Spir, Peter

From: Miranda Bateschell <Miranda.Bateschell@oregonmetro.gov>
Sent: Wednesday, February 05, 2014 4:24 PM
To: Spir, Peter
Subject: RE: Hardship Variance Section 8 provisions of Title 13 Model Ordinance

Peter,

The purpose of this portion of the code is to mirror a local variance processes. So it provides an opportunity to respond to those properties disproportionately burdened by these regulations. It's an avenue to compare what is allowed with underlying zoning vs. what you can do with these regulations. This is available to any property that can prove that there is an economic hardship regardless of whether there is something currently developed or not.

You could have a parcel that is partially developed but cannot develop the rest of the parcel according to underlying zoning with Title 13 / WMA provisions (even once density is transferred). If they can prove they meet the city's definition of economic hardship then they could be considered / approved for a variance.

The city could apply this to just vacant lots but from our perspective does not have to be limited to just vacant lots.

Let me know if you have any more questions.

Miranda

Miranda Bateschell

Senior Planner
Community Development Division
(503) 797-1817
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From: Spir, Peter [mailto:Pspir@westlinnoregon.gov]
Sent: Tuesday, February 04, 2014 8:26 AM
To: Miranda Bateschell
Subject: Hardship Variance Section 8 provisions of Title 13 Model Ordinance

Hi Miranda

Thank you for providing earlier comments in August 2013. We are still patiently moving through hearings on a revised chapter that fits within the parameters of Metro's Title 13 model ordinance. Our final Planning Commission hearing is tomorrow night.

One resident asked if the hardship variance Section 8 (D) Hardship Variance (E) Buildable Lot Variance can apply to properties that already have homes on them.
My impression was that the variances were intended for vacant lots. What is your interpretation?

Members of the West Linn Planning Commission,

During the previous hearing on January 15th, I stated that the proposed changes to the code were significantly better than the existing code. Much of this opinion was based on the assumption that the statements made on the West Linn Planning website summarizing the proposed CDC changes were accurate and true statements.

Ann Miller made very similar comments in her testimony in support of the amendment, highlighting "in particular, the hardship provisions that allow 5,000 square feet or 30% of WRAs to be developed, whichever is greater".

However, after reading through the actual code, I discovered that the statement (below) on which I based my support of the revisions was not in fact true and that the **verbiage in the proposed code does not meet the intent stated in the WRA summary** posted to the WL Planning homepage (http://westlinnoregon.gov/planning/water-resource-areas).

From the WL Planning Page:

> Currently, the owners of vacant property within a WRA can only develop up to a maximum of 5,000 square feet of "disturbed area" within the WRA. The proposed language will guarantee 5,000 square feet or 30% of the WRA, whichever is greater. Owners of larger lots will benefit from having an allowable "disturbed area" of 30% of the WRA. For a one acre parcel (43,560 square feet) that is totally encumbered by a WRA, a disturbed area of 13,068 square feet would be allowed

This statement from the WL Planning WRA page (above) clearly states that the current code only allows a **maximum** of 5,000 square feet, but that the new "proposed language will **guarantee** 5,000 square feet or 30% of the WRA, whichever is greater."

Mathematical speaking, a guarantee of 5,000 square feet means that the MINIMUM allowed disturbed area would be 5,000 square feet. However, both the existing and the proposed code (below) clearly states that it is a MAXIMUM disturbed area, hence making 5000 sq ft or 30% of the WRA not only **not a guarantee**, but <u>unlikely</u>.

As documented in the draft proposal of 32.110 (B) (1):

B.

1. For lots described in 32.110(A) that are located completely or partially inside the WRA, development is permitted, consistent with this section. The Maximum Disturbed Area (MDA) of the WRA shall be determined on a per lot basis and shall be:

    a. 5,000 square feet ; or,

    b. A maximum of 30% of the total area of the WRA; whichever is greater, and consistent with 32.110(C) below.

In order for the statement on the WL Planning page to be a true statement, which I believe is the intent of the Planning Commission, the code would have to be modified something like as follows:

1. For lots described in 32.110(A) that are located completely or partially inside the WRA, development is permitted, consistent with this section. The ~~Maximum~~ Disturbed Area (MDA) of the WRA shall be determined on a per lot basis and shall be a guaranteed minimum of:

    c. 5,000 square feet; or,

    d. ~~A maximum of~~ 30% of the total area of the WRA; whichever is greater, and consistent with 32.110(C) below.

As it stands now, the stated intent and the proposed code are in direct conflict (one being a minimum, the other a maximum).

To quote the Planning Commission statements on the WL Planning page again:

> The proposed term: "reasonable use" would allow uses consistent with other uses and buildings on nearby properties or in that same zone. This will make the code less subjective and provide landowners with greater certainty.

