

AGENDA BILL 2010-07-19-01

Subject: Continued public hearing to consider the appeal filed by Troy and Gina Bundy of the Planning Director's denial of a Water Resource Area (WRA) Protection permit.

For Council: July 19, 2010

Land Use Case Number: AP-10-01

Public Hearing: Yes

City Manager's Initials: _____

Attachments:

1. Correspondence and late submittals through July 1
2. Complete Record (previously provided to the Council prior to June 14 hearing)

Initiated by:

- Troy and Gina Bundy (1215 Ninth Street, West Linn)

Budget Impact:

- None

Sustainability Considerations:

- Restoring the wetlands and drainageway will re-establish their value as a storm detention, storm treatment, flood control and habitat area.

Policy Questions for Council Consideration:

- To approve or deny the requested Water Resource Area (WRA) Protection permit. This is a permit enforcement case.

Summary:

- Troy and Gina Bundy applied for a building permit to construct a swimming pool but then installed it without an approved permit in hand. Staff visited the site and determined that the appellant had installed a pool, patio and a non-native landscaped area after filling a wetland and drainageway(s). The appellant then applied for a Water Resource Area (WRA) permit (WAP-09-03). The Planning Director found that the approval criteria had not been met and denied the application. It was also determined that the terms of the Open Space Conservation Easement, which had been conveyed by the original developer to the City of West Linn, the WRA transition and setbacks and the Riparian Corridor had been violated. Troy and Gina Bundy are now appealing the Planning Director's decision. Attorney Michael Robinson has submitted findings on behalf of the Bundys to support approval of their permit. The case is de novo. The approval criteria of Community Development Code Chapter 32 apply. This case was opened on June 14, 2010 then immediately continued to July 19, 2010. No testimony or reports have been heard.

Recommended Action:

- Conduct a public hearing

Council Action Taken:

- Approved
- Denied
- Continued

Spir, Peter

From: Sonnen, John
Sent: Thursday, June 24, 2010 8:46 AM
To: Spir, Peter
Subject: FW: AP 10-01

John Sonnen, Planning Director
Planning and Building, #1524

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Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: GARY [mailto:hitesman@comcast.net]
Sent: Wednesday, June 23, 2010 4:22 PM
To: Sonnen, John
Subject: AP 10-01

John,

Thank you for the response. With all due respect,

- 1.) It is a shame that communication was not in place. There is no proper excuse for why this appeal was allowed to slip through the cracks and languish in plain sight.
- 2.) CDC 106 needs shoring up. Mostly, enforcement is 'selective'. CDC 106 allows bad precedents to establish policy and leaves the City open to further violations.
- 3.) CDC 106 is inconsequential when action is predicated on getting consent. Enforcement is so diminished that I fail to see what Planning does for this City except needlessly raise operating costs.
- 4.) I am no expert, but Chapter 99 appears as if it was not followed; again. As before, the City skipped a step.
- 5.) Relying on DSL to 'save the day' sets another poor precedent and would not have occurred had proper procedures been put in place, let alone followed.
- 6.) Who made the determination of incompleteness and why was a Pre-App not immediately scheduled?
- 7.) I think involving Neighborhood Associations and community members at large, instead of ostracizing them, would in the long run be in the best interests of your department.
- 8.) It is clear that staff needs better oversight than from the City Manager alone. Councilors are guilty of shirking checks & balances and should provide opportunities for better oversight. Currently, they shed those responsibilities due to overblown liability concerns, which leaves you hanging. As a city employee, you deserve better than what you guys & gals get.
- 9.) The City should hire someone experienced in writing code! Otherwise, SEE #3.

All that being said, the case submitted by the applicant appears to be looking for loopholes, of which there are now many. There appears to be no redeeming merit in any of the arguments for allowing the pool to be built there in the first place, or posthumously. BUT, actions by the City have compelled me to re-evaluate the appeal and land on the side of the applicant. **I am in favor of the appeal due to lack of proper enforcement, existing precedent, and mismanagement on part of the City.** Please revise the memo placing me in support of the appeal allowing the pool where it currently is sited. I would resolve this as quickly as possible and implement change that would not allow this type of thing to happen again. Going to LUBA, as was done with the Holiday Inn application, is a further waste of time and money. And start cleaning up the codes and procedures of process and enforcement.

Gary Hitesman

From: Sonnen, John [mailto:jsonnen@westlinnoregon.gov]
Sent: Wednesday, June 23, 2010 9:25 AM
To: GARY
Subject: Response to questions

Hi Gary. My responses to #0, #1 and #4 are in context below.

John

Dear Planning Director John Sonnen,

If possible, please reply regarding #0, #1 and #4.

Perhaps the Appeal for 10-01 has gone down a path that is too far along to appropriately remedy. It appears from the paperwork the Senior Planner Mr. Peter Spir performed his responsibilities well in his enforcement of the code. **(0)But since the applicant refused consent per CDC 106, why were CDC 32 and 99 not followed when the application was accepted by the City?** Isn't this likely to go to LUBA where it may very well be remanded back to the City for proper enforcement? And what happens if the applicant meets the requirements of DSL? How can we avoid more needless hours like those wasted on the Holiday Inn Express and 3955 Cedar oak? What argumentative gymnastics and council theater, ala Holiday Express Inn, will need to be played out this time?

Response: The applicant submitted an application for a water resource permit while we were initiating enforcement. The counter staff told the applicant that things were missing from the application. However, rather than rejecting the application or sending it to planning to perform completeness review, it sat at the counter. I became aware of the application after the 30 day completeness review period had expired. At that point, the City was obliged to declare the application complete by default and proceed with the 120-day clock running. The application was then processed per Chapter 99 and reviewed for conformance with Chapter 32. We considered concurrent enforcement but reportedly judges are unlikely to act on enforcement matters when there is a pending land use case.

The case before Council is only the request for a water resources permit. In the event that the Council does not approve the water resources permit, legal council will discuss enforcement options with the Council. We are working in coordination with DSL.

 And thank you for the FYI. If I can place Appeal 10-01 in the background for a moment, I would like to hear discussion on how the City could better address violations and standardize conformance measures in a more fair and equitable manner.

After reviewing the Code and revisiting the Imagine West Linn document, it is my observation that many obstacles and contradictions hinder City efforts to enforce compliance. The City must also do a better job at outreach (informing residents) of the City's concern for the environment and what property owner responsibilities are. And Staff should be better supervised with providing correct information regarding other precedents, state agencies, existing plans and information at the City Hall library, and regional governing bodies.

I urge staff and the Council to construct a more equitable and reasonable process forward. Whereas I will champion the protection of municipal owned lands, I would also argue for better protections for private property. I recommend greater transparency and efficiencies in using staff time to remedy these issues. What I suggest is a process that better identifies nonconformance, provides information, and establishes a less litigious approach towards conflict resolution. What is the job of Planning going to be; Planning or Policing?

Here are some of my problems with the Violations List and our combined observations regarding the 10-01 Appeal. -----> It appears very random, petty, and unproductive. (Some other model than McCarthyism should be sought.) How can the City explain the other countless violations that have occurred even when permits were filed? And what about the most egregious of violations going unacknowledged or left in a state of limbo for years? (Given the abundance of violations permitted or unpermitted in the City, an amnesty program may be the best

approach out of this quagmire.)

Here are just a few of my neighbors concerns for your consideration and information. (I have paraphrased and condensed comments to be more direct.)

1)The Palomino Loop Trail. Surveys have been conducted at some unnecessary expense. Stakes were pulled out of the ground, the trail revised to show it as a sidewalk, and thrown on the backburner under the guise of a trails study. Not to mention questionable actions by almost all parties as the issue was raised and the City's continuing inaction on this issue. **How come these violations are not on your list?**

Response: The City would deal with the trail as the property owner, not as a code enforcement issue.

2) Improper Engineering standards and controls. The Norm King City Council ignored DSL findings of wetlands on the Rosemont Development by deciding to reference the contradicting Executive Summary pasted in front of the DSL report. Plans were not followed, questionable access and safety issues remain on Santa Anita, and concrete accessibility ramps were constructed out of conformance with Federal ADA regulations. Plus, there is that ugly black fence! (The County has a better solution although I don't know how they address the liabilities their solution creates. Look at the ponds at Rosemont Middle School and the new Church across from City Hall.) The intersection at Salamo/Rosemont and Santa Anita is a heinous intersection of immense grossness and planning faux pas that will forever cement your department's ineptitude. Surprisingly, it provides an inglorious ending to our grand Salamo and is a even worse intersection for the Middle School and the beginnings of "Rosemont Road as a transit connector"! I talked to Director Bryan Brown extensively on this issue and he was powerless to implement any measures to better the situation. How does the violations list remedy this grotesque monstrosity?

3) Homeowner Associations like that at the corner of Santa Anita and Hidden Springs. There have been encroachments into the stream and backyards extended into wetlands areas and across property lines. Yet across the street, you have high density dwellings that appear to respect and comply with the code. The contradictions and issues of non conformance at some homeowner association complexes are possibly even more egregious than Appeal 10-01. How will your process resolve this?

4) **Who built a gate into the state owned fence on the north boundary of Mary S. Young Park?** That gate appears illegal and enters into a sensitive riparian area. A title search needs to be conducted to figure out who the responsible property owner is.

Response: I forwarded this to the Parks Department to follow up on. I will check with them next week to see what they find out.

5) Who or what performed an illegal dump of yard waste into a potential wetlands within the newly annexed Erickson property?

6) I am getting away from my neighborhood, but the Cedaroak application for a single residence and purchase for \$70,000 dollars by the City established a very poor precedent for your department on many levels. Violations occurred, CDC 106 was invoked(?), The City went to court, the City apparently was awarded money to remedy the site, and then years later the landowner proposed a 'spite house' that was approved by your Planning Department. The City proposed many conditions of approval that contradicted the spirit of the Code and was bought by the City after going through a year long appeals process by the Robinwood Neighborhood Association. Now the City owns that worthless piece of property, has made no plans for it, has no idea what to do with it, and the violations still exist. How can the City use the courts to mitigate violations when the City cannot even get it's own house in order?

Since I do not wish to burden the City with more work, most my questions are for councilors consideration and certainly not intended to add additional burdens onto your workload. (Perhaps, if the City wanted to be productive, they could use Mr. Coffey to address these issues and assist your department. Mr. Coffey appears to be an excellent resource and in need of good direction.)

Gary Hitesman

 City of
**West
Linn**

John Sonnen
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Planning Director
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Version: 8.5.439 / Virus Database: 271.1.1/2948 - Release Date: 06/23/10 11:11:00

From: HUFFMAN Anita [mailto:anita.huffman@state.or.us]

Sent: Wednesday, June 23, 2010 11:05 AM

To: Spir, Peter

Subject: Bundy Consent Agreement

Hi Peter, here is the attachment B.

The Bundy's, their attorney, and their wetland consultant met with my manger and I to discuss the terms of the Consent Agreement, so I expect that they'll be signing it.

The area B in this attachment is the area of their backyard that includes the pool, decking and landscaping. Let me know if you have any questions.

AH

Spir, Peter

From: GARY [hitesman@comcast.net]
Sent: Tuesday, June 22, 2010 1:37 PM
To: Spir, Peter; Sonnen, John
Subject: AP 10-01 Pool contractor

What level of enforcement, if any, can be brought upon the contractor who built a pool without getting the required permits? Is this a loophole in our enforcement codes? I have seen many commercial contractors come into our City, abuse our roads, and do work without pulling permits.

With enforcement regulations as weak as they are; with enforcement regulations knowingly being weak; with enforcement language neglected for so long; with enforcement being selective and inconsistent, How can the City say it is doing a good job?

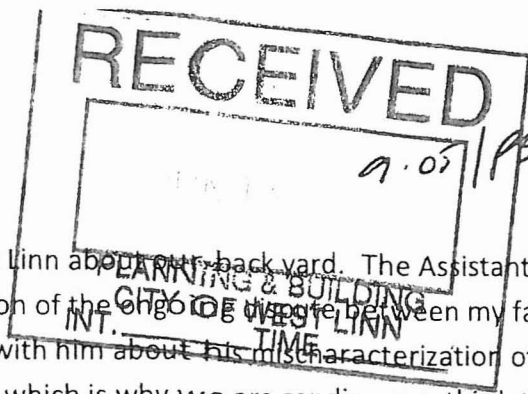
Code is currently set up as discriminatory, lacking precedent, lacking consistency, and highly debatable by an applicant with means. I strongly suggest the City quickly but into action oversight and actionable reviews of work done by contractors in the City.

