AGENDA BILL
#08-07-16

For Council: July 21, 2008

Department: Planning
Dept. Head Initials: BCA

Subject: Public Hearing (AP-08-04)
City Council appeal of Planning Director Approval of Water Resources Area Permit at 3955 Cedaroak Drive

City Manager's Initials: PJ

Attachments:
Memo to Chris Jordan
NA submittal with staff response
AP-08-04 Affadavit and Notice Mailing
Post-call up citizen correspondence
City Councilor/Mayor call up emails
WAP-08-04 staff report & record

Budget Impact:
None.

Expenditures	**Amount**	**Appropriation**
Required $ -0-	**Budgeted $** -0-	**Needed $** -0-

Summary:
On May 12, 2008, the Planning Director approved the Water Resources Area Permit (WAP-08-04) requested by Annette Johnson to build a new house at her property at 3955 Cedaroak Drive.

The parcel is 0.31 acres in size. It is a long, narrow parcel stretching north of Cedaroak Drive along Trillium Creek. The applicant applied for the Water Resources Area Permit using the hardship provisions of CDC Section 32.090, which allows flexibility in setbacks and in amount of water resource area to be developed for lots entirely within the transition area of a water resource, such as this lot. The applicant applied to build a house at the south end of the lot, at the 20-foot setback to Cedaroak Drive, and within several feet of the creek to the east. Placement of the house as close as possible to the street preserves the significant tree grove in the west-central area of the lot, reduces the amount of development on site, and reduces the amount of impervious surface on site. The Planning Director approved the application with several conditions, including a condition limiting the house footprint to a 15 by 60 foot area, the 60 foot side of which is aligned with the required 7.5 foot side yard setback on the west edge of the lot. This footprint is similar in size and proportion to many recently-built "skinny houses" in the City of Portland. Restricting the house to this footprint preserves both the grove of trees to the north and the cottonwoods on the creek bank to the east. This keeps the house as far as possible from the area around the cottonwood trees that was shown to be flooded on a 1996 videotape submitted to staff by James Andrews.

Staff Recommendation:
Deny the appeal and allow Planning Director final decision to stand.

Council Action Taken:
Approved:
Denied:
Continued:

City of West Linn
PLANNING & BUILDING DEPT.
MEMORANDUM

TO: Chris Jordan, City Manager

FROM: Tom Soppe, Associate Planner

DATE: July 7, 2008

SUBJECT: AP-08-04 (City Council appeal of WAP-08-04)

In 2007, Annette Johnson applied for a Water Resources Area Permit and Class II Variance for side yard setback (NDW-07-09) to build a house at her property at 3955 Cedaroak Drive in the Robinwood Neighborhood of West Linn. This file was NDW-07-09/VAR-07-16. The 0.31 acre property is a narrow parcel stretching north-south along Trillium Creek along the north side of Cedaroak Drive. In her application Ms. Johnson utilized the hardship provisions of Community Development Code (CDC) 32.090, which allows for limited development in lots such as this one that are completely within the transition area of a water resource, and that would otherwise not be able to be developed at all due to the minimum setbacks elsewhere in CDC Chapter 32. In NDW-07-09/VAR-07-16, Ms. Johnson had proposed to build a house in the central-northern section of the parcel along the west side of the lot, breeching the sideyard setback by two feet on the west side. The West Linn Planning Director denied NDW-07-09/VAR-07-16 because the location proposed for the house would result in the removal of significant trees, would result in more grading and potential slope instability due to the leveling out of land in the west central area of the parcel, and would result in overall more impervious surface and developed area within the parcel, compared to the result of proposing a house at the south end of the parcel.

Ms. Johnson submitted a Measure 37 claim on this property in 2005, which the City denied. Ms. Johnson then challenged the City's decision in Clackamas County Circuit Court. At the suggestion of the Clackamas County Judge hearing the case, wishing to resolve it, Ms. Johnson submitted this application on April 2, 2008. This application, WAP-08-04, again utilizes the hardship provisions of CDC 32.090. In WAP-08-04, Ms. Johnson proposed to build the house at the south end of the parcel, as was explained by staff to be less impactful in NDW-07-09/VAR-07-16. She also proposed the house to respect the side yard setback to the west, so no variance was applied for with WAP-08-04.

After reviewing the application with respect to Chapter 32 criteria and with respect to the many citizen submittals, including a videotape submitted by James Andrews showing flooding in 1996 along the west side of the creek near the south end of the parcel, the

Planning Director approved WAP-08-04 with several conditions. One of the conditions brought the proposed house footprint as far as possible from the area shown to be flooded in Mr. Andrews' video, while still keeping it in the front of the parcel. This condition of approval (Condition of Approval 1 in the WAP-08-04 staff report) limited the applicant to a 15 by 60 foot (15 east-west, 60 north-south) house footprint, the west side of which would align with the required 7.5 side yard setback. This footprint allowed the applicant to build a house of similar size and proportion to many livable-sized "skinny houses" that have been built in the past decade within the City of Portland. Limiting the house to this footprint also preserves both the trees in the west-central area of the lot and the cottonwoods next to the creek at the south end of the lot. During the staff analysis of WAP-08-04, the City Arborist concluded these cottonwoods were likely important for bank stability along the creek.

On May 26, 2008, the City Council called up the Planning Director's decision on appeal.

Soppe, Tom

From: GARY [hitesman@comcast.net]
Sent: Monday, July 07, 2008 1:31 PM
To: Soppe, Tom
Cc: kevthepres@comcast.net
Subject: RE: WAP 08-04 _ Inaccurate Survey

Thanks. The applicant's submittal still does not provide the City with enough information to indicate that applicant has met 32.090. Also, Applicant has submitted three site plans, two of which are incomplete surveys. The two surveys contradict one another. How does the applicants submittal meet the intent and requirements of the CDC? What happens if the applicant goes out there and does whatever he well pleases, like the applicant's actions did in bringing forth the last lawsuit? Nothing the City has done indicates it will be able to enforce any of the conditions of approval or that public safety will be met. The RNA is pursuing this, in part, because they have lost faith with the City adequately enforcing regulations and issues that will protect the welfare and health of that area.

If the City was responsible for this project, I would complement the City on their fine work. I will also make the observation, based on what has been submitted, that the City is not doing it's job with enforcing it's own codes nor looking out for the general public welfare, health, or safety. The City has responded to a court ordered action and not showing any vision or policy direction on how this type of development improves our collective quality of life.

Tom, Thanks for your timely response. I and the RNA truly respect your time and appreciate the responses.

-----Original Message-----
From: Soppe, Tom [mailto:tsoppe@ci.west-linn.or.us]
Sent: Monday, July 07, 2008 12:45 PM
To: GARY
Subject: RE: WAP 08-04 _ Inaccurate Survey

Part of Condition 1 was worded as follows:

. applicant shall be limited to a 15 foot by 60 foot footprint for the house, measured 15 feet east from the 7.5 foot setback on the west side of the lot, and measured 60 feet north from the 20 foot street setback.
.

Both property owners seem to agree on the stake for the west side of the property; staff has measured where the 15 x 60 footprint would be, based on this west side line. And we have measured where the house would be compared to the creek in relation to that. So staff does know where the house will be in relation to the actual creek, and the condition requires the applicant to measure where the footprint will be based on the same point of origin.

Tom Soppe

Associate Planner

City of West Linn

22500 Salamo Road

West Linn, OR 97068

RECEIVED
JUL - 7 2008
Via email
PLANNING & BUILDING
CITY OF WEST LINN
INT. _____ TIME _____

(4)

(503) 742-8660

From: GARY [mailto:hitesman@comcast.net]
Sent: Monday, July 07, 2008 12:37 PM
To: Soppe, Tom
Cc: Brown, Bryan; kevthepres@comcast.net
Subject: RE: WAP 08-04 _ Inaccurate Survey

Tom,

That's a good question. It was in the pile of documents that have been handed out since the original decision was denied.

The question is not really where did the NA get it as much as which one the NA uses to inform the residents? This also doesn't speak well for the applicant's submittal. The one that was not included appears to be the more accurate one, if just barely. What this also may portend is how the City would plan on providing enforcement of whatever decision is rendered. What is the City going to base it's decision on based on the conflicts presented by the Civil Surveyor?The City has no basis or at least, a dubious foundation to enforce from. There are no consistencies within the applicant's submittal. These are reasons why the NA believes this should not go before the Council. It should be denied outright for not meeting the submittal requirements or addressing the burden of proof regarding 32.090.

Just so that we are clear, the NA does feel that City Staff did a proper job in defining what could be built and agrees with the conditions of approval, as minimally acceptable. (And that so far, is not be the majority opinion.) Whereas the RNA is unanimous in denying WAP 08-04, there are other results that the NA is going to address. Under one scenario, what the NA will likely request is applying additional Conditions of Approval that supplement and support the City's decision on WAP 08-04.

However, given the apparent lack of documentation and proof, the applicant should be requested to provide an accurate survey of the proposed development which includes accurately showing the trees, stream bed and stream, provide a Mitigation Plan per Title 13, and show all building impacts, including how the stream will handle potential erosion and flooding impacts when the two cottonwoods are taken down.

Gary

From: Soppe, Tom [mailto:tsoppe@ci.west-linn.or.us]
Sent: Monday, July 07, 2008 9:11 AM
To: GARY
Subject: RE: WAP 08-04 _ Inaccurate Survey

Gary,

Where did you get the survey on page one your attached PDF? I have several copies of the one on page two as part of the application, but cannot find one of the survey on page one.

Thanks,

Tom Soppe

Associate Planner

City of West Linn

22500 Salamo Road

West Linn, OR 97068

(503) 742-8660

From: GARY [mailto:hitesman@comcast.net]
Sent: Thursday, July 03, 2008 2:32 PM
To: Soppe, Tom; Brown, Bryan
Cc: kevthepres@comcast.net; Jordan, Chris
Subject: WAP 08-04 _ Inaccurate Survey

Mr. Bryan Brown and Mr. Tom Soppe,

I have attached a copy of the applicant's survey and provide a list below of inaccuracies and conflicts that strongly suggest the applicant has not provided sufficient information about his project to render a decision.
Based on the attached drawings and list of observations, I do not believe this application can go before the council without it being denied for lack of substance. It appears that neither the client or City has performed it's due diligence. In the least, it appears the city has been dealing with outdated or incomplete information to make a properly informed decision.

I have attached two surveys of 3955 Cedaroak Drive that have the same date of 3/28/2008, both titled Tax Lot 202, and neither have revision dates, showing latest existing conditions. There are both graphic anomolies and information missing that pertains to compliance with 32.090.

Graphic Anomolies

1) The creek bed (bank and stream) is different in both. Which one is it?
Both are incomplete and do not show actual conditions.

2) The visual representation provided is not the same, nor proper on a legal (construction) document.

3) Existing fence shows on one , but not on other. (Did applicant instruct contractor to enter onto property outside of their control? Was permission of the next door neighbor sought? How was the fence line
determined?)

4) How does the proposed footprint relate to the survey? (How can the City approve something that is not shown to be worked out by the
applicant?)

Information Missing

1) Edge of strean bank and edge of stream bed. This has a direct correlation to determining the danger to life and property due to erosion and flooding.
The application is incomplete.

2) Downstream is impacted by danger to erosion and flooding and needs to be shown. There is the likely- hood of "particularized damage" that could occur to adjacent and downstream property that the application does not address.
In this instance, both applicant and City could be liable for any erosion downstream that causes particularized damage.

3) The cottonwoods, with an extensive root system and stabilizing characteristics, need to appear on the survey as well. The survey appears to be lacking the necessary information to base sound decisions off of.

4) By approving the submitted documentation, the City has effectively jeopardized it's ability to enforce the actions of this application. I don't see how the City will enforce the conditions of approval or the impending erosion that is bound to happen. (I would not want to leave the city open to claims of incompetence, as someone besides myself, might raise.)

I could go further, but these points hopefully describe the incompleteness and inaccuracies that appear to exist in the application.

Given the option of tearing down the cottonwoods, a fact IF the house is allowed to be built, will require Mitigation plans for the stream (Part of Title 13), which has also not been submitted.

The consensus is the City has done a good job in interpreting 32.090 and keeping the City from having to face a takings. However, the applicant has provided what appears to be inaccurate information and does not provide a "burden of proof". Lax inforcement of the code now does not serve yourselves, the client, or the NA, in my opinion.

I feel the NA should see a mitigation plan, complete survey, a civil drawing showing stream control and remediation implementations that meet 32.090, before July 9, so that we can prepare a sufficient response for the council and mayor to review.

Why will we(by we, I mean collectively, everybody) continue and risk wasting our Council's and Mayor's time?

Respectfully, G.

Soppe, Tom

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Why will we(by we, I mean collectively, everybody) continue and risk wasting our Council's and Mayor's time?

Respectfully, G.

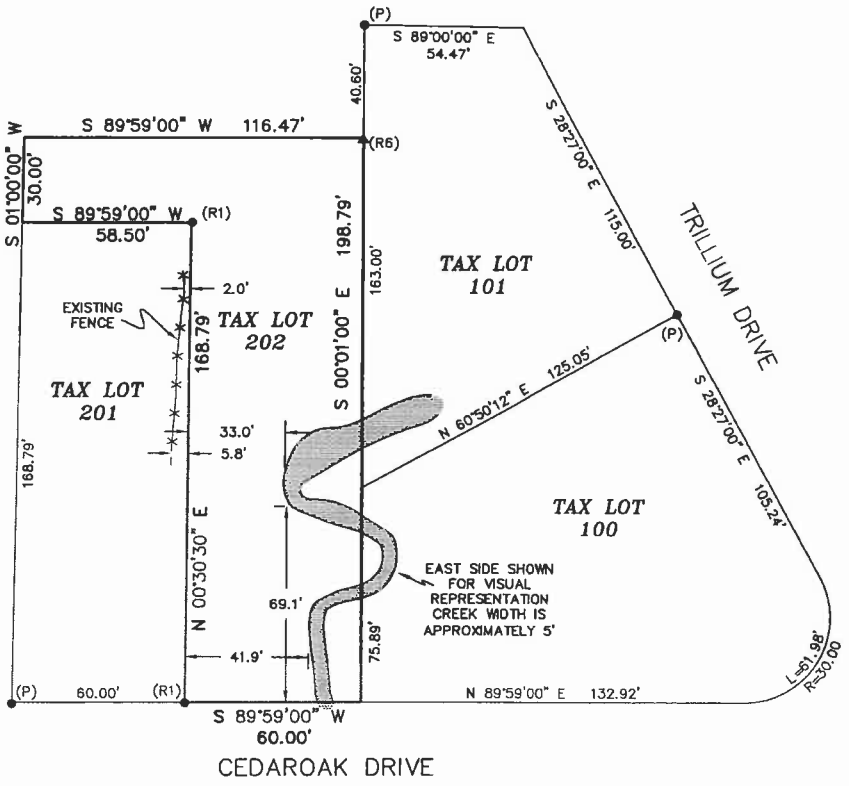
10

LEGEND

- ● FOUND 5/8" IRON ROD, NO CAP
- ▲ FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED " ASSOC. LAND SURVEYORS INC."
- EXISTING CREEK

REFERENCES

(R1)	SN 12210
(R2)	SN 12415
(R3)	SN 15354
(R4)	SN 23125
(R5)	SN 29215
(R6)	SN 2003-107
(P)	PLAT OF "CEDAROAK NO. 3"



SCALE 1" = 40'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 2005
SHAUN P. FIDLER
50333

RENEWAL DATE DECEMBER 31, 2009

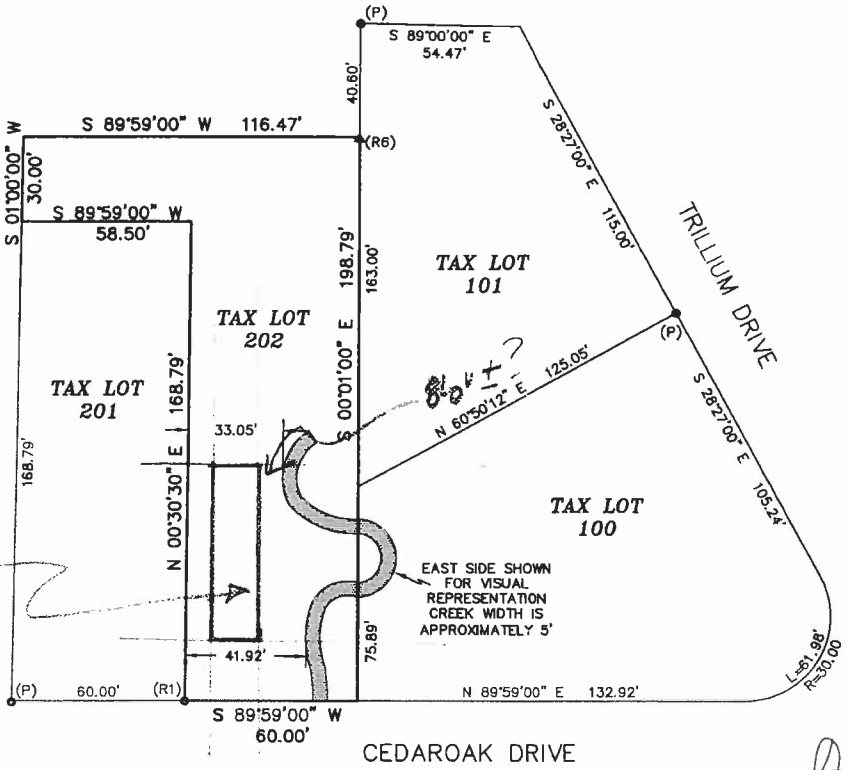
THIS SURVEY WAS PREPARED USING HEWLETT PACKARD PRODUCT NO. 4844A ON MILANO MYLAR JPC4M2

NOTES

1. THE PURPOSE OF THIS MAP WAS TO SHOW THE WEST BOTTOM OF BANK OF CREEK THAT LIES ON 3955 CEDAROAK DRIVE, WEST LINN. THE EAST SIDE IS SHOWN FOR VISUAL ORIENTATION ONLY.
2. THE BASIS OF BEARINGS IS PER SN 2003-107, CLACKAMAS COUNTY RECORDS.
3. THIS MAP WAS PREPARED FOR THE EXCLUSIVE USE OF RON JOHNSON FOR PLANNING AND DESIGN.
4. THIS MAP WAS PREPARED BY PLAT RECORDS, CALCULATED DATA, AND FIELD MEASUREMENTS.
5. THIS IS NOT A BOUNDARY SURVEY AND NO BOUNDARY SURVEY WILL BE FILED.

EXHIBIT MAP	TAX LOT 202
2S, 1E, N/W 1/4 OF SEC. 24, W.M.	CONSTRUCTION MAPPING TEAM
CITY OF WEST LINN	
CLACKAMAS COUNTY, OREGON	
3/28/2008	
DRAWN: KAS CHECKED: SPF	
SCALE 1"=40' ACCOUNT # 334	
Z:\334-002\DWG\JOHNSON	

5125 SW MACADAM AVE
SUITE 140 PORTLAND, OR 97239
PHONE 503-274-9835 FAX 503-238-2447



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SCALE 1" = 40'

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PROFESSIONAL
LAND SURVEYOR

OREGON
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DRAWN: KAS CHECKED: SPF	
SCALE 1"=40' ACCOUNT # 334	
Z:\334-002\DWG\JOHNSON	

CONSTRUCTION MAPPING TEAM
5125 SW MACADAM AVE
SUITE 140 PORTLAND, OR 97239
PHONE 503-274-9835 FAX 503-238-2447

The following is a submittal from the Robinwood Neighborhood Association and Gary Hitesman; staff responses to the questions in the submittal are included in this copy in bold.

Thursday, June 26, 2008

Questions Regarding WAP 08-04

Robinwood Neighborhood Association – RNA/gh

Mr. Bryan Brown & Mr. Tom Soppe,

The Robinwood Neighborhood Association (RNA) has read the Planning directors response to WAP 08-04. The RNA has questions and requests for the City's comment.[1] The intent is to educate ourselves without placing any added burden upon yourself and any other city staff resources. If any of these questions cannot be answered, please let us know that they cannot and we will move along. A response would truly be appreciated prior to our next meeting on July 1, 7 PM Tuesday.

Before the questions, I have observed that some individuals within the neighborhood may have entered onto the applicant's property. The property is not posted and some of the residents have told me that they have the applicants' consent to enter onto the property. Is it possible that this might be an issue? Would it be proper to get in writing permission from the landowner regarding access? Is it necessary? (As a precaution, I have advised the NA that I will not be entering anybody's property unless I have permission in writing or meet the landowner in person while at the property. Nor should they. As an example, I have always asked Mr. Olson for permission to enter his front yard.)

32.090 are set up so that ***unreasonable hardship*** is avoided. The NA appears to understand that concept. The NA appears to appreciate the City's response to mitigating the response and although unhappy with the decision, have had 32.090 explained to them in layman's terms. However, subparagraph A states the hardship is "***subject to a finding that the proposed development does not increase danger to life and property due to flooding and erosion.***"

The following question was posed by the NA;

There are only statements regarding how unreasonable hardship is addressed. Where are the findings that support this development and refute potential dangers to life and property?

To clarify;

1) The writing of 32.090 is questionable. Some feel that it won't stand muster in court. What about other dangers, like sight lines, environment, et al; not stated under 32.090? What defines "unreasonable"?

From Metro's Urban Growth Management Functional Plan:

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[1] These questions have been forwarded to the RNA president, who was unable to be present at the last meeting. Questions were developed and shared at the last meeting. The representatives requested we send these questions to the planning director to see if they might respond. In order to save time, I have not vetted these questions with the RNA president, who I assume may retain the right to edit or add questions, assuming that this does not adversely affect the City's work load, or his.

For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.

The title 3 model ordinance that the city based this section upon contains the same standards that the city's ordinance contains. In addition, our ordinance was sent to Metro after adoption and complies with Metro's standards.

2) The US and Oregon Constitutions are mentioned as the rationale for mandating that one house be built. That statement is too vague for many residents. Is it possible the Director can be more specific in his response?

The relevant U.S. Supreme Court case in this situation is Lucas v. South Carolina Coastal Council (1992). In this case the Court stated that a "total taking" of a property – denying all economic use to the owner by a governmental regulatory action, was automatically compensable to the property owner regardless of the risks or problems with allowing development.

In contrast, partial regulatory takings have been ruled as not compensable by the Supreme Court in a number of decisions, most notably Penn Central Transportation Co. v. New York City (1978) and Agins v. Tiburon (1980). Thus, it is staff's contention that the Planning Director decision, which limited the size and scope of the applicant's proposed residential use in furtherance of a legitimate governmental purpose, (expressed in CDC 32,090) but did not extinguish it, is not a compensable taking of a property.

3) What is the US Supreme Court Ruling on "lots of record" that triggers 32.090?

There is no known Supreme Court ruling on this subject.

4) The rationale for defending the applicant and 32.090 is too vague. Does the City have any written documentation from Metro stating that referenced materials meet WL standards? Why is West Linn referencing other jurisdiction standards and where does the city gain that right?

West Linn is in Metro's jurisdiction. After the February 2007 adoption of revised Chapter 32 the language was sent to Metro with a statement that the City now met Title 3 standards. No response was received by Metro, but we are no longer on Metro's "non-compliance" list. Prior to the hearings on these code amendments, staff met extensively with Metro's planners and received statements that the code changes complied with Title 3.

5) It does not appear that the applicant has provided enough material to meet "the burden of proof" for 32.090 (A). Will the NA be receiving supplemental information from the applicant prior to our July 9 submittal of our presentation to the City?

This is a substantive question for the City Council to decide at the hearing. The Planning Director believes that the applicant's information, and city staff analysis, justified the Director's decision to limit the size and scope of the proposed home.

6) Will 'dripline' plus 10 feet still be required as stated in the CDC? If not, how does it's negation support the communities concern about dangers to life and property?

The "dripline plus 10 feet" standard is only applicable to significant trees, per Chapter 55 of the Community Development Code. The four cottonwoods have not been found significant by the City Arborist – their preservation is related not to their value as trees, but their stabilization of the slope. The Planning Director believes that, with careful construction practices, the trees can be preserved during and after house construction. The grove of trees to the rear is significant, and the house may be within the "+10" area of the southern most one (but not the dripline). This is typical as it is often impossible to develop a lot while staying completely out of the +10 area for each tree. The City Arborist has agreed to the location and dimensions of the building footprint proscribed by staff in the approval of WAP-08-04.

7) A layout now appears on the applicant's site. Can the NA use this to demonstrate how there is an actual increase in danger to life and property?

The Neighborhood Association can use any relevant information to make its case.

8) What can the NA do if the supplemental findings do not fit the reality? Can the City require stakes be placed onto the site showing the proposed solution with elevations? The finished floor appears to land some distance below the flood plain.

There is no recognized FEMA (federal flood management) flood plain for Trillium Creek. The Neighborhood Association can use any relevant evidence it can obtain regarding potential flooding impacts.

9) The driveway occurs in a dip in the road that obscures sight lines. A driveway there, or any kind *without* a turnaround on the property, is a very real danger to life and property. Will the Planning Department please verify and comment. This was not addressed by either the applicant or City.

Staff measured the site per the required sight triangles in Chapter 42 Clear Vision Area. To meet the requirement for clear vision between the expected driveway location and the street to the east, a few branches may have to be pruned back, but nothing that would destroy the trees. Two plants on the Andrews property obscure part of the clear vision triangle between the driveway and the street to the west. At this point all it would take would be the relocating of these plants several feet in order for the site property's proposed driveway to be in compliance with Chapter 42. A turnaround is not addressed as a solution in Chapter 42 for properties that are not in compliance, and such a turnaround would only destroy more habitat and create more paved surface on the site.

Engineering will investigate the sight distance issue as soon as possible.

10) Would this be another example of the applicant not doing his homework and providing "burden of proof"?

Rhetorical question.

11) Are these parcels legal lots? Can the applicant actually build on this lot? Please show the paper trail. It was mentioned that not all documents are on file. Mr. Olson

maintains there are significant differences between parcels, tax lots, and 'lots of record'.

