

Spir, Peter

From: HUFFMAN Anita [anita.huffman@state.or.us]
Sent: Tuesday, April 13, 2010 6:26 PM
To: Spir, Peter
Subject: RE: bundy case

Hi Peter,

Gina Bundy called me last week and said they'd hired someone to take a look at the site. I'm very familiar with Jason Clinch and Terra Science, they should know what it is we'll be requiring. I'll get in touch with Jason soon, if he doesn't get in touch with me first. It'd be easier for me to relay to him what DSL will require than it will to the Bundy's.

I've also notified Kristin Hafer at the Army Corps of Engineers. She's also got jurisdiction on this case and she'll be following up on her end. I haven't had a chance to contact her recently, but next week I should have time to do so. I will send out DSL's consent agreement then. As I mentioned to you before, and I told Mrs. Bundy, we're going to defer to whatever the local government (and possibly the ACOE) want to do for the pool situation. I will be requiring restoration.

I was surprised by the photos that showed the new decorative bridges that had been installed...I thought it was pretty clear to the Bundy's that restoration would be required, that would include removal of that drainage.

In any event, I will let you know what I find out from Jason. Thanks.

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Tuesday, April 13, 2010 9:39 AM
To: HUFFMAN Anita
Subject: FW: bundy case

Anita
I called them this AM and left a message to ask what their study scope/parameter was but no reply yet. Perhaps you might contact them esp since you are the expert in this field and can make sure they know what you need.
Peter

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

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Spir, Peter

From: Sonnen, John
Sent: Monday, April 12, 2010 4:39 PM
To: Spir, Peter
Subject: bundy case

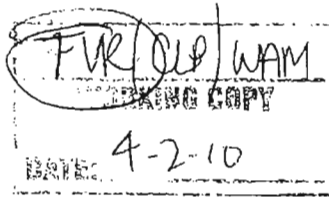
Gina Bundy called and said that a wetland biologist is coming out on Tuesday at 4:00 (Jason Clinch with Terra science sp). She also said the temporary fencing is up around the pool .

John Sonnen, Planning Director
Planning and Building, #1524

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I called Terra Science
4-13-10 to confirm
the slope/parameters
of the study
to make sure it
addresses DSL & City's
needs .



Erick J. Haynie
PHONE: (503) 727-2017
FAX: (503) 346-2017
EMAIL: EHaynie@perkinscoie.com

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

March 31, 2010

**Via First Class U.S. Mail and separately by
Certified Mail, Return Receipt Requested**

Cynthia L. Phillips, Esq.
Jordan Shrader Ramis, PC
Two Centerpointe Drive
6th Floor
Lake Oswego, OR 97035

**Re: Troy & Gina Bundy Family
Notice of Claim**

Dear Ms. Phillips:

This law firm has been recently retained by Troy S. Bundy and his family to represent them in connection with their back-yard swimming pool and related land use dealings with the City of West Linn (the "City"). We understand that your firm serves as general counsel to the City and are, therefore, sending your firm this letter pursuant to ORS 30.275(5)(b).

By this letter, the City should be advised that our firm is investigating possible claims against the City relating to the pool. For example, and without limitation, our firm is investigating possible claims arising from Mayor Galle's representation to the Bundy family in July 2009 that no permit would be required from the City to build the pool. This representation was made by the Mayor during an on-site visit she made to the Bundy residence on or about July 18, 2009. In reliance upon the representations of the Mayor—the head of the City's government—our clients thereafter commenced and completed construction of their pool.

Subsequently, City planners have raised concern with the pool. In an effort to resolve these concerns, the Bundy's submitted a formal land use application for the pool. City staff denied that application in a decision dated February 19, 2010. As your firm may be aware, the Bundy's have appealed that decision to the Planning Commission. That appeal is pending.

73108-0001/LEGAL17973103.2

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Cynthia L. Phillips, Esq.
March 31, 2010
Page 2

Although our clients have not filed a claim against the City in this matter at this point in time, their investigation is on-going. The intention of sending this letter is not to antagonize the City, but rather to comply with any potentially applicable notice requirement under ORS 30.275. To the extent ORS 30.275 requires our clients to provide the City with notice that they will assert a claim against the City for money damages, whether arising from misrepresentations by the Mayor or other wrongful conduct by the City, this letter is intended to provide that notice.

