to UTCR 5.100(1)(c).

3 DATED this 29th day of January, 2018.

4 Respectfully submitted,

5
6 /s/ Anna Marie Matheson
7 Anna Marie Matheson, Petitioner/Plaintiff
8 *Pro Se*

9
10 /s/ Mark J. Matheson
11 Mark J. Matheson, Plaintiff
12 *Pro Se*

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Respectfully submitted,