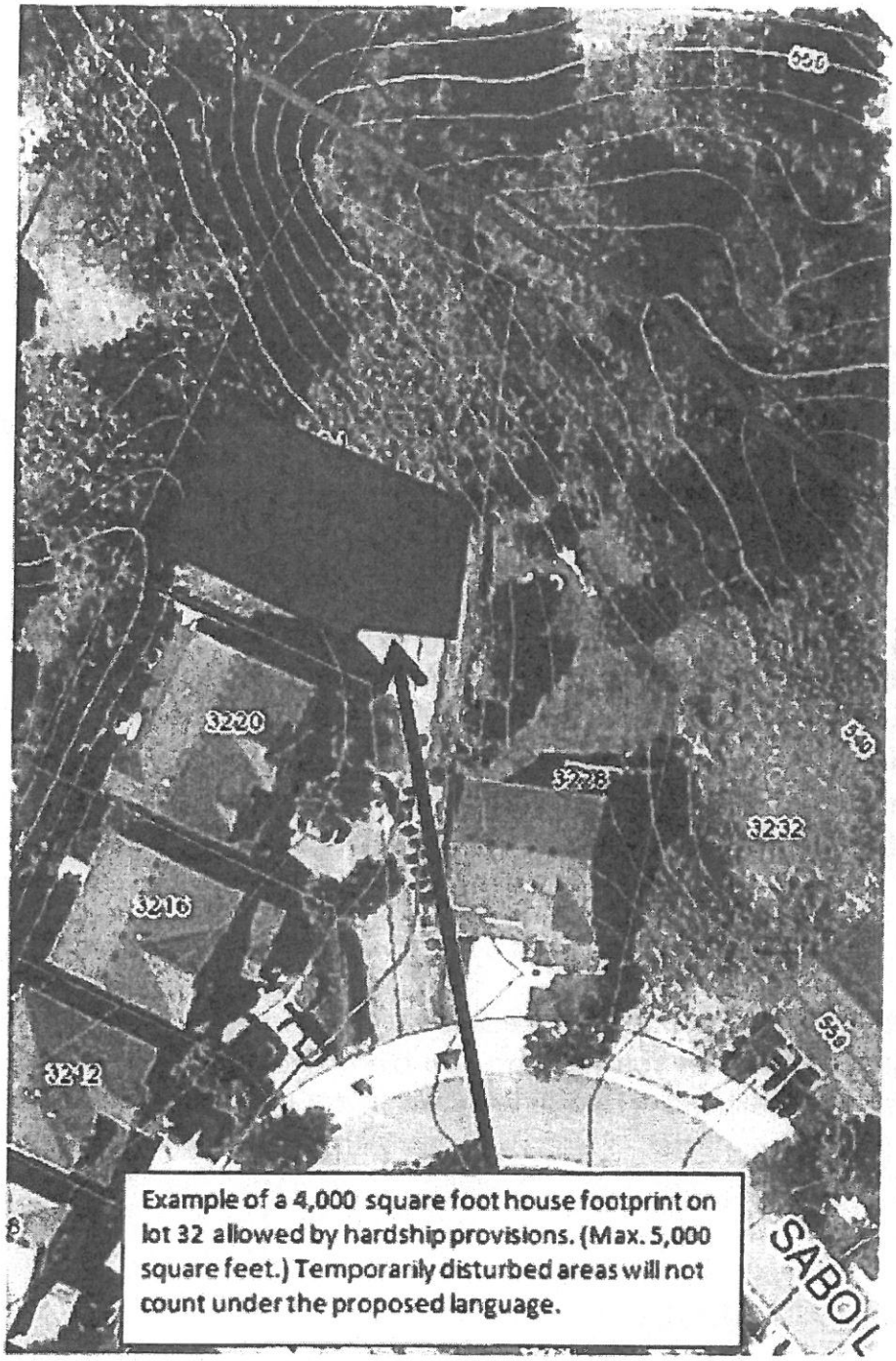
I sincerely believe that it is the Planning Commission's desire and is trying in good faith to balance the property rights of its citizens with protecting the WRA. I believe you do want to allow use consistent with nearby properties, even if protecting the WRA means that you must strip the property owner of some of the rights and flexibility that their neighbors who previously developed enjoyed. I believe that you want the code to be less subjective and do truly want to provide the landowners greater certainty. All this being true, you MUST change the draft code to make this statement true:

"The proposed language will guarantee 5,000 square feet or 30% of the WRA, whichever is greater."

"Maximum" must be stricken from the language to remove subjectivity and provide certainty to landowners.

As an example of how this change in code would change the city's application of the CDC, contrast the actual response to testimony presented 1-15-14 to a mocked new response.

Actual response (abridged; please refer to pages 7 and 8 of the PC Meeting minutes for full account):



Example of a 4,000 square foot house footprint on lot 32 allowed by hardship provisions. (Max. 5,000 square feet.) Temporarily disturbed areas will not count under the proposed language.

...

So what is next? Both the existing and proposed language guarantee a maximum 5,000 square feet of disturbed area for the construction of a house on the lot. The proposed language improves upon that by exempting temporarily disturbed areas, so once trenching and other related construction work is done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area. Bottom line: although a $2,600 WRA permit will be required, Mr. Sabo will be guaranteed the right to build on lot 32.

New (mock) response with changes guaranteeing 5,000 square feet or 30% of the WRA, whichever is greater:

> Under the hardship provision, Mr. Sabo would be allowed 5,000 square feet of permanently disturbed area (house footprint, sidewalk, driveways, non-native landscaping, etc.) on lot 32. This would require a WRA permit. The fee is $2,600. Also helping with this project would be the exemption for temporarily disturbed areas, so once trenching and other related construction work is done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area.