An analysis by the City's staff attorney is available on this issue.

12) What is the existing root structure of the cottonwood trees?

Cottonwoods have a very extensive root system.

13) How do the cottonwoods contribute in stabilizing the local soil conditions and stream bank?

Their extensive root system holds the soil of the bank in place.

14) How will foundation construction maintain cottonwood tree stability and continued life?

Any cottonwood roots in the area where the foundation will go will have to be excavated. The City Arborist says that the possibility should be left open to not keep the cottonwoods but to replace them with better species that will also stabilize the bank.

15) Where is a soils report that will validate that construction will not pose dangers to life and property?

A soils report is not necessarily required to make this proof if enough evidence is in the record otherwise to justify the Planning Director's decision.

16) What happens if the tree is blown down over adjacent homes in a wind storm, after construction is complete? The tree appears to be 80 to 100 feet tall.

In such a situation there would be a fact-specific legal analysis, as there would be in any such situation involving the blow-down of a mature tree.

17) How will conditions of approval be enforced?

As all conditions of approval are enforced in the city – by city staff.

18) How does the previous settlement, a lawsuit, affect applicant's plans?

There is no "previous settlement." There is an ongoing case at Clackamas County Circuit Court between the property owner and the city which is not resolved at this point.

19) Isn't the City just throwing money away after investing over $40,000 in a restored environment? Doesn't the amount of money already spent on this site, over the last several years, render any "unreasonable" "hardship" mute?

The Planning Director's decision would not negate the value of the restoration project, because it would not further alter the course of the stream and would not impact vegetation immediately adjacent to the stream on the applicant's property nor at all on any of the adjoining properties included in the restoration project..

20) Is the NA compelled to present our presentation on July 9? Will the NA be given equal opportunity to view the applicant's presentation? How is fairness and equitability going to be maintained?

The hearing is scheduled for July 21, not July 9. The public hearing will be conducted in a similar manner to all West Linn land use hearings. In such hearings, the applicant always gets "the last word," because it is the applicant's project, but if the neighborhood association wishes additional time to make a presentation, it should provide such a request in writing to the Mayor and Council prior to the hearing (sent through staff), specifying the amount of time requested.

21) These questions represent our largest concerns to date. Would this questionnaire suffice for our July 9 submittal?

That is for the Neighborhood Association to decide. Staff appreciates the Neighborhood Association raising these issues prior to the hearing, to allow staff time to provide answers at the hearing. This questionnaire counts as a public comment by the NA and secures them standing in the appeal.

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL
File No. AP-08-04 Applicant's Name Cowl.
Development Name Appeal WAP - 3955 Cedaroak Dr
Scheduled Meeting/Decision Date 7/21/08

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check one below)

Type A X

A. The applicant (date) 6-24-08 (signed) CG
B. Affected property owners (date) 6-24-08 (signed) CG
C. School District/Board (date) _____ (signed) _____
D. Other affected gov't. agencies (date) 6-24-08 (signed) CG
E. Affected neighborhood assns. (date) 6-24-08 (signed) CG
F. All parties to an appeal or review (date) Returned 7/4 (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:
Tidings (published date) 7/10/08 (signed) 12
City's website (posted date) 7/1/08 (signed) 12

Type B _____

A. The applicant (date) _____ (signed) _____
B. Affected property owners (date) _____ (signed) _____
C. School District/Board (date) _____ (signed) _____
D. Other affected gov't. agencies (date) _____ (signed) _____
E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

Type C _____

A. The applicant (date) _____ (signed) _____
B. Affected property owners (date) _____ (signed) _____
C. Affected neighborhood associations (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.
(date) 6-25-08 (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.
(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.
(date) _____ (signed) _____

CITY OF WEST LINN
CITY COUNCIL
PUBLIC HEARING NOTICE

FILE NO. AP-08-04

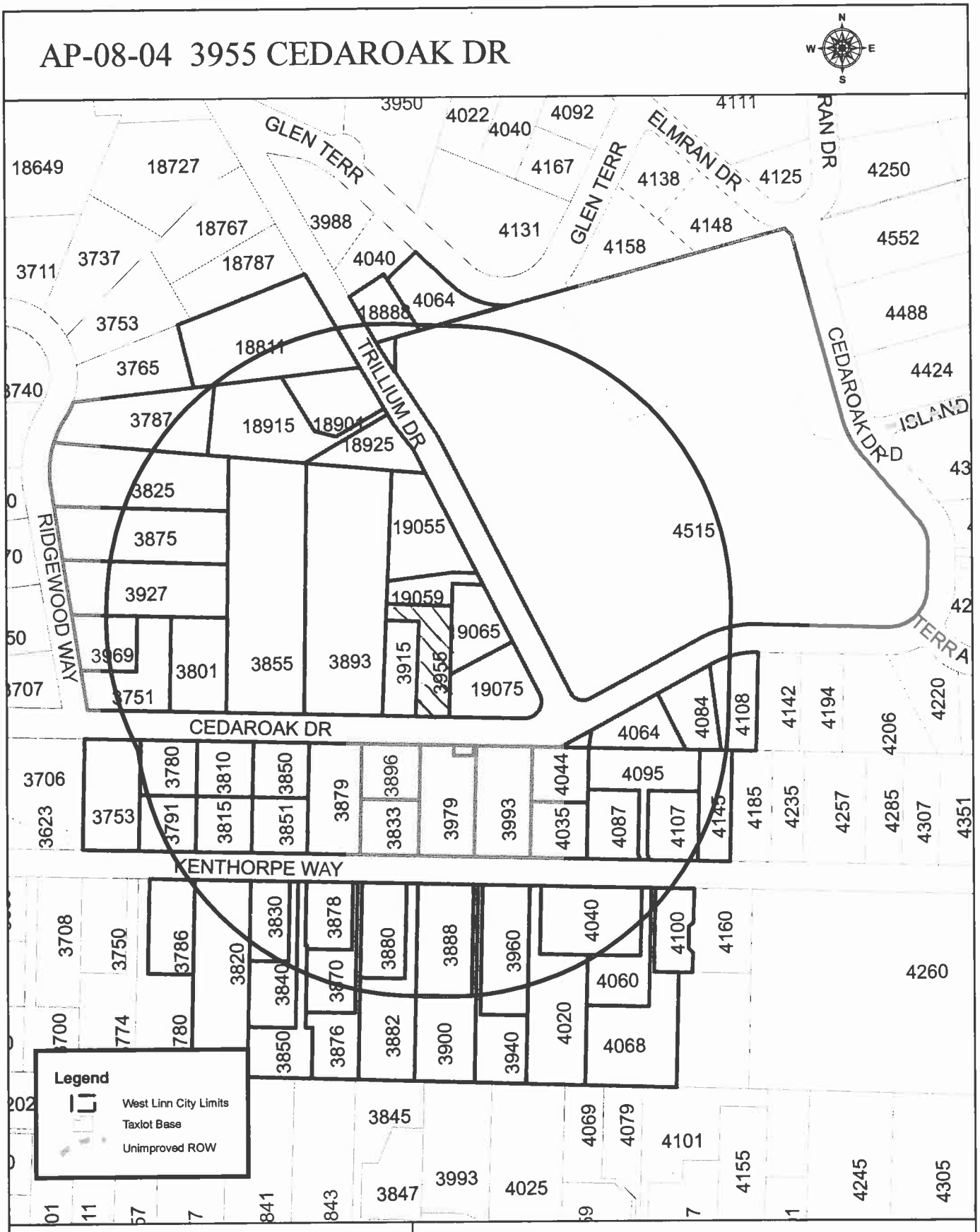
The West Linn City Council is scheduled to hold a public hearing, on **Monday July 21, 2008, starting at 6:00 p.m.** in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR,) to consider the City Council's appeal of the Planning Director's approval of WAP-08-04, Annette Johnson's application for a Water Resources Area permit to build one house at 3955 Cedaroak Drive. A Water Resources Area permit was required as all of the lot is within the drainageway transition area for Gans and/or Trillium creeks, but a new house is allowed here as it is a lot of record with no development currently. The City Council decision will be based on the approval criteria in Chapter 32 of the Community Development Code. A summary of the specific approval criteria is available for review at City Hall, in the CDC at the City Library, and on our website www.ci.west-linn.or.us. Approval or disapproval of the request by the City Council will be based upon these criteria and these criteria only. At the hearing, it is important that comments relate specifically to the applicable criteria listed.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the proposed site located at tax lot 202 of Clackamas County Assessor's Map 2-1E-24BB and/or as required by Chapter 99 of the West Linn Community Development Code, or because you had standing for WAP-08-04.

The complete application in the above noted file is available for inspection at no cost, or copies can be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection. For further information, please contact Tom Soppe, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068. For fastest response please e-mail tsoppe@ci.west-linn.or.us; alternately you may phone at 503-742-8660.

The hearing will be conducted in accordance with the rules of Section 99.170 of the Community Development Code, adopted December 14, 1987, Ordinance 1129. Anyone wishing to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the City Council will receive a staff report presentation from the City Planner; and invite both oral and written testimony. The City Council may continue the public hearing to another meeting to obtain additional information, or close the public hearing and take action on the application. If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing. If there is no continuance granted at the hearing, any participant in the hearing may request that the record remain open for at least seven days after the hearing. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

AP-08-04 3955 CEDAROAK DR



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Taxlot Base Source: Clackamas County GIS

NOT TO SCALE

SNAPNOTIFY.MXD / APP 3-12-08

User Name: T Zak

Map Creation Date: Jun 24, 2008

ANDREWS JAMES S
3915 CEDAROAK DR
WEST LINN OR 97068

BARNES ANNETTE D
3840 KENTHORPE WAY
WEST LINN OR 97068

BLACKROCK INVESTMENTS LLC
931 SW KING AVE #2
PORTLAND OR 97205

CARLSON ERIC R & MARYANNE
3875 RIDGEWOOD WAY
WEST LINN OR 97068

CIMINSKI KEITH A & GINNY T
3753 KENTHORPE WAY
WEST LINN OR 97068

CURTISS ALAN C & JACQUELYN M
18812 UPPER MIDHILL DR
WEST LINN OR 97068

DAMRON DEBBIE
3878 KENTHORPE WAY
WEST LINN OR 97068

DASSO JAMES F TRUSTEE
3893 CEDAROAK DR
WEST LINN OR 97068

DEMARIA JOHN E & DIANA
4095 KENTHORPE WAY
WEST LINN OR 97068

DULY DEBORAH M
18888 TRILLIUM DR
WEST LINN OR 97068

DURHAM KATHERINE A
3833 KENTHORPE WAY
WEST LINN OR 97068

ESNARD STEPHEN M & DARLA R
3786 S KENTHORPE WAY
WEST LINN OR 97068

GADDA KATHLEEN
18901 TRILLIUM DR
WEST LINN OR 97068

GOLDENBERG HAYDEE
3850 KENTHORPE WAY
WEST LINN OR 97068

GOLDSCHMIDT JOSHUA A &
ROBIN E
3960 KENTHORPE WAY
WEST LINN OR 97068

GRIFFITH THOMAS & LORIE
4068 KENTHORPE WAY
WEST LINN OR 97068

HACKETT JAMES E & KATHLEEN M
3900 KENTHORPE WAY
WEST LINN OR 97068

HAINS NADINE M
11295 SE PINE CT
PORTLAND OR 97216

HANSEN PAUL F & ELLEN E
3810 CEDAROAK DR
WEST LINN OR 97068

HENRY DONALD J & VIRGINIA J
3870 KENTHORPE WAY
WEST LINN OR 97068

HOXHA ARTAN
4064 GLEN TER
WEST LINN OR 97068

HOYT CAROL E
3791 KENTHORPE WAY
WEST LINN OR 97068

JOHNSON RONALD H TRUSTEE
10667 SE 144TH LOOP
HAPPY VALLEY OR 97086

KEARNEY PATRICK M & HEIDI S
19055 TRILLIUM DR
WEST LINN OR 97068

KILSTROM LONN K & ANN M
3855 CEDAROAK DR
WEST LINN OR 97068

KING EVALOIS A
4145 KENTHORPE WAY
WEST LINN OR 97068

LARSON ELEANORA H
3969 RIDGEWOOD WAY
WEST LINN OR 97068

LEATHERBERRY A V CO-TRUSTEE
3851 KENTHORPE WAY
WEST LINN OR 97068

LEATHERBERRY JOSEPH B &
CYNTHIA
3815 KENTHORPE WAY
WEST LINN OR 97068

MACNAUGHTON SCOTT C & TERE R
4107 KENTHORPE WAY
WEST LINN OR 97068

MAGEE GERALD J & JUDITH C
18925 TRILLIUM DR
WEST LINN OR 97068

MCDONALD CARMEN M &
JENNIFER A
3882 KENTHORPE WAY
WEST LINN OR 97068

MEYER ROBERT M & CAROLE ANN
3830 KENTHORPE WAY
WEST LINN OR 97068

MEYERS GRACE J
4100 KENTHORPE WAY
WEST LINN OR 97068

MILLER JOHN M & DONNA D
3825 RIDGEWOOD WAY
WEST LINN OR 97068

MYHRE TERESA C
3780 CEDAROAK DR
WEST LINN OR 97068

NEMER JERRY
3876 KENTHORPE WAY
WEST LINN OR 97068

NORBY JOHN C & KARLENE A
4040 KENTHORPE WAY
WEST LINN OR 97068

OLSEN LAWRENCE O
3993 KENTHORPE WAY
WEST LINN OR 97068

PENNINGTON TERRY LEE SR &
KARYN
19065 TRILLIUM DR
WEST LINN OR 97068

PERRY MAUREEN & JOSEPH A
4064 CEDAROAK DR
WEST LINN OR 97068

PIERCE DAVID O & METTE K IPSEN
PO BOX 615
WEST LINN OR 97068

POLLMANN DENNIS A & SHARON
3879 KENTHORPE WAY
WEST LINN OR 97068

PORTER MICHELLE P
3927 RIDGEWOOD WAY
WEST LINN OR 97068

PRANZ RICHARD L & LORI M
3751 CEDAROAK DR
WEST LINN OR 97068

PREDEEK ERIC D
3880 KENTHORPE WAY
WEST LINN OR 97068

PRICE WYLIADA M & DARYL
3787 RIDGEWOOD WAY
WEST LINN OR 97068

PYLE JENNI
3940 KENTHORPE WAY
WEST LINN OR 97068

SCHWARK RYERSON E
18915 TRILLIUM DR
WEST LINN OR 97068

SEVERSON DWIGHT
3850 CEDAROAK DR
WEST LINN OR 97068

STREET RICHARD I & LOIS J
3896 CEDAROAK DR
WEST LINN OR 97068

TREADGOLD SHARON M
4044 CEDAROAK DR
WEST LINN OR 97068

VANCE DELBERT CLARK & JEANNE
4087 KENTHORPE WAY
WEST LINN OR 97068

WALKER SALLY A
1521 N JANTZEN AVE
PORTLAND OR 97217

WELLS GEORGE A & RICHETTA M
3888 KENTHORPE WAY
WEST LINN OR 97068

WEST LINN-WILS SCH DIST #3J
PO BOX 35
WEST LINN OR 97068

WILLIAMS KRISTI A & BRIAN D
19075 TRILLIUM DR
WEST LINN OR 97068

WILLIAMS SHARON C & BILL A
3820 KENTHORPE WAY
WEST LINN OR 97068

WOODARD DONNA
3979 KENTHORPE WAY
WEST LINN OR 97068

DIVISION OF STATE LANDS
775 SUMMER ST. NE
SALEM OR 97301

US CORP OF ENGINEERS BILL
DAVIS
P.O. BOX 2946
PORTLAND OR 97208

ROBINWOOD NA + ALL

ALL PEOPLE ON FINAL DECISION
LIST FOR WAP-08-04

WAP 08-04

ANNETTE JOHNSON
10667 SE 144TH LOOP
HAPPY VALLEY, OR 97086

LANCE JOHNSON
5920 SW 18TH
PORTLAND, OR 97239

DONALD BOWERMAN
P.O. BOX 100
OREGON CITY, OR 97045

KEVIN BRYCK
18840 NIXON AVENUE
WEST LINN, OR 97068

JAMES & LORETTA DASSO
3893 CEDAROAK DRIVE
WEST LINN, OR 9768

JAMES ANDREWS
3915 CEDAROAK DRIVE
WEST LINN, OR 97068

OLE OLSEN
3993 KENTHORPE WAY
WEST LINN, OR 97068

KARYN & TERRY PENNINGTON
19065 TRILLIUM DRIVE
WEST LINN, OR 97068

WCP 08-04

PAT KEARNEY
19055 TRILLIUM DRIVE
WEST LINN, OR 97068

LORIE GRIEFITH
4068 KENTHORPE WAY
WEST LINN, OR 97068

BOB & DAWN ADAMS
2310 CENTURY LANE
WEST LINN, OR 97068

MEG FERNEKEES
OR LAND CONSERVATION & DEV
635 CAPITOL ST NE STE 150
SALEM, OR 97301-2540

DORIS DAVIDS
18767 TRILLIUM DRIVE
WEST LINN, OR 97068

AMANDA KATZENMEYER
1290 10TH STREET
WEST LINN, OR 97068

JENNY GIBBONS
18915 TRILLIUM DRIVE
WEST LINN, OR 97068

JOE & MAUREEN PERRY
4064 CEDAROAK
WEST LINN, OR 97068

DARLENE DEASEE
2145 WEBB ST.
WEST LINN, OR 97068

LISA & KEN CLIFTON
3765 RIDGEWOOD WAY
WEST LINN, OR 97068

MARY GRACE MCDERMOTT
18976 WALLING CIR.
WEST LINN, OR 97068

JOAN HOFFMAN
2001 PARKSIDE CT.
WEST LINN, OR 97068

DAYLAS. ROLLINS
18891 WALLING CIRCLE
WEST LINN, OR 97068

MARK, RYAN & TRACIE KRELLWITZ
18909 WALLING CIRCLE
WEST LINN, OR 97068

STEVEN MIESEN
6275 HOLMES ST.
WEST LINN, OR 97068

GOEFF BINGHAM
2925 MARK LANE
WEST LINN, OR 97068

DOUG SAMARRON
1314 FARRVISTA DRIVE
WEST LINN, OR 97068

SHARON TREADGOLD
4044 CEDAROAK DRIVE
WEST LINN, OR 97068

ANN & ANTHONY SCHROEDER
19042 WALLING CIRCLE
WEST LINN, OR 97068

JAMES, SAM & SUSAN MARSTON
19023 WALLING CIRCLE
WEST LINN, OR 97068

TED EHERNBERGG & GERDA EDWARDS
5749 TERRACE DRIVE
WEST LINN, OR 97068

THOMAS PALMROSE
18951 WALLING CIRCLE
WEST LINN, OR 97068

KARIE OAKES
1125 MARYLHURST DRIVE
WEST LINN, OR 97068

ANGELA R. DREHER
5767 TERRACE DRIVE
WEST LINN, OR 97068

GARY HITESMAN
2188 CLUBHOUSE DRIVE
WEST LINN, OR 97068

MICHELLE M & DONNA WOODARD
3979 KENTHORPE WAY
WEST LINN, OR 97068

BETTY OSBURN
5910 WEST A STREET
WEST LINN, OR 97068

MADALINE F. ALLEN
18567 TRILLIUM DRIVE
WEST LINN, OR 97068

DEBORAH ALYSOUN
4084 CEDAROAK DRIVE
WEST LINN, OR 97068

June 10, 2008

Bryan Brown
City of West Linn Planning Department
22500 Salamo Road
West Linn, Oregon 97068

Dear Bryan:

I know that you received many pieces of correspondence from residents of the Robinwood Neighborhood ("RN"), from the RN Association ("RNA"), and from officers of the RNA regarding concerns with WAP-08-04 (water resource permit application for 3955 Cedar Oak Drive – AKA 'the Johnson property'), but I must submit one more to you that has not yet been presented to you.

At the 5/13/08 Robinwood Neighborhood Association meeting, of the 22 eligible voters, 20 voted in favor (2 abstentions) of the Robinwood Neighborhood appealing the planning department's ratification of WAP-08-04.

We appreciate your time and consideration and are happy to converse with you further regarding our decision to appeal this decision.

Regards,

Scott Sandie
Robinwood Neighborhood Association Secretary

Cc: Kevin Bryck, Robinwood Neighborhood Association President
Tina Decker, Robinwood Neighborhood Association Vice-President

25

Brown, Bryan

From: Scott Sandie [popthemit@yahoo.com]
Sent: Tuesday, June 10, 2008 6:33 PM
To: Brown, Bryan
Cc: Kevin Bryck; Tina Decker
Subject: RNA Request to Appeal Planning Department Ratificaiton of WAP-08-04

Bryan:

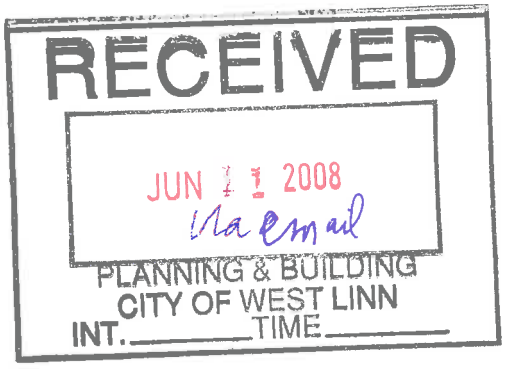
As I've noted in the attached letter, this water resource permit application certainly has garnered much attention and an inordinate amount of correspondence has been submitted to you (and others at City Hall) regarding the assessment and ratificaiton of this application.

Please note that I am not 'piling on' and attempting to burden the system with another claim of city staff incompetency. Rather, this email was approved by the attendees to the 5/13 RNA monthly meeting and has not yet been presented to you.

Please speak with myself, Kevin, or Tina Decker (both CCd on this email) with any questions you have about the letter.

Regards

Scott Sandie
RNA Secretary



26

Brown, Bryan

From: Eberle, Michele
Sent: Monday, May 26, 2008 7:47 PM
To: Brown, Bryan
Cc: King, Norm
Subject: RE: Johnson property appeal

HI Bryan,

I would like to call this up for review with the Mayor. Thank you.

Michele

-----Original Message-----
From: Jordan, Chris
Sent: Wed 5/21/2008 3:31 PM
To: City Council
Subject: Johnson property appeal

Council -

As you are aware, the Johnson property on Cedaroak was approved for the development of one house under the City's hardship rules in Chapter 32 - water resource areas. (This is the property with the stream corridor which was also the subject of a Measure 37 claim.) The approval was granted by the Planning Director. It is likely that this project will be appealed.

We believe the Robinwood Neighborhood Association would like to appeal the approval, but the NA does not have standing. Here is the language from the CDC regarding an NA having standing to appeal:

99.140

Neighborhood association standing can only be established by

a person identifying, either in testimony or in writing, that they represent a

specific neighborhood association.

Staff has reviewed the file and there is no mention from anyone who provided written testimony that they are representing the NA.

I fully expect that members of the NA will be contacting some of you asking that you either grant them standing - something that may cause a very real legal problem for the City - or that you "call up" this item.

The appeal deadline is May 27.

Brown, Bryan

From: King, Norm
Sent: Thursday, May 22, 2008 10:19 AM
To: Brown, Bryan
Cc: popthemit@yahoo.com
Subject: Review

Under CDC 99.160(C)(2) I order a review of a decision of the Planning Director on WAP-08-04.

Norm King,
Mayor

Soppe, Tom

From: Soppe, Tom
Sent: Thursday, May 22, 2008 4:35 PM
To: 'Scott Sandie'; Wyatt, Kirsten
Cc: Kevin Bryck; Tina Decker; Curt Sommer; Terry Pennington; Brown, Bryan
Subject: RE: Appeal of File# WAP-08-04

Mr. Sandie,

In regards to the issues brought up and questions asked in your email below:

Robinwood NA was notified via a notice sent 4/9/08, which was over 20 days before the date set to be the earliest possible decision date, which was May 1. Therefore notice was legally given. The laws regarding the notice only require it to be sent 20 days or more before the decision date, not that it be sent in time for any particular scheduled neighborhood meeting. We notice things when we get a chance to and do it legally; there are many notices that do not occur in a timely fashion in regards to when scheduled neighborhood meetings might be occurring, but neighborhood associations are not forbidden from holding special meetings to vote on applications and to submit testimony regarding them within the 20 day period. This was not done, and no one claimed to be representing the NA when submitting comments before May 1, which also could have given the NA standing regardless of whether a vote or meeting occurred. We have the affidavit and mailing list showing that the notice was sent to Robinwood NA on 4/9/08, which is all we need legally to make this decision and its date legitimate regardless of when it got to Kevin's house. But I know that many members of Robinwood NA knew about this notice long before the decision date.

The judge required that the City make something happen regarding this property by May. For this reason, and because this is the same type of application for which there was already a pre-app for this property on October 4, 2007, there was not another pre-app. (The NA was noticed of the October pre-app.) It is legal and not unprecedented practice for the City to not require an additional pre-app for a similar application for the same property, when there has already been a recent pre-application conference, despite any application that has gone through the process for the property in the meantime. CDC 99.030 is the section regulating pre-apps and nowhere suggests that this cannot or should not be done.

CDC 99.060(A)(1)(s) gives the Planning Director approval authority for a Water Resource Area permit.

Regarding how a NA needs to have established standing, 99.140(B) says, "The person or recognized neighborhood association appeared before an approval authority other than the Director, either orally or in writing, and provided their name and address; signed the sign-in sheet provided at the hearing; or submitted comments to the Director, either orally or in writing,
and provided their name and address to the Director regarding a decision. Neighborhood association standing can only be established by a person identifying, either in testimony or in writing, that they represent a specific neighborhood association."

The final sentence of 99.140(B) is key to what I discuss in the second paragraph above. Also, 99.240(E) states,

> Formally recognized neighborhood associations may appeal land use decisions to the appropriate bodies without cost if the Planning Director finds:
> 1. ...
> 2. A member of the association must have established standing on behalf of the association. The member must have explicitly identified themselves, in writing or in testimony, as representing the association.

Let me know if there are any questions.

Thanks.