And please notify the public who the contractor was that built the pool in question and why it was OK for them to do so.

Thanks,
Gary Hitesman

IMPORTANT! PLEASE READ

Dear Neighbor:



You have probably received many notices from the City of West Linn about our back yard. The Assistant City Planner, Peter Spir, has engaged in significant mischaracterization of the City of West Linn between my family and the City. He has done so despite our repeated discussions with him about his mischaracterization of facts placed on City notices sent to our neighbors. This includes you, which is why we are sending you this letter and are asking for your support.

In short, because the City granted permits to build our home and our neighbors' homes based upon a wetland map that it now chooses not to honor, and because they created a new city ordinance many years after our home was purchased, they are attempting to impose oppressive wetland restrictions on our home and back yard. It is their position that our pool, patio and entire backyard must be torn out and wetland weeds planted in their place, mud puddles allowed to form, and our foundations and crawlspaces allowed to flood. This will not stop with my home, but will involve our neighbors and perhaps you. It is true that we built the pool without a pool permit, but we did so with the support and direction from our former Mayor.

Mr. Spir has made material misrepresentations in his submissions about our family and the goings on in our back yard and he has not behaved in an objective or professional manner. He has called us liars, taken advantage of my family's recent health problems, and has stopped at nothing to intentionally inflict severe emotional harm on our family. He refuses to allow us to purchase wetland remediation credits to accommodate our residential use of our own land (\$10,500), in addition to payment of fine (\$3000) and "restoration" of a neighboring vacant PGE property/former hazardous construction dump (\$5000).

Please imagine your own back yard, and then imagine a city representative coming in and ordering you to rip out your back yard, smiling all the while, and costing you hundreds of thousands to "restore" your own back yard to a condition that you have never even seen in existence. No flower garden, no trees, no grass, no garden, no patio for a bar-B-que. Nothing but mud and weeds can remain. Our family will not economically recover from this overly- aggressive, punitive attack by Mr. Spir for a long time, and the value of our home will bottom out worse than it already has, regardless of the outcome.

If you care enough to prevent this kind of abuse from maverick city officials, please take the time to send us your letter of support. I have included a form and stamped envelope. If you care to attend the City Council meeting next Monday, June 14, at 730pm, we would welcome you. We would also take your calls about this issue and answer any questions you might have or show you the area in question.

Is this really the kind of thing we pay taxes for? Help us take a stand and tell the City that they are supposed to support West Linn families, not destroy them emotionally and financially. Thank you for your time and consideration. 503-723-0855

Sincerely,

The Bundy Family

Troy, Gina, Cole & Logan

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

Name:

Address:





Oregon

Theodore R. Kulongoski, Governor

RECEIVED

JUN 18 2010

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

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us.

CERTIFIED MAIL

June 17, 2010

AMH600/7014
TROY AND GINA BUNDY
1215 9TH ST
WEST LINN OR 97068

RE: Consent Agreement - DSL Enforcement File No. 7014-ENF

Dear Mr. and Mrs. Bundy:

State Land Board

Theodore R. Kulongoski
Governor

Kate Brown
Secretary of State

Ted Wheeler
State Treasurer

Thank you for meeting with Lori Warner-Dickason and I on June 11, 2010 to discuss the above referenced compliance matter. As we discussed, the removal and fill activities constitute a violation of Oregon's Removal-Fill Law. During the meeting, we agreed to resolve the violation through a Consent Agreement, the objective of which is to create a legally binding agreement that is cooperative in nature.

Enclosed is a Consent Agreement that sets out the measures to be accomplished by February 28, 2011. Please read this document carefully. If you agree to the course of action, please (1) sign, (2) make a copy for your records, and (3) return it to my attention by July 7, 2010. If there is anything in the Consent Agreement that you do not understand, or that you cannot agree to, please call me by July 1, 2010 to discuss. Completion of the requirements set forth in the Consent Agreement will resolve the violation.

By signing the Consent Agreement, you also agree to waive your right to contest this Agreement and waive any and all claims against DSL, the State of Oregon or any of its agencies arising from this Agreement or the application of the Removal-Fill Law to the situation described in this Agreement.

Thank you for your cooperation in dealing with this matter. I appreciate your willingness to bring the work into compliance with the Removal-Fill Law.

Please feel free to call me at 503-986-5250 if you have any questions or concerns.

Sincerely,

Anita Huffman
Natural Resource Coordinator
Wetlands and Waterways Conservation Division
Oregon Department of State Lands

Enclosure

cc: Peter Spir, City of West Linn Development Services Dept.
Kristen Hafer, US Army Corps of Engineers, Portland District



BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS
OF THE STATE OF OREGON

In the Matter of an Alleged Violation) CONSENT AGREEMENT
of ORS 196.810(1) by)
Troy and Gina Bundy)
)

I. BACKGROUND

This matter is before the Director of the Department of State Lands pursuant to the State Removal-Fill Law, ORS 196.800 et seq. Under the Oregon Removal-Fill Law (ORS 196.800 - 196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of the waters of this state or any amount of material within waters designated Essential Salmonid Habitat or State Scenic Waterway requires a permit from the Department of State Lands. Waters of the state include the Pacific Ocean, rivers, lakes, most ponds and wetlands, and other natural water bodies.

Troy and Gina Bundy have agreed to the entry of this Consent Agreement to resolve the violations alleged under the Removal-Fill Law.

Based upon the following stipulated facts and the existing file of the Department in this matter, the Director makes the following findings of fact, conclusions of law, and Consent Agreement.

II. STIPULATED FACTS

1. Troy and Gina Bundy own property located at Township 03S, Range 01E, Section 02, Tax Lot 8201 in Clackamas County, Oregon. Tax Lot 2200, which is directly adjacent to the Bundy property, is owned by Portland General Electric.
2. The properties contain a wetland, a "water of the state" within the meaning of ORS 196.800(14).
3. Troy and Gina Bundy removed and/or filled more than 50 cubic yards of material within waters of the state without a permit or other authorization from the Department.
4. Troy and Gina Bundy have:
 - a. Stipulated to the facts recited in this Agreement;
 - b. Agreed to the imposition of the requirements set forth in this Agreement; and
 - c. Waived their rights to appeal or contest this Agreement.

III. ULTIMATE FACTS AND CONCLUSIONS OF LAW

By failing to comply with the Oregon Removal Fill Law, the Troy and Gina Bundy violated ORS 196.810(1)(a), stated below:

1 - CONSENT AGREEMENT

"Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan."

IV. AGREEMENT

1. A civil penalty of \$3,000.00 is assessed against Troy and Gina Bundy. The civil penalty is due within 30 days of signing this agreement.
2. Submit a site restoration plan for review and approval by the Department by August 1, 2010. The site restoration plan must include the following:
 - a. Planting plan including woody/shrub vegetation of 1600 plants per acre within the area identified as Area A as shown on Exhibit B.
 - b. Vegetative planting plan within the drainage ditch area identified as Area C as shown on Exhibit B.
3. Planting must be completed by December 31, 2010.
4. Purchase wetland credits from Mud Slough Wetland Mitigation Bank for the entire area identified as Area B as shown on Exhibit B and submit the proof of purchase to DSL by September 1, 2010
5. In the event that the City of West Linn requires restoration of Area B, the Department will allow and support restoration of that area.
6. This Consent Agreement replaces all previous enforcement orders against Troy and Gina Bundy, and when the Troy and Gina Bundy satisfies the requirements by deadlines required by Section IV, DSL will close the enforcement file on this violation.



Lori Warner-Dickason
Northern Resource Manager,
Removal Fill Program
Department of State Lands

6/14/10

Date

Stipulated and Agreed to:

Signature of Responsible Party

Date

NOTICE: Statute permits judicial review of Final Orders. However, pursuant to this Consent Agreement, the parties have agreed to waive their right to appeal.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS
OF THE STATE OF OREGON

In the Matter of an Alleged Violation) CONSENT AGREEMENT
of ORS 196.810(1) by)
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II. STIPULATED FACTS

1. Troy and Gina Bundy own property located at Township 03S, Range 01E, Section 02, Tax Lot 8201 in Clackamas County, Oregon. Tax Lot 2200, which is directly adjacent to the Bundy property, is owned by Portland General Electric.
2. The properties contain a wetland, a "water of the state" within the meaning of ORS 196.800(14).
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4. Troy and Gina Bundy have:
 - a. Stipulated to the facts recited in this Agreement;
 - b. Agreed to the imposition of the requirements set forth in this Agreement; and
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III. ULTIMATE FACTS AND CONCLUSIONS OF LAW

By failing to comply with the Oregon Removal Fill Law, the Troy and Gina Bundy violated ORS 196.810(1)(a), stated below:

1 - CONSENT AGREEMENT

Spir, Peter

From: Sonnen, John
Sent: Wednesday, June 16, 2010 9:45 AM
To: Spir, Peter
Subject: RE: current alleged violations under review -FYI/ Appeal 10-01

ok

John Sonnen, Planning Director
Planning and Building, #1524

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Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: Spir, Peter
Sent: Wednesday, June 16, 2010 6:37 AM
To: Sonnen, John
Subject: FW: current alleged violations under review -FYI/ Appeal 10-01

John
I could cobble together a brief response for you review prior to mailing to Gary
Peter

Peter Spir, Associate Planner
Planning and Building, #1539

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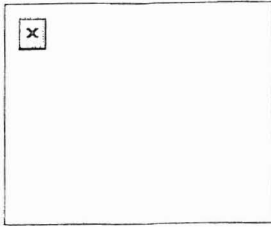
From: GARY [mailto:hitesman@comcast.net]
Sent: Tuesday, June 15, 2010 1:42 PM
To: Sonnen, John
Cc: Spir, Peter
Subject: RE: current alleged violations under review -FYI/ Appeal 10-01

No hurries or worries. Please excuse my intrusions and questions. I am only expecting clarification to "**since the applicant refused consent per CDC 106, why were CDC 32 and 99 not followed when the application was accepted by the City**". And maybe Peter could answer that? Thank you for your consideration. Gary

From: Sonnen, John [mailto:jsonnen@westlinnoregon.gov]
Sent: Tuesday, June 15, 2010 11:13 AM
To: GARY
Subject: RE: current alleged violations under review -FYI/ Appeal 10-01

Hi Gary, I am busy today but I will try to respond to this email tomorrow afternoon
John

John Sonnen



sonnen@westlinnoregon.gov
 Planning Director
 22500 Salamo Rd.
 West Linn, OR, 97068
 P: (503) 723-2524
 F: (503) 656-4106
 Web: westlinnoregon.gov

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From: GARY [mailto:hitesman@comcast.net]
Sent: Tuesday, June 15, 2010 11:07 AM
To: Sonnen, John
Cc: karieokee@aol.com; Worcester, Ken; 'Kevin Bryck'; Spir, Peter; Cummings, Teri; Kovash, John
Subject: RE: current alleged violations under review -FYI/ Appeal 10-01

Dear Planning Director John Sonnen,

If possible, please reply regarding #0, #1 and #4.

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Here are just a few of my neighbors concerns for your consideration and information. (I have paraphrased and condensed comments to be more direct.)

1) The Palomino Loop Trail. Surveys have been conducted at some unnecessary **expense**. Stakes were pulled out of the ground, the trail revised to show it as a sidewalk, and thrown on the **backburner** under the guise of a trails study. Not to mention questionable actions by almost all parties as the issue **was** raised and the City's continuing inaction on this issue. How come these violations are not on your list?