This mocked response is a merger of the city's response to testimony presented 1-15-14 by Bill Perkins and Sam Sabo, but removing the words "up to" and "maximum" in both responses. The city's response in both cases shows their intent to treat 5,000 square feet as a maximum, not a guaranteed allowed disturbance area (which, in fairness, is how the new code is currently written – demonstrating the need to reword it to provide a guaranteed minimum).

Even with my proposed change to the code to provide a guaranteed minimum disturbance area, the WRA will still be protected, and property owners will still be losing the right to develop their properties to the same extent as their neighbors, and will still suffer significant loss of property value. **I am just asking that the code be written to ensure property owners are afforded at least a minimum disturbance area guarantee consistent with how the Planning Commission has already stated the code shall read.**

Others have testified that they were counting on the value of their land for retirement and other long-term life goals. The choices you make on how this code is written have real repercussion on the lives and livelihood of people living within our community. I implore you to ensure the land owner is protected in addition to the WRA when making changes to Chapter 32 of the CDC.

Thank you for your time and consideration.

Laura Sabo

2/5/14

Addendum

The code needs to use legally defined words or explicitly define terms such as "unreasonable hardship" and "reasonable use of land" in order for the city to have non-subjective terminology to apply when making decisions.

For instance, the WRA Summary available on the WL Planning site states:

1. Currently, owners of vacant property within a WRA can only build something that is the "minimum economically viable use" of the land (such as a small 900 square foot house). The proposed term: "reasonable use" would allow uses consistent with other uses and buildings on nearby properties or in that same zone. This will make the code less subjective and provide landowners with greater certainty. [1]

In comparison, the draft CDC reads:

> 32.110 HARDSHIP PROVISIONS
>
> The purpose of this section is to ensure that compliance with this chapter does not cause unreasonable hardship or deprive an owner of reasonable use of land. To avoid such instances, the requirements of this chapter may be reduced. The decision-making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

The actual CDC is less specific than the WRA summary. If you want" reasonable use" to mean something like "allow[ing] uses consistent with other uses and building on nearby properties or in that same zone", it needs to actually be written as such in the code.

Why is this important? Because as written, the city can apply the reduction in standards for hardship section in ways harmful to the land owner and annoying to the neighbors. The city can make strange reductions in setbacks and yard sizes that result in houses and lots incongruent with the neighborhood and totally dysfunctional for the land owner. For example, when Lot 34 was developed, the city proposed changes to the setback, side yard, driveway length,etc. that initially led to the landowners not being able to get a loan because the yard was unusable. We were ultimately able to use the "loss of economic viability" clause to force the city to change some of the applied variances. However, a) the new draft proposal removes "economic viability" as a protection for the land owner and b) does not protect the land owner or his neighbors from suffering the consequences of not applying the same building rules as apply to non-WRA land. As an unintended consequence of applying non-standard building requirements (in this example, the minimum driveway length of 18 feet was reduced to 15 feet), the neighbor's view from his front porch was blocked by the corner of our house because the rules applied to where our house had to be built did not

[1] http://westlinnoregon.gov/planning/water-resource-areas

comply with the houses around it. This may seem minor to the city or to the Planning Commission, but I promise you it was not minor to my neighbor in the slightest. It produced an outcome very negative to him. There are reasons that there are setback, etc, rules. While trying to reduce the impact to the WRA, these "tweaks" to the code can have truly negative impacts to landowners.

As another example of how failure to define "reasonable use of land" can have negative consequences in the field, consider how the city's response to Sam Sabo about his lot could play out as currently written:

The City responded to Sam Sabo's testimony on 1-15-14 that he could build a 4,000 square foot house (with no mention to a yard). Lot 32 is almost entirely in a WRA. If we assume that this means the city would allow a 4000 sqft disturbance[2], approximately 50% of his single home lot would be unusable[3]. The average foot print of houses on the nearby properties is 2300 sqft. If he built a house with a 2300 sqft foot print, he would be left with less than a 9 foot usable perimeter around the entire house. This would satisfy the new code, but he would have a hard time getting a loan, if he could get one at all, for the house because it had no usable yard. Additionally, if he ever wanted to sell the property, it could potentially be difficult to recoup the cost of building because the number of buyers willing to buy a house with no usable yard at the necessary price point (remembering that the lot's "value" and cost assumes full utilization of the property, even though in reality it is only half a useable lot), would be small, if not a null set. So a very real potential would exist that the home would have to sell at a loss not because of market fluctuation, but only because of land use restrictions placed on the property.

These are a couple of examples of why terms like "reasonable use of land" and "unreasonable hardship" need documentation in the code.