Tom Soppe
Associate Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068
(503) 742-8660

From: Scott Sandie [mailto:popthemit@yahoo.com]
Sent: Thursday, May 22, 2008 11:47 AM -rec'd May 22 Via email
To: Wyatt, Kirsten
Cc: Kevin Bryck; Tina Decker; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom; King, Norm
Subject: Appeal of File# WAP-08-04

Kirsten:

I left you a voice-mail earlier this morning on this same topic.

Recently, I submitted to you the minutes from the April 2008 meeting of the Robinwood Neighborhood Association (RNA). Kevin Bryck, RNA President, who was unable to review the minutes until just recently, noted a key omission from the minutes. Specifically, that the attendees at the April meeting, strongly advocated for opposing any forward progress of a land-use application that would result in a home being built at the 3955 Cedar Oak property (this addendum is attached).

In addition to this minutes omission, the RNA would like to note our being excluded from the planning process for this application, and thus being left without an opportunity to gain standing on which to process an appeal, based on the following:

- RNA President, Kevin Bryck, was not notified of a pre-app meeting for this application.
- The Planning Director's letter noting his decision for this application (mailed out to impacted residents) was dated 5/12/08.
- A packet of information regarding this application did not arrive at Kevin Bryck's home until 5/12/08.

So, taking our vehement opposition to any forward progress on the application as noted in our January 2008 minutes (mailed to the city), the opposition as now noted in the April 2008 minutes, and the bulleted list process deficiency noted above into consideration, I ask that you work with me to facilitate an appeal or rescinding of, the Planning Director's decision on file# WAP-08-04.

Lastly, to fully apprise the neighborhood of the process by which the Planning Director, instead of the planning commission, reviews and makes a decision on a land-use application, please refer me to the clause(s) of the CDC that speak to this. Of specific interest for us, is the text that speaks to residents, or neighborhood associations, being able to 'gain standing'.

(30)

Thanks for your time and consideration and I look forward to hearing from you. My need to help facilitate an appeal of this decision on behalf of the RNA may be a moot point as the Mayor has, as of this morning, asked for a review of the Planning Director's decision on this application.

Scott Sandie

RNA Secretary

(503) 313-2161 (cell)

City of West Linn
Robinwood Neighborhood Association (RNA, RN to be used for Robinwood Neighborhood)
Monthly Meeting Minutes
Tuesday, 4/8/08 – Johnson Property Addendum (5/22/08)

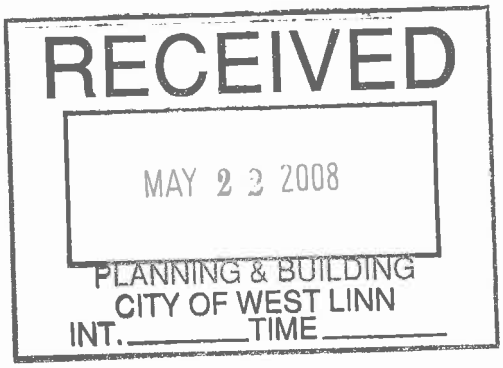
President, Kevin Bryck, due to an out-of-state absence, had not reviewed the 4/8/08 meeting minutes until just recently. He noted that although we captured the various aspects of the resident's discussions in the meeting minutes (regarding the Johnson property), we neglected to note the essence of the discussion, which was that the attendees to the meeting were again in favor, as we were unanimously at the January 2008 meeting (excerpt below), of opposing any forward progress of the Johnson land-use application.

January 2008 Meeting Minutes Excerpt (these minutes already on file with the City of West Linn)

Motions (motion voting results in parentheses after motion title)

1. Kantara Way Land-Use Application – Request of City Council to Move Application Review Date Later Than 1/28/08(approved)
   23 eligible voters approved of the RNA requesting that the city council move their review of this land-use application to a date later than 1/28/08. One eligible voter chose not to register a note.
2. Approval to Spend $100 on Improving RN Signs
   All eligible voters approved of this expenditure.
3. Letter Drafted by Kevin Bryck Regarding Changes to Association By-Laws – Send to Oregonian and West Linn Tidings
   Of the remaining 22 eligible voters, 19 voted in favor, 1 voted against, and 3 chose not to vote for this motion.
4. Johnson Property – Appeal of Any Type of Forward Progress
   All eligible voters in attendance at the time of this vote, unanimously approved the RN to process an appeal if the planning department approves the application, or to oppose the applicant's appeal of the planning department's denial of the application, if it is denied.

Addendum drafted by Scot Sandie, RNA Secretary.



Soppe, Tom

From: King, Norm
Sent: Thursday, May 22, 2008 12:52 PM
To: tinadecker03@yahoo.com; Scott Sandie; Wyatt, Kirsten
Cc: Kevin Bryck; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom; Howard, Gordon
Subject: RE: Appeal of File# WAP-08-04

Yes, please don't copy me or any member of the Council on any more e-mails, fun as they may be. Any contact on this issue puts us in the position of having to ignore the contact and declare the content of the contact as well as any infleunce it may have had on us.

For the record, the neighborhood lost it's opportunity for "standing" by not testifying, or not having someone testify for the neighborhood, when the application was before the Planning Director. It's too late to get it now.

Thanks,
Norm

From: Tina Decker [mailto:tinadecker03@yahoo.com]
Sent: Thu 5/22/2008 12:25 PM
To: Scott Sandie; Wyatt, Kirsten; King, Norm
Cc: Kevin Bryck; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom
Subject: RE: Appeal of File# WAP-08-04

And I also think we probably need to remove the Mayor from the rest of our emails. I don't think he (or other councilors) are allowed to be part of the 'discussion' until it becomes part of an official appeal presented to them at a council meeting.

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CITY OF WEST LINN
INT._____TIME_____

Norm, and I correct in this?

Tina

--- On **Thu, 5/22/08, King, Norm <*NKing@ci.west-linn.or.us*>** wrote:

> From: King, Norm <NKing@ci.west-linn.or.us>
> Subject: RE: Appeal of File# WAP-08-04
> To: "Scott Sandie" <popthemit@yahoo.com>, "Wyatt, Kirsten" <kwyatt@ci.west-linn.or.us>
> Cc: "Kevin Bryck" <KevthePres@comcast.net>, "Tina Decker" <tinadecker03@yahoo.com>, "Curt Sommer" <csommer@opusnet.com>, "Terry Pennington" <tpenn@teleport.com>, "Brown, Bryan" <BBrown@ci.west-linn.or.us>, "Soppe, Tom" <tsoppe@ci.west-linn.or.us>
> Date: Thursday, May 22, 2008, 12:09 PM
>
> Scott, I think Kirsten is on vacation this week.
>
> I'm not sure why you are calling and e-mailing Kirsten regarding an appeal and to submit testimony to get standing in a case. Kirsten's duties don't include planning. If Mr. Brown is not available, Gordon Howard would be a more appropriate contact on procedural issues and questions.
>
> Norm

From: Scott Sandie [mailto:popthemit@yahoo.com]
Sent: Thu 5/22/2008 11:46 AM
To: Wyatt, Kirsten
Cc: Kevin Bryck; Tina Decker; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom; King, Norm
Subject: Appeal of File# WAP-08-04

Kirsten:

I left you a voice-mail earlier this morning on this same topic.

Recently, I submitted to you the minutes from the April 2008 meeting of the Robinwood Neighborhood Association (RNA). Kevin Bryck, RNA President, who was unable to review the minutes until just recently, noted a key omission from the minutes. Specifically, that the attendees at the April meeting, strongly advocated for opposing any forward progress of a land-use application that would result in a home being built at the 3955 Cedar Oak property (this addendum is attached).

In addition to this minutes omission, the RNA would like to note our being excluded from the planning process for this application, and thus being left without an opportunity to gain standing on which to process an appeal, based on the following:

- RNA President, Kevin Bryck, was not notified of a pre-app meeting for this application.
- The Planning Director's letter noting his decision for this application (mailed out to impacted residents) was dated 5/12/08.
- A packet of information regarding this application did not arrive at Kevin Bryck's home until 5/12/08.

So, taking our vehement opposition to any forward progress on the application as noted in our January 2008 minutes (mailed to the city), the opposition as now noted in the April 2008 minutes, and the bulleted list process deficiency noted above into consideration, I ask that you work with me to facilitate an appeal or rescinding of, the Planning Director's decision on file# WAP-08-04.

Lastly, to fully apprise the neighborhood of the process by which the Planning Director, instead of the planning commission, reviews and makes a decision on a land-use application, please refer me to the clause(s) of the CDC that speak to this. Of specific interest for us, is the text that speaks to residents, or neighborhood associations, being able to 'gain standing'.

Thanks for your time and consideration and I look forward to hearing from you. My need to help facilitate an appeal of this decision on behalf of the RNA may be a moot point as the Mayor has, as of this morning, asked for a review of the Planning Director's decision on this application.

Scott Sandie

34

RNA Secretary

(503) 313-2161 (cell)

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Soppe, Tom

From: Scott Sandie [popthemit@yahoo.com]
Sent: Thursday, May 22, 2008 12:46 PM
To: King, Norm; Wyatt, Kirsten
Cc: Kevin Bryck; Tina Decker; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom
Subject: Re: Appeal of File# WAP-08-04

Norm:

I appreciate your input on this matter. I found Kirsten to be very helpful in the past in helping me achieve my administrative objectives. As I've just learned, Curt Sommer of the neighborhood associaton will be the primary steward of the neighborhood's appeal.

Thanks, Norm.

Scott Sandie

----- Original Message ----
From: "King, Norm" <NKing@ci.west-linn.or.us>
To: Scott Sandie <popthemit@yahoo.com>; "Wyatt, Kirsten" <kwyatt@ci.west-linn.or.us>
Cc: Kevin Bryck <KevthePres@comcast.net>; Tina Decker <tinadecker03@yahoo.com>; Curt Sommer <csommer@opusnet.com>; Terry Pennington <tpenn@teleport.com>; "Brown, Bryan" <BBrown@ci.west-linn.or.us>; "Soppe, Tom" <tsoppe@ci.west-linn.or.us>
Sent: Thursday, May 22, 2008 12:09:42 PM
Subject: RE: Appeal of File# WAP-08-04

Scott, I think Kirsten is on vacation this week.

I'm not sure why you are calling and e-mailing Kirsten regarding an appeal and to submit testimony to get standing in a case. Kirsten's duties don't include planning. If Mr. Brown is not available, Gordon Howard would be a more appropriate contact on procedural issues and questions.

Norm

From: Scott Sandie [mailto:popthemit@yahoo.com]
Sent: Thu 5/22/2008 11:46 AM
To: Wyatt, Kirsten
Cc: Kevin Bryck; Tina Decker; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom; King, Norm
Subject: Appeal of File# WAP-08-04

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home being built at the 3955 Cedar Oak property (this addendum is attached).

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Scott Sandie

RNA Secretary

(503) 313-2161 (cell)

Soppe, Tom

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MAY 22 2008
via email
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From: Tina Decker [tinadecker03@yahoo.com]
Sent: Thursday, May 22, 2008 12:19 PM
To: Wyatt, Kirsten; Scott Sandie
Cc: Kevin Bryck; Curt Sommer; Terry Pennington; Brown, Bryan; Soppe, Tom; King, Norm
Subject: Re: Appeal of File# WAP-08-04

Scott -

Do we file the appeal with the planning committee or to Kirsten? I also provided a copy of the April meeting minutes to the planning department, got it date stamped, and requested it become part of the official file. We need to write up the revised one with Kevin's input pronto I think. But then we might be in a quagmire on whether we can officially add his comments after the NA members accepted the minutes at the May meeting. I think the NA had a better opportunity if we focus on notification / input timelines verses the minutes though.

And what Chris Jordan told me yesterday was that meeting minutes do not suffice as standing. We had to have provided either written or oral communication (either a letter, email, or phone call) from an NA member stating that on behalf of the NA we are opposed to the land use issue prior to the decision. I think a case could be made that the NA was not notified in a timely manner to present our position prior to the official decision being made. But I don't know what CDC 99 says about time lines for Planning Director decisions.

I still think we need to file an official appeal and add this dialog with it as part of our appeal documentation. I don't think these emails alone will help us gain standing or officially address the NA's position on this issue.

But, as you say, it might be mute...but since appealing the decision is what the NA voted to do, I think the NA Board needs to proceed as such.

Tina

--- On **Thu, 5/22/08, Scott Sandie <*popthemit@yahoo.com*>** wrote:

> From: Scott Sandie <popthemit@yahoo.com>
> Subject: Appeal of File# WAP-08-04
> To: "Kirsten Wyatt" <kwyatt@ci.west-linn.or.us>
> Cc: "Kevin Bryck" <KevthePres@comcast.net>, "Tina Decker" <tinadecker03@yahoo.com>, "Curt Sommer" <csommer@opusnet.com>, "Terry Pennington" <tpenn@teleport.com>, "Bryan Brown" <BBrown@ci.west-linn.or.us>, tsoppe@ci.west-linn.or.us, "Norm King" <NKing@ci.west-linn.or.us>
> Date: Thursday, May 22, 2008, 11:46 AM
>
> Kirsten:
>
> I left you a voice-mail earlier this morning on this same topic.
>
> Recently, I submitted to you the minutes from the April 2008 meeting of the Robinwood

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Scott Sandie

RNA Secretary

(503) 313-2161 (cell)

Soppe, Tom

From: Madaline Allen [madalineallen@comcast.net]
Sent: Wednesday, May 21, 2008 9:53 AM
To: Soppe, Tom
Cc: tjordan@ci.west-linn.or.us
Subject: Re: Johnson property

Thanks Tom.

So, the Penningtons will be looking at the rear of the Johnson house, but the two houses - one on Cedaroak and on on Trillium and Cedaroak will each be looking at the side of the Johnson house. I had heard that it was just the opposite with 20 feet of pavement in front for parking. It is a sad situation isn't it, but it looks like the new provisions are tough to get around. I suspect there will be an appeal. I honestly do not know what the neighbors are going to do about the matter.

Have a good day.

Madaline F. Allen

----- Original Message -----
From: Soppe, Tom
To: Madaline Allen
Cc: Jordan, Chris
Sent: Wednesday, May 21, 2008 8:59 AM
Subject: RE: Johnson property

Ms. Allen,

The plan that was approved has the house in front, so it will not be directly behind the Pennington house. It only has to be 7.5 feet from the west property line, not 15 feet. 7.5 feet is standard for the R-10 zone.

There aren't many other lots in town that were not buildable at all that have become buildable with the new hardship exception provisions in 32.090. These hardship provisions only apply this way to individual lots of record, which still cannot be divided to allow development close to the creeks despite their size; it is not as if people will be able to divide properties and put many houses in the type of location that the Johnsons are building in.

The Johnson lot is very unusual in that it is narrow, with every part of it very close to the creek, yet still meets the 32.090 minimum for buildability in terms of its total square footage. Even on other lots that are allowed development near creeks only via the 32.090 hardship provisions, a house is not likely to come so close to the creek and its nearby habitat.

I am only handling the land use application aspect as to what is happening on this property. I know that at least one citizen has met with other city officials about the theoretical park, but I cannot give you further predictions as to what may occur with that. The approval may also still be appealed. I'll print out your email for the file.

Tom Soppe
Associate Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068
(503) 742-8660

From: Madaline Allen [mailto:madalineallen@comcast.net]
Sent: Wednesday, May 21, 2008 8:22 AM
To: Soppe, Tom
Cc: tjordan@ci.west-linn.or.us
Subject: Johnson property

Wednesday, May 21, 2008 -8:17 a.m.

Hi Tom:

I am so sorry to hear that Johnson has been given the okay to build on the property on Cedaroak Drive. I visited the Penningtons a week ago. Honestly, they will be getting the brunt of it. Their house is a reverse plan in that the kitchen is in the front and the living room and dining room face the back with large windows overlooking the creek and the trees - soon to be Johnson's home site for one of his children. The people who live on Cedaroak and Trillium and the family on the other side of the lot who reside on Cedaroak will be looking at 20 feet of driveway, but the Penningtons will be looking at nothing but the side of the Johnson house from every window of their home as well as from their deck.

City Manager Chris Jordan mentioned that the City is trying to find a way to stop all of this, but that it is difficult to get around the law. He, like most of the neighbors, seems to be torn by all of this and wishes he could do something, but it appears his hands are tied. Yet, It is difficult to even imagine how that house will be 10 feet, let alone 15 feet, from the property line on each side of that land and that the lot is even considered buildable.

Is there some way that the City can make a park out of it? It would seem that Johnson has run into so much opposition that he would be willing to sell the land to the City to get away from a possible showdown that could erupt once building begins. A small park there would be ideal - as it is already a natural preserve for trees, birds, and other wildlife. There MUST be some way to get around this?

I do believe that this will set off a storm in that others living with that same kind of land - including wetland - will want to build on their property that up until now has been declared unbuildable. As I mentioned to Mr. Jordan, all of this on this side of the highway is considered a part of hidden springs. If one spring is plugged up, another can pop up somewhere else. Hopefully, none of us will end up with a geyser sprouting up in our living room or our backyard!

I do not know what I would do if that were my property, but I do think that permitting Johnson to build there will absolutely, positively downgrade the value of the Pennington property - and most likely the other two neighbors mentioned above.

This is such a sad situation for the neighbors who have lived there for a very long time time. Chris, what else can be done to stop building on that property?

Madaline F. Allen
18567 Trillium Drive
West Linn, OR 97068
(503) 636-8306

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.524 / Virus Database: 269.23.21/1458 - Release Date: 5/21/2008 7:21 AM

41

City of West Linn
Robinwood Neighborhood Association (RNA, RN to be used for Robinwood Neighborhood)
Monthly Meeting Minutes
Tuesday, 4/8/08

Kevin Bryck, President, called the meeting to order at 7:09 PM. Scott Sandie, RNA Treasurer, noted that the RNA fiscal year account balance was $982.06 (plus an existing, small credit at the UPS store on Willamette Drive). The March 2008 RNA meeting minutes were unanimously approved.

Items Discussed

Summer Concerts in Willamette Park
Alice Richmond spoke about these free concerts which will occur each Wednesday and Thursday in June and July. She noted that some of the concert will occur at noon to attract a larger audience. More details are available in the West Linn Parks and Rec brochure. Ms. Richmond also noted that she's attempting to organize a fireworks display for the City of West Linn.

Johnson Property
Terry Pennington noted that the Johnsons have a filed a new application for a different size house in a different spot on the plot. Terry spoke about his interactions with surveyors who were surveying the Johnson plot and about the difference between taxable and legal lots. Terry noted that he and West Linn resident, Oly Olsen, spoke with City of West Linn representative Gordon Howard who confirmed that if it is confirmed that there is integrity to the legal or taxable status of the Johnson lot, their application would dismissed. Terry's recent research shows that the Johnson application had not been dismissed and is still on file with the City; Gordon Howard committed to Terry that he would provide Terry with his final analysis of the application by Monday, 4/14/08. Additionally, Terry noted that, per ORS 92, the partitioning of property should be administered via civil law, not administrative law, channels.

Water Plan
Lake Oswego is looking to build in the Stafford Basin and they need to address the water supply issue for the area. As such, discussions are occurring to consider giving Lake Oswego West Linn's senior water rights to the South Fork Water Board. In return, West Linn would get access to, via Lake Oswego, emergency water when needed. See Motion section below for motion notes on this topic.

Kantara Land-Use Application
No new updates but audience was reminded that this next appears on the 4/28 City Council agenda.

Robinwood Neighborhood Plan Review Update
No new updates but the audience was reminded that the RN plan is set to be reviewed by the City Council on 4/28 (a work session will precede this on 4/21).

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Neighborhood Association By-Laws
No discussion – will be reviewed at 5/13/08 neighborhood meeting.

Committee Reports
No substantive updates from any committee.

City Committees and Boards
Discussion occurred about making the names of city board and committee participants available to all residents or, minimally, to the neighborhood associations. See Motion section below for motion notes on this topic.

Miscellaneous Updates

- Reminder: Goal 1 Coalition workshop on 4/10 at 6:00 PM at City Hall.
- The City of West Linn will soon make available some city financial/accounting information online at the City's website.
- The RNA may be asked to contribute monies to the railroad trail interpretive sign project.
- Contributions to Mary S. Young State Park are tax deductible.

Motions (motion voting results in parentheses after motion title)

1. Send Letter to City of West Linn Noting RN Opposing of the Giving Away of West Linn Senior Water Rights to the South Fork Water Board (approved)
   All eligible voters approved of sending such a letter to the city.
2. The City Must Provide a List of City Board and Committee Participants to Neighborhood Association Presidents (approved)
   After the motion was made and seconded, discussion occurred, resulting in 16 eligible voters approving the motion – 6 were in opposition (0 abstentions).

Meeting adjourned at 8:30 PM.
Minutes authored by RNA Secretary, Scott Sandie.

Robinwood Neighborhood Association Agenda

Tuesday May 13th 2008 7PM Emmanuel Pres Church

A. Minutes of Previous Meetings and Treasurer's Report

B. Announcements: (See back of Agenda for what's happening in West Linn)

C. President's Comments: League of Neighborhoods, Weekly Update, Open City Council Position, P&R Summer Catalog, Library District, Taste of Tuesday, City Direct Payment Plan, Don't forget to Vote

D. Committee Reports:
   1. Parks and Recreation
      a. Meeting – Monday, May 19th
      b. Rail Trail
   2. Planning
      a. Land Use Updates:
         (1) Kantara
         (2) Fairview Way
         (3) Ceaderoake Dr
         (4) Nixon
      b. CDC – Chapter 99 Changes
      c. Pre-App Conference – Thursday, May 15 10:00
      d. Next Planning Commission Mtg: Wed, May 21, 7:00
   3. Streets:

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E. Old Business:
   1. Robinwood Neighborhood Plan - Finito?
   2. Bylaw Changes to Committees – Need parameters / Vote

F. New Business
   1. Water Plan – Guest speakers next month from Water and Budget Boards?
   2. Any other Bylaw changes needed? Need committee?
   3. Tourism Applications

G. What's Happening in West Linn:

❖ Thursday May 15 & 16
Storytime at Library for children age 0-6 – 10:00 & 11:00

❖ Saturday May 17
'Down By the Riverside' – MS Young Ivy pull in conjunction with SOLV. 9 am – 1 p.m.

❖ Sunday May 18
'Old River Ramble' Walk & Run

❖ Thursday May 22
Library Computer Class: Internet Basics. 6:15 p.m.

❖ Saturday May 31
Library Computer Class: Internet Basics. 10:00 a.m.

❖ Monday June 2
City Council Work Session – Imagine West Linn

❖ **Tuesday June 10**
Next Robinwood Neighborhood Association Meeting 7:00 P.M.

❖ Saturday June 14
Daddy / Daughter Dance – West Linn Parks and Rec. 6-9 PM

City of West Linn
Planning & Building Dept.
Land Use Action

DATE: May 1, 2008

FILE NO.: WAP-08-04

SUBJECT: Water Resources Area Permit for 3955 Cedaroak Drive

PLANNER: Tom Soppe, Associate Planner

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SPECIFIC DATA

OWNER/: APPLICANT Annette Johnson, 10667 SE 144th Loop, Happy Valley, OR 97086

CONSULTANT: Lance Johnson, P.E., 5920 SW 18th Dr., Portland, OR 97239

LOCATION: 3955 Cedaroak Drive

SITE SIZE: 0.31 acres

LEGAL DESCRIPTION: Clackamas County Assessor's Map 2-1E-24BB, Tax Lot 202

ZONING: R-10

COMP PLAN DESIGNATION: Low Density Residential

APPROVAL CRITERIA: CDC Chapter 32, Natural Drainageway Protection

PUBLIC NOTICE: Public notice was mailed to the Robinwood Neighborhood Association and to affected property owners on April 9, 2008. The property was posted with a sign on April 10, 2008. The application has also been posted on the City's website. Therefore, notice requirements have been satisfied.

SPECIFIC PROPOSAL:

The applicant, who is the owner of the site, is seeking approval of a Water Resources Area permit to build one house on a 13,392 square foot site at 3955 Cedaroak Drive in West Linn. Gans Creek and Trillium Creek converge at the south end of the site, at the street, and Trillium Creek runs north from there through the eastern flank of the site. The entire lot is within the drainageway transition area as this drainageway is a riparian corridor, and all of the lot is within 110 feet of the drainageway at most. This is a lot of record on which one house is allowed despite the entire lot's proximity to the natural drainageway. The entirety of the lot is too close to the drainageway to allow any development under current drainageway protection setbacks in Chapter 32, if it was not for above-described exceptions for lots of record, as delineated in Section 32.090. The site is a narrow parcel east-west that stretches north from Cedaroak Drive, with a small wing stretching to the west at the north end of the site. In 2007, the applicant applied for a Water Resources Area permit (NDW-07-09) that was denied earlier in 2008 as it proposed a house footprint further north on the site, where the significant grove of trees lies. Due to the effect on trees and the overall amount of new impervious surface this plan would have entailed, the Planning Director denied the application. While the application NDW-07-09 was denied, staff explained in the staff report what type of proposal would be able to be approved on this site, specifically a house closer to the front of the lot that does not affect the grove of significant trees further north and that still maintains

several feet of setback from the drainageway. This is mainly the type of site plan proposed in this new application, and further enhanced by staff in the conditions of approval, as discussed further in the findings below.

PUBLIC COMMENTS

Meg Fernekees, Oregon Dept. of Land Conservation and Development, April 15, 2008
Thanks for sending us the notices for 3 applications for a Water Resources permit.

Could you please forward to us additional info (site plans) for the Annette Johnson and the Patricia Ferris applications, so we can see the relationship of the proposed structures to the Willamette Greenway?

Also, (speaking of relationship) is your designated water resource areas coterminous with the city's adopted comp plan application of the Greenway?

In any event, the City should make findings regarding State-wide Goals 5 and 6.

RESPONSE: See Supplemental Findings section below, where staff has made findings regarding State-wide Goals 5 and 6.

Pat Kearney, 19055 Trillium Drive, April 15, 2008
Concerned with downstream effects such as flooding. Lives just downstream. Court decision doesn't respect green ethic in West Linn. Supports people's right to build on properties but thinks natural drainageways need to be respected.