2) Improper Engineering standards and controls. The Norm King City Council ignored DSL findings of wetlands on the Rosemont Development by deciding to reference the contradicting Executive Summary pasted in front of the DSL report. Plans were not followed, questionable access and safety issues remain on Santa Anita, and concrete accessibility ramps were constructed out of conformance with Federal ADA regulations. Plus, there is that ugly black fence! (The County has a better solution although I don't know how they address the liabilities their solution creates. Look at the ponds at Rosemont Middle School and the new Church across from City Hall.) The intersection at Salamo/Rosemont and Santa Anita is a heinous intersection of immense grossness and planning faux pas that will forever cement your department's ineptitude. Surprisingly, it provides an inglorious ending to our grand Salamo and is a even worse intersection for the Middle School and the beginnings of "Rosemont Road as a transit connector"! I talked to Director Bryan Brown extensively on this issue and he was powerless to implement any measures to better the situation. How does the violations list remedy this grotesque monstrosity?

3) Homeowner Associations like that at the corner of Santa Anita and Hidden Springs. There have been encroachments into the stream and backyards extended into wetlands areas and across property lines. Yet across the street, you have high density dwellings that appear to respect and comply with the code. The contradictions and issues of non conformance at some homeowner association complexes are possibly even more egregious than Appeal 10-01. How will your process resolve this?

4) Who built a gate into the state owned fence on the north boundary of Mary S. Young Park? That gate appears illegal and enters into a sensitive riparian area. A title search needs to be conducted to figure out who the responsible property owner is.

5) Who or what performed an illegal dump of yard waste into a potential wetlands within the newly annexed Erickson property?

6) I am getting away from my neighborhood, but the Cedaroak application for a single residence and purchase for \$70,000 dollars by the City established a very poor precedent for your department on many levels. Violations occurred, CDC 106 was invoked(?), The City went to court, the City apparently was awarded money to remedy the site, and then years later the landowner proposed a 'spite house' that was approved by your Planning Department. The City proposed many conditions of approval that contradicted the spirit of the Code and was bought by the City after going through a year long appeals process by the Robinwood Neighborhood Association. Now the City owns that worthless piece of property, has made no plans for it, has no idea what to do with it, and the violations still exist. How can the City use the courts to mitigate violations when the City cannot even get it's own house in order?

Since I do not wish to burden the City with more work, most my questions are for councilors consideration and certainly not intended to add additional burdens onto your workload. (Perhaps, if the City wanted to be productive, they could use Mr. Coffey to address these issues and assist your department. Mr. Coffey appears to be an excellent resource and in need of good direction.)

Gary Hitesman

From: Sonnen, John [mailto:jsonnen@westlinnoregon.gov]
Sent: Monday, June 14, 2010 10:49 AM
To: GARY; karieokee@aol.com
Subject: current alleged violations under review -FYI



John Sonnen
jisonnen@westlinnoregon.gov
Planning Director
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2524
F: (503) 656-4106
Web: westlinnoregon.gov

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Version: 8.5.437 / Virus Database: 271.1.1/2932 - Release Date: 06/15/10 06:35:00

Spir, Peter

From: GARY [hitesman@comcast.net]
Sent: Tuesday, June 15, 2010 11:07 AM
To: Sonnen, John
Cc: kariooke@aol.com; Worcester, Ken; 'Kevin Bryck'; Spir, Peter; Cummings, Teri; Kovash, John
Subject: RE: current alleged violations under review -FYI/ Appeal 10-01

Dear Planning Director John Sonnen,

If possible, please reply regarding #0, #1 and #4.

Perhaps the Appeal for 10-01 has gone down a path that is too far along to appropriately remedy. It appears from the paperwork the Senior Planner Mr. Peter Spir performed his responsibilities well in his enforcement of the code. **(0)But since the applicant refused consent per CDC 106, why were CDC 32 and 99 not followed when the application was accepted by the City?** Isn't this likely to go to LUBA where it may very well be remanded back to the City for proper enforcement? And what happens if the applicant meets the requirements of DSL? How can we avoid more needless hours like those wasted on the Holiday Inn Express and 3955 Cedaroak? What argumentative gymnastics and council theater, ala Holiday Express Inn, will need to be played out this time?

 And thank you for the FYI. If I can place Appeal 10-01 in the background for a moment, I would like to hear discussion on how the City could better address violations and standardize conformance measures in a more fair and equitable manner.

After reviewing the Code and revisiting the Imagine West Linn document, it is my observation that many obstacles and contradictions hinder City efforts to enforce compliance. The City must also do a better job at outreach (informing residents) of the City's concern for the environment and what property owner responsibilities are. And Staff should be better supervised with providing correct information regarding other precedents, state agencies, existing plans and information at the City Hall library, and regional governing bodies.

I urge staff and the Council to construct a more equitable and reasonable process forward. Whereas I will champion the protection of municipal owned lands, I would also argue for better protections for private property. I recommend greater transparency and efficiencies in using staff time to remedy these issues. What I suggest is a process that better identifies nonconformance, provides information, and establishes a less litigious approach towards conflict resolution. What is the job of Planning going to be; Planning or Policing?

Here are some of my problems with the Violations List and our combined observations regarding the 10-01 Appeal. -----> It appears very random, petty, and unproductive. (Some other model than McCarthyism should be sought.) How can the City explain the other countless violations that have occurred even when permits were filed? And what about the most egregious of violations going unacknowledged or left in a state of limbo for years? (Given the abundance of violations permitted or unpermitted in the City, an amnesty program may be the best approach out of this quagmire.)

Here are just a few of my neighbors concerns for your consideration and information. (I have paraphrased and condensed comments to be more direct.)

1) The Palomino Loop Trail. Surveys have been conducted at some unnecessary expense. Stakes were pulled out of the ground, the trail revised to show it as a sidewalk, and thrown on the backburner under the guise of a trails study. Not to mention questionable actions by almost all parties as the issue was raised and the City's continuing inaction on this issue. **How come these violations are not on your list?**

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Gary Hitesman

From: Sonnen, John [mailto:jsonnen@westlinnoregon.gov]
Sent: Monday, June 14, 2010 10:49 AM
To: GARY; kariookee@aol.com
Subject: current alleged violations under review -FYI

John Sonnen
jsonnen@westlinnoregon.gov
 Planning Director



22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2524
F: (503) 656-4106
Web: westlinnoregon.gov

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Steven L. Pfeiffer
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EMAIL: SPfeiffer@perkinscoie.com

June 14, 2010

VIA EMAIL AND FIRST-CLASS MAIL

Mr. Chris Jordan
City Manager
City of West Linn
22500 Salamo Road, #100
West Linn, OR 97068

**Re: Troy and Gina Bundy
AP-10-01 (WAP 09-03)**

Dear Mr. Jordan:

This office represents Troy and Gina Bundy with regard to the above-referenced land use matter now pending before the West Linn City Council on appeal. The purpose of this letter is to confirm our authorization for an extension of the 120-day review period to and through August 31, 2010. If you have any questions regarding any aspect of this confirmation, please do not hesitate to give me a call.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

cc: Clients (via email)
Peter Spir (via email and first-class mail)
Michael C. Robinson (via email)

73108-0001/LEGAL18521896.1



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

May 21, 2010

VIA E-MAIL

Mr. John Sonnen
Planning Director
City of West Linn
22500 Salamo Road, #100
West Linn, OR 97068

Re: City of West Linn File No. AP-10-01 (WAP 09-03)

Dear Mr. Sonnen:

This office represents the applicants, Troy and Gina Bundy. This letter constitutes the applicants' initial response in support of its appeal of the Planning Director's decision denying the Water Resource Area Protection ("WAP") permit. Would you please place this letter in the official Planning Department file and before the City Council at the initial evidentiary hearing on June 14, 2010? My clients and I intend to provide additional information to you the week of May 24, 2010, including affidavits, photographs and a report on the Bundy's progress in obtaining permits from the Oregon Department of State Lands and the U.S. Corps of Army Engineers.

Please feel free to call me if you have any questions.

Very truly yours,

Michael C. Robinson

MCR/cfr

Enclosure

73108-0001/LEGAL18367866.1

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Perkins Coie LLP and Affiliates

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Mr. John Sonnen
May 21, 2010
Page 2

cc: Mr. and Mrs. Troy Bundy (w/encl.) (via email)
Mr. Jason Clinch (w/encl.) (via email)
Mr. Peter Spir (w/encl.) (via email)

Spir, Peter

From: Hafer, Kristen A NWP [Kristen.A.Hafer@usace.army.mil]
Sent: Thursday, June 10, 2010 9:48 AM
To: Spir, Peter
Cc: Gina Bundy; Jason Clinch; Zinszer, Shawn H NWP; HUFFMAN Anita
Subject: RE: NWP-2010-177, Troy and Gina Bundy

Peter,

The purpose of my email was not to discuss whether or not fill had been placed at the Bundy property, but to request that statements would not be made on behalf of the Corps of Engineers. Thank you for stating that you will clarify the memorandum at the City Council hearing on Monday night. I am enclosing a copy of the letter the Corps sent to the Bundy's on May 18, 2010, following the site visit that took place. I would request that you keep me posted on the hearing on Monday so that the Corps will be aware of what to anticipate at this site.

Thank you,

Kristen Hafer
Biologist, Project Manager
U.S. Army Corps of Engineers
(503) 808-4387

I would appreciate your feedback on how I am performing my duties. Our automated Customer Service Survey is located at: <http://per2.nwp.usace.army.mil/survey.html>. Thank you for taking the time to visit the site and complete the survey. Have a great day!

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

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Thursday, June 10, 2010 8:38 AM
To: Hafer, Kristen A NWP
Subject: RE: NWP-2010-177, Troy and Gina Bundy

Kristen

The point I was trying to communicate is that in the course of site visits to the Bundy property, it was evident to City staff and Anita of DSL that wetlands had been filled plus other significant alterations of the natural landscape had taken place. I thought that you took the same view. I apologize if I mischaracterized your position (and USACE) and I will make note of that at the hearing on Monday night.

Peter

Peter Spir
mailto:pspir@westlinnoregon.gov
Associate Planner
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2539
F: (503) 656-4106
Web: <http://westlinnoregon.gov>

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

From: Hafer, Kristen A NWP [mailto:Kristen.A.Hafer@usace.army.mil]
Sent: Thursday, June 10, 2010 8:12 AM
To: Spir, Peter

Cc: HUFFMAN Anita; Jason Clinch; Gina Bundy; Zinszer, Shawn H NWP
Subject: NWP-2010-177, Troy and Gina Bundy

Good morning Mr. Spir,

I was forwarded a copy of the memorandum, dated June 14, 2010, that you prepared regarding the Bundy property. I want to clarify a few of the statements made on page 19 of the memorandum. The memorandum states; "The activities at this site require a federal permit typically known as a 'Joint Permit.'" The Corps does not issue "Joint Permits." As I explained at the site visit on May 5, 2010, the alleged fill activities on the Bundy property would have qualified for a Nationwide Permit No. 29 (Residential Developments). This Nationwide Permit requires a pre-construction notification (i.e. permit application) prior to commencing any activities. Because the alleged activities commenced without a pre-construction notification the Bundy's do not meet the terms of the Nationwide Permit No. 29; however, as we also discussed during the site visit, an After-the-Fact permit application could be submitted to the Corps requesting After-the-Fact authorization under Nationwide Permit No. 29.

The memorandum goes on to states that, "if the City decline to pursue enforcement, then they [The Corps of Engineers] will pursue enforcement with DSL." I am concerned with this statement as it does not reflect any of the conversations that you and I have had regarding the alleged activities at the Bundy residence. On March 15, 2010, you and I discussed the activities that occurred at the site. During this phone call I informed you about the Corps' regulatory authority and the Nationwide Permit program. I stated that the Corps would likely not open an enforcement action on the alleged activities because they would have qualified for the Nationwide Permit. I informed you that the Corps would send a letter informing the Bundy's of the Corps' program and the need to obtain a permit for fill within Waters of the U.S. This letter was sent to the Bundy's on May 3, 2010, and you were copied on the letter. During the site visit on May 5, 2010, we discussed pursuing an After-the-Fact permit authorization. I want to clarify that at no time has the Corps stated that an enforcement action would be pursued, regardless of the City's enforcement actions. Emails between the Corps, DSL, the Bundys, and Jason Clinch from Terra Science, dating between May 7 and May 17, 2010, clearly state that the Corps would accept an After-the-Fact permit application. Additionally, the Corps issued a letter to the Bundy's on May 18, 2010, informing them of the terms of the Nationwide Permit No. 29, and stating that they may apply for an After-the-Fact permit.