Thank you,

Damon Sabo

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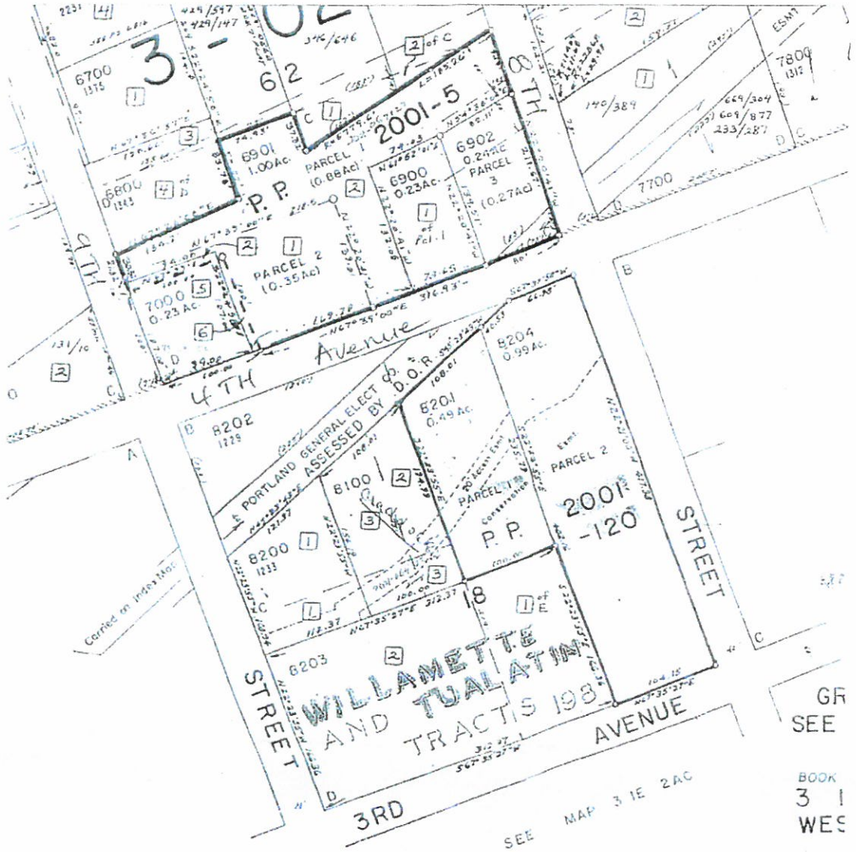
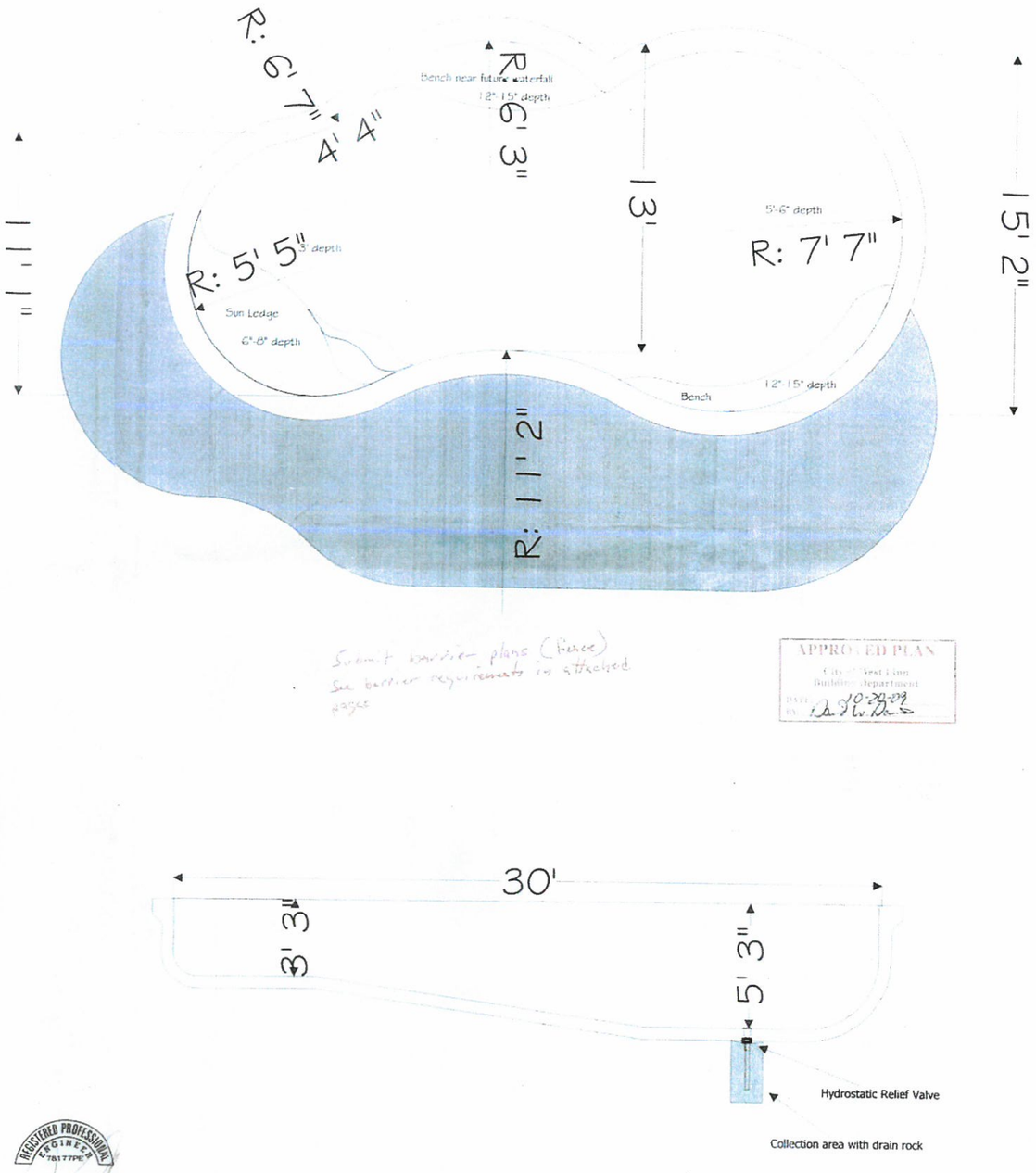
[2] 5000 sqft is currently a max, not a guarantee