RESPONSE: The drainageway will not be altered by this decision. The conditions of approval keep the new house as far from the creek is as feasible on this lot. The cottonwood trees providing bank stability will be preserved. Required erosion control measures around the construction area will prevent further disturbance of the creek. Condition of Approval 6 requires the first floor to be above 1996 flood elevation and requires the area below the first floor to have openings for floodwater to pass in and out, compatible with the requirements of Chapter 27 which regulates flood area development.

James Andrews, 3915 Cedaroak Drive, April 16, 2008
Pointed out that his house is 15.5 feet from the property line as measured from the surveyor's stakes placed by the applicant's surveyor, not 10 feet as shown on the applicant's site plan. Wants to be sure the 7.5 foot setback for the new house is measured from the property line, not his house. Is concerned with how close the house is proposed to be to the creek- not even room to walk between house and creek.

RESPONSE: Staff concurs with the above comment regarding the distance to the property line as measured from the applicant's surveyor stakes. Condition of Approval 4 ensures the setback will be measured from the property line delineated by the stakes, not from Mr. Andrews' house.

James & Loretta Dasso, 3893 Cedaroak Drive, April 21, 2008
I feel a house set in that location would be a mistake. First because it would be out of place in the neighborhood. Secondly because it would have to be so close to the bank of the creek, it could flood, also disturb the creek, and unsettle the habitat of the living creatures of the creek. Such as tadpoles, crawfish, and trout that used to make their homes in there. However with the disruption of the natural flow has made it nearly impossible for them to make a comeback.

Let us all see if we can't all make peace with the environment and bring some beauty to our city again.

James & Loretta Dasso, 3893 Cedaroak Drive since 1968

RESPONSE: In order to prevent takings claims against the City based upon the United States and Oregon Constitutions, one house is allowed, causing minimal disturbance, on this site. See CDC 32.090. The house footprint as delineated in Condition of Approval 1 will be unusual in its shape for the neighborhood and may be smaller than many of the houses in the neighborhood. However, the need to minimize environmental effects on the drainageway and the rest of the site, while allowing one house to be built, outweighs whether the house fits the neighborhood in terms of size, proportion, or style. Also see the response to comment by Pat Kearney above.

Ole Olsen, 3993 Kenthorpe Way, April 28, 2008
CITY OF WEST LINN, OREGON

OLE OLSEN, Petitioner, & Co-petitioners by Attachment "A," Interested Parties by Attachment "B," Interested Parties by Testimony in Future Attachment "C"
v.
CITY OF WEST LINN, Respondent.
WEST LINN FILE NO. WAP-08-04
PETITION FOR EVIDENTIARY HEARING
Water Resources Protection Permit Plus Other Issues-
Annette Johnson Property
3955 Cedar Oak Drive
West Linn, OR 97068

This is a petition to the City of West Linn for an EVIDENTIARY HEARING and potential Conflict Resolution agreement by Ole Olsen, Petitioner, and 5 Co-Petitioners within 100 feet of Annette Johnson's property addressing the City of West Linn's File No. WAP-08-04 Water Resource Protection Permit.

Interested Parties qualify by petition signatures, oral testimony, or written testimony.

The Annette Johnson property is entirely within the Water Resource Protected area of Trillium Creek/Gans Creek that drain 200+- acres of an area of West Linn called Hidden Springs. This development has created extra water flow after a rainstorm causing downstream erosion problems.

1. Petitioner's name and address is Ole Olsen, 3993 S. Kenthorpe Way, West Linn, OR 97068.
2. Petitioner purchased his property, which is located south and about 100 feet east of the Annette Johnson property, in 1972 and built a house in 1973, where he has resided since. Co-petitioners' properties are adjacent to or across from the Annette Johnson property and have Trillium Creek in common.
3. Petitioner recognizes that a $250.00 fee may be required and that the fee may be voided by the Robinwood Neighborhood Association upon vote or upon the City's own agreement.
4. Petitioner recognizes that the Robinwood Neighborhood Association was not mailed notice as required, and that at the April meeting, the President, Kevin Bryck, was unable to discuss this as an issue.
5. Petitioner recognizes that the authority for this petition is ORS 197.763 or the Administrative Procedures Act (ORS 183) or ORS 92, as applicable.
6. Petitioner has known Annette Johnson since about 1962, has known her husband Ron since about 1961, and has known several other family members in various degrees of association during the 1960s, 1970s, and 1980s.
7. Petitioner has participated with several City of West Linn officials over subjects of interest, plus has performed volunteer activities since 1973, but on an intermittent basis.

TAX LOT 202- 3955 CEDAROAK DRIVE- LEGAL PROBLEM HISTORY

8. Petitioner has considerable historical knowledge of the property and has done a deed, plat map, and plat drawing review of documents from Clackamas County Surveyors and Assessors offices done in January 2008.
9. Petitioner has knowledge that legal "deed" issues exist which need to be corrected. The property is actually a tax lot and not a legal lot.
10. Petitioner has knowledge that this property is the subject of a civil action in Clackamas County Court and that this action is still active as of April 2008.
11. Petitioner believes that Clackamas County Court needs to be notified in the form of an Amicus Curiae as prepared by the petitioner, co-Petitioners, and/or interested parties. The City of West Linn's legal counsel may desire to notify the Court of the evidentiary hearing or dispute resolution meeting at their desire.
12. Petitioner has knowledge that several other civil actions, administrative violations, and administrative permit problems have occurred with the property over the last eight years.

TAX LOT 202- 3955 CEDAROAK DRIVE- OWNERSHIP HISTORY

13. Petitioner has knowledge that this property was purchased in 1974 by Ken and Terri Cusic as a private "open space" as an extension of their property directly to the west of the Annette Johnson property.
14. Petitioner has knowledge that Annette Johnson's ownership began June 5, 1984 with a joint payment of $8,000, that additional monies were paid in 1994, that other monies were paid over time with the amounts and dates unknown, and that the property was purchased for a private "open space' because the property was upstream to their residence at 19055 Trillium Drive, West Linn.

15. Petitioner has knowledge that Ron Johnson has declared bankruptcy twice, and that Ron Johnson put several real estate properties into the name of Annette Johnson; Ronald & Annette Johnson Revocable Living Trust; and/or Annette Johnson, Trustee, by considerations of $0 to $1,000 in a series of Warranty and Quitclaim Deeds. The amount of loss to creditors needs to be researched. Numerous properties are affected by these deed transfers besides Tax Lot 202.
16. Petitioner has knowledge that the City of West Linn employees and/or officials have made substantive and procedural errors in processing the numerous errors in processing the numerous civil and administrative applications over the years.
17. Open for expansion
18. Open for expansion
19. Open for expansion
20. Petitioner has knowledge that the City of West Linn attached the lien for the stream rehabilitation project of 2003-4 to Tax Lot 203, and not Tax Lot 202, and that the title company paid the lien because of a title error. (See also ORS 105.454)
21. Petitioner believes that the City of West Linn has spent over $100,000 in time and overhead expense in processing paperwork on this property over the last eight years.
22. Open for expansion

TAX LOT 203- 19055 TRILLIUM DRIVE, WEST LINN, OR

23. Petitioner has knowledge that present Tax Lot 203, known as 19055 Trillium Drive, was purchased in 1974+ from Paul and Bill Kasch for a $2,500 discount as opposed to a purchase through Ole Olsen, the Petitioner. The Petitioner then entered in a construction agreement to build the house at 19055 Trillium Drive for foundation, framing, roof, windows, and a front door in about 1975. Ron Johnson refused to pay the 1975(?) $4,500 bill, and througbh a legal tactic by Ron Johnson's attorneys, the court dismissed the case without judgment. Annette Johnson eventually paid slightly more than $900 of the bill.
24. Open for expansion
25. Open for expansion

TAX LOT 200- 19057 TRILLIUM DRIVE, WEST LINN, OREGON

26. Petitioner has knowledge that Tax Lot 200 is not a legal lot due to size, less than 10,000 sq. ft., and that this lot is not a buildable lot. This lot is owned by Pat and Heidi Kearney, 19055 Trillium Drive.
27. Open for expansion
28. Open for expansion
29. Open for expansion

TAX LOT 202- 3955 CEDAROAK DRIVE- APPLICATION 4/2/07

30. Petitioner has knowledge that an application for a Water Resource Area Permit was submitted with an alleged signature of Annette Johnson, though numerous documents indicate this may not be a true and legal signature. The alleged date was 4/02/07, but processing was not started until 4/02/08, nearly a year later.
31. Petitioner has knowledge that no pre-application conference was conducted. Petitioner has knowledge that a meeting was held between Gordon Howard, Bryan Brown, Annette

Johnson, Ron Johnson, and Lance Johnson on 4/02/08, and that Tom Soppe knew about the meeting but was unable to attend. Tom Soppe has belief that no written document existed per meeting with Petitioner, Ole Olsen, on 4/28/08. See Lance Johnson comment item 32.040B. Notification was mailed on 4/09/08, and there is an "application complete" date of 4/07/08.

32. Petitioner has knowledge that a site visit was done by Tom Soppe of the City of West Linn Planning Department in the presence of Jim Andrews on April 16, 2008.
33. Petitioner personally accompanied City Engineer Dennis Wright to the site on April 21, 2008, and that Jim Andrews was present at the visit. Dennis Wright has agreed to in-house questions.
34. Petitioner has knowledge that the File No. WAP-08-04 for a Water Resource Area Permit should not be issued because:
    - A. There is a legal lot problem. The lot cannot be sold, a house cannot be built, and no mortgage can be obtained;
    - B. Proper creek top bank-to-building setback has to be added to the application. Present drawings show zero setback;
    - C. A mitigation plan has not been applied for;
    - D. Construction in a filled-in area adjacent to a creek creates problems;
    - E. Elevation grades do not appear correct and may have an error of 3 ft;
    - F. The "first floor" elevation is 9 ft. above basic grade and is a concern.
35. Natural resources, environmental and conservation concerns are major issues to a large number of neighbors. A preliminary list is:
    - A. Soil (land) including riparian
    - B. Air and noise
    - C. Water, including lakes, ponds drinking water supply, etc.
    - D. Plants, including trees, forests
    - E. Animals, including birds, mammals, fish, and habitat
    - F. Minerals
    - G. Protected areas including open space, flood, erosion, etc. Wetlands and riparian areas
36. Petitioner acknowledges that numerous documents exist that are in the possession of others, and that one or more prehearing conferences may be necessary to collect the documents and establish procedures to conduct an orderly hearing.
37. Petitioner believes that an evidentiary hearing will support the conclusion that the owners' rights, the City of West Linn's rights or obligations, and the Petitioner's Co-petitioners, plus other interested parties' rights, concerns, and issues will support and lead to a solution that will benefit and be acceptable to all parties and the community at large. See ORS 197.319 to .350.
38. Petitioner acknowledges that some of the issues are civil matters and some are administrative matters, and that the inter-relationship makes a solution more difficult. The Petitioners, the owners and the agents, and the City officials need to know the difference.
39. Open for expansion
40. Petitioners/Parties Disclaimer. This petition is an outline and all evidence supplied by the petitioners and other parties is the responsibility of those supplying the information, and there is no cross liability for the action of "other."

Dated: April 28, 2008

Ole Olsen, Petitioner

Attachment A: Co-petitioners' Names and Signatures
Attachment B: Party Petitioners & Signatures
Attachment B: Interested Parties & Signatures

RESPONSE: A petition for an evidentiary hearing is irrelevant in that anyone can appeal the decision in this staff report, which would result in an evidentiary hearing before City Council. Mr. Olsen has since recognized in another comment below that (4) of the above petition is not accurate as the Robinwood Neighborhood Assocation did receive notice in due time.

The site has been concluded to be a legal lot; see Exhibit PD-2 by Staff Attorney Gordon Howard. The signature on the application does say 4/2/07 but staff assumes this is a mistake as it was submitted on 4/2/08. Condition of Approval 1 requires a footprint with a greater setback than that discussed in (34) of the petition. Condition of Approval 5 requires revegetation. Mitigation plans are not required unless a wetland is removed or otherwise affected; this is not the case for this application where the only wetland is at the northeast corner, across the creek from where development is proposed.

In order to prevent takings claims against the City based upon the United States and Oregon Constitutions, one house is allowed, causing minimal disturbance, on this site. See CDC 32.090. The house footprint as delineated in Condition of Approval 1 has been greatly limited to a particular set of dimensions at the southwest corner of the site in order to have minimal effects on the drainageway, habitat, erosion, and vegetation. For other environmental issues, see responses to comment above by Pat Kearney.

Lorie Griffith, 4068 Kenthorpe Way, April 28, 2008
I am restating my concerns about the proposed development of 3955 Cedaroak Drive and the disturbance of the riparian habitat. I live on Trillium Creek and see a slow return of native fish, such as trout and craw daddies, and native "Douglas" squirrels. I am removing ivy from my Trillium Creek bed so trillium and other native plants can return.

This site is so close to the creek it would destroy, by causing silt and erosion, the fish habitat.

Haven't we already heard, loud and clear, the neighbors concerns about this variance? Why has it returned and so soon? The property should never be developed. It is wrong in so many ways, I can't understand how the city would even consider allowing a house to be built there.

The City of West Linn supports the park preservation/restoration effort. Why would City Planners grant a development that would undermine this upstream effort?

Please do not grant a Water Resources Area permit and a Class I Variance for side yard setback. Let us save what is left of the riparian habitat and repair, not destroy it.

RESPONSE: No variance is requested as part of this application. For environmental issues, see staff response to above comments by Ole Olsen and Pat Kearney. As many precautions as possible will be taken to ensure minimal effects on the drainageway and minimal effect on the upstream environmental efforts, but one house has to be allowed per 32.090 to prevent takings claims against the City based on the Oregon Constitution or U.S. Constitution.

Doris Davids, 18767 Trillium Drive, April 29, 2008
Says lot is not buildable; house would be too close to creek. Doesn't want regular City and Metro setbacks to be violated. Wonders how much taxpayer money and city staff time is spent on this property.

RESPONSE: Condition of Approval 1 ensures a minimum footprint that is as far from the creek as possible while ensuring also a minimal effect on the environment as a whole on site, by keeping the house in the southwest corner. 32.090 allows for setbacks to be flexible on lots completely within the drainageway transition area, such as this one.

Petition signed by 30 residents, see Exhibit PD-1 for names and addresses, April 30 and May 1, 2008

PETITION AGAINST A. JOHNSON LOT DEVELOPMENT

DENY WAP-08-04

We, the undersigned, strongly request the Planning Director, or proper authorities, to facilitate and perform an evidentiary hearing on Application WAP-08-04 as allowed by City and State Statutes. (Per Mr. Ole Olson's formal submittal request.)

Barring acknowledgement of our request, the undersigned request Application WAP 08-04 be denied; *based on harm to the environment, improper interpretation, lack of proof, and poor administration by City Staff.* We, the undersigned, believe;

1) Tax Lot 2S 1E 24BB #202 is likely an illegal lot lacking documentation with proper City records lost,
2) CDC 32.090 is not met and the burden of proof has not been established. Work performed is still not accurate, nor is enough completed; posing a real threat to the environment and W L residents,
3) Due to the instability and soils characteristics, the existing cottonwoods need to remain and setbacks should be enforced, unless definitive proof and performance bond is delivered,
4) Permission and execution on this illegal lot WILL destroy many natural resources,
5) Based on the history of the permits for the tax lot and the recent addition of CDC 32.090 into the code, improper administration and the perception of collusion amongst city staff with developer interests appears to be supported,

6) Missing applications and prior illegal findings do not indicate due diligence has been performed. Gross errors indicating incompetence by prior staff and prior City Managers should be reprimanded; grandfathering in their actions and repealing CDC 32.090.

RESPONSE: See Exhibit PD-2 for analysis by the staff attorney concluding that this is a legal lot. 32.090 is met. 32.090 only imposes the 15 foot minimum setback on lots that are not completely within the drainageway transition area. This lot is completely within the drainageway transition area. Staff has performed measurements at the site ensuring that the applicant's submitted site plan will accurately provide for the setbacks desired by staff, should the measurements be measured from the west property line as required by Condition of Approval 4. Condition of Approval 1 requires that the cottonwoods remain. For other environmental issues, see staff responses above to comments by Ole Olsen and Pat Kearney.

Lisa and Ken Clifton, 3765 Ridgewood Way, April 30, 2008

We are writing in regard to the application for a drainageway protection permit at 3955 Cedaroak Drive (WAP-08-04, Tax Lot 202). We strongly oppose this application as with the previous application by these owners for a Class I Variance and a Water Resources Area permit. Previous comments apply (please let us know if you need another copy of those), though we will reiterate below with specifics to the new application.

To begin with, we have several significant concerns about the incomplete and erroneous nature of the application itself. All of the following questions should be addressed and clarified before any further action is pursued:

Where is the building plan for this property? We have no sense of building height, amount of roof overhang, etc.
Where is the mitigation plan, as required by CDC Section 32.070?
Is this Tax Lot 200 or Tax Lot 202 (much confusion on the front page of application)?
Was the application actually signed in 2007 as it says on the front page?
Why was the application also signed by Ron Johnson when Annette Johnson is the sole applicant?

Anyone interested in the proposed building should thoroughly familiarize themselves with the dimensions and topography of this lot. I believe the city already has pictures of this site from last year's applications to build there. To speak of placing a home on the "13,392 square foot lot," implies a large property. However, the survey plat reveals a narrow lot that slopes significantly towards Trillium Creek. This creek flows nearly halfway onto the main portion of the lot. There is no room or access on the north portion of the lot which also contains a wetland.

Something is wrong with the calculations regarding the size of the proposed foundation. According to the site plan submitted, the northern portion of the house (20' wide) is to fit into a 33' area between the west property line and the edge of Trillium Creek. With 7.5' taken up between the foundation and the west property line and 20' for the house, the remainder is a distance of only 5.5' from the proposed house to the "west bottom of bank of creek" (NOTE: this is misleadingly drawn on the site plan; the size and placement of the footprint is wrong for the scale of the map). Please also note that at its closest point, Trillium Creek is flowing directly toward the proposed

house into a sharp, erosional bank. This is a certain recipe for erosion and flooding. Other portions of the house and driveway appear to reach as close as 6' to the creek. Any access points or landscaping along the east side of the house cannot help but have substantial impacts on the creek. It is troubling that the property owners would not have to even come close to the current 100' plus structural setback requirement for a riparian corridor as outlined in CDC Table 32-1 (Required Widths of Setback and Transition Area).

We would like to know how being unable to build in this riparian corridor constitutes "unreasonable hardship" under CDC section 32.090. The owner of this property owns other properties. That does not sound like the type of "hardship" the law intended.

Under the hardship clause, it mentions "a finding that the proposed development does not increase danger to life and property due to flooding and erosion." Many neighbors who wrote to you about the previous applications for this property mentioned the concern they had for their own properties whether by flooding, pollutants in the creek, damage to wildlife habitat, or property values. As a downstream neighbor, we are particularly concerned about the effects to the creek, though we are also concerned about the City being open to future lawsuits should this building be approved and then future owners face structural problems with their home.

The applicant mentions (response to Criteria 32.050 B) that "compared to homes located on or near the drainageway and in the Cedaroak neighborhood, the proposed home design is narrow and occupies a small footprint area." and that "the footprint has been placed in a location on the site reasonably far from the drainageway." As I stated above, building a house that close to a creek seems disasterous both for the future owners of the house (We're sure that won't be the Johnsons), the health of the creek, and the effects to properties downstream. Please look at your maps. This proposed house would be closer to the creek than anyone else's (except the house at 3993 Kenthorpe that has been there for years), and the footprint is similar in size to many of the existing homes.

When reading the response to Criteria 32.050K, please remember that "the City of West Linn performed a drainageway diversion and re-vegetation project at the site approximately four years ago" to attempt to return the creek to its natural configuration after the Johnsons had illegally altered its course.

The applicant states that stormwater may drain to rock splash pads at the north and northeast corners of the footprint. Remember, the northeast corner is the one proposed to be 5.5' from the creek and the wetland is to the north.

Thank you for taking time to address these concerns. Please contact us should you have any questions regarding the points we have raised here.

RESPONSE: The application is complete. The application is for Tax Lot 202. Specific building plans beyond a building footprint are not normally required for a Water Resources Area permit. These are for the building permit stage. Roof overhangs from the footprint allowed by Condition of Approval 1 should not cause a problem. It is immaterial whether Ron Johnson signed the application in addition to the applicant, as long as the applicant's signature was there. The

application was submitted 4/2/08, and staff believes that the signature dated 4/2/07 is in error. The hardship on this lot is that the entire lot is within the transition area of the natural drainageway, so building cannot be completely forbidden on the lot without risking "takings" claims against the City based upon the United States and Oregon Constitutions. Condition of Approval 3 ensures that stormwater infrastructure will be to City of West Linn Engineering Department satisfaction (and therefore to City environmental standards). Condition of Approval 1 ensures that the house's footprint (in combination with the proposed location for the house) will be as far away from the creek as possible and will disturb as little of the site as possible. Revegetation is also required by Condition of Approval 5. For other environmental issues, see staff responses above to comments by Ole Olsen and Pat Kearney.

Jenny Gibbons, 18915 Trillium Drive, April 30, 2008
Concerned with erosion rate of stream; doesn't want channeled of stream to be modified as she is concerned with downstream flow on her property, where there are large trees near the creek including a large maple with a root system that straddles the creek. Wants to be sure there is oversight of construction etc. at the site.

RESPONSE: The stream channel will not be modified. Erosion control methods required by the City will be in place and will be supervised.

James Andrews, 3915 Cedaroak Drive, April 30, 2008
RE: File No. WAP.08.04 Water Resources Area permit at 3955 Cedaroak Dr. for Gans and/or Trillium Creeks.

I live directly west of the 3955 Cedar Oak Dr. property. Johnson and I have lots that are 60 feet wide. They are the narrowest lots on Cedar Oak Dr. All other lots are 100 to 150 feet wide. I have a 36 foot wide house. My house is 9 feet from the property line west of me, and 15 feet from the Andrews-Johnson property line east of me.

The question is, "How can you build a house on that 60 foot lot with a creek running through almost half the lot?"

The closest he can build from our property line is 7 ½ feet. He says he wants to build a house that is 20 feet wide in the back. Measure 27 ½ feet from our property line and you can tell he will be building right on the creek bed. CDC 32.090(C) requires a 15 foot setback from the creek.

His proposed house is 27 feet wide in front. The creek is a little bit further east near the front of the lot, but the result is the same. He will be building right on the creek bed. CDC 32.090(C) requires a 15 foot setback from the creek.

Have you checked his drawings. They are not accurate. They are not drawn to scale. They do not match the measurements on the ground. He still has our property line 10 feet from my house, even though the survey has the property line 15 feet from my house.

The area where he wants to build the house has flooded several times. The creek drains the West Linn hills and empties excess water into the Willamette. Please watch the video I have included

with this submission. He wants to build a house in the flood zone. Living by that creek for 22 winters like I have done, you realize you cannot build a house in that flood plane. Watch the video. He wants to build right where the property has flooded during the winter rains. He wants to cut down the cotton woods and build right where the cotton woods are standing now. That is precisely the area that gets flooded when the creek jumps the bank. It will be a house flooded with water.

Johnson's surveyor has staked out our property line. Measure the 7 ½ foot set back from the property line. Measure the distance to the creek. There is no room to build a narrow house like mine on the lot. Even if the proposed house was half the width of my house, it would be too close to the creek.

He wants to build a house in our neighborhood that would be inappropriate. He would then move on, leaving a sore thumb in our neighborhood for generations to come.

I ask you not to approve this project.

(see video in file also submitted with this, shows February 1996 flooding of area around the two cottonwood trees)

RESPONSE: Mr. Andrews demonstrated the property line issues to staff, and Condition of Approval 4 was written to ensure the setback for the house would be measured accurately from the staked property line, not from Mr. Andrews' house. Staff measurements on site confirm that the site plan in conjunction with staff's modifications delineated in Condition of Approval 1 will result in the setbacks (from the creek and property lines) desired by staff. Condition of Approval 1 requires a smaller footprint keeping the house further from the creek than is proposed by the applicant's site plan; the house will no longer be on the top of the creek bank. Condition of Approval 1 also requires the cottonwoods be preserved and allows only for a 15-foot-wide footprint that does not encroach into the cottonwood area.

Maureen and Joe Perry, 4064 Cedaroak Drive, April 30, 2008
Re: Request for Evidentiary hearing regarding tax lot 202 (Annette Johnson property)

We are writing to express concern relative to the recent proposal submitted by Annette Johnson to develop tax lot 202. We live within 500 feet of Trillium Creek, and have appreciated the returning health of this waterway. We know also that the condition of the creek is important to Willamette River.

We are very concerned that the Planning Commission and the City of West Linn do not understand we cannot build on or near creeks, rivers, or waterways. We cannot build or disrupt natural habitat. This is growing more important everyday as we hear about catastrophes predicted as result of mismanagement. Naturalist reports have shown that disrupting waterways in anyway causes the dying off of wildlife and water stagnation. This certainly is not what we want for our city.

We are asking that the City of West Linn (City of Trees) set an Evidentiary Hearing for the friends and neighbors of Trillium Creek to voice their opinion, suggestion or concerns with regards to this matter.

We would like to be notified of any future plans that are presented to the City of West Linn or Planning Commission of this property or future plans of building near or disturbing the land around Trillium Creek.

RESPONSE: If the decision is appealed, Mr. and Mrs. Perry will be notified of the City Council hearing as their property is within 500 feet of the site. Both the cottonwoods and the significant grove of trees in the west central area of the site will be preserved. See above response to comments by Pat Kearney and Ole Olsen.

Ole Olsen, 3993 Kenthorpe Way, May 1, 2008
Enclosed find a copy of a memo regarding a request for the legal document mnumber for the Civil Action in Clackamas Co. between Annette Johnson v City of West Linn that is active.

My second request was to Tom Soppe on 4/30/08 and the public records law dictates that the third request goes to Clcakamas Co Court for a writ.