All correspondence concerning this matter should be addressed to this office at my attention or that of my partner, Michael Robinson. Our address is 1120 NW Couch Street, 10th Floor, Portland, Oregon 97209.

Your cooperation and courtesies in this matter are appreciated.

Very truly yours,

Erick J. Haynie

EJH:jgs

cc: Troy S. Bundy
Gina Bundy
Michael C. Robinson, Esq., Perkins Coie LLP

Spir, Peter

From: Spir, Peter
Sent: Thursday, March 18, 2010 6:56 AM
To: 'HUFFMAN Anita'
Cc: 'Cindy Phillips'; Sonnen, John
Subject: Bundy's wetland fill issue on Ninth Street

Hi Anita

I understood that you would be discussing this case with your boss to see if/when you would start enforcement. Could you let me know what DSL's response will be?

I also spoke w/ Kristen Hafer of USACE and she said she would send them a letter of USACE's concerns and permit requirements to the Bundys but that the USACE would probably wait to see how the City's enforcement went so as not to duplicate effort.

Thanks
Peter

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Monday, March 15, 2010 3:54 PM
To: Sonnen, John; Spir, Peter
Subject: 1215 9th Street

Dear Mr. Sonnen and Mr. Spir:

Gina just dropped off a number of materials for you with John Nomie relating to my neighbor's complaints about safety. I think the materials will speak for themselves. I can confirm for you that the Evans spend the summers (nearly every weekend last year) living on their 30 foot cabin cruiser on Detroit Lake riding water skis and swimming. Their safety complaints about our pool are ill-founded and meritless. Their oldest daughter even has her Oregon Boater's Certificate, so she can pilot the 10 foot zodiac listed on those documents.

Our printer ran out of ink, so Gina could not print out photos of the construction fence we put up around the pool. She will bring them tomorrow. We wanted you to have these now because I need Gina to take some time to recuperate, and that is not happening at home. We will return on the 29th. The pool cover will remain locked during this time. Please let me know if you have further questions. Thank you for your courtesies.

Troy S. Bundy



Oregon Marine Board Report

SEARCH CRITERIA

Name: **BRIAN EVANS**
City: **WEST LINN**
Record Type: **ALL**

Records Current Through: **7/21/2008**
Date/Time Searched: **03/07/2010 11:40 PM**

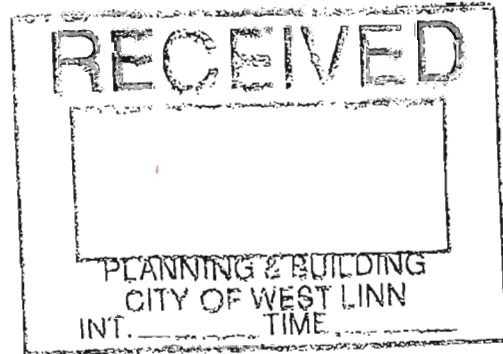
SEARCH RESULTS

Subject Information

Name **EVANS BRIAN - OWNER**
PREMISES ADDRESS
1221 9TH ST
WEST LINN OR 97068
County **CLACKAMAS**

Supplemental Information

Vessel ID Number **925ACW**
Hull Serial Number **YAMAHA3351L506**
Hull Date **2006**
Feet **011**
Inches **00**
Hull Material **FIBERGLASS/PLASTIC**
Propulsion Type **INBOARD OR INBOARD/OUTBOARD**
Construction Type **5**



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Oregon Marine Board Report

SEARCH CRITERIA

Name: **BRIAN EVANS**
City: **WEST LINN**
Record Type: **ALL**

Records Current Through: **7/21/2008**
Date/Time Searched: **03/07/2010 11:40 PM**