Additionally, in an email you sent to the Bundy's on June 9, 2010, you stated "When the Planning Director denied your WRA permit application it was simply because the preponderance of evidence showed that the provisions of CDC Chapter 32 have been violated. It is a view shared by DSL, USACE as well as City Engineering staff responsible for management of storm drainage facilities." I want to clarify that the Corps does not become involved in City regulations or codes, therefore, it would be inappropriate and inaccurate to state that the Corps shares the views of the Planning Director and City Engineering staff on the provisions of any Community Development Codes.

I hope this clarifies the position of the Corps' regarding the alleged Clean Water Act violations at the Bundy residence and regarding the Corps' position on any City or County codes. If you have questions please contact me.

Thank you,

Kristen Hafer
Biologist, Project Manager
U.S. Army Corps of Engineers
(503) 808-4387

I would appreciate your feedback on how I am performing my duties. Our automated Customer Service Survey is located at: <http://per2.nwp.usace.army.mil/survey.html>. Thank you for taking the time to visit the site and complete the survey. Have a great day!

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Wednesday, June 09, 2010 5:07 PM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie)

I think this is what you needed? It's a pdf because Gina scanned it in from the home computer. Let me know if you cannot pull it up, Peter. That's our son, Logan, age 4 on an Easter Egg hunt with the Craddock children (now age 9, will be 10 in august). It shows the original river rock that was installed in the home when we purchased it. Note the bird feeder hanging from the tree. After a couple of years, bird seed plants began to sprout in that area, covering up some of the river rock, and mud worked its way up and out with kid traffic, while the trench just got deeper over the years with erosion. I think Brian Evans just did not see the channel because of maintenance issues over the years. Because of this repeated problem, we did fortify the channel with the granite/basalt for weed protection and erosion control. I did remove some of the river rock that had been in there to make room for the granite in about 2008 or so. I did not excavate it or dig the dirt any deeper than it was though. Thanks.

Troy



(57)

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Dear City Council and Mr. Spir:

We are writing in reference to the situation regarding the Bundy family and the notices that we have received from West Linn regarding their pool, patio and back yard.

We have owned our property at 1250 9th street since 1993. At that time it was empty land, with the exception of a barn on our property. Many houses have gone in since that time, and this includes the property that has been developed where the Bundy family lives.

The houses that were built on either side of the Bundy family, and including their residence, were all built with permits and passed inspections by West Linn. The Bundy family bought this property and were assured that everything concerning the construction, property lines, and inspections were properly done by West Linn.

All that being said, as neighbors, residents of West Linn, and West Linn property owners, we find that it is very difficult to know about the difficult situation that this family has been placed in.

We have personally viewed the beautiful landscaping and home that this family has developed. It is indeed an asset to the neighborhood. We fail to understand why West Linn would choose to make such hardships on this family. If there is any fault, West Linn should examine their own handling of this property. The inspections and permits were issued by West Linn, and used by Mr. Mark Handris in his construction of not only this house, but the houses on either side of this family.

West Linn needs to examine their dealing with the construction of these houses, and place the blame where it belongs. Not on the property owners, but on West Linn, and the inspectors that dealt with the builder.

West Linn has even gone so far as to state that the property owners have changed a drainage ditch that runs across the back of their property. All of us property owners that are close to this property are well aware of this drainage ditch that has always been there, in the precise spot that it still is.

We definitely think that the city needs to address other important issues regarding wetlands. We personally witnessed about 30 dump truck loads of dirt being removed from 1263 10th Street during construction of that house, and dumped in a wet land area that they wanted to fill in for a park. Maybe West Linn should start with that issue. Check out the park by the Tualatin river. That dirt came off our property and was used to fill in that property

(28)
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for a park. It just seems that if it is something that West Linn wants to do, there are great exceptions made in the rulings.

Our tax dollars should be used in a better manner, than to single out home owners and make financial hardships for a family. West Linn should examine their own use of our tax dollars.

*Gerald and Sharon Paulsen
1250 9th street
West Linn, Oregon 97068*

Spir, Peter

From: Spir, Peter
Sent: Wednesday, June 09, 2010 11:55 AM
To: 'Troy S. Bundy'
Cc: Sonnen, John; Robinson, Michael C. (Perkins Coie); Tim Ramis
Subject: RE:

Troy

Thank you for the e-mail.
It will be entered into the record.

I am sorry that you feel that as the planner assigned to your case my preparation of the staff report reflected any form of personal bias.
That is not the intent. I have tried to be as dispassionate, civil and objective as possible.

When the Planning Director denied your WRA permit application it was simply because the preponderance of evidence showed that the provisions of CDC Chapter 32 have been violated.
It is a view shared by DSL, USACE as well as City Engineering staff responsible for management of storm drainage facilities.

Those basic facts remain substantially unchanged today.

Best regards

Peter

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Wednesday, June 09, 2010 11:08 AM
To: Spir, Peter; Gina Bundy; 'Robinson, Michael C. (Perkins Coie)'
Subject:

Dear Peter:

In advance of the hearing, and after reading the case file you provided, I think it might be important for you to know the "story" behind the Evans' complaints because it is obvious to me you have decided to believe them, rather than one of the city's own legal soldiers. I have let go of my animosity toward my neighbors, and I feel that I should try to let go of the anger and animosity I hold toward you throughout this process. I need to do this because it is quite a burden. Gina has now been through 2 separate surgeries within the last 2 months. I simply need to be able to function on a healthy level again, and I cannot do so carrying these feelings around. Letting go of my hostility toward the Evans has improved my sleep, mental attitude and peace of mind.

Brian alluded to this important issue in his statement to you when he spoke of the drain box "that had been installed on his property." He did not go into further detail. I think it is important for you to know the background, because it forms the genesis of his complaints against us. I accused him of lying in my personal emails to him. Stepping into his shoes and giving him every benefit of the doubt, I can make a case for his misunderstanding of the facts, and I have decided to accept that version rather than hate him for making those assumptions of the facts.

When we were considering buying our home in 2003, we noticed that the property lines were askew. Bob and

(30)
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Noel Craddock lived in the adjoining property at that time. Bob was a youth minister, and we got along quite well. We spoke with the Craddocks before we purchased and learned that it had already been decided that that property line would be modified to make the back yard of my home "square up." We had AKS survey a proposed easement for our exclusive use, and the Craddocks agreed to this. The oral condition was that we would install and maintain the drain box in the canal on the corner of the yard at our expense. Neither of us realized that the easement was omitted at closing. However, once we did, neither of us really cared. Our kids played together, we bar-b-que'd together, we took each other's children to school (since they were in the same grade and school), had parties together, celebrated holidays together, Bob served as our Christmas picture photographer, and we would accompany them to their church gatherings. We were good neighbors, and we cared about one another. There was no need, or so I thought. Besides, we both concluded, "who would even want to own that little triangle directly behind our house, anyway?" The easement is much larger than the space we used. We only needed 315 square feet, so we only used 315 square feet of the 700+ listed on the delineation.

The Craddocks sold in 2006 or 07 to the Evans and the face of our neighborhood changed. We were just different people. But, our children got along well, and we exchanged neighborly niceties from time to time. Then, one afternoon, we were throwing a children's party, and Brian Evans walked into our back yard and began hammering wooden marker stakes into our back yard and walked around with a metal detector. My wife asked him what he was doing and he indicated that he was marking his land, insinuating that we had encroached and "stolen" the property. Gina asked him to please leave, and we would deal with it when I returned from a work matter. There were children coming over for the party. He obliged. He made several other trips in the area, marking what he believed to be the property line.

When I returned home, I obtained the easement documentation for him, and he looked at it. I voiced surprise that Bob had not mentioned it to him, and I was sorry for any misunderstanding. I offered, at that time, to let him use the front of his home (which we owned) and treat it as his own. He simply stated we would "have to work something out."

Later, when the pool was going in, he asked when we were going to install a fence. We knew Jeri, his wife, had wanted one for some time. Especially since they bought a new dog. We never minded the dog, and I voiced this several times. She really did like the mud puddles though, and I would often hear Brian understandably yelling at her for diving in them. In any event, I explained that we would be happy to install a fence of their choosing and we would cover all costs, as long as it was along the easement line. We suggested a wrought iron fence, so as not to create an intrusive barrier between our yards. I also offered to lease the 315 square feet from him on a yearly basis. He did not like that idea and suggested a trade of land. I presumed he meant the land in front of his home, so I said, okay. Then, one day he came forward with a proposal that involved us giving up 3x the land we were utilizing. I said, "no thanks." Then he modified it in an odd way such that he wished to take over a large triangle of land that was improved, but located in the middle of the lot line between our homes. The land was improved and contained our utility box and the sprinkler box. I declined again. He explained that he needed more garage space to house his vehicles (seven in all). He wanted to build out his garage onto our land. I didn't like this idea for obvious reasons, but was willing to look into what I could do.

So, I contacted my mortgagor and asked about making a trade of land. They told me that this required prior written approval and was rarely, if ever, granted. If I did so without written permission, they would default me on my mortgage. We would have to open a file and submit a number of different appraisals and valuations to ensure that the trade was sound. It was quite an arduous process. I told Brian it simply would not work, but that he could access his property through my carport anytime he liked. Perhaps, I suggested, he could build out the back of his garage, rather than the front. He was not pleased, and it was at this point things spiraled into a state of hostility. He was angry that I did not wish to pay for the fence that would encroach on my easement. I also did not want a solid cedar fence jammed behind my garage. I again offered to lease the 315 square feet

(3)
(8)

payable 5 years in advance. He, again, refused. So, I told him I would probably be installing a perimeter fence along the pool, but we needed to complete the patio stonework first before the fence could go in (we stopped work on this patio after the events giving rise to our upcoming hearing and it is still unfinished).

The Evans fence went up quickly. I asked him to build it, if he really must, keeping the materials on his own property line, so we could have a little breathing room. I do not believe he built it 8 inches off the line. I examined the posts after they went up. The contractors appeared to have butted the posts directly against the line, and utilized half moon concrete, rather than a complete even diameter post filling. I did not dig all the way down, but this certainly appeared to be the case. I thought it was silly because the posts will eventually give way without that support behind them. We were able to get up some of our plantings, but the fence went up too quickly, extending across our carport. He dug up the rest of the plants and left them in our back yard.

Our wall went along the property line, on our side. The reason for the wall was (1) to provide a safety enclosure as requested by the city. (it is not complete yet because of these proceedings; the low points would incorporate the black wrought ironwork to bring it up to the safety code). (2) Visitors to our neighbors' home and ours treat the private drive as a street, speeding up and down it and creating a safety hazard for our children who treat the area as it is ... a driveway. John Sonnen may recall that Gina called in to complain about a city vehicle speeding down the drive and skidding to a stop after nearly running over my 9 year old son, (who still tells the story quite well). It is a warning to drivers that they are entering someone's home, and it is effective. Brian Evans despises that wall as much as we despise his fence. However, I think that he and I have both patched things up as good as possible, and we are taking steps in the right direction as neighbors once again.

So, there you have it. Bias and motivation are admissible evidence in any trial for a good reason. I wanted you to know this because at some point, we feel as though you chose to disbelieve us. We feel that, at some point, you decided to make your attacks personal and mean-spirited, probably based upon Mr. Evans' misunderstanding of the topography, history of the land back there, and basic facts associated with our property as it has always existed. It was also based, I believe, on the various CYAs going on amongst people working in City Hall. These people, although well-intentioned, did do and say the things we have alleged. Perhaps also the notice of intent, which was recommended (appropriately so) by our counsel, rubbed you the wrong way. We are not without fault, and we have always been willing to take our lumps, so to speak. But, I must tell you that there are a number of misstatements and mischaracterizations that I must take issue with at the hearing. I will need to address them all at the hearing with the evidence I have gathered because I feel as though my family has been intentionally defamed and maligned. I will endeavor to keep my remarks professional and courteous at the hearing. However, in the end, I am simply trying to protect my home and family. It is difficult to keep myself anything less than emotional about what has gone on. I have seen your posting about your home on the internet (very old historic photos), and I can tell you are proud of what you have done with it as well. You should be. Please try to put yourself in our shoes, taking an objective position when you hear all the evidence we will be providing. Perhaps you will give us the benefit of the doubt, as I will endeavor to give to you.