My file on the Public Records Law is at home.

I was here at 9:00 to 9:30 for a meeting with Ken Worcester to discuss a solution to the Johnson property. I had previously discussed this with Dennis Wright Engineering and they think my proposal is feasible.

I am not sure whether my present emotion is anger or disappointment or both.

This is my "third" request.

I will be back with a request for writ if the lawsuit no. is not at Ken W.'s secretary by 4:00 May 1, 2008.

RESPONSE: Mr. Olsen received the lawsuit number on May 1, 2008.

Ole Olsen, 3993 Kenthorpe Way, May 1, 2008
Item #4 of my Petition for Evidentiary Hearing contains information that is not correct.

The April Robinwood Neighborhood Association meeting was held on April 8, 2008. Terry Pennington has received a fax per his testimony and my recollection from Gordon Howard. On the 8th? The notice was not mailed until the 9th so the neighborhood president and all others did not receive notice until the 10th or 11th.

I believe it is in the best interest of the City of West Linn to allow a meeting to discuss the Annette Johnson Property and allow a proposed solution that presented to Ken Worcester & Dennis Wright to be researched and put an end to the terrible civil and administrative procedures that plague this property.

This is a hand-written request that is in front of my secretary but she may not have time to type.

Please extend the decision date to after the May 13, 2008 Robinwood Neighborhood Association meeting.

RESPONSE: Staff concurs that the Robinwood Neighborhood Association was notified legally and on time. The 120-day rule requires that a decision be made as soon as possible after May 1 on this application. The Robinwood Neighborhood Association had the required 20 days to respond. The CDC requires the decision only be based on the criteria of Chapter 32, not discussions of other issues that may be occurring between Mr. Olsen and other City staff.

Karie Oakes, 1125 Marylhurst Dr., May 1, 2008

I have many concerns regarding this application. I ask that my comments be included in the record.

First, please cite for me the CDC that gives authority to the Planning Director to grant a Water Resources Protection Permit for the above referenced property.

Secondly, I am unable to access the application or staff report through the West Linn web site. Teresa Zak stated in an e-mail yesterday to me that the Staff Report is still being prepared and is not available. She also states that the deadline for comments is today.

The Planning Director decision is either today, per Ms. Zak or Monday, May 5, per the notice. Either date gives the public time to review and comment on the application, given that the Staff Report is not complete and posted.

Please also cite for me the CDC that will allow the process to proceed to a decision without a Staff Report.

I have learned of the concerns of Ole Olsen and other interested parties regarding this property. They seem warranted.

I would like to review the application and Staff Report. Please notify me as soon as they are available. Thank you.

For the record, I oppose this application until it is properly noticed. While Planning Director decisions may not require a hearing, they do allow for public comments.

RESPONSE: 32.090(A) grants the authority of the City to grant a Water Resources Area Permit for lots completely within the transition area of a water resource area, such as this one, as long as the permit allows the disturbance of the minimum area possible to build one unit. 99.060(A)(1)(s) says a Water Resources Area Permit is a Planning Director decision.

The deadline for comments was May 1 which is what was said on the notice sent out. Staff notified appropriate administrative staff about the website issue. A Water Resources Area Permit is a Class B Notice. Regarding website access for Class B notices, 99.080(B)(1)(g) says, "The City shall make reasonable efforts to post notice of the application on the City's website at least 10

days prior to the hearing, meeting, or decision date. Failure to comply with this section due to technical problems with the website is not a procedural defect entitling any party to a delay in the hearing process."

99.040(A)(3)(c) says the Director shall "Make the application, all documents or evidence relied upon by the applicant and applicable criteria available at least 20 days prior to the hearing or date of the Director's decision. Make the staff report available at least 10 days prior to the scheduled date of the public hearing(s)." 99.090(7) says "State that a copy of the staff report will be available for inspection at no cost at least 10 days prior to the hearing, and copies at reasonable cost." There is no requirement that a staff report be available before the Director decision date. There are only requirements that for an application that has a hearing, the staff report shall be available 10 days prior. The application itself was made available to anyone who asked to see it during the comment period.

Terry & Karyn Pennington, 19065 Trillium Drive, May 1, 2008

As I stated in my 12/31/2007 request for denial of the applicant's previous application (NDW-07-09/VAR-07-09/VAR-07-16) based upon the fact that denying the Mrs. Johnson's application would constitute a violation of her civil rights is questionable.

The same reasons apply to this application also. The applicant's property is part of a transition area that surrounds a natural stream and adjacent wetlands that consists of property owned by three additional property owners who would suffer particularized injury as a result of the applicant's construction activities. Such construction activity would also cause extensive damage to the watershed below the site and would result in particularized injury to those property owners also.

The site has already been severely disturbed twice within the past 6+ years. And our property has already suffered severe erosion as a result. Should this application be approved it will again be subjected to radical environmental damage causing further erosion.

It is our (my wife's and my) position that particularized injury would occur to our property as well as the other property owners adjacent to and downstream (all the way to the mouth of Trillium Creek) from the resulting construction activity on the applicant's property as a result of the approval of this application.

Such activity would consist of severe erosion, loss of fishery, nesting, other habitats, and tree canopy resulting in the reduction of our property's value and considerable degradation of the quality of life we, as part of the ecosystem, have enjoyed for the past 21 years.

The watershed is just beginning to rejuvenate its self and support wildlife including beaver. Trillium Creek is finally again demonstrating that it is a viable habitat to support salmonides, lampre and other amphibian species.

In closing, in addition to the above, based upon the harm to the environment, what appears to be improper interpretation, lack of proof, and poor administration by City Staff, we believe:

1) Tax Lot 2S 1E 24BB #202 is likely to be found an illegal lot lacking documentation with proper City records lost,
2) CDC 32.090 is not met and the burden of proof has not been established. Work performed is still not accurate, nor is enough completed; posing a real threat to the environment and West Linn residents,
3) Due to the instability and soils characteristics, the existing cottonwoods need to remain and setbacks should be enforced, unless definitive proof including a professional independent hydrology report and performance bond is delivered,
4) Permission and execution on this illegal lot WILL destroy many natural resources,
5) A mitigation plan has not been submitted nor applied for or even considered by staff as required by code.
6) Based on the history of the permits for the tax lot and the recent addition to CDC 32.090 into the code, improper administration and the perception of collusion amongst city staff with developer interests appears to be supported,
7) Missing applications and prior illegal findings do not indicate due diligence has been performed. Gross errors indicating incompetence by prior staff and prior City Managers should be reviewed; grandfathering in their actions and repealing CDC 32.090.

Consequently, **We Oppose Approval of this Application.**

RESPONSE: See above staff responses to comments by Ole Olsen, Pat Kearney, Lisa and Ken Clifton, and James Andrews. See above staff reponse to petition signed by 30 residents. See also Exhibit PD-2, the memo regarding legal lot status by Staff Attorney Gordon Howard.

Deborah Alysoun, 4084 Cedaroak Drive, May 1, 2007

As a new resident of the Robinwood neighborhood in West Linn, I've been dismayed to observe the city's handling of the application of Annette Johnson to build a residence in a "water resource area" (ie. beautiful little creek and wetlands). Not only would the granting of a request to build a house directly in an important drainage way and wildlife habitat fly in the face of West Linn's professed commitment to sustainability, but in this particular case there are so many questions about the legality of the lot itself that the granting of Ms. Johnson's request would put to question the City of West Linn's commitment to upright legal practices.

I urge you to perform an evidentiary hearing on Ms. Johnson's most recent application, to allow all the issues regarding this matter to be presented and accurately and fairly examined. A situation that involves as many legally-questionable transactions as this property does, cannot be dismissed as ordinary and requiring nothing more than signature of a city official to proceed on the applicant's request. To uphold legal standards and to demonstrate respect of its citizens, the city must allow all the issues to be brought to light in public hearing.

RESPONSE: See above staff responses to comments by Ole Olsen. See also Exhibit PD-2, the memo regarding legal lot status by Staff Attorney Gordon Howard.

Sharon Treadgold, 4044 Cedaroak Drive, May 1, 2007

As I stated in my December 2007 email, I am against the building of any house on or near Trillium Creek. Please grant an evidentiary hearing so friends and neighbors of the creek may express their concerns regarding tax lot 202, the Annette Johnson property.

RESPONSE: See above staff responses to comments by Ole Olsen. See also Exhibit PD-2, the memo regarding legal lot status by Staff Attorney Gordon Howard.

RECOMMENDATION

Based upon staff findings and findings contained in the applicant's submittal in the City record, staff finds and recommends that there are sufficient grounds to approve this application with the following conditions of approval:

1. The applicant shall be limited to a 15 foot by 60 foot footprint for the house, measured 15 feet east from the 7.5 foot setback on the west side of the lot, and measured 60 feet north from the 20 foot street setback. A driveway 15 feet wide shall be allowed directly south of this footprint, coming no further east than the house does. A conservation easement shall be placed on the entire lot except for the house and driveway footprint as described above. The conservation easement may also exclude any area permanently set aside for any necessary above-ground stormwater treatment facilities, if deemed necessary by the Engineering Department. The significant grove of trees in the west central area of the site shall be preserved during construction, as shall be the two cottonwoods.

2. The applicant shall remove all non-native species from the site by hand, without bringing vehicles onto the site to do so.

3. The applicant shall provide stormwater treatment facilities to the satisfaction of the Engineering Department.

4. At the building stage, the 7.5 foot setback on the west side of the house shall be measured from the line created by the two survey stakes placed by the surveyor, rather than measuring 17.5 feet or any other distance from the house at 3915 Cedaroak Drive.

5. All areas disturbed by construction shall be revegetated with native vegetation.

6. The first floor finished floor elevation must be at least one foot above the 1996 flood elevation. There shall not be a basement, but any enclosed area below the first floor shall have openings allowing potential floodwater to pass in and out of the area. Any areas below the first floor, and their aforementioned floodwater openings, shall be compatible with CDC 27.080(B).

I/We declare to have no interest in the outcome of this decision due to some past or present involvement with the applicant, the subject property, or surrounding properties, and therefore, can

render an impartial decision. The provisions of the Community Development Code Chapter 99 have been met.

Ryan C Brown — 5.09.08

BRYAN BROWN, Planning Director — DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of mailing date. Cost is $2500. The appeal must be filed by an individual who has established standing by submitting written comments prior to or on May 1, 2008. Approval will lapse 3 years from effective approval date unless an extension is obtained.

Mailed this 12 day of May, 2008.
Therefore, the 14-day appeal period ends at 5 p.m., on

May 26th, 2008

SUPPLEMENTAL FINDINGS

NDW-07-09, VAR-07-16

32.050 APPROVAL CRITERIA

No application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards have been satisfied, or can be satisfied by conditions of approval.

A. Proposed development submittals shall identify all water resource areas on the project site. The most currently adopted Surface Water Management Plan) shall be used as the basis for determining existence of drainageways. The exact location of drainageways identified in the Surface Water Management Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer. The Local Wetlands Inventory shall be used as the basis for determining existence of wetlands. The exact location of wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in a wetlands delineation analysis prepared for the applicant by a certified wetlands specialist. The Riparian Corridor inventory shall be used as the basis for determining existence of riparian corridors.

FINDING NO. 1:

The site plan depicts location of the drainageway on the property and the wetland on the northeast corner of the property. A professional survey has been done for the site plan. The criterion is met.

B. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.

C. Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.

FINDING NO. 2:

NDW-07-09, also an application for a Water Resources Area permit at this site for this applicant, was denied earlier this year because the applicant proposed the house further north on the lot, resulting in more impervious areas, more disturbance to the drainageway transition area, and more effects on significant trees than the current plan to build the house towards the front of the lot as shown on the current site plan. As discussed above, the code allows for one house to be built on this site even though it is completely within the drainageway transition area and even though any house built on this site would violate the drainageway setbacks otherwise provided by the code. This is allowed through the hardship provisions of 32.090. The provisions of 32.090 make the CDC compatible with a U.S. Supreme Court ruling on lots of record that would otherwise be undevelopable without such exceptions.

In the staff report for NDW-07-09, staff made it clear that a proposal to build the house at the front of the lot while still retaining reasonable setback from the drainageway would be the most acceptable proposition for developing this site. This application better respects that analysis by staff as it proposes to stay within a maximum footprint at the front of the site. In the staff report for NDW-07-09, staff discussed the importance of retaining the significant grove of trees in the west central area of the lot, and discussed how a Portland-style "skinny house" hugging the west side of the lot may be the best solution for this narrow property entirely traversed by the creek.

The City Arborist and others have expressed concern about how the two cottonwoods located east of the proposed house site stabilize the bank and how erosion, flooding, and negative downstream effects may be more likely without them, even if they are immediately mitigated for. Also, Mr. James Andrews submitted a video (see public comments above) that is part of the record that shows the flooding of the area around the two cottonwood trees in February 1996. In this video it appears the area further west of the cottonwoods, where a skinny house hugging the west setback would mainly be located, is not flooded. Therefore it appears a skinny house west of the cottonwoods, along with the preservation of the cottonwoods themselves, would be the best solution.

The maximum footprint proposed by the applicant is larger than a skinny house and would cause the removal of the cottonwoods. It would also allow the house to be built within 6 feet of the creek at certain locations, which would mean it is approximately at the bank of the creek. Also, it would remove the furthest south of the trees in the significant grove of trees in the west central area of the lot. The footprint needs to be both shorter and narrower.

Condition of Approval 1 therefore requires that the maximum footprint be 15 feet wide east to west, and 60 feet long north to south, which would preserve both the cottonwoods and the trees in the grove, and which should keep the house out of the areas shown to be flooded in the 1996 video. Due to the stability provided by the cottonwoods and the past history of flooding, this would provide the reasonable setback needed. The 15 feet shall be measured from the 7.5 foot west side setback, and the 60 feet shall be measured from the 20 foot street setback. A driveway of approximately 15 feet in width will be allowed south of this footprint. With this plan, the house would be approximately 5.5 feet from the bank of the creek, making it approximately 11.5 feet from the creek itself at its northeast corner, according to staff measurements on site. It would be approximately 17 feet from the creek bank (approximately 23 feet from the creek itself) at its south

corner, and further from the creek in between these two corners. The house would be 7 feet west of the closer of the two cottonwoods.

Houses of approximately 15 by 60 feet or smaller have been built in many locations in the City of Portland, and have functional floorplans appropriate for constrained lots. These two-story homes tend to have 1400-1600 square feet of living area in addition to the one-car garage that is part of the first floor. This is a livable family home. As shown by the applicant's analysis of nearby houses in her NDW-07-09 previous application, the average house in the immediately surrounding area has a footprint (including garage) square footage of 1,693 square feet. Since many of these houses are ranch style, this average likely represents many houses with this amount of above ground living area. The house next door to the west at 3915 Cedaroak Drive has approximately 1,248 square feet of living area according to Clackamas County data, and the house across the street from that at 3896 Cedaroak Drive has 1,534 square feet of living area according to county data. Regardless of whether the footprint as modified by Condition of Approval 1 allows for a house with as much square footage as surrounding houses (or with as large of a garage), this is an acceptable restriction for a lot with so many constraints. The constraints of the lot include its location entirely within the transition area, the need to reduce impervious surfaces as much as possible for flooding/erosion/stability/habitat reasons, narrowness of the lot, curvatures of the creek, stability provided by existing trees, etc. The need to respect these constraints to preserve the delicate environment and to prevent severe erosion, flooding, habitat, and aesthetic effects on surrounding and downstream properties outweigh the need to allow the applicant to build a house that is as large as those in the remainder of the neighborhood. And as stated above Condition of Approval 1 allows for a livable sized house with a functional floorplan, complete with garage and a parking space in front in the driveway.

Condition of Approval 1 also ensures that areas outside this modified driveway and house footprint area will not be developed and will instead be placed within a conservation easement which will cover all areas of the lot that are not included in the footprint delineated in Condition of Approval 1.

Condition of Approval 5 requires the any areas disturbed during construction to be revegetated with native vegetation.

As seen in Mr. James Andrews' comments above, Mr. Andrews demonstrated to staff with a tape measure that his house (3915 Cedaroak Drive) is 15.5 feet from the line created by the two survey stakes on the property boundary between his property and the subject property, not 10 feet as shown on the applicant's site plan. Therefore Condition of Approval 4 also ensures the 7.5 foot setback for the new house will be measured from the line created by the stakes, not as a 17.5 foot total measured from Mr. Andrews house.

The criterion is met via the conditions of approval.

D. *Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant*

chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot wide structural setback areas do not require preservation by easement or dedication.

E. *The protected water resource area shall include the drainage channel, creek, wetlands, and the required setback and transition area. The setback and transition area shall be determined using the following table:*

At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon the width of the property, the width of the protected corridor will vary.

FINDING NO. 3:
The narrow lot is completely within the transition area, and any dedication of the lot to the City would make this lot that much smaller (any dedication of more than 3,392 square feet would make it non-conforming). Any dedication would also make setbacks that much harder to maintain. Unlike with many Water Resource Area permit applications, such dedication is not appropriate at this site. However it is appropriate to ensure that no development beyond what is allowed by Condition of Approval 1 occur, including either expansions of the house beyond this footprint or landscaping or other development that would change the natural character of the site beyond this house and driveway footprint. Therefore via Condition of Approval 1, the entire lot except for the house and driveway footprint as delineated in Condition of Approval 1 will be placed in a conservation easement.

F. *Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:*

   a. *For utility facility connections to utility facilities, no greater than 10 feet wide.*

   b. *For upgrade of existing utility facilities, no greater than 15 feet wide.*

   c. *For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of Water Quality Resource Area, or 20% of the total linear feet of Water Quality Resource Area, whichever is greater.*

G. *Prior to construction, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction is complete. The water resource area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.*

FINDING NO. 4:
There will be no roads or recreation facilities. Construction will be carried out in a way that minimizes impacts according to the applicant. Utilities will be put under the driveway to minimize disturbed area. Any areas that need to be disturbed for utilities beyond this will be planted with native grasses. The drainageway will be fenced off from the construction area, which is in the water resource area because the entire lot is within the water resource area. The criterion can therefore be met as outlined.

H. *Paved trails, walkways, or bike paths shall be located at least 15 feet from the edge of a protected water feature except for approved crossings. All trails, walkways, and bike paths shall be constructed so as to minimize disturbance to existing native vegetation. All trails, walkways, and bike paths shall be constructed with a permeable material and utilize Low Impact Development (LID) construction practices.*

FINDING NO. 5:
There will be no trails, walkways, or bike paths. The criterion is not applicable.

I. *Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.*

J. *Appropriate erosion control measures based on CDC Chapter 31 requirements shall be established throughout all phases of construction.*

K. *Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80% of the water resource area and less than 50% tree canopy coverage in the water resource area. "Vegetative improvements" will be documented by submitting a revegetation plan meeting CDC Section 32.080 criteria that will result in the water resource area having a combination of native trees,*

shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC Section 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.

FINDING NO. 6:
Strong engineering and appropriate erosion control measures based on Chapter 31 will be applied. The current drainageway course will not be further diverted. Himalayan blackberries, morning glory vine, and other invasive plants have grown over some of the native plantings from the revegetation project at the site four years ago. The applicant plans to remove the non-native plants from the site. Condition of Approval 2 requires the applicant to remove all non-native species from the site by hand (without vehicles entering the site to do this) in order to disturb the drainageway transition area as little as possible. Flooding is a concern as the house will be built very near to the area of the 1996 flood around the cottonwood trees. The finished floor of the house should therefore be above the 1996 flood elevation, and any structural open area beneath this shall have openings for water to pass in and out if and when it floods within the house footprint. This will prevent development on this site from increasing the severity of floods downstream. Condition of Approval 6 requires these stipulations. The criterion is therefore met.

L. *Structural Setback area: w here a structural setback area is specifically required, development projects shall keep all foundation walls and footings at least 15 feet from the edge of the water resource area transition and setback area if this area is located in the front or rear yard of the lot, and 7 ½ feet from the edge of the water resource area transition and setback area if this area is located in the side yard of the lot. Structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to three feet are permitted in the setback. Decks are permitted within the structural setback area.*

FINDING NO. 7:
The criterion cannot be applied because the parcel is entirely within the transition area (50 feet from the stream, in most cases, but in this case all of the parcel is within the transition area due to the larger transition area buffer designated for riparian corridors). There is no way that a house of a typical width could be built on this site without coming closer than 15 feet to the drainageway. The site plan as proposed maintains a distance of at least 6 feet from the drainageway in all areas, which would place the house right at the creek bank in some locations. For this and other reasons, Condition of Approval 1 requires a 15 x 60 house footprint as measured from the southwest corner of the applicant's proposed footprint. This would ensure the house was at least 13 feet from the creek in all areas, and several feet further than this in most areas.

M. *Stormwater Treatment Facilities may only encroach a maximum of 25 feet into the outside boundary of the water resource area; and the area of*

encroachment must be replaced by adding an equal area to the water quality resource area on the subject property. Facilities that infiltrate storm water onsite, including the associated piping, may be placed at any point within the water resource area outside of the actual drainage course so long as the forest canopy and the areas within ten feet of the driplines of significant trees are not disturbed. Only native vegetation may be planted in these facilities.

FINDING NO. 8:
The applicant proposes no stormwater treatment facilities, but public works standards now require all new impervious development of over 500 square feet to have stormwater treatment. Condition of Approval 3 ensures that the applicant will provide appropriate treatment facilities. The criterion is met.

N. *As part of any proposed land division or Class II Design Review application, any covered or piped drainageways identified on the Surface Water Quality Management Plan Map shall be opened, unless the City Engineer determines that such opening would negatively impact the affected storm drainage system and the water quality within that affected storm drainage system in a manner that could not be reasonably mitigated by the project's site design. The design of the reopened channel and associated transition area shall be considered on an individualized basis, based upon the following factors:*

1. *The ability of the reopened storm channel to safely carry storm drainage through the area.*
2. *Continuity with natural contours on adjacent properties*
3. *Continuity of vegetation and habitat values on adjacent properties.*
4. *Erosion control*
5. *Creation of filters to enhance water quality*
6. *Provision of water temperature conducive to fish habitat*
7. *Consideration of habitat and water quality goals of the most recently adopted West Linn Surface Water Management Plan.*
8. *Consistency with required site Mitigation Plans, if such plans are needed.*

The maximum required setback under any circumstance shall be the setback required as if the drainage way were already open.
The maximum required setback under any circumstance shall be the setback required as if the drainage way were already open.

FINDING NO. 9:
There are no piped or covered drainageways on site. The criterion is not applicable.

O. *The decision-making authority may approve a reduction in applicable front yard setbacks abutting a public street to a minimum of fifteen feet and a reduction in applicable side yard setbacks abutting a public street to 7 ½ feet if the applicant demonstrates that the reduction is necessary to create a building envelope on an existing or proposed lot of at least 5,000 square*

feet.

FINDING NO. 10:
The proposed footprint allows for a 20-foot driveway, instead of a smaller setback. Both staff and applicant agreed this was appropriate as this is a street with no on-street parking. The criterion is met.

P. Storm Drainage Channels not identified on the Surface Water Management Plan Map, but identified through the development review process, shall be subject to the same setbacks as equivalent mapped storm drainage channels.

FINDING NO. 11:
No other water resource areas besides the two creeks and the wetland in the northeast corner have been identified. The criterion is not applicable.

Statewide Goals 5 and 6 and findings regarding these, as requested by DLCD:

Goal 5: To protect natural resources and conserve scenic and historic areas and open spaces.

Goal 6: To maintain and improve the quality of the air, water and land resources of the state.

FINDING NO. 12:
West Linn CDC Section 32.090 implements Metro's guidelines set forth in Title 3 of the Metro Functional Plan. This title was adopted in response to Goal 6 of the Statewide Planning Program. It also implements Metro guidelines set forth in Title 13 of the Metro Functional Plan, entitled "Nature in Neighborhoods." This title was adopted in response to Goal 5 of the Statewide Planning Program. Section 32,090 allows minimal development on a lot that is entirely within a natural drainageway transition area, such as this lot, so as to avoid "takings" claims against the City from private property owners based upon the United States and Oregon Constitutions.

Earlier this year the City denied the applicant's earlier application, NDW-07-09, as it was not the least impactful plan for this site. NDW-07-09 proposed a house in the west central area of the lot, obliterating the significant grove of trees that provides stability on the bank above the creek, and adding more impervious surface to the site than a house further south on the site.

This new application, WAP-08-04, proposes a house further south on the site. Condition of Approval 1 further shrinks the footprint proposed by the applicant in this application, which is necessary to keep the house away from the creek bank, to preserve trees on site, to ensure these trees continue their role in stabilizing the bank and creek course and in preventing erosion, to add as little impervious surface to the lot as possible, to keep the house as far from the creek as possible, and to destroy as little habitat as possible.

This decision preserves natural resources and scenic areas as much as possible considering that the City is legally obligated to approve one house on this lot. This decision maintains the quality of the air, water, and land resources as much as possible, considering that the City is legally obligated to approve one house on this lot.

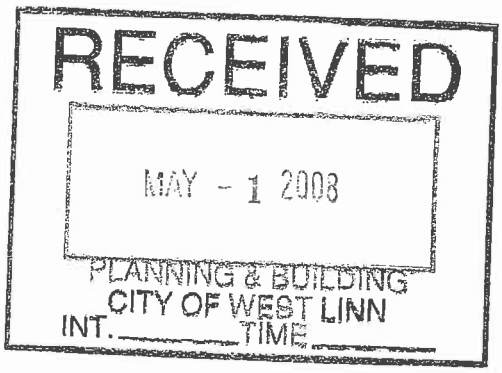
p:\devrvw\staff reports\WAP-08-04 REVISED

EXHIBITS

PD-1 ADDITIONAL CITIZEN SUBMITTALS.....28-48
PD-2 STAFF ATTORNEY MEMO ON LEGAL LOT STATUS.....49-50
PD-3 CITIZEN SUBMITTALS 51-62
PD-4 DLCD COMMENTS.....63
PD-5 AFFADAVIT OF NOTICE.....64
PD-6 PUBLIC NOTICE MAILING 65-68
PD-7 COMPLETENESS LETTER (APRIL 7, 2008).....69
PD-8 APPLICANT'S SUBMITTAL.....70-77

PD-1

April 30, 2008



Mr. Tom Soppe
Associate Planner
West Linn City Hall
22500 Salamo Road
West Linn, Oregon 97068

Dear Mr. Soppe:

Re: Application WAP 08-04

As a new resident of the Robinwood neighborhood in West Linn, I've been dismayed to observe the city's handling of the application of Annette Johnson to build a residence in a "water resource area" (ie. beautiful little creek and wetlands). Not only would the granting of a request to build a house directly in an important drainage way and wildlife habitat fly in the face of West Linn's professed commitment to sustainability, but in this particular case there are so many questions about the legality of the lot itself that the granting of Ms. Johnson's request would put to question the City of West Linn's commitment to upright legal practices.