SEARCH RESULTS

Subject Information

Name: **EVANS BRIAN P - OWNER**

PREMISES ADDRESS

1221 9TH ST
WEST LINN, OR 97068

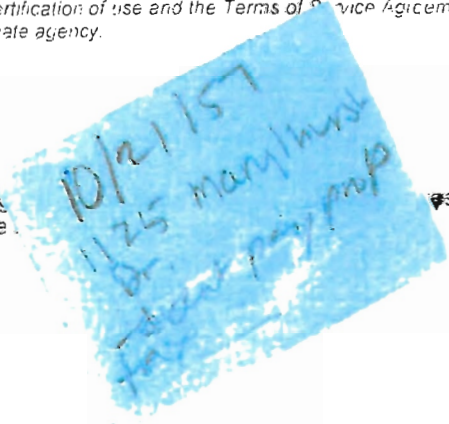
County: **CLACKAMAS**

Supplemental Information

Vessel ID Number: **924ACW**
Hull Serial Number: **YAMA2932K505**
Hull Date: **2006**
Feet: **010**
Inches: **11**
Hull Material: **FIBERGLASS/PLASTIC**
Propulsion Type: **INBOARD OR INBOARD/OUTBOARD**
Construction Type: **5**

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Oregon Marine Board Report

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Name: **BRIAN P EVANS**
Record Type: **ALL**

Records Current Through: **7/21/2008**
Date/Time Searched: **03/07/2010 11:35 PM**

SEARCH RESULTS

Subject Information

Name **EVANS BRIAN P - OWNER**

PREMISES ADDRESS

1221 9TH ST

WEST LINN, OR 970684617

County **MULTNOMAH**

Supplemental Information

Vessel ID Number **869AAX**

Hull Serial Number **XDCJ0056G203**

Hull Date **2002**

Feet **010**

Inches **00**

Hull Material **OTHER**

Propulsion Type **OUTBOARD**

Construction Type **OPEN BOAT**

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Oregon Marine Board Report

SEARCH CRITERIA

Name: **BRIAN EVANS**
City: **WEST LINN**
Record Type: **ALL**

Records Current Through: **7/21/2008**
Date/Time Searched: **03/07/2010 11:40 PM**