[3] Lot 32 is just over 8,000 sqft





Submit barrier plans (fence)
See barrier requirements in attached pages

APPROVED PLAN
City of West Linn
Building Department
DATE 10-20-09
BY

REGISTERED PROFESSIONAL ENGINEER
78177PE
OREGON
March 16, 2009
AARON JUSTIN COWEN
Expires 12/31/2009

This is to certify that the professional engineer, whose seal appears on this document, assumes responsibility only for the validity of Pool Engineering, Inc. structural elements shown here on, and NOT for any architectural, site-planning, civil, mechanical, electrical, soils engineering, or any other engineering or design aspect of the work.

Enter text here.

ANDERSON POOLWORKS

ANDERSON POOLWORKS
24008 S.W. Morgan Lane
Sherwood, Oregon
(503) 625-5628
(503) 625-3468 Fax
Oregon CCB 125440
Washington #ANDERG100SDQ
andersonpoolworks.com
Project contact: Dave Anderson

Project Owner: Troy & Gea Bundy
Address: 1215 9th Street
West Linn, OR
Owner's Representative: Troy & Gea
Permit Authority: City of West Linn
Inspection Request #
Permit #

BUNDY FAMILY POOL

CONSULTANTS

Pool Engineering, Inc.
1201 N. Tustin Ave.
Anaheim, California 92807
Phone: (714) 630-6100
Fax: (714) 630-6114
www.pooleng.com

Engineer:

Stamp

DRAWING INFORMATION

Drawing Date: July 1, 2009
Designer: D. Anderson
Changes:

Approved:

SP-1

Site plan/Sections

poena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on application of the board or its designated representative, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board shall be punishable by a fine of $100. [1977 c.380 §9; 1989 c.980 §8]

Note: 161.395 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

161.397 Psychiatric Security Review Board Account. The Psychiatric Security Review Board Account is established separate and distinct from the General Fund. All moneys received by the Psychiatric Security Review Board, other than appropriations from the General Fund, shall be deposited into the account and are continuously appropriated to the board to carry out the duties, functions and powers of the board. [2001 c.716 §3]

Note: 161.397 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

161.400 Leave of absence; notice to board. If, at any time after the commitment of a person to a state hospital or a secure intensive community inpatient facility under ORS 161.341 (1), the superintendent of the hospital or the director of the facility is of the opinion that a leave of absence from the hospital or facility would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent or director may authorize such leave for up to 48 hours in accordance with rules adopted by the Psychiatric Security Review Board. However, the superintendent or director, before authorizing the leave of absence, shall first notify the board for the purposes of ORS 161.326 (2). [1981 c.711 §12; 2005 c.685 §9]

161.403 [1983 c.800 §14; repealed by 1993 c.77 §1]

INCHOATE CRIMES

161.405 "Attempt" described. (1) A person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is murder or treason.

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor. [1971 c.743 §54]

161.425 Impossibility not a defense. In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be. [1971 c.743 §55]

161.430 Renunciation as a defense to attempt. (1) A person is not liable under ORS 161.405 if, under circumstances manifesting a voluntary and complete renunciation of the criminal intent of the person, the person avoids the commission of the crime attempted by abandoning the criminal effort and, if mere abandonment is insufficient to accomplish this avoidance, doing everything necessary to prevent the commission of the attempted crime.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §56]

161.435 "Solicitation" described. (1) A person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor or an attempt to commit such felony or Class A misdemeanor the person commands or solicits such other person to engage in that conduct.

(2) Solicitation is a:

(a) Class A felony if the offense solicited is murder or treason.

(b) Class B felony if the offense solicited is a Class A felony.

(c) Class C felony if the offense solicited is a Class B felony.

(d) Class A misdemeanor if the offense solicited is a Class C felony.

(e) Class B misdemeanor if the offense solicited is a Class A misdemeanor. [1971 c.743 §57]

161.440 Renunciation as defense to solicitation. (1) It is a defense to the crime of solicitation that the person soliciting the crime, after soliciting another person to commit a crime, persuaded the person solicited not to commit the crime or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of the criminal intent.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §58]

161.450 "Conspiracy" described. (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct.

(2) Criminal conspiracy is a:

(a) Class A felony if an object of the conspiracy is commission of murder, treason or a Class A felony.

(b) Class B felony if an object of the conspiracy is commission of a Class B felony.

(c) Class C felony if an object of the conspiracy is commission of a Class C felony.