I urge you to perform an evidentiary hearing on Ms. Johnson's most recent application, to allow all the issues regarding this matter to be presented and accurately and fairly examined. A situation that involves as many legally-questionable transactions as this property does, cannot be dismissed as ordinary and requiring nothing more than signature of a city official to proceed on the applicant's request. To uphold legal standards and to demonstrate respect of its citizens, the city must allow all the issues to be brought to light in public hearing.

Sincerely,

Deborah Alysoun
4084 Cedar Oak Dr.
West Linn, Oregon 97068
(503)699-6926

Terry and Karyn Pennington
19065 Trillium Drive
West Linn, OR 97068-1675
503 636 0143

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PLANNING & BUILDING
CITY OF WEST LINN
INT. _____ TIME _____

May 1, 2008

Mr. Tom Soppe
Associate Planner
Planning Department
City of West Linn
220500 Salamo Road
West Linn, OR 97068

Subject: Water Resources Area Permit Application WAP-80-04

Dear Mr. Soppe:

As I stated in my 12/31/2007 request for denial of the applicants previous application (NDW-07-09/VAR-07-09/VAR—07-16) based upon the fact that denying the Mrs. Johnson's application would constitute a violation of her civil rights is questionable.

The same reasons apply to this application also. The applicant's property is part of a transition area that surrounds a natural steam and adjacent wetlands that consists of property owned by three additional property owners who would suffer particularized injury as a result of the applicant's construction activities. Such construction activity would also cause extensive damage to the watershed below the site and would result in particularized injury to those property owners also.

The site has already been severely disturbed twice within the past 6+ years. And our property has already suffered severe erosion as a result. Should this application be approved it will again be subjected to radical environmental damage causing further erosion.

It is our (my wife's and my) position that particularized injury would occur to our property as well as the other property owners adjacent to and downstream (all the way to the mouth of Trillium Creek) from the resulting construction activity on the applicant's property as a result of the approval of this application.

Such activity would consist of severe erosion, loss of fishery, nesting, other habitats, and tree canopy resulting in the reduction of our property's value and considerable degradation of the quality of life we, as part of the ecosystem, have enjoyed for the past 21 years.

The watershed is just beginning to rejuvenate its self and support wildlife including beaver. Trillium Creek is finally again demonstrating that it is a viable habitat to support salmonides, lampre and other amphibian species.

29 (76)

In closing, in addition to the above, based upon the harm to the environment, what appears to be improper interpretation, lack of proof, and poor administration by City Staff, we believe:

1. Tax lot 2S 1E 24BB #202 is likely to be found an illegal lot lacking documentation with proper City records lost,

2. CDC 32.090 is not met and the burden of proof has hot been established. Work performed is still not accurate, nor is enough completed; posing a real threat to the environment and West Linn residents,

3. Due to instability and soils characteristics, the existing cottenwoods need to remain and setbacks should be enforced, unless definitive proof including a professional independent hydrology report and a performance bond are delivered,

4. Permission and execution on this apparently illegal lot will destroy many natural resources,

5. A mitigation plan has not been submitted nor applied for or even considered by staff as required by code,

6. Based upon the history of the permits for the tax lot and the recent addition to CDC 32.090 into the code, improper administration and the perception of collusion amongst city staff with developer interests appears to be supported,

7. Missing applications and prior illegal filings do not indicate due diligence has been performed. Gross errors indicating questionable competence by prior staff and prior City Managers should be reviewed, grandfathering in their actions and repealing CDC 32.090.

Consequently, **We Oppose Approval of this Application.**

Yours Truly,

Terry Pennington

Karyn Pennington

Karyn Pennington

Soppe, Tom

From: karieokee@aol.com
Sent: Thursday, May 01, 2008 2:27 PM
To: Soppe, Tom; Brown, Bryan
Subject: App. 3955 Cedaroak DR for Water Resource Protection Permi

RECEIVED
MAY - 1 2008
Via email
PLANNING & BUILDING
CITY OF WEST LINN
INT. JS TIME 2:51

Karie Oakes
1125 Marylhurst DR
West Linn, OR 97068

West Linn Planning Department

May 1, 2008

RE: File No:WAP08-04: Water Resources Protection Permit at 3955 Cedaroak DR. for applicant Annette Johnson

Dear Mr. Soppe and Mr. Brown:

I have many concerns regarding this application. I ask that my comments be included in the record.

First, please cite for me the CDC that gives authority to the Planning Director to grant a Water Resources Protection Permit for the above referenced property.

Secondly, I am unable to access the application or staff report through the West Linn web site. Teresa Zak stated in an e-mail yesterday to me that the Staff Report is still being prepared and is not available. She also states that the deadline for comments is today.

The Planning Director decision is either today, per Ms. Zak or Monday, May 5, per the notice. Either date gives the public time to review and comment on the application, given that the Staff Report is not complete and posted.

Please also cite for me the CDC that will allow the process to proceed to a decision without a Staff Report.

I have learned of the concerns of Ole Olsen and other interested parties regarding this property. They seem warranted.

I would like to review the application and Staff Report. Please notify me as soon as they are available. Thank you.

For the record, I oppose this application until it is properly noticed. While Planning Director decisions may not require a hearing, they do allow for public comments.

Sincerely,

Karie Oakes

31 (78)

RECEIVED
May 1, 2008
MAY - 1 2008
PLANNING & BUILDING
CITY OF WEST LINN
INT. _____ TIME 1

To Tom Soppe
to Chris Jordan
RE: WAP 0804

Enclosed finda copy of a memo regarding a request for the legal document number for the civil action in Clackamas Co between Annette Johnson v City of West Linn that is active.

My second request was to Tom Soppe on 4/30/08 and the public records law dictates that the third request goes to Clackamas Co Court for a writ.

My file on the Public Records Law is at home.

I was here at 9:00 to 9:30 for a meeting with Ken Worcester to discuss a solution to the Johnson property. I had previously discussed this with Dennis Wright Engineering and they think my proposal is feasible.

I am not sure whether my present emotion is anger or disappointment or both.

This is my third request.

I will be back with a request for writ if the lawsuit no. is not at Ken W.'s Secretary by 4:00 May 1, 2008

Dated May 1, 2008 (79) Gil Olsen
cc. Dennis Wright 52 Petitioner

Wiencken, Tarra

PERIOD 01/2008

From: Soppe, Tom

Sent: Wednesday, April 30, 2008 4:37 PM

To: Wiencken, Tarra

Subject: What to tell Ole Olsen re lawsuit file

His two options, per my conversation with Gordon:

1) The city doesn't have easily searchable files on past lawsuits. It takes staff time to research this. He can put in a formal records request with the name of the lawsuit, approximately when he thinks it took place, any other useful information, and pay for this request, and the city will do the research and get him the appropriate parts of the file.
2) Go to the County as they have lawsuit records, and this may be easier for him as they may have more readily available, fast research capability.

Tom Soppe
Associate Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068
(503) 742-8660

RECEIVED
MAY 2008
PLANNING & BUILDING
CITY OF WEST LINN
INIT. TIME

To Tom Soppe
City of West Linn

May 1, 2008

RE WAP 08-04 ~~Annette Johnson~~ Property

Item #4 of my petition for Evidentiary Hearing contains information that is not correct.

The April Robinwood Neighborhood Assn meeting was held on April 8, 2008. Terry Pennington has required a fax per his testimony and my recollection from Gordon Howard. On the 8th? The notice was not mailed until the 9th so the neighborhood president and all others did not receive notice until the 10th or 11th.

I believe it is in the best interest of the City of West Linn to allow a meeting to discuss the Annette Johnson Property and allow a proposed solution that I presented to Ken Worcester & Dennis Wright to be researched and put an end to the terrible civil and administrative procedures that plague this property.

~~I do desire~~

This is a hand-written request that is in front of my secretary but she may not have time to type.

Please extend the decision date to after the May 13 2008 Robinwood Neighborhood Assn. Meeting.

Dated May 1, 2008 (81) 3rd

Petitioner,

Soppe, Tom

From: SM Treadgold [smtreadgold@hotmail.com]
Sent: Thursday, May 01, 2008 4:51 PM
To: Soppe, Tom
Subject: request for permit

Mr Soppe and the City of West Linn,

As I stated in my December 2007 email, I am against the building of any house on or near Trillium Creek. Please grant an evidentiary hearing so friends and neighbors of the creek may express their concerns regarding tax lot 202, the Annette Johnson property.
Thank you,
Sharon Treadgold
4044 Cedar Oak Drive

Spell a grand slam in this game where word skill meets World Series. Get in the game.

35 82

PETITION AGAINST A. JOHNSON LOT DEVELOPMENT

DENY WAP 08-04

We, the undersigned, strongly request the Planning Director, or proper authorities, to facilitate and perform an evidentiary hearing on Application WAP 08-04 as allowed by City and State Statutes. (Per Mr. Ole Olson's formal submittal request.)

Barring acknowledgement of our request, the undersigned request Application WAP 08-04 be denied; ***based on harm to the environment, improper interpretation, lack of proof, and poor administration by City Staff.*** We, the undersigned, believe;

1.) Tax Lot 2S 1E 24BB #202 is likely an illegal lot lacking documentation with proper City records lost,

2.) CDC 32.090 is not met and the burden of proof has not been established. Work performed is still not accurate, nor is enough completed; posing a real threat to the environment and W L residents,

3.) Due to the instability and soils characteristics, the existing cottonwoods need to remain and setbacks should be enforced, unless definitive proof and performance bond is delivered,

4.) Permission and execution on this illegal lot WILL destroy many natural resources,

5.) Based on the history of the permits for the tax lot and the recent addition of CDC 32.090 into the code, improper administration and the perception of collusion amongst city staff with developer interests appears to be supported,

6.) Missing applications and prior illegal filings do not indicate due diligence has been performed. Gross errors indicating incompetence by prior staff and prior City Managers should be reprimanded; grandfathering in their actions and repealing CDC 32.090.

NAME	ADDRESS	SIGNATURE
1. DarLeen Deasee	2145 Webb st W.L.	Darleen Deasee
2. Joan Hoffman	2001 Parkside Ct. W.L.	Joan Hoffman
3. STEVEN MIESEN	6275 HOLMES ST W.L.	Steve Miesen
4. Ted Shrewsberg	5749 Terrace Dr W.L.	Ted Shrewsberg
5. Gerda Edwards	5749 Terrace Dr. WL	Gerda Edwards
6. Angela R. Dreher	5767 Terrace Dr. W.L.	Angela R. Dreher
7. Betty Osburn	5910 WEST A. ST, W.L.	Betty Osburn
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NAME	ADDRESS	SIGNATURE
1. GARY HIBERMAN	2188 CLUBHOUSE DRIVE	
2. TERRY PENNINGTON	19015 TRILLIUM DR.	
3. KARYN PENNINGTON	19065 TRILLIUM DR	Karyn Pennington
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CITY OF WEST LINN
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NAME	ADDRESS	SIGNATURE
1. Michelle M. Woodard	3979 Kenthorpe	Michelle M. Woodard
2. Donna L. Woodard	3979 Kenthorpe West Linn OR	Donna L Woodard
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NAME	ADDRESS	SIGNATURE
1. MADALINE F. ALLEN	18567 Trillium Drive, West Linn, OR	Madaline F. Allen
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NAME	ADDRESS	SIGNATURE
1. Deborah Alysoun	4084 Cedar Oak Dr., West Linn	Deborah Alysoun
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NAME	ADDRESS	SIGNATURE
1. Bob Adams	2310 Century Lane	Bob Adams
2. Dawn Adams	2310 Century Lane	Dawn Adams
3. Amanda Katzenmeyer	1290 10th Street, West Linn, OR	A. M. Katzenmeyer
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Recd 4-30-08

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	NAME	ADDRESS	SIGNATURE
1.	MaryGrace McDermott	18976 Walling Circle 97068 1714	MaryGrace McDermott
2.	Pamela Rollins	18891 Walling Circle 97068	
3.	Travis Krellwitz	18909 Walling Circle 97068	
4.	GEOFF BINGHAM	2925 MARYLN. WEST LINN 97068	
5.	Ryan Krellwitz	18909 walling Cir. West Linn 97068	
6.		1314 Jon Vista WL 97068	
7.		18909 WALLING CIR	
8.	Anthony Schroeder	19042 walling Cir	
9.		19042 Walling Cir	Annemarie Schroeder
10.	Susan Marston	19023 Walling Cir 97068	Susan Marston

PETITION AGAINST A. JOHNSON LOT DEVELOPMENT

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NAME	ADDRESS	SIGNATURE
1. James Marston Jams Marston	19023 Walling Circle, West Linn	Jams Marston
2. Thomas Palmore	18957 walling circle, WL	
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NAME	ADDRESS	SIGNATURE
1. James Andrews	3915 Cedar Oak Dr	James L. Andrews
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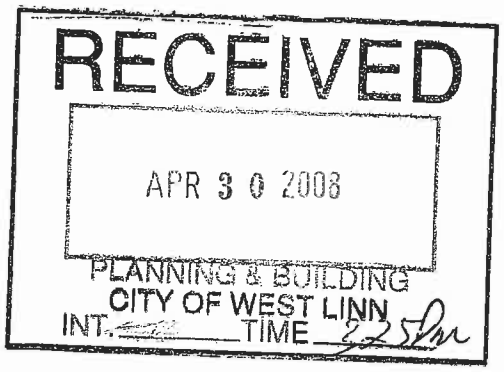
From: Maureen and Joe Perry
4064 Cedar Oak Drive
West Linn, OR 97068



April 29, 2008

To: The City of West Linn

Re: Request for Evidentiary hearing regarding tax lot 202 (Annette Johnson property)

We are writing to express concern relative to the recent proposal submitted by Annette Johnson to develop tax lot 202. We live with in 500 feet of Trillium Creek, and have appreciated the returning health of this waterway. We know also that the condition of the creek is important to Willamette River.

We are very concerned that the Planning Commission and the City of West Linn do not understand we cannot build on or near creeks, rivers or waterways. We cannot build or disrupt natural habitat. This is growing more important everyday as we hear about catastrophes predicted as result of mismanagement. Naturalist reports have shown that disrupting waterways in anyway causes the dying off of wildlife and water stagnation. This certainly is not what we want for our city.

We are asking that the City of West Linn (City of Trees) set an Evidentiary Hearing for the friends and neighbors of Trillium Creek to voice their opinion, suggestion or concerns with regards to this matter.

We would like to be notified of any future plans that are presented to the City of West Linn or Planning Commission of this property or future plans of building near or disturbing the land around Trillium Creek.

Respectfully submitted,

Maureen Perry
Joe Perry

Maureen and Joe Perry
4064 Cedar Oak Drive
West Linn, Or 97068

45 (92)

Soppe, Tom

From: Lisa Clifton [lisamclifton@earthlink.net]
Sent: Wednesday, April 30, 2008 4:27 PM
To: Soppe, Tom
Subject: WAP-08-04

Dear Mr. Soppe,

We are writing in regard to the application for a drainageway protection permit at 3955 Cedaroak Drive (WAP-08-04, Tax Lot 202). We strongly oppose this application as with the previous application by these owners for a Class I Variance and a Water Resources Area permit. Previous comments apply (please let us know if you need another copy of those), though we will reiterate below with specifics to the new application.

To begin with, we have several significant concerns about the incomplete and erroneous nature of the application itself. All of the following questions should be addressed and clarified before any further action is pursued:

Where is the building plan for this property? We have no sense of building height, amount of roof overhang, etc.
Where is the mitigation plan, as required by CDC Section 32.070?
Is this Tax Lot 200 or Tax Lot 202 (much confusion on the front page of application)?
Was the application actually signed in 2007 as it says on the front page?
Why was the application also signed by Ron Johnson when Annette Johnson is the sole applicant?

Anyone interested in the proposed building should thoroughly familiarize themselves with the dimensions and topography of this lot. I believe the city already has pictures of this site from last year's applications to build there. To speak of placing a home on the "13,392 square foot lot," implies a large property. However, the survey plat reveals a narrow lot that slopes significantly towards Trillium Creek. This creek flows nearly halfway onto the main portion of the lot.. There is no room or access on the north portion of the lot which also contains a wetland.

Something is wrong with the calculations regarding the size of the proposed foundation. According to the site plan submitted, the northern portion of the house (20' wide) is to fit into a 33' area between the west property line and the edge of Trillium Creek. With 7.5' taken up between the foundation and the west property line and 20' for the house, the remainder is a distance of only 5.5' from the proposed house to the "west bottom of bank of creek" (NOTE: this is misleadingly drawn on the site plan; the size and placement of the footprint is wrong for the scale of the map). Please also note that at its closest point, Trillium Creek is flowing directly toward the proposed house into a sharp, erosional bank. This is a certain recipe for erosion and flooding. Other portions of the house and driveway appear to reach as close as 6' to the creek. Any access points or landscaping along the east side of the house cannot help but have substantial impacts on the creek. It is troubling that the property owners would not have to even come close to the current 100' plus structural setback requirement for a riparian corridor as outlined in CDC Table 32-1 (Required Widths of Setback and Transition Area).

We would like to know how being unable to build in this riparian corridor constitutes "unreasonable hardship" under CDC section 32.090. The owner of this property owns other properties. That does not sound like the type of "hardship" the law intended.

Under the hardship clause, it mentions "a finding that the proposed development does not increase danger to life and property due to flooding and erosion." Many neighbors who wrote to you about the previous applications for this property mentioned the concern they had for their own properties whether by flooding, pollutants in the creek, damage to wildlife habitat, or property values. As a downstream neighbor, we are particularly concerned about the effects to the creek, though we are also concerned about the City being open to future lawsuits should this building be approved and then future owners face structural problems with their home.

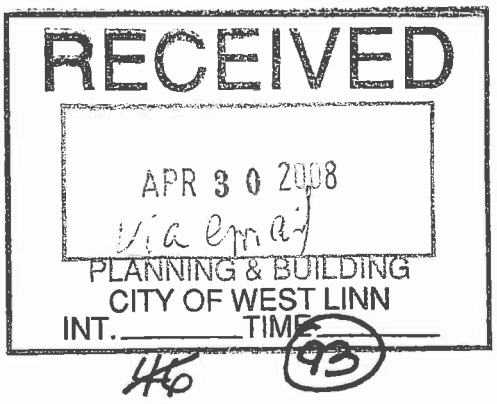
The applicant mentions (response to Criteria 32.050 B) that "compared to homes located on or near the drainageway and in the Cedaroak neighborhood, the proposed home design is narrow and occupies a small footprint area." and that "the footprint has been placed in a location on the site reasonably far from the drainageway." As I stated above, building a house that close to a creek seems disasterous both for the future owners of the house (We're sure that won't be the Johnsons), the health of the creek, and the effects to properties downstream. Please look at your maps. This proposed house would be closer to the creek than anyone else's (except the house at 3993 Kenthorpe that has been there for years), and the footprint is similar in size to many of the existing homes.

When reading the response to Criteria 32.050K, please remember that "the City of West Linn performed a drainageway diversion and re-vegetation project at the site approximately four years ago" to attempt to return the creek to its natural configuration after the Johnsons had illegally altered its course.

The applicant states that stormwater may drain to rock splash pads at the north and northeast corners of the footprint. Remember, the northeast corner is the one proposed to be 5.5' from the creek and the wetland is to the north.

Thank you for taking time to address these concerns. Please contact us should you have any questions regarding the points we have raised here.

Lisa and Ken Clifton



4/30/2008

April 30, 2008

To: Mr. Tom Soppe
Associate Planner
Wet Linn City Hall

From: James Andrews
3915 Cedar Oak
West Linn, OR 97068

RE: File No. WAP.08.04 Water Resources Area permit at
3955 Cedar Oak Dr. for Gans and/or Trillium Creeks.

I live directly west of the 3955 Cedar Oak Dr. property. Johnson and I have lots that are 60 feet wide. They are the narrowest lots on Cedar Oak Dr. All other lots are 100 to 150 feet wide. I have a 36 foot wide house. My house is 9 feet from the property line west of me, and 15 feet from the Andrews–Johnson property line east of me.

The question is, "How can you build a house on that 60 foot lot with a creek running through almost half the lot?"

The closest he can build from our property line is 71/2 feet. He says he wants to build a house that is 20 feet wide in the back. Measure 27 ½ feet from our property line and you can tell he will be building right on the creek bed. CDC 32.090(C) requires a 15 foot setback from the creek.

His proposed house is 27 feet wide in the front. The creek is a little bit further east near the front of the lot, but the result is the same. He will be building right on the creek bed. CDC 32.090(C) requires a 15 foot setback from the creek.

Have you checked his drawings. They are not accurate. They are not drawn to scale. They do not match the measurements on the ground. He still has our property line 10 feet from my house, even though the survey has the property line 15 feet from my house.

The area where he wants to build the house has flooded several times. The creek drains the West Linn hills and empties excess water into the Willamette. Please watch the video I have included with this submission. He wants to build a house in the flood zone. Living by that creek for 22 winters like I have done, you realize you cannot build a house in that flood plane. Watch the video. He wants to build right where the property has flooded during winter rains. He wants to cut down the cotton woods and build right where the cotton woods are standing now. That is precisely the area that gets flooded when the creek jumps the bank. It will be a house flooded with water.

Johnson's surveyor has staked out our property line. Measure the 71/2 foot set back from the property line. Measure the distance to the creek. There is no room to build a narrow house like mine on the lot. Even if the proposed house was half the width of my house, it would be too close to the creek.

He wants to build a house in our neighborhood that would be inappropriate. He would then move on, leaving a sore thumb in our neighborhood for generations to come.

I ask you not to approve this project.

PD-2

West Linn

Administration

April 28, 2008

TO: BRYAN BROWN, PLANNING DIRECTOR

FROM: GORDON HOWARD, STAFF ATTORNEY GH.

SUBJECT: LEGALITY OF LOT OWNED BY ANNETTE JOHNSON AND SUBJECT OF APPLICATION WAP 08-04

Question presented: Was tax lot 2S 1E 24BB #202, a vacant lot that is the subject of an application for a Water Resource Area Permit (WAP 08-04) to build a single-family residence, legally created?

Answer: While the evidence is not conclusive, there exists strong evidence to assume that the lot in question was legally created in 1974.

Background: The subject lot, on the north side of Cedaroak Drive to the west of Trillium Drive, is identified by Clackamas County as tax lot 2S 1E 24BB #202, and has a tentative city-assigned address of 3955 Cedaroak Drive. It is located between two existing residences at 3915 Cedaroak Drive and 19075 Trillium Drive. The lot is entirely within a water resource area associated with Trillium Creek, which runs through the lot. Therefore, to develop a single-family residence on the lot, the City must approve a Water Resource Area permit pursuant to Chapter 32 of the West Linn Community Development Code (CDC). The owner and applicant have submitted such an application (City file WAP 08-04).

CDC 32.090 allows development on existing lots through a reduction in standards for hardship. Sub-section (A) applies to existing lots, such as this lot, which are entirely within the normally required setback area from natural drainageways, wetlands, and riparian corridors. This section states that "[d]evelopment may occur on lots located completely within the water resource area that are recorded with the County Assessor's Office on or before the effective date of this ordinance." The section then goes on to provide standards for such development. While not explicit, the clear intent of this section is to allow limited development on lots *legally created* that are recorded with the County Assessor's office.

Mr. Ole Olson, a neighbor of the application site, has claimed that the lot being considered in this application was illegally created. He has provided evidence consisting of records from the County Surveyor and County Recorder dating from 1972 through 2003.

49 (96)

(503) 657-0331 · FAX (503) 650-9041
22500 Salamo Road, #100 · West Linn, OR 97068

Analysis: For purposes of discussion, the lot now owned by the applicant will be referred to as Lot #202. In 1972, this lot and adjacent Lot #201, owned by James Andrews and with a residence addressed at 3915 Cedaroak Drive, were one lot, per a record of survey #PS 10741, filed with the Clackamas County Surveyor.

In 1974 two record of surveys were filed with Clackamas County involving Lot #202, in February (#PS 12210) and May (#PS 12415), by a previous owner of the property. These surveys created Lot #202. At the time West Linn had a land division ordinance, #846, effective December 8, 1971, requiring a lot partition such as created this lot be approved by the City Administrator as a minor partition application. The City has record of such a partition application, file # MIP 74-2. The city file on this application is incomplete, but it does include a map similar to that filed as the May 1974 record of survey and also includes three legal descriptions corresponding to the three lots created by the record of survey. There is no city letter in the file approving the application; however, the city's files from this period of time were poorly purged at some point in the past and are often incomplete. The lots created appear to conform to the zoning in place at the time (minimum 10,000 square feet). Also, in 1974 minor partitions (three or fewer lots) were implemented through records of survey or other mechanisms – partition plats were not created by state law until 1990. While not conclusive, the evidence available – 1) a minor partition application filed in 1974, 2) evidence that the lots created complied with zoning at the time, 3) the spotty condition of city files from that era, and 4) a record of survey filed with the Clackamas County surveyor matching the map contained within the City file – lead to the reasonable conclusion that Lot #202 (the lot now owned by the Johnsons) was legally created in 1974.

In 1989 Lot #202 was further divided into two lots by a record of survey filed with the Clackamas County Surveyor (#PS 23125). There is no record of a minor partition application with the city for this division. Additionally, the two lots created were each 29 feet wide and less than 10,000 square feet, and would not have met city standards. This lot division was clearly illegal. However, the two illegally created lots were recombined by the County Assessor at the request of the property owner in 1999, therefore curing the illegality and recreating Lot #202.