SEARCH RESULTS

Subject Information

Name **EVANS BRIAN - OWNER**

PREMISES ADDRESS

1221 9TH ST

WEST LINN, OR 970684517

County **CLACKAMAS**

Supplemental Information

Vessel ID Number **319ACL**

Hull Serial Number **FGBA1009B606**

Hull Date **2006**

Feet **030**

Inches **08**

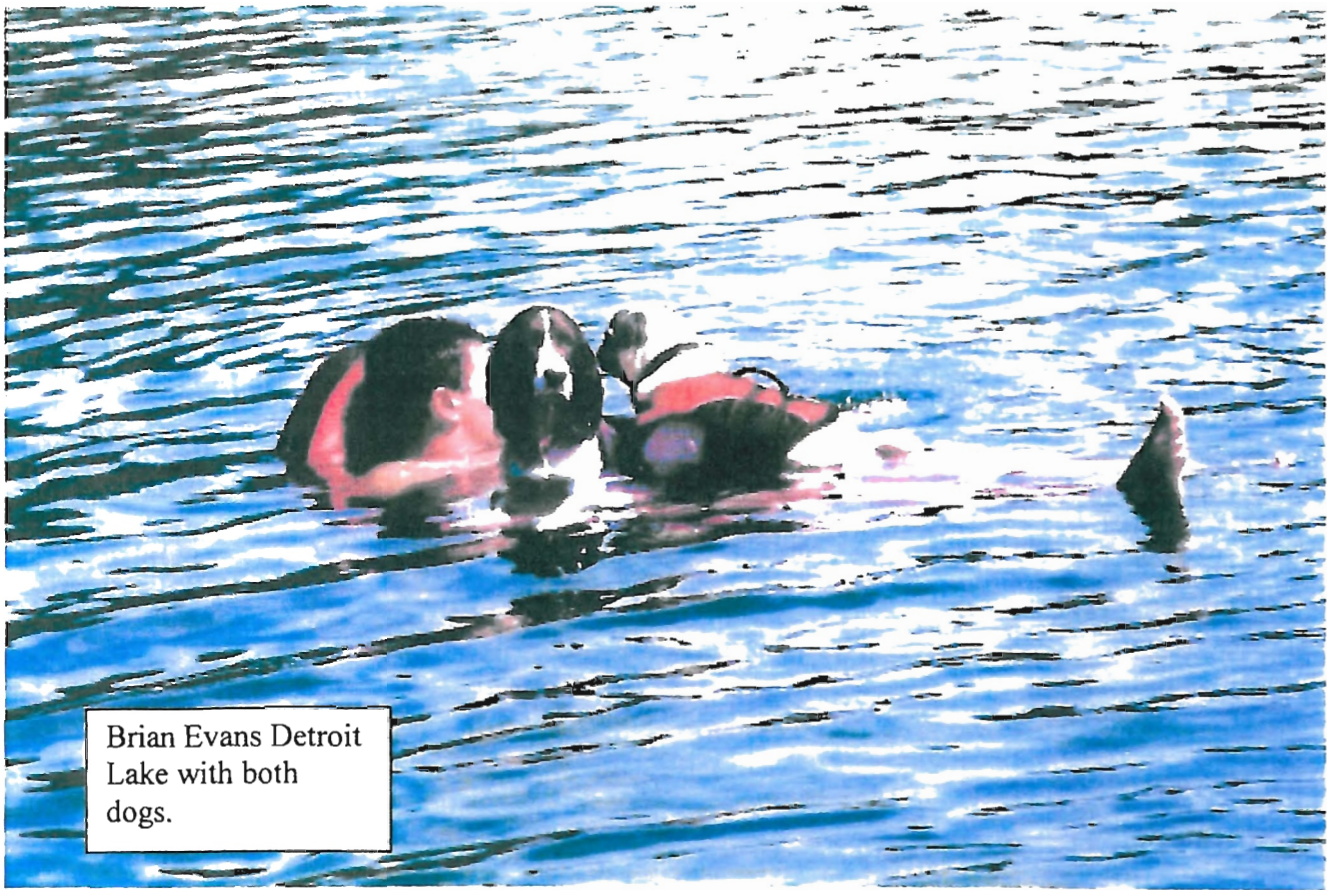
Hull Material **FIBERGLASS/PLASTIC**

Propulsion Type **INBOARD OR INBOARD/OUTBOARD**

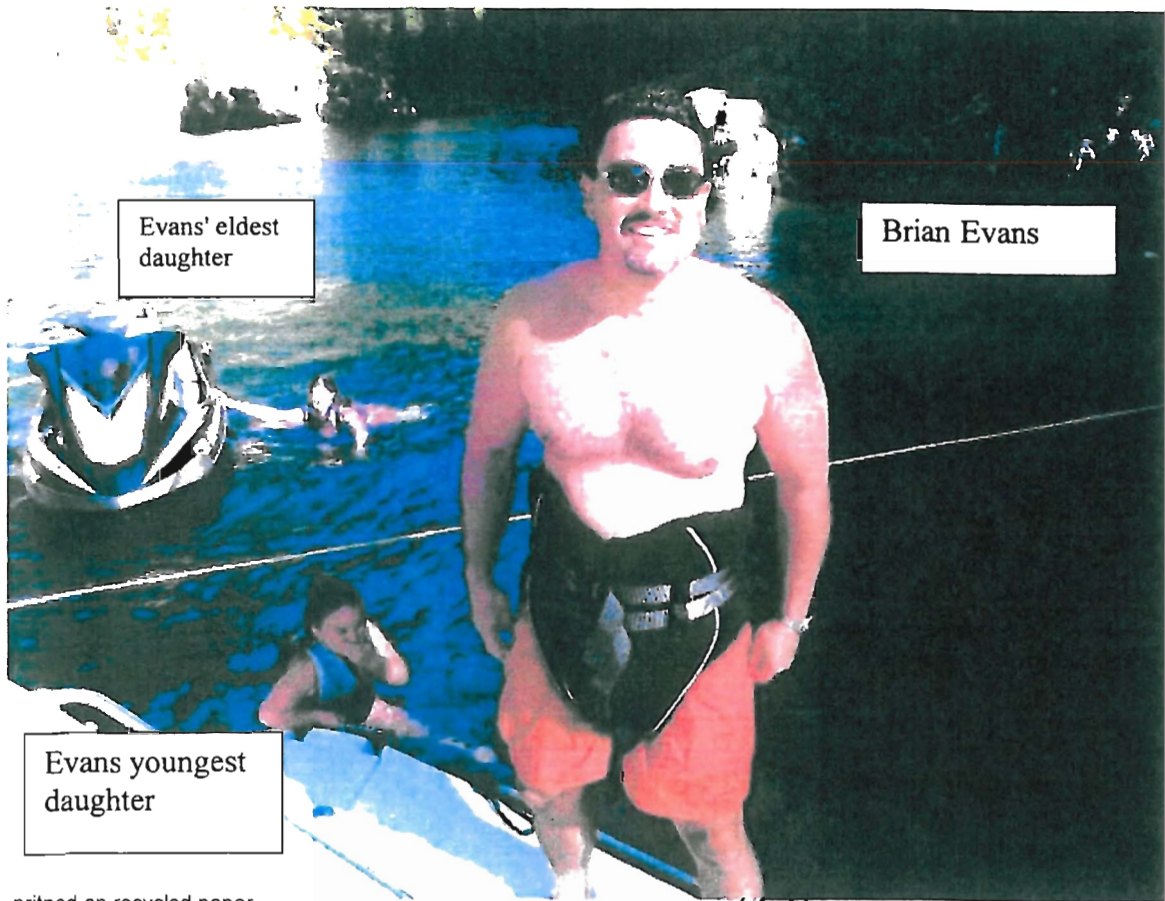
Construction Type **CABIN CRUISER**

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Brian Evans Detroit Lake with both dogs.



Evans' eldest daughter

Brian Evans

Evans youngest daughter



Oldest Evans with dogs on boat next to their jet skis.





Youngest Evans daughter swimming
note 5 ft marker





Brian Evans on cabin cruiser with their dog, Henry



Printed on recycled paper
Brian Evans with both dogs

Maddie Evans's Photos - Detroit Lake '09 ▼

Photo 17 of 17 | [Back to Album](#) | [Maddie's Photos](#) | [Maddie's Profile](#)

[Previous](#) [Next](#)



my idiot dog is eating my floatie!

From the album:
"Detroit Lake '09 ▼" by Maddie Evans

Added August 22, 2009 · [Comment](#) · [Like](#)



Emily Erdahl haha! Bad dog. but cuuute!!
September 28, 2009 at 8:05pm · [Report](#)



Maddie Evans she ate that thing! i tried to sit in it and it deflated!
October 13, 2009 at 8:01am · [Report](#)



Write a comment...

[Share](#)

[Tag This Photo](#)

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Youngest fishing without life jacket.



The Evans at Detroit Lake with their dogs.



© 2005 of S. Sp. in Action. All rights reserved. Photo: Prof. E.