(d) Class A misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor. [1971 c.743 §59]

161.455 Conspiratorial relationship. If a person is guilty of conspiracy, as defined in ORS 161.450, and knows that a person with whom the person conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the person is guilty of conspiring with such other person or persons, whether or not the person knows their identity, to commit such crime. [1971 c.743 §60]

161.460 Renunciation as defense to conspiracy. (1) It is a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted commission of the crime which was the object of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of the criminal purpose of the actor. Renunciation by one conspirator does not, however, affect the liability of another conspirator who does not join in the renunciation of the conspiratorial objective.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §61]

161.465 Duration of conspiracy. For the purpose of application of ORS 131.125:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are completed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(2) Abandonment is presumed if neither the defendant nor anyone with whom the defendant conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation.

(3) If an individual abandons the agreement, the conspiracy is terminated as to the individual only if and when the individual advises those with whom the individual conspired of the abandonment or the individual informs the law enforcement authorities of the existence of the conspiracy and of the participation of the individual therein. [1971 c.743 §62; 1973 c.836 §340]

161.475 Defenses to solicitation and conspiracy. (1) Except as provided in subsection (2) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(a) The person or the person whom the person solicits or with whom the person conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if the person believes that one of them does; or

(b) The person whom the person solicits or with whom the person conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime, or, in the case of conspiracy, has feigned the agreement; or

(c) The person with whom the person conspires has not been prosecuted for or convicted of the conspiracy or a crime based upon the conduct in question, or has previously been acquitted.

(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under ORS 161.150 to 161.165. [1971 c.743 §63]

161.485 Multiple convictions barred in inchoate crimes. (1) It is no defense to a prosecution under ORS 161.405, 161.435 or 161.450 that the offense the defendant either attempted to commit, solicited to commit or conspired to commit was actually committed pursuant to such attempt, solicitation or conspiracy.

(2) A person shall not be convicted of more than one offense defined by ORS 161.405, 161.435 and 161.450 for conduct designed to commit or to culminate in commission of the same crime.

(3) A person shall not be convicted on the basis of the same course of conduct of both the actual commission of an offense and

10607 SE Stanley Ave.
Portland, OR 97222

November 21, 2013

CC:

KATU News Investigative Reporters
Lars Larson
Oregon Building Codes Division (BCD)
Mayor Ferguson, City of Milwaukie
Bill Monahan, Milwaukie City Manager
Councilor Churchill, City of Milwaukie
Councilor Hedges, City of Milwaukie
Councilor Gamba, City of Milwaukie
Councilor Miller, City of Milwaukie

To whom it may concern,

To give you a little back story about my problem with the City of Milwaukie.

I own a piece of property in the city on a fully developed neighborhood street (all lots are built on and have been for decades.) The street is paved but it is only 18 feet wide, 9 feet for each direction. There are no sidewalks or curbs for the entire length of the street.

I bought this property a couple of decades ago with a duplex on the property. I operated it as a duplex until a few years ago when there was a fire that destroyed the structure.

At the time I tried to rebuild my duplex, the City of Milwaukie denied it because they said it wasn't zoned for multi-family. We argued over this for years. The City said the only way I could rebuild the duplex was to provide documentation of proof that the property was a duplex in 1962, when it was annexed into the city. We missed the proof by a few years because I can only prove back to 1969.

So after all of this, I decided to build a new house for myself, and a grand house it is up to this point, which started all my problems.

I received my building permits and started breaking ground in September of 2012. When I received my permits I was told I would have to put in sidewalks and a curb. I thought "no problem".

A week or so after getting the permits, I received a memorandum from Brad Albert, Civil Engineer, through his boss, Gary Parkin, Director of Engineering, for the City of Milwaukie detailing the street requirements. It was a shock to say the least.

First of all, have you seen those rain gardens in commercial and industrial areas of Portland and downtown Milwaukie that are in the boulevard? They want me to build those in front of my property.

Second, they are trying to designate the street in front of my house as a "collector street". Back ground on this is that "neighborhood streets" have less than 500 cars a day. "Local Streets" have between 500-1500 cars a day. "Collector streets" have over 3000 cars a day. My street is a neighborhood street with less than 500 cars a day.

Trying to call it a collector means many things, but two major items. First, no backing into the street, the property **must** have a turnaround even though everyone else on the street backs into the street to exit their property. Second, that collector and arterial streets **must** have a bike path (trying to force a bike path). By their own rules anything they require must not substantially change the character of the neighborhood. What do you suppose this street will look like with no sidewalks, no curbs and only a 9' wide half street when **one** house has sidewalks, a rain garden in the boulevard, curbs and 18' wide half street? The city has said that they have no plans to develop this street any further in any of their plans.

So to find out exactly where I stand, I hired an engineer. He called the city engineer to ask questions. They wouldn't even tell him what the elevations of the street improvement should be, they told him to "figure something out". You see, another requirement is to engineer the street 200 feet on each side of the property. Isn't that the city's job when they develop the street?

My engineer wrote a report detailing everything. In conclusion my licensed "PE" engineer said the city engineers are so high on their power that their requirements are not attainable. He also said that he would not draw up plans for the street and risk his license due to the lack of information, and outrageous requirements. And that no other PE would.

So I hired a lawyer to get this straightened out. You would think that would help, but no. The city's lawyer won't respond to my lawyer and when he does, all he has to say is that the city engineers are looking at it. The city is dragging their feet,---for months---, costing me money and trying to extort me to do things the law doesn't require.

This is even though the City of Milwaukie's lawyer, who is the same lawyer for the City of Tigard, lost a US Supreme court case in 1994 for the same type of thing.