In 2003 the City approved a lot line adjustment adding approximately 3,500 square feet of area to Lot #202 from a lot to the north also owned by the property owner. This was recorded with the County Surveyor (#SN 2003-107). This final action created Lot #202 as it stands today, the subject of the application.

Summary: Lot #202 was originally created in 1974. Evidence available shows that this lot was most likely legally created at that time. In 1988 Lot #202 was illegally further divided, but was recombined in 1999. In 2003 the City approved a lot line adjustment creating the lot as it currently exists. Therefore, I recommend the City determine that Lot #202 is a legally created lot for the purposes of considering the Water Resource Area permit application (WAP 08-04).

PD-3

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CITY OF WEST LINN
INT._____TIME_____

April 16, 2008

Mr. Tom Soppe
Associate Planner at City Hall
22500 Salamo Rd.
West Linn, OR 97068

Ref: File NO. NDW-07-09/VAR-07-16

Dear Mr. Soppe,

I am restating my concerns about the proposed development of 3955 Cedaroak Drive and the disturbance of the riparian habitat. I live on Trillium Creek and see a slow return of native fish, such as trout and craw daddies, and native "Douglas" squirrels. I am removing ivy from my Trillium Creek bed so trillium and other native plants can return

This site is so close to the creek it would destroy, by causing silt and erosion, the fish habitate.

Haven't we already heard, loud and clear, the neighbors concerns about this variance? Why has it returned and so soon? The property should never be developed. It is wrong in so many ways, I can't understand how the city would even consider allowing a house to be built there.

The City of West Linn supports the park preservation/restoration effort. Why would City Planners grant a development that would undermine this upstream effort?

Please do not grant a Water Resources Area permit and a Class I Variance for side yard setback. Let us save what is left of the riparian habitat and repair, not destroy it.

Sincerely,

Lorie Griffith
4068 Kenthorpe Wy
West Linn, OR 97068

98

CITY OF WEST LINN, OREGON

OLE OLSEN, Petitioner, & Co-petitioners by Attachment "A," Interested Parties by Attachment, "B," Interested Parties by Testimony in Future Attachment "C"	)	WEST LINN FILE NO. WAP-08-04 PETITION FOR EVIDENTIARY HEARING Water Resource Protection Permit Plus Other Issues – Annette Johnson Property 3955 Cedaroak Drive West Linn, OR 97068
v.	)	
CITY OF WEST LINN,	)	
Respondent.	)	

RECEIVED
APR 28 2008
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CITY OF WEST LINN
INT. TIME

This is a petition to the City of West Linn for an EVIDENTIARY HEARING and potential Conflict Resolution agreement by Ole Olsen, Petitioner, and 5 Co-Petitioners within 100 feet of Annette Johnson's property addressing the City of West Linn's File No. WAP-08-04 Water Resource Protection Permit.

Interested Parties qualify by petition signatures, oral testimony, or written testimony.

The Annette Johnson property is entirely within the Water Resource Protected area of Trillium Creek/Gans Creek that drain 200± acres of an area of West Linn called Hidden Springs. This development has created extra water flow after a rainstorm causing downstream erosion problems.

1. Petitioner's name and address is Ole Olsen, 3993 S. Kenthorpe Way, West Linn, OR 97068.

2. Petitioner purchased his property, which is located south and about 100 feet east of the Annette Johnson property, in 1972 and built a house in 1973, where he has resided since. Co-petitioners' properties are adjacent to or across from the Annette Johnson property and have Trillium Creek in common.

52 '99

3. Petitioner recognizes that a $250.00 fee may be required and that the fee may be voided by the Robinwood Neighborhood Association upon vote or upon the City's own agreement. See ORS 227.175(10)(b)

4. Petitioner recognizes that the Robinwood Neighborhood Association was not mailed notice as required, and that at the April meeting, the President, Kevin Bryck, was unable to discuss this as an issue.

5. Petitioner recognizes that the authority for this petition is ORS 197.763 or the Administrative Procedures Act (ORS 183) or ORS 92, as applicable.

6. Petitioner has known Annette Johnson since about 1962, has known her husband Ron since about 1961, and has known several other family members in various degrees of association during the 1960s, 1970s, and 1980s.

7. Petitioner has participated with several City of West Linn officials over subjects of interest, plus has performed volunteer activities since 1973, but on an intermittent basis.

TAX LOT 202 – 3955 CEDAROAK DRIVE – LEGAL PROBLEM HISTORY

8. Petitioner has considerable historical knowledge of the property and has done a deed, plot map, and plat drawing review of documents from Clackamas County Surveyors and Assessors offices done in January 2008.

9. Petitioner has knowledge that legal "deed" issues exist which need to be corrected. The property is actually a tax lot and not a legal lot.

10. Petitioner has knowledge that this property is the subject of a civil action in Clackamas County Court, and that this action is still active as of April 2008.

(100)

11. Petitioner believes that Clackamas County Court needs to be notified in the form of an Amicus Curiae (Friend of the Court) as prepared by the Petitioner, co-Petitioners, and/or interested parties. The City of West Linn's legal counsel may desire to notify the Court of the evidentiary hearing or dispute resolution meeting at their desire.

12. Petitioner has knowledge that several other civil actions, administrative violations, and administrative permit problems have occurred with the property over the last eight years.

TAX LOT 202 – 3955 CEDAROAK DRIVE – OWNERSHIP HISTORY

13. Petitioner has knowledge that this property was purchased in 1974 by Ken and Terri Cusic as a private "open space" as an extension of their property directly to the west of the Annette Johnson property.

14. Petitioner has knowledge that Annette Johnson's ownership began June 5, 1984 with a joint payment of $8,000, that additional monies were paid in 1994, that other monies were paid over time with the amounts and dates unknown, and that the property was purchased for a private "open space" because the property was upstream to their residence at 19055 Trillium Drive, West Linn.

15. Petitioner has knowledge that Ron Johnson has declared bankruptcy twice, and that Ron Johnson put several real estate properties into the name of Annette Johnson; Ronald & Annette Johnson Revocable Living Trust; and/or Annette Johnson, Trustee, by considerations of $0 to $1,000 in a series of Warranty and Quitclaim Deeds.

The amount of loss to creditors needs to be researched. Numerous properties are affected by these deed transfers besides Tax Lot 202.

16. Petitioner has knowledge that the City of West Linn employees and/or officials have made substantive and procedural errors in processing the numerous civil and administrative applications over the years.

17. Open for expansion

18. Open for expansion

19. Open for expansion

20. Petitioner has knowledge that the City of West Linn attached the lien for the stream rehabilitation project of 2003/2004 to Tax Lot 203, and not Tax Lot 202, and that the title company paid the $8,000 lien because of a title error. (See also ORS 105.454.)

21. Petitioner believes that the City of West Linn has spent over $100,000 in time and overhead expense in processing paperwork on this property over the last eight years.

22. Open for expansion

TAX LOT 203 – 19055 TRILLIUM DRIVE, WEST LINN, OR

23. Petitioner has knowledge that present Tax Lot 203, known as 19055 Trillium Drive, was purchased in 1974+ from Paul and Bill Kasch for a $2,500 discount as opposed to a purchase through Ole Olsen, the Petitioner. The Petitioner then entered in a construction agreement to build the house at 19055 Trillium Drive. Ron Johnson claimed hardship, and modified the contract to include foundation,

framing, roof, windows, and front door only. Ron Johnson refused to pay the 1975(?) $4,500 bill, and through a legal tactic by Ron Johnson's attorneys, the court dismissed the case without judgment. Annette Johnson eventually paid slightly more than $900 of the bill.

24. Open for expansion

25. Open for expansion

TAX LOT 200 – 19057 TRILLIUM DRIVE, WEST LINN, OREGON

26. Petitioner has knowledge that Tax Lot 200 is not a legal lot due to size, less than 10,000 sq. ft., and that this lot is not a buildable lot. This lot is owned by Pat and Heidi Kearney, 19055 Trillium Drive.

27. Open for expansion

28. Open for expansion

29. Open for expansion

TAX LOT 202 – 3955 CEDAROAK DRIVE – APPLICATION 4/2/07

30. Petitioner has knowledge that an application for a Water Resource Area Permit was submitted with an alleged signature of Annette Johnson, though numerous documents indicate this may not be a true and legal signature. The alleged date was 4/02/07, but processing was not started until 4/02/08, nearly a year later.

31. Petitioner has knowledge that no pre-application conference was conducted. Petitioner has knowledge that a meeting was held between Gordon Howard, Bryan Brown, Annette Johnson, Ron Johnson, and Lance Johnson on 4/02/08,

and that Tom Soppe knew about the meeting but was unable to attend. Tom Soppe has belief that no written document existed per meeting with Petitioner, Ole Olsen, on 4/28/08. See Lance Johnson comment item 32.040B. Notification was mailed on 4/09/08, and there is an "application complete" date of 4/07/08.

32. Petitioner has knowledge that a site visit was done by Tom Soppe of the City of West Linn Planning Department in the presence of Jim Andrews on 4/16/08.

33. Petitioner personally accompanied City Engineer Dennis Wright to the site on April 21, 2008, and that Jim Andrews was present at the visit. Dennis Wright has agreed to in-house questions.

34. Petitioner has knowledge that the File No. WAP-08-04 for a Water Resource Area Permit should not be issued because:

A. There is a legal lot problem. The lot cannot be sold, a house cannot be built, and no mortgage can be obtained;
B. Proper creek top bank-to-building setback has to be added to the application. Present drawings show zero setback;
C. A mitigation plan has not been applied for;
D. Construction in a filled-in area adjacent to a creek creates problems;
E. Elevation grades do not appear correct and may have an error of 3 ft.;
F. The "first floor" elevation is 9 ft. above basic grade and is a concern.

35. Natural resources, environmental and conservation concerns are major issues to a large number of neighbors: A preliminary list is:

A. Soil (land) including riparian
B. Air and noise
C. Water, including lakes, ponds, drinking water supply, etc.
D. Plants, including trees, forests
E. Animals, including birds, mammals, fish, and habitat
F. Minerals
G. Protected areas including open space, flood, erosion, etc. Wetlands and riparian areas

36. Petitioner acknowledges that numerous documents exist that are in the possession of others, and that one or more prehearing conferences may be necessary to collect the documents and establish procedures to conduct an orderly hearing.

37. Petitioner believes that an evidentiary hearing will support the conclusion that the owners' rights, the City of West Linn's rights or obligations, and the Petitioner's, Co-petitioners, plus other interested parties' rights, concerns, and issues will support and lead to a solution that will benefit and be acceptable to all parties and the community at large. See ORS 197.319 to .350.

38. Petitioner acknowledges that some of the issues are civil matters and some are administrative matters, and that the inter-relationship makes a solution more difficult. The Petitioners, the owners and their agents, and the City officials need to know the difference.

39. Open for expansion

40. **Petitioners/Parties Disclaimer**. This Petition is an outline and all evidence supplied by the petitioners and other parties is the responsibility of those supplying the information, and there is no cross liability for the action of "other."

Dated: April 28, 2008

Ole Olsen, Petitioner

Attachment A: Co-Petitioners' Names & Signatures
Attachment B: Party Petitioners & Signatures
Attachment C: Interested Parties & Signatures

ATTACHMENT "A"

Co-petitioners Names & Signatures

Attachment to Petition for Evidentiary Hearing, File No. WAP-08-04, Water Resource Area Permit – Annette Johnson Property.

The following names are those that are on the mailing list of property owners within 500 feet of Annette Johnson Property.

1. _____ _____
Name Signature

_____
Address

2. _____ _____
Name Signature

_____
Address

3. _____ _____
Name Signature

_____
Address

4. _____ _____
Name Signature

_____
Address

5. _____ _____
Name Signature

_____
Address

106

ATTACHMENT "B"

Co-petitioners Names & Signatures

Attachment to Petition for Evidentiary Hearing, File No. WAP-08-04, Water Resource Area Permit – Annette Johnson Property.

The following parties have submitted evidence or testimony in the above matter and have legal standing to participate in any administrative hearing or appeal.

1. _____ _____
Name Signature

_____
Address

2. _____ _____
Name Signature

_____
Address

3. _____ _____
Name Signature

_____
Address

4. _____ _____
Name Signature

_____
Address

5. _____ _____
Name Signature

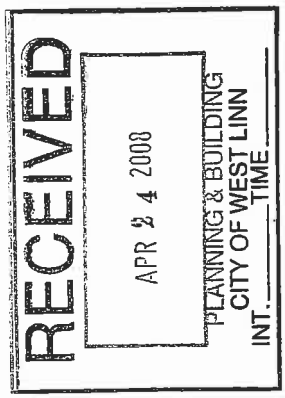
_____
Address

MEETING
April 23, 2008
Wednesday 7:00 pm
Round Table Pizza
Site visit: 6:00-6:45pm
Jim Andrews and Ole Olsen

For: Property owners within 500 feet of tax lot 202

Property Name: A. Johnson House
Address: 3955 Cedaroak Drive
West Linn, OR 97068

Subject: PROPERTY
Residential Real Estate



Primary Application: House Construction Permit
(NOT SUBMITTED)

File Number: WAP-08-04

Second Application: Drainage way Protection Permit
Application Date: 4/02/07 (what)
Completed Date: 4/07/08
(120 day to approve 8/05/08)

Third Application: Mitigation Plan
(NOT SUBMITTED)

Owner/Applicant: Annette Johnson
Happy Valley, OR 97086

Jurisdiction: West Linn Planning Department
Tom Soppe
503-742-8660

Narrative by Ole Olsen: Annette Johnson intends to build a 1680 square foot house with a garage at 3955 Cedaroak Drive, West Linn. Tax lot designation 2S1E page 24BB lot 202 in an R-10 zone (10,000 sq ft single family residential zone), that is entirely in the water resource area of Trillium Creek.
The east edge of the house has plans that have a ZERO setback to the creeks top bank. The floor level is over 9 ft. above the basic grade; considerable fill exists in the footprint. NO mitigation plan is included.
Numerous legal lot, legal data, expected construction problems, proper setbacks, and procedural problems exist.

Property Owners to: Establish a plan of action in the form of a report to support one or more solutions. Report completion date May 1, 2008.

Meeting opening statements by Ole Olsen

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PAGE..... OF.....

RE: Lot 202 Clackamas County
West Linn, Or. 97068

Tom Soppe:
Planner Assoc.

I feel a home set in that location would be a mistake. Not because it would be out of place in the neighborhood. Secondly because it would have to be so close to the bank of the creek, it could flood, also disturb the Creek and unsettle the habitat of the living Creatures in the Creek. Such as tadpoles, Crawfish, and birds that used to make their homes in there. However with the disruption of the Natural flow has made it nearly impossible for them to make a come-back.

Let us all see if we can't all make peace with the environment & bring some beauty to our City again

Sincerely:

Loretta Dasso
James Dasso
5893 Colorado Dr.
West Linn, Or.
- since 1968 -

62 (109)

PP-4

Soppe, Tom

From: Meg FERNEKEES [Meg.Fernekees@state.or.us]
Sent: Tuesday, April 15, 2008 3:13 PM
To: Soppe, Tom
Subject: RE: recent Water Resource Permit applications

From: Meg FERNEKEES [mailto:Meg.Fernekees@state.or.us]
Sent: Tuesday, April 15, 2008 10:59 AM
To: Tsoppe@ci.west-linn.or.ujs
Cc: Brown, Bryan; Zak, Teresa; Darren Nichols
Subject: recent Water Resource Permit applications

Hi Tom,

Thanks for sending us the notices for 3 applications for a Water Resources permit.

Could you please forward to us additional info (site plans) for the Annette Johnson and the Patricia Ferris applications, so we can see the relationship of the proposed structures to the Willamette Greenway?

Also, (speaking of relationship) is your designated water resource areas coterminous with the city's adopted comp plan application of the Greenway?

In any event, the City should make findings regarding State-wide Goals 5 and 6.

Thanks,

Meg Fernekees, Portland Regional Rep

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CITY OF WEST LINN
INT._____TIME_____

110

PD-5

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL
File No. WA-08-04 Applicant's Name Annette Johnson
Development Name Water Resource Permit
Scheduled Meeting/Decision Date 5/1/08

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check one below)

Type A ____

A. The applicant (date) _____ (signed) _____
B. Affected property owners (date) _____ (signed) _____
C. School District/Board (date) _____ (signed) _____
D. Other affected gov't. agencies (date) _____ (signed) _____
E. Affected neighborhood assns. (date) _____ (signed) _____
F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:
Tidings (published date) _____ (signed) _____
City's website (posted date) _____ (signed) _____

Type B X

A. The applicant (date) CL/ 4-9/08 (signed) _____
B. Affected property owners (date) CL /4-9-08 (signed) _____
C. School District/Board (date) _____ (signed) _____
D. Other affected gov't. agencies (date) CL / 4-9-08 (signed) _____
E. Affected neighborhood assns. (date) CL 4-9-08 (signed) _____

COE + DSL all

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: 4/8/08 (signed) _____

Type C ____

A. The applicant (date) _____ (signed) _____
B. Affected property owners (date) _____ (signed) _____
C. Affected neighborhood associations (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

PD-6

CITY OF WEST LINN
PLANNING DIRECTOR
DECISION

FILE NO. WAP-08-04

The West Linn Planning Director is considering the request of Annette Johnson for a Water Resources Area permit for a new house at 3955 Cedaroak Drive. A Water Resources Area permit is required as all of the lot is within the drainageway transition area for Gans and/or Trillium creeks, but a new house is allowed here as it is a lot of record with no development currently. The decision will be based on the approval criteria in Chapter 32 of the Community Development Code. A summary of the specific approval criteria is available for review at City Hall, in the CDC at the City Library, and on our website www.ci.west-linn.or.us.

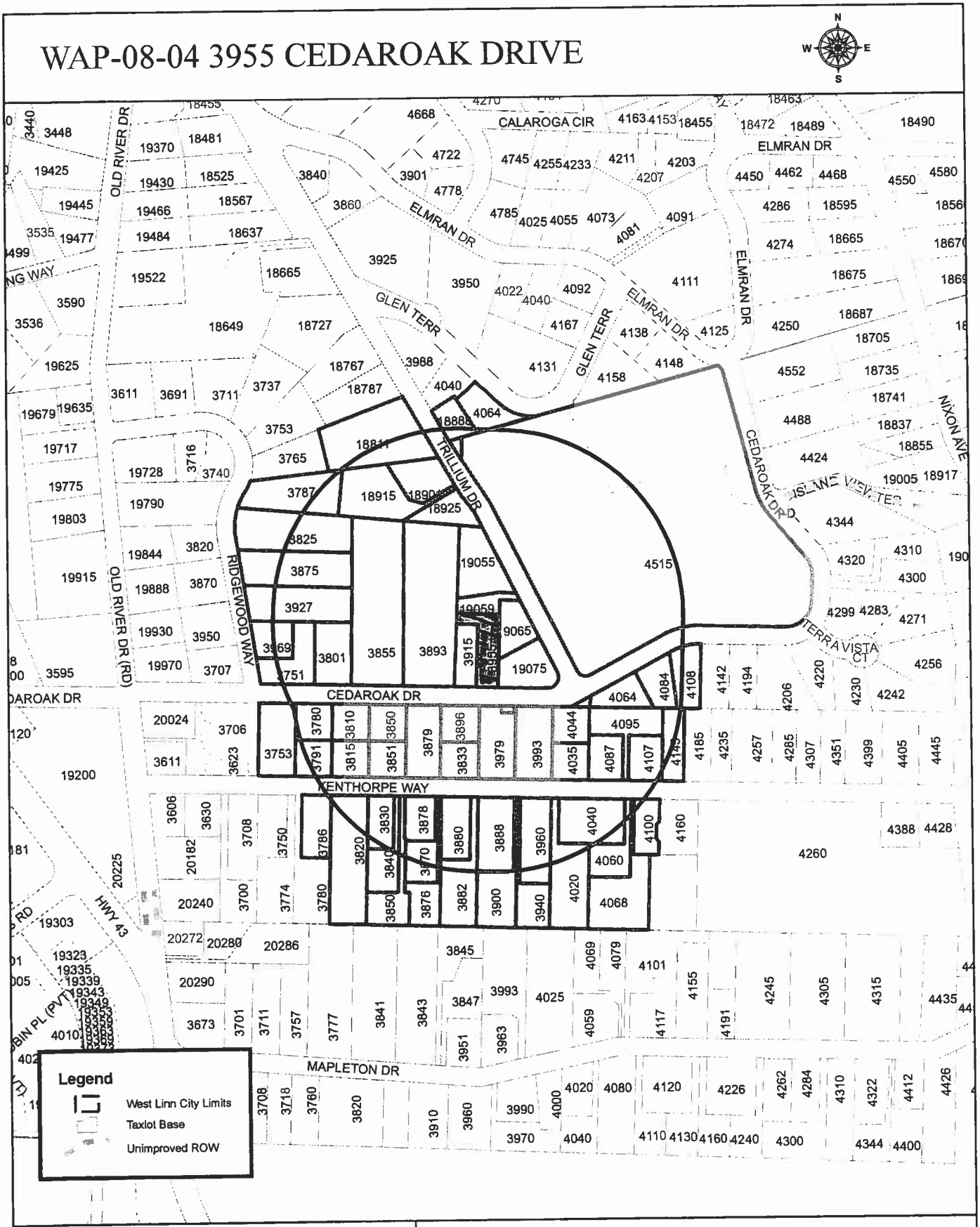
You have been notified of this proposal because County records indicate that you own property within 500 feet of the site located at Tax Lot 202, Clackamas County Assessor's Map 2-1E-24BB, and/or as required by Chapter 99 of the West Linn Community Development Code.

All relevant materials in the above noted file are available for inspection at no cost, or copies may be obtained for a minimal charge per page. Although there is no public hearing, your comments and ideas can definitely influence the final decision of the Planning Director. Planning staff looks forward to discussing the application with you. **The final decision is expected to be made on, and no earlier than, May 1, 2008**, so please get in touch with us prior to this date. For further information, please contact Tom Soppe, Associate Planner, at City Hall, 22500 Salamo Rd., West Linn, OR 97068, telephone (503) 742-8660, or e-mail to tsoppe@ci.west-linn.or.us.

Any appeals to this decision must be filed within 14 days of the final decision date with the Planning Department. Failure to raise an issue in person or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes the raising of the issue at a subsequent time on appeal or before the Land Use Board of Appeals.

p:\devrvw\p.d. notices\notice-WAP-08-04

WAP-08-04 3955 CEDAROAK DRIVE



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Taxlot Base Source: Clackamas County GIS

NOT TO SCALE

SNAPNOTIFY.MXD / APP 3-12-08

User Name: T Zak

Map Creation Date: Apr 08, 2008

~~66~~ 113

ANDREWS JAMES S
3915 CEDAROAK DR
WEST LINN OR 97068

BARNES ANNETTE D
3840 KENTHORPE WAY
WEST LINN OR 97068

BLACKROCK INVESTMENTS LLC
931 SW KING AVE #2
PORTLAND OR 97205

CARLSON ERIC R & MARYANNE
3875 RIDGEWOOD WAY
WEST LINN OR 97068

CIMINSKI KEITH A & GINNY T
3753 KENTHORPE WAY
WEST LINN OR 97068

CURTISS ALAN C & JACQUELYN M
18812 UPPER MIDHILL DR
WEST LINN OR 97068

MAP DISCLAIMER:

DAMRON DEBBIE
3878 KENTHORPE WAY
WEST LINN OR 97068

DASSO JAMES F TRUSTEE
3893 CEDAROAK DR
WEST LINN OR 97068

DEMARIA JOHN E & DIANA
4095 KENTHORPE WAY
WEST LINN OR 97068

DULY DEBORAH M
18888 TRILLIUM DR
WEST LINN OR 97068

DURHAM KATHERINE A
3833 KENTHORPE WAY
WEST LINN OR 97068

ESNARD STEPHEN M & DARLA R
3786 S KENTHORPE WAY
WEST LINN OR 97068

GADDA KATHLEEN
18901 TRILLIUM DR
WEST LINN OR 97068

GOLDENBERG HAYDEE
3850 KENTHORPE WAY
WEST LINN OR 97068

GOLDSCHMIDT JOSHUA A &
ROBIN E
3960 KENTHORPE WAY
WEST LINN OR 97068

GRIFFITH THOMAS & LORIE
4068 KENTHORPE WAY
WEST LINN OR 97068

HACKETT JAMES E & KATHLEEN M
3900 KENTHORPE WAY
WEST LINN OR 97068

HAINS NADINE M
4084 CEDAROAK DR
WEST LINN OR 97068

HANSEN PAUL F & ELLEN E
3810 CEDAROAK DR
WEST LINN OR 97068

HENRY DONALD J & VIRGINIA J
3870 KENTHORPE WAY
WEST LINN OR 97068

HOXHA ARTAN
4064 GLEN TER
WEST LINN OR 97068

HOYT CAROL E
3791 KENTHORPE WAY
WEST LINN OR 97068

JOHNSON RONALD H TRUSTEE
10667 SE 144TH LOOP
HAPPY VALLEY OR 97086

KEARNEY PATRICK M & HEIDI S
19055 TRILLIUM DR
WEST LINN OR 97068

KILSTROM LONN K & ANN M
3855 CEDAROAK DR
WEST LINN OR 97068

KING EVALOIS A
4145 KENTHORPE WAY
WEST LINN OR 97068

LARSON ELEANORA H
3969 RIDGEWOOD WAY
WEST LINN OR 97068

LEATHERBERRY A V CO-TRUSTEE
3851 KENTHORPE WAY
WEST LINN OR 97068

LEATHERBERRY JOSEPH B &
CYNTHIA
3815 KENTHORPE WAY
WEST LINN OR 97068

MACNAUGHTON SCOTT C & TERE R
4107 KENTHORPE WAY
WEST LINN OR 97068

LT (114)

MAGEE GERALD J & JUDITH C
18925 TRILLIUM DR
WEST LINN OR 97068

MCDONALD CARMEN M &
JENNIFER A
3882 KENTHORPE WAY
WEST LINN OR 97068

MEYER ROBERT M & CAROLE ANN
3830 KENTHORPE WAY
WEST LINN OR 97068

MEYERS GRACE J
4100 KENTHORPE WAY
WEST LINN OR 97068

MILLER JOHN M & DONNA D
3825 RIDGEWOOD WAY
WEST LINN OR 97068

MYHRE TERESA C
3780 CEDAROAK DR
WEST LINN OR 97068

NEMER JERRY
3876 KENTHORPE WAY
WEST LINN OR 97068

NORBY JOHN C & KARLENE A
4040 KENTHORPE WAY
WEST LINN OR 97068

OLSEN LAWRENCE O
3993 KENTHORPE WAY
WEST LINN OR 97068

PENNINGTON TERRY LEE SR &
KARYN
19065 TRILLIUM DR
WEST LINN OR 97068

PERRY MAUREEN & JOSEPH A
4064 CEDAROAK DR
WEST LINN OR 97068

PIERCE DAVID O & METTE K IPSEN
PO BOX 615
WEST LINN OR 97068

POLLMANN DENNIS A & SHARON
3879 KENTHORPE WAY
WEST LINN OR 97068

PORTER MICHELLE P
3927 RIDGEWOOD WAY
WEST LINN OR 97068

PRANZ RICHARD L & LORI M
3751 CEDAROAK DR
WEST LINN OR 97068

PREDEEK ERIC D
3880 KENTHORPE WAY
WEST LINN OR 97068

PRICE WYLIADA M & DARYL
3787 RIDGEWOOD WAY
WEST LINN OR 97068

PYLE JENNI
3940 KENTHORPE WAY
WEST LINN OR 97068

SCHWARK RYERSON E
18915 TRILLIUM DR
WEST LINN OR 97068

SEVERSON DWIGHT
3850 CEDAROAK DR
WEST LINN OR 97068

STREET RICHARD I & LOIS J
3896 CEDAROAK DR
WEST LINN OR 97068

TREADGOLD SHARON M
4044 CEDAROAK DR
WEST LINN OR 97068

VANCE DELBERT CLARK & JEANNE
4087 KENTHORPE WAY
WEST LINN OR 97068

WALKER SALLY A
1521 N JANTZEN AVE
PORTLAND OR 97217

WELLS GEORGE A & RICHETTA M
3888 KENTHORPE WAY
WEST LINN OR 97068

WEST LINN-WILS SCH DIST #3J
PO BOX 35
WEST LINN OR 97068

WILLIAMS KRISTI A & BRIAN D
19075 TRILLIUM DR
WEST LINN OR 97068

WILLIAMS SHARON C & BILL A
3820 KENTHORPE WAY
WEST LINN OR 97068

WOODARD DONNA
3979 KENTHORPE WAY
WEST LINN OR 97068

JOHNSON LANCE
5920 SW 18TH DRIVE
WEST LINN OR 97068

115

Rebuniwood & NIA ALL

- Division of State Land
- US Corp. of Engineer

~~68~~

This product is for informational purposes and may not have been prepared

PD-7

West Linn

MAILED
4/8/08

Planning and Building

April 7, 2008

Annette Johnson
10667 SE 144th Loop
Happy Valley, OR 97086

SUBJECT: WAP-08-04 Completeness Determination

Dear Ms. Johnson:

The Planning Department has declared the Water Resources Area permit application for 3955 Cedaroak Drive is **complete** on April 7, 2008. Pursuant to Oregon Revised Statutes Chapter 227.178, the city is obliged to exhaust all local review by August 5, 2008, including any potential appeal of the director's decision to the West Linn City Council. In the near future you will receive in the mail a copy of the public notice, which will give the expected Planning Director decision date for this application.