From the album: 'Sage Crest' written by George F. Jones

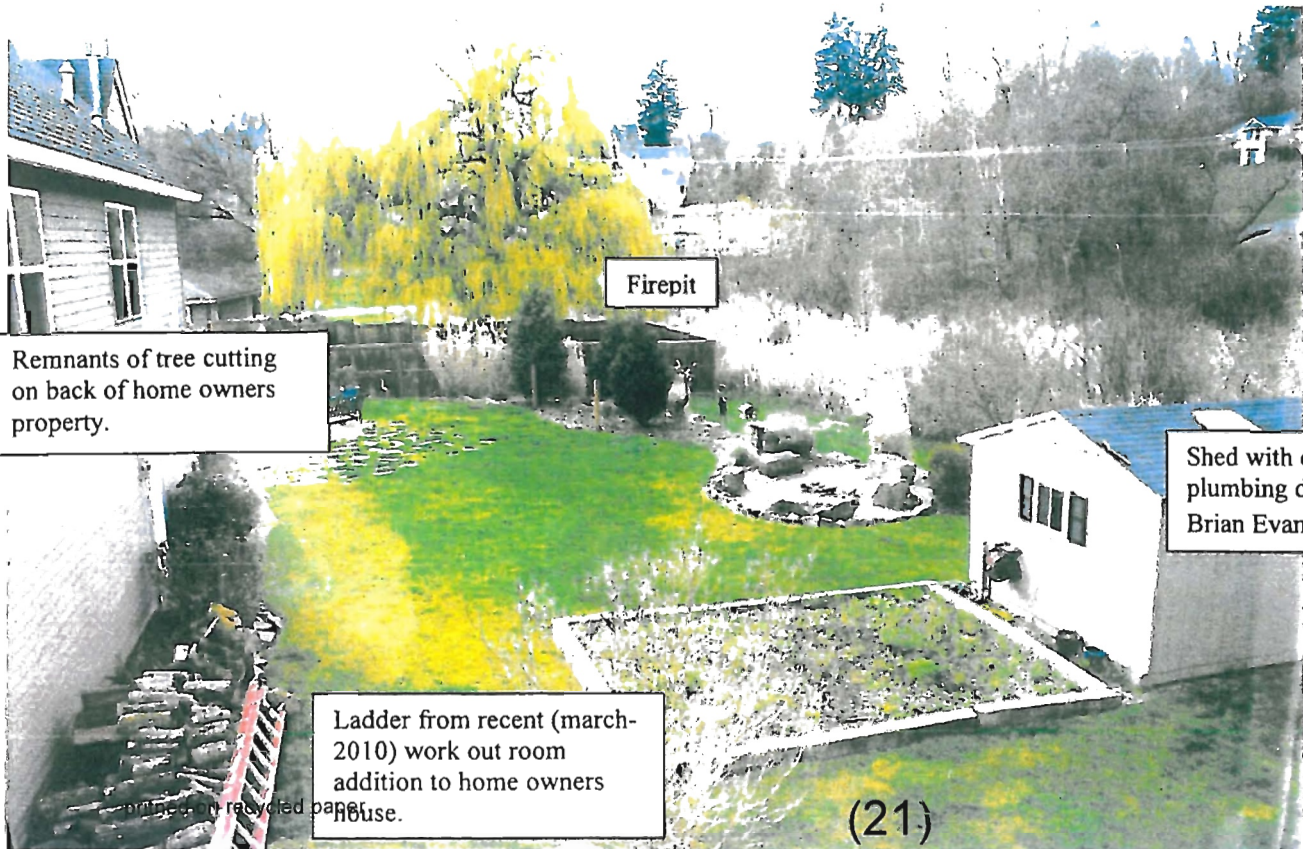


Maddie Evans

Chloe Evans



Evans backyard.
Picture is of firepit.