Tigard lost this issue in 1994 and then again this last June in Florida the US Supreme Court reaffirmed the Tigard decision. They both say that any street developments need to be **Proportional** to the amount of traffic increase on the street due to any development. With that said, NO street development should be required because there will be less traffic, because we are going from a duplex to a single family dwelling. Even if it was called a single family dwelling being replaced (as the City of Milwaukie says), there should be no street improvements required because of no increase in traffic.

Koontz v St Johns Water Management District Florida
Dolan v City of Tigard

Still, I have not had any decision by the city that follows the law and their own rules or otherwise. You would think a government agency would follow a US Supreme court case and not get sued to make them follow it, wasting more of our taxpayer dollars.

The attorney for the City of Milwaukie is Tim Ramis. (tim.ramis@jordanramis.com)

So here my new house sits, framed, sided, wired and plumbed, HVAC installed, and painted, with all the inspections approved for the finished work. I can't go any further. They will not give me a framing final inspection until the plans for the street have been approved (extortion?). And they are just flat ignoring my attorney who is trying to help me get this resolved.

I'm 75. Are they just planning to not respond, hoping I pass away before they are forced to follow the law?

Clyde Abston
503-249-8455

I. SELLER'S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer.

*If you mark yes on items with *, attach a copy or explain on an attached sheet.

1. TITLE

A. Do you have legal authority to sell the property? [ ]Yes [ ]No [ ]Unknown

*B. Is title to the property subject to any of the following: [ ]Yes [ ]No [ ]Unknown

(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Other listing
(5) Life estate?

*C. Is the property being transferred an unlawfully established unit of land? [ ]Yes [ ]No [ ]Unknown

*D. Are there any encroachments, boundary agreements, boundary disputes or recent boundary changes? [ ]Yes [ ]No [ ]Unknown

*E. Are there any rights of way, easements, licenses, access limitations or claims that may affect your interest in the property? [ ]Yes [ ]No [ ]Unknown

*F. Are there any agreements for joint maintenance of an easement or right of way? [ ]Yes [ ]No [ ]Unknown

*G. Are there any governmental studies, designations, zoning overlays, surveys or notices that would affect the property? [ ]Yes [ ]No [ ]Unknown

*H. Are there any pending or existing governmental assessments against the property? [ ]Yes [ ]No [ ]Unknown

*I. Are there any zoning violations or nonconforming uses? [ ]Yes [ ]No [ ]Unknown

*J. Is there a boundary survey for the property? [ ]Yes [ ]No [ ]Unknown

*K. Are there any covenants, conditions, restrictions or private assessments that affect the property? [ ]Yes [ ]No [ ]Unknown

*L. Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold? [ ]Yes [ ]No [ ]Unknown

2. WATER

A. Household water

(1) The source of the water is (check ALL that apply):
[ ]Public [ ]Community [ ]Private
[ ]Other _____

(2) Water source information:

*a. Does the water source require a water permit? [ ]Yes [ ]No [ ]Unknown
If yes, do you have a permit? [ ]Yes [ ]No

b. Is the water source located on the property? [ ]Yes [ ]No [ ]Unknown
*If not, are there any written agreements for a shared water source? [ ]Yes [ ]No [ ]Unknown [ ]NA

*c. Is there an easement (recorded or unrecorded) for your access to or maintenance of the water source? [ ]Yes [ ]No [ ]Unknown

d. If the source of water is from a well or spring, have you had any of the following in the past 12 months? [ ]Flow test [ ]Bacteria test
[ ]Chemical contents test [ ]Yes [ ]No [ ]Unknown [ ]NA

*e. Are there any water source plumbing problems or needed repairs? [ ]Yes [ ]No [ ]Unknown

(3) Are there any water treatment systems for the property? [ ]Yes [ ]No [ ]Unknown
[ ]Leased [ ]Owned

B. Irrigation

(1) Are there any [ ] water rights or [ ] other irrigation rights for the property? [ ]Yes [ ]No [ ]Unknown

*(2) If any exist, has the irrigation water been

	used during the last five-year period?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*(3)	Is there a water rights certificate or other written evidence available?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Outdoor sprinkler system				
(1)	Is there an outdoor sprinkler system for the property?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Has a back flow valve been installed?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Is the outdoor sprinkler system operable?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
3.	SEWAGE SYSTEM				
A.	Is the property connected to a public or community sewage system?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Are there any new public or community sewage systems proposed for the property?	[ ]Yes	[ ]No	[ ]Unknown	
C.	Is the property connected to an on-site septic system?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was it installed by permit?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	*Has the system been repaired or altered?	[ ]Yes	[ ]No	[ ]Unknown	
	Has the condition of the system been evaluated and a report issued?	[ ]Yes	[ ]No	[ ]Unknown	
	Has it ever been pumped?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, when? _____				
*D.	Are there any sewage system problems or needed repairs?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Does your sewage system require on-site pumping to another level?	[ ]Yes	[ ]No	[ ]Unknown	
4.	DWELLING INSULATION				
A.	Is there insulation in the:				
(1)	Ceiling?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Exterior walls?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Floors?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Are there any defective insulated doors or windows?	[ ]Yes	[ ]No	[ ]Unknown	
5.	DWELLING STRUCTURE				
*A.	Has the roof leaked?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, has it been repaired?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
B.	Are there any additions, conversions or remodeling?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was a building permit required?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was a building permit obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was final inspection obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Are there smoke alarms or detectors?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Is there a woodstove included in the sale?	[ ]Yes	[ ]No	[ ]Unknown	
	Make _____				
*E.	Has pest and dry rot, structural or "whole house" inspection been done within the last three years?	[ ]Yes	[ ]No	[ ]Unknown	
*F.	Are there any moisture problems, areas of water penetration, mildew odors or other moisture conditions (especially in the basement)?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, explain on attached sheet the frequency and extent of problem and any insurance claims, repairs or remediation done.				
G.	Is there a sump pump on the property?	[ ]Yes	[ ]No	[ ]Unknown	
H.	Are there any materials used in the construction of the structure that are or have been the subject of a recall, class action suit, settlement or litigation?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, what are the materials? _____				
(1)	Are there problems with the materials?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(2)	Are the materials covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Have the materials been inspected?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(4)	Have there ever been claims filed for these materials by you or by previous owners?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, when? _____				
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(6)	Were any of the materials repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA

6. DWELLING SYSTEMS AND FIXTURES
If the following systems or fixtures are included in the purchase price, are they in good working order on the date this form is signed?

A.	Electrical system, including wiring, switches, outlets and service	[ ]Yes	[ ]No	[ ]Unknown	
B.	Plumbing system, including pipes, faucets, fixtures and toilets	[ ]Yes	[ ]No	[ ]Unknown	
C.	Water heater tank	[ ]Yes	[ ]No	[ ]Unknown	
D.	Garbage disposal	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
E.	Built-in range and oven	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
F.	Built-in dishwasher	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
G.	Sump pump	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
H.	Heating and cooling systems	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
I.	Security system [ ]Owned [ ]Leased	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
J.	Are there any materials or products used in the systems and fixtures that are or have been the subject of a recall, class action settlement or other litigations? If yes, what product? _____	[ ]Yes	[ ]No	[ ]Unknown	
(1)	Are there problems with the product?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Is the product covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Has the product been inspected?	[ ]Yes	[ ]No	[ ]Unknown	
(4)	Have claims been filed for this product by you or by previous owners? If yes, when? _____	[ ]Yes	[ ]No	[ ]Unknown	
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	
(6)	Were any of the materials or products repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	

7. COMMON INTEREST

A.	Is there a Home Owners' Association or other governing entity? Name of Association or Other Governing Entity _____ Contact Person _____ Address _____ Phone Number _____	[ ]Yes	[ ]No	[ ]Unknown	
B.	Regular periodic assessments: $_____ per [ ]Month [ ]Year[ ]Other _____				
*C.	Are there any pending or proposed special assessments?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Are there shared "common areas" or joint maintenance agreements for facilities like walls, fences, pools, tennis courts, walkways or other areas co-owned in undivided interest with others?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is the Home Owners' Association or other governing entity a party to pending litigation or subject to an unsatisfied judgment?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
F.	Is the property in violation of recorded covenants, conditions and restrictions or in violation of other bylaws or governing rules, whether recorded or not?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA

8. GENERAL

A.	Are there problems with settling, soil, standing water or drainage on the property or in the immediate area?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Does the property contain fill?	[ ]Yes	[ ]No	[ ]Unknown	
C.	Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils or landslides?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Is the property in a designated floodplain?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is the property in a designated slide or other geologic hazard zone?	[ ]Yes	[ ]No	[ ]Unknown	
*F.	Has any portion of the property been tested or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks or contaminated soil or water?	[ ]Yes	[ ]No	[ ]Unknown	

G. Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property? [ ]Yes [ ]No [ ]Unknown

H. Has the property ever been used as an illegal drug manufacturing or distribution site? [ ]Yes [ ]No [ ]Unknown
*If yes, was a Certificate of Fitness issued? [ ]Yes [ ]No [ ]Unknown

*I. Has the property been classified as forestland-urban interface? [ ]Yes [ ]No [ ]Unknown

9. FULL DISCLOSURE BY SELLERS

*A. Are there any other material defects affecting this property or its value that a prospective buyer should know about? [ ]Yes [ ]No
*If yes, describe the defect on attached sheet and explain the frequency and extent of the problem and any insurance claims, repairs or remediation.

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy of this disclosure statement. I/we authorize my/our agents to deliver a copy of this disclosure statement to all prospective buyers of the property or their agents.

Seller(s) signature:

SELLER _____ DATE _____

SELLER _____ DATE _____

II. BUYER'S ACKNOWLEDGMENT

A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are known to me/us or can be known by me/us by utilizing diligent attention and observation.

B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or of any real estate licensee engaged by the seller or buyer. A financial institution or real estate licensee is not bound by and has no liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement required by this section or any amendment to the disclosure statement.

C. Buyer (which term includes all persons signing the "buyer's acknowledgment" portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature(s).

DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER, HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY DISCLOSURE STATEMENT.

BUYER _____ DATE _____

BUYER _____ DATE _____

Agent receiving disclosure statement on buyer's behalf to sign and date:

_____ Real Estate Licensee

_____ Real Estate Firm