Thank you for your time in reading this. We have taken up enough of each other's valuable time. I will bother you no further, until Monday.

Troy Bundy

(32)
(9)

Spir, Peter

From: Molalla Vision Clinic [eyeonu@molalla.net]
Sent: Wednesday, June 09, 2010 12:01 AM
To: Spir, Peter
Cc: Troy and Gina Bundy
Subject: AP-10-01

June 8, 2008

Peter Spir
 Associate City Planner
 22500 Salamo Road
 West Linn, OR 97068

RE: Troy and Gina Bundy appeal file # AP-10-01

I, Jay Wallace Walker, currently reside at 1213 9th Street, in West Linn. My property includes one acre, the majority of which is part of a Wetland Conservation Easement according to a property line adjustment survey dated January 2001. I and my family moved in on February 29th (leap year) 2008.

Inspection of my property in January 2008 revealed a ditch along the northern property boundary which contained standing water and extended west along the northern border of the Bundy and Evans properties. The pooling water was especially pronounced at the northwest corner of my property. This appears to have been a "low spot" which accumulated water from the adjacent properties. The ditch contained perforated drain tubing which was plugged and overgrown. This is presumed to have been in place to carry runoff around the yard and house, and out into the wetland. There was also standing water in the crawl space under my house. There are 2 sump pumps under the house to clear out water accumulation. They were both in working order, but continually running. We were granted a credit by the seller to help defray the costs of fixing the problem of standing water in the back yard and under the house.

The water accumulation problem was mitigated April 2008 by repair of the drainage in the back yard. We re-graded the small ditch and put in 3-inch basalt to stop erosion. The Bundys also cleared their "ditch" at that time and put in the same basalt rock. This has been an effective way to keep the water from accumulating in our back yard and under the house. During this year's heavy rain and last year's snow melt, the water "catches" and flows nicely around our yard and in to the adjacent wetland.

I understand that the wetland conservation easement surrounding our homes is governed by a certain set of rules that restricts many uses and modifications. I also understand that our homes are in a riparian area which may present a second layer of rules. In practice, some of the rules are difficult to follow due to challenges presented that threaten the maintenance of our homes and enjoyment of our back yards.

Our modest back yards represent a very small sliver of the water resource/wetland/riparian zones. Whereas permission was granted by the city for the construction of our homes even though they were in a water resource area (WRA), and whereas the riparian setback zone was redefined years after construction, it seems reasonable to allow certain uses of some portion of our property which may not be in compliance with WRA rules. I encourage the Planning Director to grant an exception which allows us reasonable use of our back yards and allows us to apply for use permits for those small parcels under normal permitting rules.

I am in support of the Bundys' swimming pool and patio. They were meticulously designed, planned and maintained. I understand that the Bundys proceeded with the project in good faith, having received verbal permission from city authorities. The pool and patio are a beautiful back-yard enhancement. Attention is given to safety by using a perimeter fence, pool cover, and electronic monitors. The Bundys are very generous and kind people. We have enjoyed that opportunity to use the swimming pool on occasion, and we do not think that the pool poses a threat to our health and safety.

6/9/2010

(10)
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We feel fortunate to live in such a unique and beautiful setting. West Linn is a special community. We appreciate that the city officers and staff are faced with the daily, difficult task of upholding and enforcing laws aimed at preserving natural resources and maintaining community standards. Please consider the point of view of the property owners as you work towards a speedy resolution of this issue. Try to arrive at a compromise that is empathetic rather than mean-spirited or coercive. Disproportionate time and resources have already been spent on this seemingly small matter. Please consider that if this issue is not resolved carefully, with some deference to property owners, the issue may arise again and again as other property owners are burdened with strict compliance to ponderous rules that disallow reasonable use of their back yards and proper maintenance of their homes.

Respectfully submitted, June 8, 2010

Jay Wallace Walker, OD
1213 9th Street
West Linn, OR 97068
Home phone 503-650-0342
Mobile phone 503-860-0937

Information Classification: Confidential.

J. Wallace Walker, O.D.
Optometric Physician
Molalla Vision Source
(503) 829-9186
eyeonu@molalla.net

Visit our website: <http://molallavision.com>

Become a Fan of Molalla Vision on Facebook: <http://facebook.com/molallavision>

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** are addressed.
**

(34)
(11)

June 8, 2008

Peter Spir
Associate City Planner
22500 Salamo Road
West Linn, OR 97068

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Respectfully,

Jay Wallace Walker, OD
1213 9th Street
West Linn, OR 97068
Home phone 503-650-0342
Mobile phone 503-860-0937

(36)
(13)

Spir, Peter

From: Spir, Peter
Sent: Tuesday, June 08, 2010 11:01 AM
To: 'Troy S. Bundy'
Cc: Robinson, Michael C. (Perkins Coie); Sonnen, John; Tim Ramis
Subject: RE: City File

Troy

"*Intentionally missing, blank or omitted*" are all intended to communicate the same thing as I explained below:

Teresa Zak, our department's administrative assistant has to orchestrate the pagination/numbering of the record for the hearing and, occasionally, due to edits in my staff report to City Council, the numbering gets thrown off so instead of renumbering hundreds of pages, a blank page is inserted with the title: "intentionally omitted". No exhibits etc are left out because of those pages.

There is nothing left out for pages 1-3 or any other pages with a similar notation.

Peter

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Tuesday, June 08, 2010 10:32 AM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie); Sonnen, John; Tim Ramis
Subject: RE: City File

I checked the document again, Peter. It says "Pages 1-3 are intentionally MISSING." I said "Omitted." Missing/omitted, whatever. If pages were left out, we want them. I will presume you checked this and nothing is "missing." If you do find that there are missing pages, please let us know. Thank you.

Troy Bundy

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Tuesday, June 08, 2010 6:50 AM
To: Troy S. Bundy
Cc: Robinson, Michael C. (Perkins Coie); Sonnen, John; Tim Ramis
Subject: RE: City File

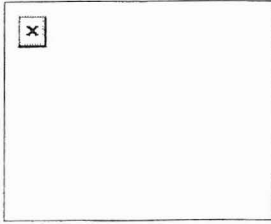
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Peter

Peter Spir
pspir@westlinnoregon.gov
Associate Planner
22500 Salamo Rd.

(37)
(14)



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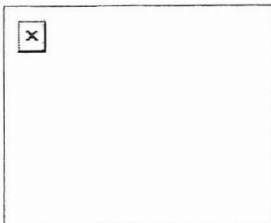
From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Monday, June 07, 2010 6:59 PM
To: Spir, Peter
Cc: Sonnen, John; 'MRobinson@PerkinsCoie.com'; 'Tim.Ramis@jordanschrader.com'
Subject: Re: City File

I do not know what was omitted. Your table of contents on the file we picked up states "pages 1 - 3 intentionally omitted." Or words to that effect. Maybe they were blank. I don't know. All I do know is that those words in a discovery response are a red flag to Mike and I requiring confirmation that we have been provided everything. Thanks.

Troy Bundy
 Troy S. Bundy
 Hoffman, Hart & Wagner

From: Spir, Peter <pspir@westlinnoregon.gov>
To: Troy S. Bundy
Cc: Sonnen, John <jsonnen@westlinnoregon.gov>; Robinson, Michael C. (Perkins Coie) <MRobinson@PerkinsCoie.com>; Tim Ramis <Tim.Ramis@jordanschrader.com>
Sent: Mon Jun 07 18:13:32 2010
Subject: RE: City File

Troy
 Please let me know what these exhibits are that were "intentionally omitted".
 I want to make sure the record is complete and you can help by identifying the specific items.
 There was a USACE letter dated May 3 that will be added to the supplemental list of exhibits as well as any e-mail, letter (some from you) etc that was submitted after June 2, 2010.
 We could not get those items in the packet because the deadline for distributing the packet to City Council members was June 2, 2010.
 You are always welcome to review our case file if that would help.
 All the best
 Peter



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6/8/2010

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Monday, June 07, 2010 11:45 AM
To: Robinson, Michael C. (Perkins Coie)
Cc: Spir, Peter
Subject: City File

Mike and Peter:

So you know, there are "intentionally omitted" pages from the materials we received referenced in the binder. Additionally, I do not see any "staff interview" notes in these materials that were referenced by Mr. Spir. Of particular interest would be Mr. Nomie's statement. When Gina picked up the packet, she was informed that this was everything. Is it really the complete file?

I would like to see those and, in particular, any declaration he intends to submit on his oath.

Mike, will we have the opportunity to cross examine witnesses in this forum, or is it strictly public testimony without examination?

Thank you,

Troy Bundy

(39)
(16)

Spir, Peter

From: Spir, Peter
Sent: Tuesday, June 08, 2010 6:50 AM
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Cc: 'Robinson, Michael C. (Perkins Coie)'; Sonnen, John; 'Tim Ramis'
Subject: RE: City File

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Sent: Monday, June 07, 2010 6:59 PM
To: Spir, Peter
Cc: Sonnen, John; 'MRobinson@PerkinsCoie.com'; 'Tim.Ramis@jordanschrader.com'
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Troy Bundy
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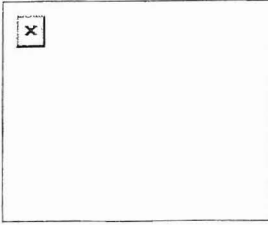
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All the best
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Peter Spir
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Associate Planner
22500 Salamo Rd.

(40)
(17)



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Mike, will we have the opportunity to cross examine witnesses in this forum, or is it strictly public testimony without examination?

Thank you,

Troy Bundy

(41)
(18)

Spir, Peter

From: Spir, Peter
Sent: Monday, June 07, 2010 6:14 PM
To: 'Troy S. Bundy'
Cc: Sonnen, John; 'Robinson, Michael C. (Perkins Coie)'; 'Tim Ramis'
Subject: RE: City File

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Troy Bundy

(42)
(19)

Spir, Peter

From: Robinson, Michael C. (Perkins Coie) [MRobinson@PerkinsCoie.com]
Sent: Monday, June 07, 2010 6:37 PM
To: Spir, Peter; Sonnen, John
Subject: Re: City File

Thanks, Peter

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

From: Spir, Peter <pspir@westlinnoregon.gov>
To: Robinson, Michael C. (Perkins Coie)
Sent: Mon Jun 07 13:57:55 2010
Subject: RE: City File

Mike

I just spoke with John Sonnen and he will be following up on the public records request.

In response to a recent telephone conversation, when you asked for a copy of the power point presentation for the City Council hearing on June 14, 2010. I am still working on the presentation. Typically I work on these presentations until just before the hearing.

To give you a heads up on the hearing, I intend to use the 2000 AKS engineering wetland delineation as the basis for the WRA chapter's 50 foot WRA transition plus 15 foot setback. The AKS delineation will also be the basis for the 100 foot riparian corridor and the associated 15 foot structural setback.

Peter

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pspir@westlinnoregon.gov
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6/8/2010

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
Sent: Monday, June 07, 2010 12:05 PM
To: tsb@hhw.com
Cc: Spir, Peter
Subject: Re: City File

Peter, we made a public records request for this information on(I believe, May 28). What's the status of the response? I would think the interview materials would be right at hand and easily distributed to us.

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

From: Troy S. Bundy <TSB@hhw.com>
To: Robinson, Michael C. (Perkins Coie)
CC: Spir, Peter <pspir@westlinnoregon.gov>
Sent: Mon Jun 07 11:45:10 2010
Subject: City File

Mike and Peter:

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disclosing the contents. Thank you.