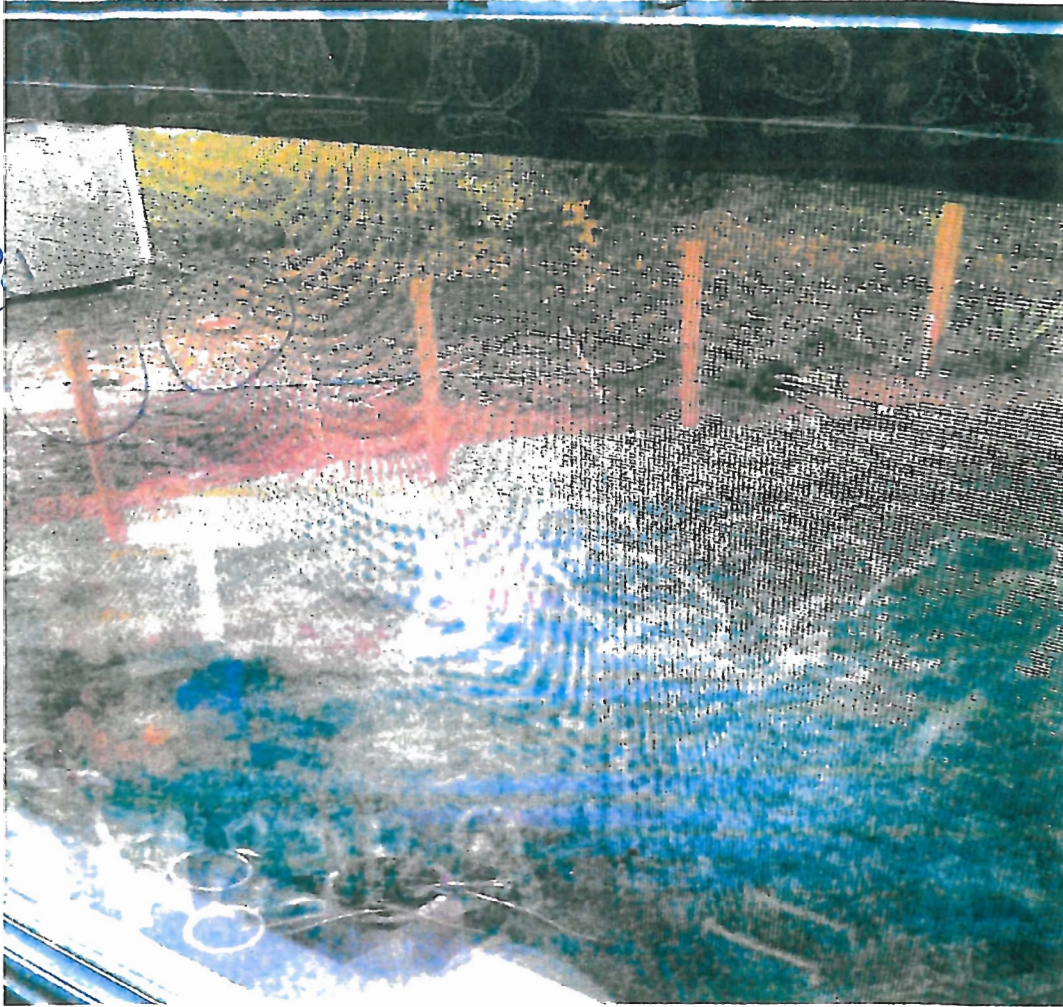
Firepit

Remnants of tree cutting
on back of home owners
property.

Shed with electrical and
plumbing done by home owner,
Brian Evans.

Ladder from recent (march-
2010) work out room
addition to home owners
house.

trees removed



Evans fence
without allowing
us to move our
plants/grass.

→ note trees still
here after
pool





Spir, Peter

From: Vogel, Stephanie (Perkins Coie) [SVogel@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Tuesday, March 09, 2010 9:07 AM
To: Sonnen, John
Cc: Spir, Peter; tsb@hww.com; Jordan, Chris; Cindy.phillips@jordanschrader.com; Pfeiffer, Steven L. (Perkins Coie); Robinson, Michael C. (Perkins Coie)
Subject: My Clients, Troy and Gina Bundy; Appeal of Director's Decision

Dear John,

I am writing to confirm that I filed an appeal of the Director's decision on behalf of the Bundys. The appeal was timely filed because it was received by the West Linn Planning Department on March 5, 2010 prior to 5:00 p.m. The appeal consisted of a letter on my firm letterhead addressing the applicable requirements for an appeal under West Linn Community Development Code Chapter 99, a check made payable to the City of West Linn in the amount of \$400.00 as the applicable appeal fee, and a completed and executed City of West Linn Development Review application form signed by me on behalf of my clients.

Please let me know if you have any questions. Thanks.
Mike

Michael C. Robinson | Perkins Coie LLP
 1120 N.W. Couch Street
 Tenth Floor
 Portland, OR 97209-4128
 PHONE 503.727.2264
 FAX 503.727.2222
 E-MAIL: MRobinson@perkinscoie.com

* * * * *

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

March 9, 2010

VIA EMAIL

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

**Re My Clients, Troy and Gina Bundy
City of West Linn File No. WAP-09-03**

Dear John:

As you know, this office represents Troy and Gina Bundy. I am writing to follow up on our meeting of last Thursday. First, I want to express my thanks for the time that you, Peter and Cindy took to meet with us. As Troy and Gina told you, their objective is to settle this matter and to retain the pool that their family enjoys so much. As we explained at that meeting, their violation of the West Linn Community Development Code ("CDC") was purely unintentional, and they believed that they had authority to proceed with the pool construction. While they now realize that is incorrect, they are doing their best to remedy the violation of the relevant provisions of the CDC. I am writing to respond to the issues that we discussed.

1. 120 Day Period Under ORS 227.178(3) and Hearing Date.

Mr. Spir's January 27, 2010 letter to the Bundys states that the 120 day clock began to run on November 11, 2009, the date the Bundys submitted their application. (Mr. Spir's letter is at packet page 17, and the Bundys' application is date-stamped November 11, 2009.) Mr. Spir's letter states that the 120 day clock ends on April 9, 2010. Because the application was submitted on November 11, the 30 day completeness review provided under ORS 227.178(3) ended on December 11, 2010. Relevant authority provides that if no determination of completeness is provided within the 30 day period, the 120 day period begins to run on the 31st day, which in

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Mr. John Sonnen
March 9, 2010
Page 2

this case was December 12, 2010. Thus, the City has until April 11, 2010 to render a final decision. I understand that the hearing date is scheduled for April 5, 2010.