If you have any questions, it is best to e-mail me at tsoppe@ci.west-linn.or.us. Alternately, you may call me at 503-742-8660.

Sincerely,

Tom Soppe
Associate Planner

cc: Lance Johnson, P.E., 5920 SW 18th Drive, Portland, OR 97239

p:/devrvw/completeness check/compl-WAP-08-04

116
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CITY OF WEST LINN
PLANNING AND
DEVELOPMENT

EXHIBIT PC-8

APPLICANT'S SUBMITTAL

FILE NO.: WAP-08-04

REQUEST: **WATER RESOURCES AREA PERMIT TO BUILD HOUSE AT 3955 CEDAROAK DRIVE**

Application for a Drainageway Protection Permit

3955 Cedaroak Drive, West Linn

Background

Applicant intends to apply for a building permit to build one home on the 13,392 square foot (SF) lot located at 3955 Cedaroak Drive in West Linn. Because a natural drainageway flows through a portion of the property, a Drainageway Protection Permit shall be obtained before applying for a building permit. This application addresses the application requirements set forth in Section 32.040 of the City of West Linn (City) Community Development Code (CDC).

Application of the City's Community Development Code

The site is eligible for development under the newer CDC section 32.090 REDUCTION IN STANDARDS FOR HARDSHIP part A. That section states,

> *Development may occur on lots located completely within the water resource area that are recorded with the County Assessor's Office on or before the effective date of this ordinance. Development shall disturb the minimum necessary area to allow the proposed use or activity, and in any situation no more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards in CDC Chapter 31, and subject to a finding that the proposed development does not increase danger to life and property due to flooding and erosion.*

As described in detail in this application and summarized below, the proposed building footprint has been selected to minimize site disturbance and avoid encroachment into the drainageway.

- The footprint width is significantly smaller than nearby home footprints.
- The footprint occupies a small area compared with nearby home footprints.
- The footprint location has been designed to stay reasonably far away from the drainageway.

PROPERTY INFORMATION

Owner:	Annette Johnson 10667 SE 144th Loop Portland, OR 97236
Owner's agent:	Lance Johnson, P.E.
Site Address:	3955 Cedaroak Drive, West Linn
Legal Description:	Cedaroak Park Plat 3, City of West Linn Tax Lot # 202
Tax Lot No:	2S 1E, Page 24BB, Lot 202
Zoning:	R10
Density:	Single Family Detached Unit or Residential Home per R10 lot

Section 32.040 THE APPLICATION section of the CDC and responses:

32.040 A. An application for development on the property containing a water resource area shall be initiated by the property owner, or the owner's authorized agent, and shall be accompanied by the appropriate fee.

Response: This application has been prepared by the owner's agent, Lance Johnson.

32.040 B. A pre-application conference shall be a prerequisite to the filing of the application.

Response: An initial pre-application conference occurred on Thursday, October 4, 2007 at 10:00 AM. Attendees at the pre-application conference included Annette Johnson, Ron Johnson, Lance Johnson, and Gordon Howard representing the City of West Linn. During the pre-application conference Gordon Howard explained that the site is eligible for a single home under the provisions of CDC 32.090 A. During a second pre-application conference on March 31, 2008, attendees (Annette Johnson, Ron Johnson, Gordon Howard, Bryan Brown, and Lance Johnson) discussed an acceptable footprint location along with related subjects.

32.040 C. The application shall include a site plan and topographic map of the parcel pursuant to Section 32.060. The applicant shall submit three copies of all maps and diagrams at original scale and three copies reduced to a paper size not greater than 11 X 17 inches, and an electronic copy of all maps on a compact disc. The Planning Director may require the map to be prepared by a registered land surveyor to ensure accuracy.
Response: The above requested site plans and topographic maps are attached.

32.040 D. The site map shall be accompanied by a written narrative addressing the approval criteria in Section 32.050 and if necessary, addressing the reason why the owner wishes to alter the natural drainageway.
Response: The responses to the approval criteria in 32.050 are included below. The owner is not proposing to alter the natural drainageway and is not proposing work in the drainageway.

Response to Criteria 32.050 A: As indicated on the City Surface Water Management Plan and the Riparian Corridor Inventory, an open channel drainageway exists on the site, and it is designated as a riparian corridor. This drainageway is shown on the site plan. As indicated on the Local Wetlands Inventory, no wetlands are identified on or near the proposed building footprint.

Response to Criteria 32.050 B: The proposed home, a relatively skinny single family home, has been custom designed for this site to avoid all encroachment in the drainageway and to minimize site disturbances. It should be noted that compared with nearby homes located on or near the drainageway and in the Cedaroak neighborhood, the proposed home design is narrow and occupies a small footprint area. The home footprint has been placed in the optimal site location thereby keeping the structure away from the drainageway as far as reasonably possible. By not encroaching on or altering the drainageway, the proposed development maintains the existing drainageway as the primary method of stormwater conveyance through the site.

Response to Criteria 32.050 C: As discussed in the paragraph above, the proposed home design and placement on the lot minimize adverse impact to the drainageway by keeping development as far as reasonably possible away from the drainageway while still preserving mature trees near the back of the lot. Disturbance of the ground surface will be minimized during construction, and as stated in 32.090A, subject to the erosion and sediment control standards in CDC Chapter 31.

Response to Criteria 32.050 D: Under the hardship provision of CDC 32.090A, the criteria in 32.050D not apply to this site.

Response to Criteria 32.050 E: Under the hardship provision of CDC 32.090A, the criteria in 32.050E do not apply to this site.

Response to Criteria 32.050 F: The construction impacts of the driveway and utilities shall be minimized as shown on the site plan. Utilities will be placed under the driveway to the extent practical and any other disturbance from utilities beyond the driveway will be seeded with native grasses as described in the erosion control plan per CDC chapter 31.

Response to Criteria 32.050 G: Under the hardship provision of CDC 32.090A, the criteria in 32.050D do not apply to this site. (The entire site is within the water resource area, so "fencing off" the water resource area is not applicable.) Per the erosion control plan, the drainageway will be fenced off from the construction area.

Response to Criteria 32.050 H: The criteria in 32.050H do not apply to this site.

Response to Criteria 32.050 I: The storm drainageway will not be diverted under the proposal. Erosion control for construction purposes will be provided under the required erosion control plan.

Response to Criteria 32.050 J: Appropriate erosion control measures based on CDC Chapter 31 requirements will be established throughout all phases of construction.

Response to Criteria 32.050 K: The City of West Linn performed a drainageway diversion and re-vegetation project at the site approximately four years ago. Since that time, some invasive plants (Himalayan blackberries, morning glory vine, and others) have grown over some of the native plantings. The goal for the home construction project will be to disturb the minimum area beyond the building footprint and remove the non-native (invasive) plants so that the recently planted native plants may thrive. The September 2003 Trillium Creek Stream Restoration planting plan describes the recent plantings at the site.

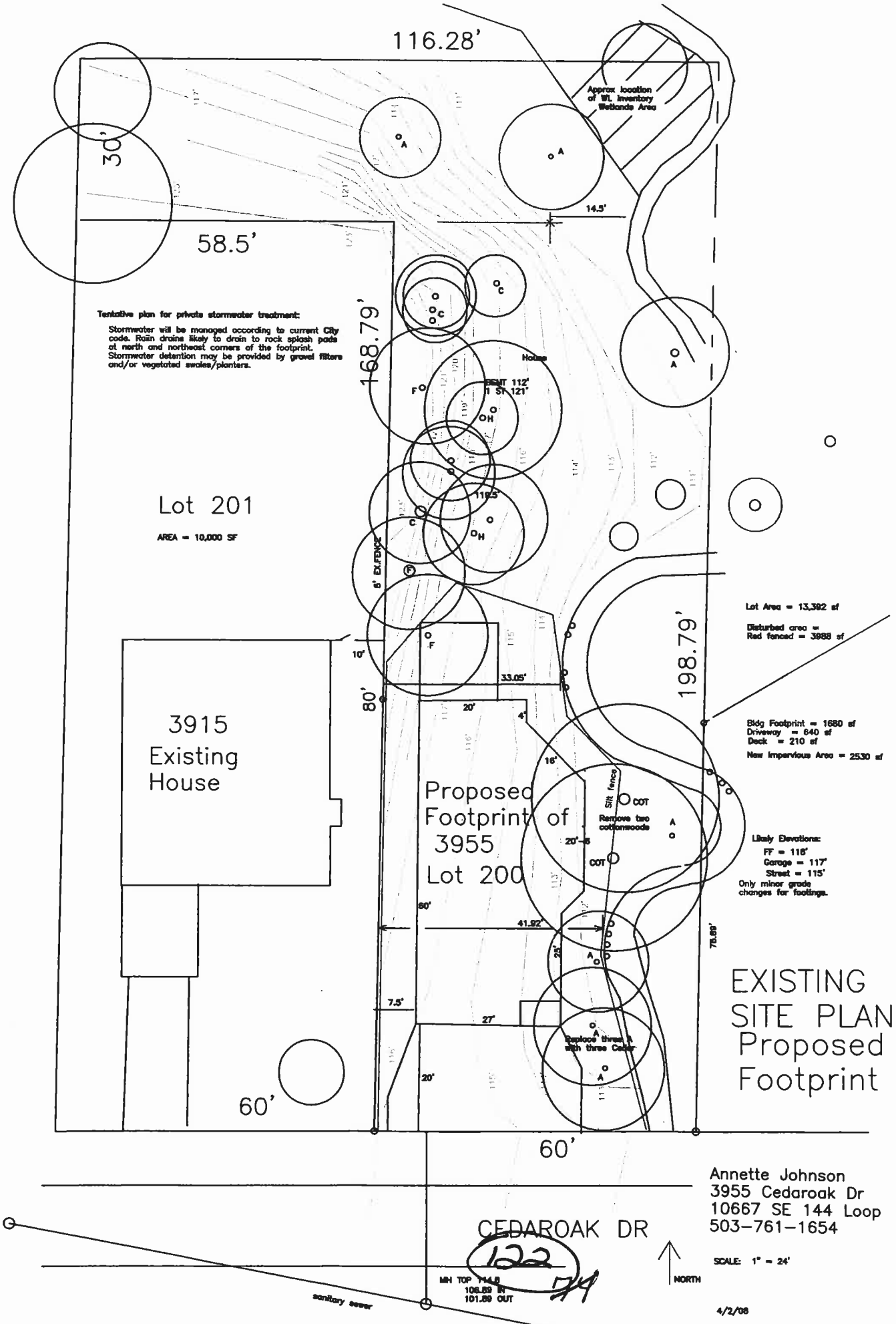
Response to Criteria 32.050 L: Under the hardship provision of CDC 32.090A, the criteria in 32.050L do not apply to this site.

Response to Criteria 32.050 M: No stormwater treatment facilities or infiltration facilities are proposed at the site, so these criteria do not apply to this application.

Response to Criteria 32.050 N: These criteria do not apply to this site, because there are no covered or piped drainageways on the site.

Response to Criteria 32.050 O: The potential setback reductions mentioned in these criteria do not apply to the proposed home footprint.

Response to Criteria 32.050 P: Storm drain channels other than the labeled drainageway on the site map are not known to be present at the site.



Annette Johnson
3955 Cedaroak Dr
10667 SE 144 Loop
503-761-1654

32.040 E. All proposed improvements to the drainageway channel or creek which might impact the storm load carrying ability of the drainageway shall be designed by a registered civil engineer.
Response: No improvements are proposed to the drainageway.

32.040 F. The applicant shall present evidence in the form of adopted utility master plans or transportation master plans, or findings from a licensed engineer to demonstrate that the development or improvements are consistent with accepted engineering practices.
Response: No improvements are proposed to the drainageway.

32.040 G. The applicant shall prepare an assessment of existing condition of the water resource area consisting of an inventory of vegetation, including percentage ground and canopy coverage.
Response: Of the areas re-planted several years ago, some are healthy while others are grown-over with blackberries and vines. The site consists of approximate 40% mature tree canopy cover and 60% ground cover.

32.040 H. If necessary, the applicant shall also submit a mitigation plan pursuant to CDC 32.070, and a revegetation plan pursuant to CDC 32.080.
Response: Disruption to the site will be contained as much as possible to the proposed footprint and the driveway as shown on the site map. Those small areas within several feet of the foundation walls and next to the driveway will be seeded with only native grasses as required in the erosion control plan per CDC chapter 31.

WA -08-04

West Linn

DEVELOPMENT REVIEW APPLICATION

TYPE OF REVIEW (Please check all boxes that apply):

[ ]	Annexation	[ ]	Non-Conforming Lots, Uses & Structures
[ ]	Appeal and Review *	[ ]	One-Year Extension *
[ ]	Conditional Use	[ ]	Planned Unit Development
[ ]	Design Review	[ ]	Pre-Application Meeting *
[ ]	Easement Vacation	[ ]	Quasi-Judicial Plan or Zone Change
[ ]	Extraterritorial Ext. of Utilities	[ ]	Street Vacation
[ ]	Final Plat or Plan	[ ]	Subdivision
[ ]	Flood Plain Construction	[ ]	Temporary Uses *
[ ]	Hillside Protection and Erosion Control	[ ]	Tualatin River Greenway
[ ]	Historic District Review	[ ]	Variance
[ ]	Legislative Plan or Change	[X]	Water Resource Area Protection/Wetland
[ ]	Lot Line Adjustment * /**	[ ]	Willamette River Greenway
[ ]	Minor Partition (Preliminary Plat or Plan)	[ ]	Other/Misc

Home Occupation / Pre-Application / Sidewalk Use Application * / Permanent Sign Review * / Temporary Sign Application require individual application forms available in the forms and application section of the City Website or at City Hall.

TOTAL FEES/DEPOSIT 1850 ✓ *** No CD required / ** Only one copy needed**

OWNER'S	ADDRESS	CITY	ZIP	PHONE(res.& bus.)
ANNETTE JOHNSON	10667 SE 144th Loop	Happy Valley, OR	97086	503-761-1854
APPLICANT'S	ADDRESS	CITY	ZIP	PHONE(res.& bus.)
Above				
Lance Johnson	5920 SW 18th	PORT, OR	97239	503-293-3491
CONSULTANT	ADDRESS	CITY	ZIP	PHONE

SITE LOCATION 3955 CEDAROAK DRIVE **LEGAL:** CEDAROAK PARK 3, PLT 200

Assessor's Map No.: 1S 2E 24 BB 00202 **Tax Lot(s):** BB00200 Acc. No. 00372215 **Total Land Area:** 13,392 SF

T2 S R1E Section 24 BB 00202

1. All application fees are non-refundable (excluding deposit).
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or grant may be reversed on appeal.. No permit will be in effect until the appeal period has expired.
4. **Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format.**

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application.

SIGNATURE OF PROPERTY OWNER(S)
X _____ Date 4/2/07

SIGNATURE OF APPLICANT(S)
X _____ Date 4/2/07

BY SIGNING THIS APPLICATION, THE CITY IS AUTHORIZED REASONABLE ACCESS TO THE PROPERTY.
ACCEPTANCE OF THIS APPLICATION DOES NOT INFER A COMPLETE SUBMITTAL.
COMPLETENESS WILL BE DETERMINED WITHIN 30 DAYS OF SUBMITTAL.

PLANNING AND BUILDING; 22500 SALAMO RD #1000; WEST LINN, OR 97068;
PHONE: 656-4211 FAX: 656-4106

75 (123)

CITY OF WEST LINN
22500 Salamo Rd.
West Linn, OR. 97068
(503) 656-4211

PLANNING RECEIPT
Receipt: # 932738
Date : 04/02/2008
Project: #WA-08-04
BY: WS

NAME : ANNETTE JOHNSON

ADDRESS : 10667 SE 144TH LOOP

CITY/STATE/ZIP: HAPPY VALLEY, OR 97086

PHONE # : 761-1654

SITE ADD. : **3955 CEDAROAK DRIVE**

TYPE I HOME OCCUPATIONS		HO	$
PRE-APPLICATIONS	Level I ( ), Level II ( )	DR	$
HISTORIC REVIEW	Residential Major ( ), Minor ( ), New ( )	DR	$
	Commercial Major ( ), Minor ( ), New ( )		
SIGN PERMIT	Face ( ), Temporary ( ), Permanent ( )	DR	$
SIDEWALK USE PERMIT		DR	$
APPEALS	Plan. Dir. Dec. ( ), Subdivsion ( ), Plan Comm./City Coun. ( ), Nbhd ( )	DR	$
LOT LINE ADJUSTMENT		LA	$
CITY/METRO BUSINESS LICENSE		BL	$

The following items are paid by billing against the up-front deposit estimate. If the amount of time billed to your project exceeds the amount coverered by the deposit, additional payment may be required.

DESIGN REVIEW	Class I ( ), Class II ( )	RD	$	
VARIANCE	Class I ( ), Class II ( )	RD	$	
SUBDIVISION	Standard ( ), Expedited ( )	RD	$	
ANNEXATION	"Does Not Include Election Cost"	RD	$	
CONDITIONAL USE		RD	$	
ZONE CHANGE		RD	$	
MINOR PARTITION		RD	$	
MISCELLANEOUS PLANNING		RD	$	1850.00

Boundry Adjustments	( )		
Modification to approval	( )	Water Resource Area Protection	(X)
Code Amendments	( )	Street Vacations	( )
Comp. Plan Amendments	( )	Easement Vacations	( )
Temporary Permit Admin.	( )	Will. River Greenway	( )
Temporary Permit Council	( )	Tualatin River Grwy.	( )
Flood Management	( )	Street Name Change	( )
Inter-Gov. Agreements N/C	( )	Code Interpretations	( )
Alter Non-Conforming Res.	( )	Type II Home Occ.	( )
Alter Non-Conforming Comm.	( )	Planned Unit Dev. PUD	( )
Measure 37 Claims	( )		

TOTAL REFUNDABLE DEPOSIT		RD	$ 1850.00
GENERAL MISCELLANEOUS Type:		PM	$
TOTAL Check #	Credit Card (X) Cash ( )		$ 1850.00

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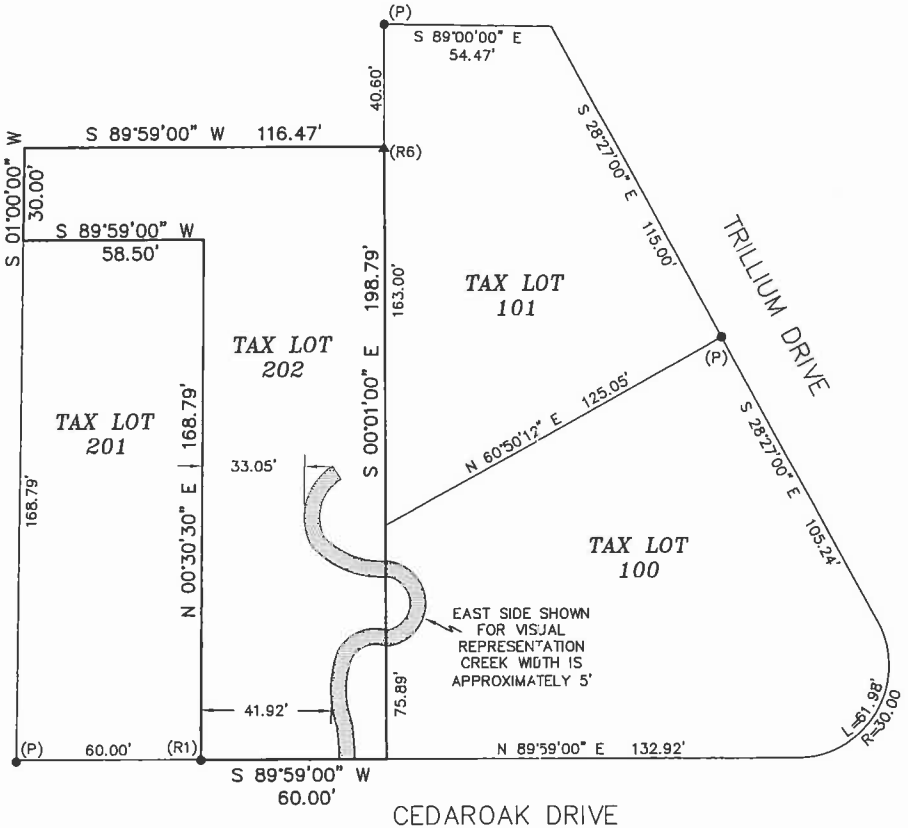
124

LEGEND

- • FOUND 5/8" IRON ROD, NO CAP
- ▲ FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED " ASSOC. LAND SURVEYORS INC."
- EXISTING CREEK

REFERENCES

(R1) SN 12210
(R2) SN 12415
(R3) SN 15354
(R4) SN 23125
(R5) SN 29215
(R6) SN 2003-107
(P) PLAT OF "CEDAROAK NO. 3"



SCALE 1" = 40'

125

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 2005
SHAUN P. FIDLER
50333

RENEWAL DATE DECEMBER 31, 2009

THIS SURVEY WAS PREPARED USING HEWLETT PACKARD PRODUCT NO. 4844A ON MILANO MYLAR JPC4M2

NOTES

1. THE PURPOSE OF THIS MAP WAS TO SHOW THE WEST BOTTOM OF BANK OF CREEK THAT LIES ON 3955 CEDAROAK DRIVE, WEST LINN. THE EAST SIDE IS SHOWN FOR VISUAL ORIENTATION ONLY.
2. THE BASIS OF BEARINGS IS PER SN 2003-107, CLACKAMAS COUNTY RECORDS.
3. THIS MAP WAS PREPARED FOR THE EXCLUSIVE USE OF RON JOHNSON FOR PLANNING AND DESIGN.
4. THIS MAP WAS PREPARED BY PLAT RECORDS, CALCULATED DATA, AND FIELD MEASUREMENTS.
5. THIS IS NOT A BOUNDARY SURVEY AND NO BOUNDARY SURVEY WILL BE FILED.

EXHIBIT MAP	TAX LOT 202
2S, 1E, N/W 1/4 OF SEC. 24, W.M.	
CITY OF WEST LINN	
CLACKAMAS COUNTY, OREGON	
3/28/2008	
DRAWN: KAS CHECKED: SPF	
SCALE 1"=40' ACCOUNT # 334	
Z:\334-002\DWG\JOHNSON	

CONSTRUCTION MAPPING TEAM
5125 SW MACADAM AVE
SUITE 140 PORTLAND, OR 97239
PHONE 503-274-9835 FAX 503-238-2447