(45)
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Spir, Peter

From: Sonnen, John
Sent: Monday, June 07, 2010 12:51 PM
To: Spir, Peter; Tim Ramis
Subject: FW: West Linn Permit

FYI

John Sonnen, Planning Director
Planning and Building, #1524

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-----Original Message-----
From: GARY [mailto:hitesman@comcast.net]
Sent: Monday, June 07, 2010 12:46 PM
To: tsb@hhw.com
Cc: Sonnen, John
Subject: RE: West Linn Permit

Troy,

I am considering presenting my concerns to the City Council at the upcoming June 14th hearing. As I mentioned earlier, I am not necessarily opposed to your improvements as there may be mitigation efforts that might prove beneficial for everyone. And since the City listed me as the only person opposed to your project, I wanted to clarify to the council that I have more objections to how the City handled your matter than the matter itself. My position could be 'neutral', although I may support your appeal at the last minute.

My intent is to underscore the City's irregular enforcement and poor precedents that make it confusing for many residents to know what to do or not do when it comes to maximizing use and livability of their own property. There are also many other flagrant violations of the environment that the City has either cretaed or done little to nothing about. I will structure my comments as a policy issue.

As a courtesy, I wanted to give you a heads up, assuming the hearing will still be this coming Monday. I have also, through copy, extended the courtesy to the City as well.

Regards, Gary

-----Original Message-----
From: GARY [mailto:hitesman@comcast.net]
Sent: Monday, March 08, 2010 2:53 PM
To: 'Troy S. Bundy'
Subject: RE: West Linn Permit

I had to respond to your wife's procedure. I wish your wife the best and can empathize with your situation. I was under chemo when my wife was t-boned by a 17 yr old from LO who was dealing pot in the back seat. He blew through a stop sign at 70 mph. Luckily, My wife survived as did I. Family is what is important and the City should be only a tertiary concern.

Best of Luck. By the way, it is not the Mayor but the City Manager that has things so messed up. I have reviewed enough applications to assert that your problems are with the City, not the Mayor.

Gary

(46)
(23)
1

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

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Monday, March 08, 2010 9:38 AM
To: 'hitesman@comcast.net'
Subject: Re: West Linn Permit

Thank you for your response. I can certainly respect your advocacy and personal convictions. I am a novice when it comes to local government and planning. I could not agree more with you about the process. I will tell you that we filed our appeal. But the appeal is solely about the pool and patio area. I am having a wetland landscape planner come out for survey this week. I hope to have that area taken care of before we even appear.

It is a long story, but what I can say at this point is the entire process was messed up from the beginning. First, we were told that a pre app conf was not necessary. Second, we were told by the planning department to speak with the mayor for help. So, we spoke with the Mayor, and she stated that we could put in the pool. If anyone had any questions they could call her directly. I am told she denies this now, but I have emails and phone call logs. We had no idea the city was in such a shambles up there or that there was so much controversy about the mayor. We were given every indication that this was the way it worked.

Well, then all of the sudden my neighbor gets upset about a fence and tells me he wants my side yard property for a new garage. I say no and his wife files a complaint against the pool in spite. Then I'm told to apply for a hardship permit, so I do. The permit clerk holds onto it for 3 weeks before turning it in to John Sonnen. They never say anything about more documentation, and so my app is deemed complete by default. I don't know how this stuff works. I'm a tort lawyer. I don't know land use or local politics.

Now I've got my family savings dumped into my backyard and am being told to take out a pool the city told me to put in in the first place. Turns out I'm just a political pawn. Well, I might lose my family savings in this, and maybe city council won't give a darned about what a mess the mayor and others made, but I want our story and the evidence on the record. Maybe it will turn into a tort action in the end. I don't know. All we want is to take our lumps and get on with our lives. I don't know how you do it. It must drive you mad. My wife is having surgery to remove a uterine mass tomorrow that is probably malignant, and I'm still dealing with this darn pool. What a nightmare.

Anyway, sorry for carrying on. Its been hard for me to bite my tongue throughout this process. We aren't blameless, but I feel like we were grossly misled.

Thank you for your well wishes. It means a lot to me even though we have not met. I wish you well also.

Troy
Troy S. Bundy
Hoffman, Hart & Wagner

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

From: GARY <hitesman@comcast.net>
To: Troy S. Bundy
Cc: pgalle@westlinnoregon.gov <pgalle@westlinnoregon.gov>
Sent: Sun Mar 07 22:29:00 2010
Subject: RE: West Linn Permit

Mr. Bundy,

With all due respect, I am not angry with you. Nor do I feel the need to categorize anyone as "villians".

I am a land use planner currently practicing in California while I persue marketing opportunities in the Northwest. I am a West Linn resident. I track applications involving Chapter 32 for historical purposes, to assess policy trends, and use for other related applications. All of my submittals are intended to address relevant aspects of the individual applications and create a record that may be extrapolated ~~printed on recycled paper~~

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interest is in the creation of form based codes and application of environmental & social equity that can create sustainable communities.

I do not feel the City writes and enforces code in an equitable way. The Planning Department and City Manager and Council make decisions in a harmful way towards its' constituents. I made the observation, in a round about way, that neither responses appeared respectful of the process or followed the intent of the code. But that is really an academic attitude on my part that is overshadowed by how the City decides to treat its' residents.

There should have been a pre application conference and perhaps you should have received more assistance from the City. My point was to poke at the edges of bad policy, made by the Council and City Manager, that ignores more blatant violations within the City than your own.

For me, worse is the position struck by the City upon everyday residents in our neighborhoods, like yourself. Yet others are treated and given extraordinary consideration, as I mentioned regarding the Palomino Loop Trail, as an example. Politics and Planning should not mix nor should favoritism and position rule. Through all this, I wish you and your family that best in rectifying the situation. My concern is that the City be more transparent in protections and in dealings with applicants. And you have my sincere hope that you and your family receive a fair shake in all this.

I did note that the City listed me as a person who was against approving the application. Which is true, but not necessarily because of what your application states. I thought the City should start over and fully enforce the correct process. In the end, it appears the City disagrees with me and feels they did everything right. And they paraphrased my many emails to position me as a person who is against your application.

I wish you success in your endeavors and nothing but good health to you and your family.
Gary Hitesman

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

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Friday, March 05, 2010 4:13 PM
To: hitesman@comcast.net
Subject: West Linn Permit

Dear Mr. Hitesman:

Per your recent letter, I thought I would let you know that I am a partner and equal shareholder of my law firm, Hoffman, Hart & Wagner. I am not an employee. I have been a partner since 2002.

I have read your emails and correspondence with interest. It is clear you are angry with me, and I respect your viewpoint. However, there is much more to the story than you have been told at this point. I am simply hopeful that we can approach our respective situations with respect for one another as neighbors. I am interested in your own situation, and would be happy to talk with you anytime about either situation and listen to what you have to say. All I ask is that you give me and my family the benefit of the doubt before jumping to a final conclusion. We are, honestly, not the villains I believe you think we are.

For your own information, we are working with a wetland consultant to create a plan for the back area that is acceptable to everyone. I think you also might not be aware that a major portion of the area in question was a former dumpsite for construction debris, which I had nothing to do with.

Regardless, that is not something I intend to fight about. I will see to it that the area is landscaped appropriately. The remaining issue relates only to the pool area. We are trying to get this straightened out as well.

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It is unclear to me what you are going through in your own neighborhood, but I do hope that works out to your satisfaction. I simply wanted to extend my hand as a neighbor. I deal with animosity and conflict so frequently in my work-life, I try to avoid it in my neighborhood whenever possible. Trust me, we certainly did not intend to create such an ordeal for all involved, and I am very sorry it has turned into one. Your courtesies are appreciated.

Sincerely,

Troy S. Bundy

No virus found in this incoming message.

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Version: 8.5.435 / Virus Database: 271.1.1/2729 - Release Date: 03/07/10 19:34:00

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Version: 8.5.436 / Virus Database: 271.1.1/2729 - Release Date: 03/08/10 07:34:00

Re: City File

Spir, Peter

From: Spir, Peter
Sent: Monday, June 07, 2010 1:58 PM
To: 'Robinson, Michael C. (Perkins Coie)'
Subject: RE: City File

Mike

I just spoke with John Sonnen and he will be following up on the public records request.

In response to a recent telephone conversation, when you asked for a copy of the power point presentation for the City Council hearing on June 14, 2010. I am still working on the presentation. Typically I work on these presentations until just before the hearing.

To give you a heads up on the hearing, I intend to use the 2000 AKS engineering wetland delineation as the basis for the WRA chapter's 50 foot WRA transition plus 15 foot setback. The AKS delineation will also be the basis for the 100 foot riparian corridor and the associated 15 foot structural setback.

Peter

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
Sent: Monday, June 07, 2010 12:05 PM
To: tsb@hhw.com
Cc: Spir, Peter
Subject: Re: City File

Peter, we made a public records request for this information on(I believe, May 28). What's the status of the response? I would think the interview materials would be right at hand and easily distributed to us.

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

From: Troy S. Bundy <TSB@hhw.com>
To: Robinson, Michael C. (Perkins Coie)
CC: Spir, Peter <pspir@westlinnoregon.gov>
Sent: Mon Jun 07 11:45:10 2010
Subject: City File

Mike and Peter:

So you know, there are "intentionally omitted" pages from the materials we received referenced in the binder. Additionally, I do not see any "staff interview" notes in these materials that were referenced by Mr. Spir. Of particular interest would be Mr. Nomie's statement. When Gina picked up the packet, she was informed that this was everything. Is it really the complete file?

I would like to see those and, in particular, any declaration he intends to submit on his oath.

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Re: City File

Mike, will we have the opportunity to cross examine witnesses in this forum, or is it strictly public testimony without examination?

Thank you,

Troy Bundy

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Spir, Peter

From: Troy S. Bundy [TSB@hwh.com]
Sent: Monday, June 07, 2010 11:45 AM
To: Robinson, Michael C. (Perkins Coie)
Cc: Spir, Peter
Subject: City File

Mike and Peter:

So you know, there are "intentionally omitted" pages from the materials we received referenced in the binder. Additionally, I do not see any "staff interview" notes in these materials that were referenced by Mr. Spir. Of particular interest would be Mr. Nomie's statement. When Gina picked up the packet, she was informed that this was everything. Is it really the complete file?

I would like to see those and, in particular, any declaration he intends to submit on his oath.

Mike, will we have the opportunity to cross examine witnesses in this forum, or is it strictly public testimony without examination?

Thank you,

Troy Bundy

(52)
(29)

Spir, Peter

From: Troy S. Bundy [TSB@hbw.com]
Sent: Thursday, June 03, 2010 3:04 PM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie)
Subject: FW: IMG.pdf

Mr. Spir:

Attached are the recent correspondence between my neighbor, Brain Evans, and myself. I learned he forwarded my angry outburst to him. I learned this after I apologized earlier this morning. But, it really doesn't matter to me that he passed on our private correspondence. I think we needed to vent against one another, and now its done. Its too hard to hang onto such bitterness and anger for so long and bite one's tongue. At least I will have peace in my neighborhood once again, regardless of what happens at the hearing or what you think of me and my family.

Troy Bundy

From: Evans, Brian [mailto:BEvans@pccstructurals.com]
Sent: Thursday, June 03, 2010 2:33 PM
To: Troy S. Bundy
Subject: RE: IMG.pdf

Troy,

Yes, I forwarded him the texts. I was pissed-off all weekend about the texts and how to respond and eventually I decided I would just let the City fight the battle. But yes, the feelings are absolutely mutual about ending our private battle. Thank you for extending the gesture.

I can see the trench in your pictures. It was less obvious / substantial than it is now but it was there. I wasn't trying to "lie" to the City to cause you a problem. When they asked when the trench was installed, I answered the question relative to the trench as it is today (larger, with crushed rock and drains). I don't think I ever noticed the smaller trench and it certainly doesn't show in my pictures. Maybe I should have been more specific regarding when the trench was "improved" vs. "installed".

Take care

Brian

Brian P. Evans
SSBO Controller
(503) 652-4631

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6/4/2010

From: Troy S. Bundy [mailto:TSB@hhw.com]
Sent: Thursday, June 03, 2010 1:44 PM
To: Evans, Brian
Subject: IMG.pdf

Brian:

Here is that photo I was referencing.

By the way, I just saw that you copied Spir on the texts. Its okay. I cant say I blame you. I was a jerk and "texted" out of anger. I've never disputed putting in drains or laying gravel anyway. I just hope the war can end as of today. I have no interest in carrying on with it. With any luck, the feelings are mutual. Thanks.

Troy

(54)
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(32)



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Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

May 21, 2010

VIA E-MAIL

Mayor John Kovash
City of West Linn City Hall
22500 Salamo Road, #100
West Linn, OR 97068

**Re: City of West Linn File No. AP-10-01;
Appeal of Director's Decision in City of West Linn File No. WAP-09-03
to Allow Approval of a Water Resources Area Protection ("WAP") Permit**

Dear Mayor Kovash and Members of the City Council:

This office represents the applicants, Troy and Gina Bundy. This letter explains why the City Council should reverse the Planning Director and approve their application in order to allow them to use their back yard just as all families in West Linn are able to do.

The issue before the City Council is the impact on the wetlands located on the adjacent Portland General Electric ("PGE") property. There were no wetlands located in the Bundys' back yard where the permanent improvements have been made. The Bundys made improvements to the PGE property with permission of PGE. As described elsewhere in this letter, the Bundys will propose mitigation either on the PGE property, where the lawn was installed, or in a mitigation bank acceptable to the City. However, the improvements within the Bundys' back yard are not in a wetland area and should not be removed.

1. Summary of Arguments.

A. The Bundys proceeded with the pool and patio construction because they had a good faith belief that they had been authorized to do so by the former Mayor. They now recognize this was incorrect, and have sought to rectify their mistake by applying for this application, submitting an appeal of the denial of the application, and working with the City and state and federal wetland agencies to propose an acceptable mitigation plan while maintaining the improvements in their back yard for their family. The Bundys' improvements do not harm the public. There is no "flood storage capacity" that is diminished by the improvements. The

91004-0005/LEGAL18338252.2

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Mayor John Kovash
May 21, 2010
Page 2

PGE property is not part of the West Linn wetland conservation easement recorded pursuant to Clackamas County Document No. 2001-044-110.

B. The Bundys are working with the United States Corps of Army Engineers ("Corps") and the Oregon Department of State Lands ("DSL") to obtain those agencies' approval for wetland disturbance and mitigation.

C. The City Council can find that West Linn Community Development Code ("CDC") 32.050.A is satisfied because the record contains the required water resource areas on the project site.

D. The improvements at issue in this appeal do not impair an existing natural drainageway. The only existing natural drainageway is a small drainageway on the north edge of the Bundy property which was improved prior to the Bundys' purchase of their property. The City Council can find that CDC 32.050.B is satisfied.

E. CDC 32.050.C requires that once an applicant determines that an unavoidable environmental impact will result from improvements, the applicant must consider alternatives to reduce or minimize those impacts. If any portion of a water quality resource area is proposed to be permanently disturbed, the applicant is required to prepare a mitigation plan as specified in CDC 32.070 to restore disturbed areas. In this case, the Bundys propose to restore the PGE property for the disturbance of the water quality resource area and the wetland conservation easement in their back yard as mitigation.

F. CDC 32.050.D and E are not relevant to this WAP application because these provisions concern the creation of a water resource area tract or easement and the extent of a water resource area.

G. CDC 32.050.F is satisfied. This section allows "passive use recreational facilities" to be built in a water resource area "when no other practical alternative exists." A swimming pool and patio are passive use recreational use facilities and this provision expressly allows their construction where, as in this case, no other practical alternative exists. As the riparian area map on staff report page 12 shows, virtually the *entire* Bundy property is covered by a riparian area, including their home. The only part of their property not encumbered is their driveway and a small area south of the driveway. Therefore, there is *no* other place where the Bundys could construct passive use recreational facilities for their family. The City should want to ensure that families have recreational opportunities which, notwithstanding their laudable nature, wetlands do not provide.

H. CDC 32.050.L is satisfied because the swimming pool and patio are not structures, so a structural setback is not affected. The Director's decision takes the position that the pool and the patio encroach within the conservation easement, the riparian corridor and the water resource transition and setback, so this criterion is not met. In fact, the definition of

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"structure" in CDC Chapter 2 excludes improvements that are less than 30 inches above grade and not located over any basement or story below. (Exhibit 1.) The pool and the patio are not structures, so they are not subject to the structural setback.

I. CDC 32.090 does not apply. Because the applicant can demonstrate compliance with the relevant criteria for CDC Chapter 32 either through evidence before the City Council or pursuant to reasonable conditions of approval, a hardship release is unnecessary.

J. The Bundys request that the City Council impose three (3) conditions of approval:

- That a wetland mitigation plan satisfactory to City staff, the City Council, DSL and the Corps be submitted and approved. The purpose of the mitigation plan is to satisfy CDC 32.070.
- That a post-construction engineering plan and erosion control plan satisfactory to City staff and the City Council be submitted and approved.
- That a building permit for the swimming pool be submitted and approved.

2. Discussion.

A. History of Application.

The Bundys do not take issue with the general events described in the staff report at pages 1-6 but they want the City Council to understand that they constructed the pool and patio only after communicating with the former Mayor who led them to believe it was her decision to allow construction of the improvements. While the Bundys have professional occupations (Mr. Bundy is a lawyer and Mrs. Bundy is an emergency room nurse), neither has had occasion to be involved with administration of City regulations in the past and neither is well versed in this area. They reasonably believed that it was appropriate to ask the Mayor if she could approve the improvements or persuade the Planning Department to approve the permit if that was not within her authority. They spoke with the former Mayor in the summer of 2009 prior to constructing their improvements. As already noted, the Bundys now realize this belief was mistaken and subsequently filed the WAP application to seek land use approval for the improvements in November, 2009.

The City took an extraordinary amount of time to review the application for completeness after which the Planning Director denied the application. As the remainder of this letter describes, however, the Bundys' improvements fully comply with the relevant approval criteria in CDC Chapter 32, so approval of a "hardship" in CDC 32.090 is unnecessary. If a "hardship" is necessary, this letter proposes a path to obtain the hardship reduction in standards.

B. CDC 32.050.A.-C. are satisfied.

CDC 32.050.A requires that a WAP application identify water resource areas on the project site. The Bundys acknowledge that their application failed to provide this information but this information has been subsequently provided in the staff report. Thus, the City Council can find that because the staff has provided this information, this approval criterion has been satisfied.

CDC 32.050.B is satisfied. The only "natural drainageway" anywhere near the property is referred to on staff report page 7 which notes: "A channel has been dug along the north property line and filled with gravel as a means of conveyance for water. This constitutes a clear disturbance of the water resource." The Bundys did not dig the channel.

The staff report does not contain evidence that a drainageway identified in the City's Surface Water Management Plan is on the Bundy property or on the PGE property. The assertion that the 2007 photograph of the PGE site at page 8 of the staff report compared to the 2008 photograph is clear enough to show a channel is not supported by a comparison of the two photos. Moreover, neither of the two photos shown on page 8 of the staff report is captioned as showing a drainage area. The staff report does not refer to an "existing natural drainageway" which is what CDC 32.050.B applies to. However, the Bundys have stated that the gravel-filled channel was present when they purchased their property in April, 2003. Thus, the City Council can find that because no "existing natural drainageway" is present, nor does the staff report show that such drainageway is identified in the City's wetland, riparian and wildlife habitat inventory (identified as wetland WI-02 and shown on pages 43-46 of the staff report) this criterion is satisfied.

The simple fact is that there is no existing natural drainageway on the Bundy property which is listed on the City's Surface Water Management Plan nor is there one on the PGE property, but even if there was, the Bundys did not alter it. The City Council can find that this criterion is satisfied.

Finally, CDC 32.050.C requires that development be conducted in a manner that will minimize adverse impacts on water resource areas. The development in this case is the Bundys' swimming pool and patio. CDC 32.050.C requires that unavoidable adverse environmental impacts be mitigated. The Bundys propose a condition of approval requiring submittal of a mitigation plan as specified in CDC 32.070 to restore disturbed areas. The City Council may impose a condition of approval pursuant to ORS 227.175(4). It is clear that impacts to their back yard were unavoidable since the entire back yard is in a water resource area, as is the majority of the lot, leaving only the driveway outside of the area.

Additionally, the City Council should note the photograph on staff report page 8. Improvements in the water resource area that the City complains of are located not just on the Bundys' property but on the properties to the east and west of their lot. All of these properties

are within the "riparian area" as shown on staff report page 12. Thus, the City must find that it not only wants to prevent the Bundys from having a passive recreational area in their back yard but that the improvements on the lots to the east and the west must also be removed because they also represent improvements inside the "riparian area."

C. CDC 32.050.D. is not relevant to this Application.

The City Council can find that this is not a relevant approval criterion. This provision simply directs either the dedication of land or a grant of an easement and neither is relevant here. This criterion does not impose an approval standard on this application. The "intent" for this criterion is not relevant to the Director's decision. The City Council should find that this criterion is not relevant.

D. CDC 32.050.E. is not relevant to this Application.

CDC 32.050.E is not an approval criterion. This provision simply describes protected water resource areas.

E. CDC 32.050.F. is satisfied.

This section expressly allows "passive use recreational facilities" to be built in and across water resource areas where no other practical alternative exists. The City Council can find that this criterion is satisfied for two (2) reasons. First, the swimming pool and patio are "passive use recreational facilities." The CDC does not define this term, so the City Council may rely on common and ordinary definitions in interpreting this provision. A non-passive recreational facility is appropriately described as a baseball field or football field or something built for an organized activity. Passive use recreational facilities would include a pool and patio because they do not allow organized activities. *See* Collins English Dictionary (2003).

Second, the City Council must find that "no other practical alternative exists." Assuming the riparian area shown on the map at page 12 is correct, the City Council can find that the riparian area extends across most of the Bundys' lot. Thus, their entire front yard, back yard and home are covered by a riparian area and the Bundys had no other practical alternative to construct a passive use recreational facility.

Third, the City Council can find that the Bundys can comply with the requirement of this provision that requires "full mitigation and revegetation." The Bundys will agree to do so pursuant to the proposed conditions of approval listed above on page 3.

F. CDC 32.050.G.-J. are satisfied.

These sections apply to construction within the water resource area. The City Council can find that CDC 32.050.G is satisfied because the Bundys have installed a fence around the

swimming pool and patio and, as the staff report notes at page 13, "fencing is not necessary at this time since the site disturbance has already occurred." Additionally, the Bundys propose a condition of approval requiring the submittal of a post-construction engineering report and erosion control evaluation pursuant to CDC 32.050.A and G, and a condition of approval requiring that they implement any recommendations found in that engineering report, subject to City staff and City Council review and approval.

G. CDC 32.050.K. is satisfied.

The staff report conclusion at pages 13 and 14 is unsupported by substantial evidence. The staff does not have evidence to support their conclusion that the Bundys' back yard supported wetland functions. Moreover, there is no evidence that the Bundys' back yard supported "flood storage capacity." The Bundys are working with the DSL and the Corps to propose appropriate mitigation but not in their back yard.

Further, the criterion is not an impediment to allowing the Bundys' improvements since it applies to sites that are "unhealthy or disturbed or portions of the site that are disturbed or in the development process." This criterion simply requires that where existing vegetation is to be permanently removed or the original land contours disturbed, a mitigation plan meeting the requirements of CDC 32.070 (a revegetation plan under CDC 32.080 is not required) be submitted. The City Council can find that this criterion is not relevant to the construction of the improvements in the Bundys' back yard, but if it is, a condition of approval requiring a mitigation plan can satisfy this criterion.

Wetland WI-02 is the wetland located on the PGE property. The staff report at page 43 contains the "LSW criteria" for wetland WI-02. The only two (2) criteria which allowed the City to deem it "locally significant" are that it provides an intact hydrologic control function and is less than one-quarter (1/4) mile from a DEQ water quality limited water body. The LSW criteria *not* met were that the wetland did not provide a diverse wildlife habitat, did not provide an intact fish habitat, did not provide an intact water quality function, did not contain one or more rare plant community, was not inhabited by a threatened or endangered species and did not have a direct surface water connection to a stream segment mapped by the Oregon Department of Fish and Wildlife.

H. CDC 32.050.L. is satisfied.

The City Council can find that this section is satisfied because the swimming pool and patio are not subject to "structural setbacks." A patio is no different from a deck and, in fact, is less obtrusive than a deck because it is at ground level. A swimming pool is certainly not subject to a structural setback. (*See* definition of structure in **Exhibit 1.**)

3. Response to issues identified in the Planning Department Staff Report.

A. Issue One: The Applicant constructed a swimming pool without obtaining a building permit.

The Bundys propose, as a condition of approval, to apply for and obtain a building permit following approval of the land use application. Further, a licensed contractor built the swimming pool, so it should satisfy relevant standards.

B. Issue Two: The Bundys constructed a swimming pool and patio in the Water Resource Area without obtaining approval of a Water Resource Area permit.

The Bundys have since applied for a WAP permit and following the Director's denial, filed a timely appeal. The site does not contain a fire pit. If the City Council chooses to grant the appeal, the Bundys will have resolved this issue.

C. Issue Three: The swimming pool, patio area, fire pit and removal of native vegetation are within an open space Conservation Easement.

The staff report is incorrect to the extent it asserts that the open space Conservation Easement covers the PGE property; it does not. The issue of improvements within the Conservation Easement area is not relevant to the land use proceeding and should be dealt with, if the City Council chooses to approve this application, through a release of the easement terms by the Grantee, the City Council for West Linn.

D. Issue Four: The Bundys did not obtain a permit from the DSL.

The Bundys' wetland biologist, Jason Clinch, is working with both DSL and the Corps to obtain the necessary permits and believes that they will be obtained.

4. Response to February 16, 2010 letter from Carrie Oakes.

A. Ms. Oakes argues that CDC 32.025, "Permit Required", prohibits an after-the-fact application such as that made by the Bundys. CDC 32.025 does not prohibit an applicant from submitting a permit application to correct a violation of the CDC. The City Council should reject this argument.

B. Ms. Oakes argues that CDC 32.040.B (requirement for pre-application conference) has not been satisfied. Nevertheless, the City accepted the application for a WAP permit, deemed it complete and processed it. Under ORS 227.178(3), the city must make a final decision on the application once accepted and deemed complete. CDC 32.040.B is not an applicable approval criterion and is not a basis for denial of the application. *Caster v. City of Silverton*, ___ Or LUBA ___ (June 19, 2007, LUBA No. 2007-033).

Similarly, CDC 99.030.B.1 is not a basis for a denial. Neither CDC 32.040.B nor CDC 99.030.B.1 is described as a "jurisdictional" requirement and neither is listed as part of the approval criteria for a WAP permit in CDC Chapter 32. Furthermore, the CDC does not state that failure to satisfy these requirements is a basis for denial of an application that otherwise satisfies applicable approval criteria. Therefore, the City Council should reject this argument.

5. Reduction in standards for hardship.

CDC 32.090 allows reductions to the standards in CDC Chapter 32 so that the chapter does not "cause unreasonable hardship."

In the event the City Council determines that the forgoing substantive requirements are not satisfied, the Bundys respectfully request that the City Council approve a reduction in the standards of CDC Chapter 32 pursuant to CDC 32.090.A. This criterion applies to "lots located completely inside the Water Resource Area." The Bundys' lot was recorded prior to the effective date of CDC Chapter 32 in 2007. While the map at staff report page 12 shows that a small area of the Bundys' lot is not within a Water Resource Area, as a practical matter, the useable portion of the lot is located entirely within the Water Resource Area. The map at staff report page 12 shows that the Bundys' front yard (the area between the driveway's north edge and the front of the home) and the back yard are entirely located within the Water Resource Area.

The City Council can find that the proposed development does not increase danger to life and property due to flooding and erosion. The development at issue is the swimming pool and patio in the Bundys' back yard. Their back yard served no flood storage capacity function and the improvements have not increased erosion. However, the proposed conditions of approval at page 3 of this letter include a requirement that the Bundys submit a post-construction engineering and erosion control analysis to allow staff to make that determination.

This criterion also limits the area of disturbance to no more than 5,000 square feet. CDC 32.090.B provides that any further reduction in the standards of this chapter require approval of a variance pursuant to CDC Chapter 75. The area of disturbance includes more than 5,000 square feet of the Water Resource Area.

Therefore, the Bundys respectfully request that the City Council make a threshold determination. If the City Council believes that it is "plausible" (as described by the Oregon Court of Appeals in *Siporen v. City of Medford*) that CDC 32.090.A will allow consideration of the Bundys' request for reduction in standards for hardship, then the Bundys will agree to apply for a variance pursuant to CDC Chapter 75 in a separate proceeding. In that event, the Bundys respectfully request that the City Council place this matter on hold, the Bundys will grant an extension of the 120-day clock in ORS 227.178(3) for the maximum period (365 days from the date of completion) in order to allow them to apply for and receive approval for a variance and they will demonstrate satisfaction of the three (3) proposed conditions of approval shown on page 3 of this application. The Bundys are not waiving their right to argue that a reduction in

Mayor John Kovash
May 21, 2010
Page 9

standards for hardship under CDC 32.090 is not required for the reasons described elsewhere in this letter.

6. The wetland Conservation Easement is not before the City Council in this matter.

The Bundys acknowledged that their property is subject to that open space Conservation Easement recorded in 2001 on the northern and southern areas of their lot (shown as Parcel 1 on the partition plat). Should the City Council indicate that it wishes to approve this WAP application with or without a variance, the Bundys will ask the City Council to waive the terms of the easement as it exists on the northern portion of their property to allow only the improvements associated with the WAP application. The other easement terms, conditions and limitations would remain in this area and no change would occur to the Conservation Easement on the portion of the Bundys' lot south of their driveway (the private access and utility easements shown on the partition plat).

While outside of this land use application process, there is no evidence in the record that the City complied with the requirements of ORS 271.715 to 271.795, "Conservation and Highway Scenic Preservation Easements." ORS 271.765(1) provides that the statutes apply to any interest created after October 15, 1983 that complied with ORS 271.715 to 271.795. ORS 271.735 sets forth the requirements for establishment of a Conservation Easement. The Bundys will work with staff to determine whether the establishment of the Conservation Easement met the requirements of ORS 271.715 to 271.795. If so, the Bundys will then seek the City Council's separate waiver of the prohibition within the Conservation Easement regarding their improvements in their back yard.

7. Conclusion.

The Bundys understand the importance of wetland preservation to the City. As noted at the beginning of this letter, however, the improvements in their back yard are not within wetlands. The changes to a wetland occurred solely upon the PGE property. The Bundys have offered to mitigate the impact to those wetlands, either by mitigation on the PGE property, or in another way acceptable to the City, DSL and the Corps. The Bundys wish to have a patio and a pool in their back yard for their young family and those improvements do not harm the City's ultimate goal of maintaining wetlands. On behalf of the Bundys, I respectfully request that the City

Mayor John Kovash
May 21, 2010
Page 10

Council grant their appeal, reverse the Planning Director and approve the WAP application with appropriate conditions of approval as suggested in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Robinson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael C. Robinson

MCR/cfr

cc: Mr. and Mrs. Troy Bundy (via email)
Mr. Jason Clinch (via email)
Mr. John Sonnen (via email)
Mr. Peter Spir (via email)
Ms. Cynthia Phillips (via email)



DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

May 18, 2010

REPLY TO
ATTENTION OF:
Operations Division
Regulatory Branch
Corps No.: NWP-2010-177

Troy and Gina Bundy
1215 9th Street
West Linn, Oregon 97068

Dear Mr. and Mrs. Bundy:

The U.S. Army Corps of Engineers (Corps) conducted a site inspection of your property on May 5, 2010, after receiving information that fill material may have been placed in waters of the U.S. The property is located within wetlands in West Linn, Clackamas County, Oregon (Section 2, Township 3 South, and Range 1 East).

The site visit revealed that a pool, patio, and landscaping may have been placed within wetlands in the backyard of your residence. A channel that consists of intermittent flow bisects the property, flowing from north to the south. Fill material was placed in the backyard of the property to grade the area and prepare it for planting. Based on the surrounding site conditions, the area likely consisted of hummocky terrain. Undisturbed areas consisted of wetlands dominated by non-native and invasive herbaceous vegetation under a canopy of native and non-native woody species. Surface water was present in areas immediately adjacent to the alleged unauthorized fill area. During the site visit standing water was present within the filled lawn area and wetland vegetation was re-establishing along the borders of the landscaping and within the lawn. A soil sample taken adjacent to the southern end of the patio area, near the intermittent channel, revealed a layer of fill approximately 2 to 3 inches over the native soil. Due to the hummocky nature of the area, the area of fill over the natural soil will vary.

As a result of the site visit, the Corps has determined that the work performed at the property may have impacted areas meeting the definition of "Waters of the U.S." The work may have qualified for Nationwide Permit No. 29 (Residential Developments). The Nationwide Permit No. 29 authorizes the following:

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, stormwater management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

(66)
(23)

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Those intending to conduct residential development activities under Nationwide Permit No. 29 must submit a preconstruction notification (i.e. permit application) to the Corps prior to conducting the work. A preconstruction notification and/or permit application was not submitted to the Corps prior to project development. A permit application for after-the-fact authorization may be submitted to the Corps identifying the extent of the work conducted and describing wetland restoration and/or mitigation plans proposed for the property.

If you have any questions regarding your project, please contact me at the letterhead address, by telephone (503) 808-4387 or by email at Kristen.A.Hafer@usace.army.mil.

Sincerely,

Kristen Hafer (Hdln)
for Ms. Kristen Hafer

Project Manager, Regulatory Branch

Copy Furnished:

- Oregon Department of State Lands (Huffman)
- Oregon Department of Environmental Quality (Saxon)
- Terra Science, Inc. (Clinch)

BC
SC
PM
TL <i>HT</i>
PM
TECH
TYP <i>[Signature]</i>

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DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

RECEIVED
MAY 14 2010
PAGE 1 OF 1

REPLY TO
ATTENTION OF:

May 3, 2010

Operations Division
Regulatory Branch
Corps No.: NWP- 2010-177

Troy and Gina Bundy
1215 9th Street
West Linn, Oregon 97068

Dear Mr. and Ms. Bundy:

We have received information you may have conducted work within waters of the United States, specifically within wetlands in West Linn, Clackamas County, Oregon (Section 2, Township 3 South, Range 1 East). Specifically, a pool, patio, and associated landscaping may have been constructed within wetlands located at 1215 9th Street, West Linn. A shallow gravel and rock drainage channel appears to have been constructed within the wetlands and soil material was placed within the wetlands to elevate the existing grade approximately 1 to 1.5 feet. The purpose of this letter is to inform you of the authority/jurisdiction of the Regulatory Branch of the U.S. Army Corps of Engineers (Corps).

The Corps has jurisdiction over water bodies under two statutory authorities: the Rivers and Harbors Act of 1899 and the Clean Water Act. Under Section 404 of the Clean Water Act, the Corps regulates the discharge of dredge or fill material into waters of the U.S. Additionally, under Section 10 of the Rivers and Harbors Act, the Corps regulates work in or affecting navigable or historically navigable waters of the U.S. Section 404 of the Clean Water Act, 33 U.S.C. § 1344, prohibits discharges of dredged or fill material into waters of the United States unless the work has been authorized by a Department of the Army permit.

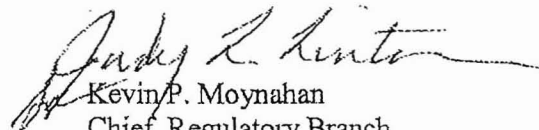
At this time, the Corps will not be pursuing an enforcement action. However, you are hereby advised that further work within waters of the United States may require permit authorization. You are cautioned that before you commence any work within waters of the U.S., you should contact the Corps Project Manager for your county, to determine the need for a permit. Information on the U.S. Army Corps of Engineers regulatory program is enclosed, including a copy of a permit application (Enclosure 1).

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-2-

If you have any questions regarding our regulatory authority, please contact Ms. Kristen Hafer at the letterhead address, by telephone (503) 808-4387 or by email at Kristen.A.Hafer@usace.army.mil.

Sincerely,


Kevin P. Moynahan
Chief, Regulatory Branch

Copy Furnished:

Oregon Department of State Lands (Huffman)
U.S. Environmental Protection Agency (Nadeau)
City of West Linn (Peter Spir)

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