Because my firm just began its representation of the Bundys and because they intend to address the reasons for denial of the application, it is fair that the hearing be continued to a reasonable date to allow me to work with the Bundys to prepare the best application possible to be heard by the City Council. As you know, the City Council hearing is *de novo*. I therefore request that the hearing be set for May 3. If that hearing date is set, the Bundys will extend the 120-day clock until May 21, 2010, inclusive.

2. Enforcement.

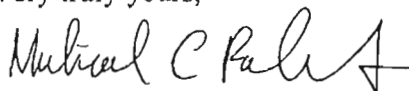
My understanding from our meeting on March 4, 2010 is that the City does not plan to take enforcement action now. However, after having reviewed the file, I question whether that is accurate. If the City plans to take enforcement action before the land use proceeding is complete, please let me know so I can plan accordingly. I am not asking you to waive the City's right to enforce the matter, but I am asking you to confirm that the City does not plan to take enforcement action until the land use application is concluded.

3. Enclosure Around Pool.

Assistant City Attorney Cindy Phillips raised the issue of a requirement for a fence around the swimming pool. The Bundys replied that there is a locked cover of substantial material over the pool, which will prevent a person from falling into the pool. I said at our meeting that if the City wants something specific installed around the pool, please let me know in writing and the Bundys will consider it. However, the issue of a fence around the pool is unrelated to the land use matter.

Thank you in advance for your courtesy and assistance.

Very truly yours,



Michael C. Robinson

MCR:crl

cc Mr. & Mrs. Troy Bundy (via email)
Ms. Cindy Phillips (via email)
Mr. Peter Spir (via email)

91004-0005/LEGAL17848099.1

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Saturday, March 06, 2010 5:58 PM
To: Spir, Peter
Subject: Re: wetland permit (WAP-09-03)

Peter: Please let John and Chris know that I put up a temporary construction fence today. The pool is completely enclosed now. The cover is shut and the control box is locked. Feel free to come down and check it out if you like. I think it should be satisfactory for now. There are 5 foot, steel T Bars every 5-6 feet securing the fence. The fence is 4 feet high and does not rise above the ground more than 4 inches. In most places, it is about an inch or less from the ground. It is composed of 1 inch, hard plastic mesh. At least it was a beautiful Saturday to get outside and work. Please let me know if you or John feel this is not satisfactory. Thanks. Troy Bundy
Troy S. Bundy
Hoffman, Hart & Wagner

From: Spir, Peter <pspir@westlinnoregon.gov>
To: Troy S. Bundy
Sent: Thu Feb 25 13:52:35 2010
Subject: wetland permit (WAP-09-03)

Mr. Bundy

First let me say how much I hope Mrs. Bundy remains healthy and well. It was very kind of her to bring in the land use sign yesterday.

On the subject of the land use permit, March 5, 2010 at 5pm is deadline to file an appeal to City Council. The cost is 400 dollars. If that period lapses we expect to begin discussions with DSL as to the most appropriate course of action. Hopefully we can meet to discuss the outcome of those discussions in the coming weeks but we appreciate the fact that family comes first.

Best wishes

Peter Spir
Associate Planner

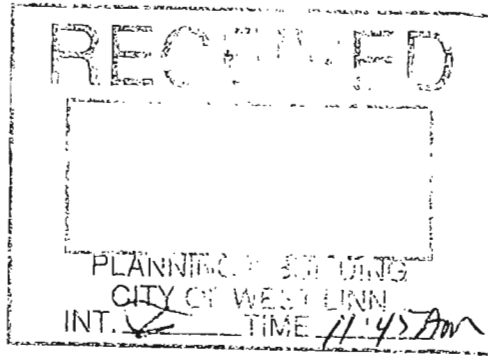
West
Linn

Peter Spir
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March 5, 2010

VIA MESSENGER

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

Re: Appeal of City of West Linn File No. WAP-09-03

Dear Mr. Sonnen:

This office represents Troy and Gina Bundy. Mr. and Mrs. Bundy applied for the above-referenced application which has been denied by the Director. This letter constitutes an appeal by the Bundys of the Director's decision pursuant to the requirements of West Linn Community Development Code ("CDC") 99.250. The remainder of this letter addresses the requirements of this CDC provision.

1. CDC 99.250.A.

Response: This letter of appeal contains a reference to the original application sought to be appealed (described above). The petitioners qualify as parties pursuant to CDC 99.140 because they are the applicant and because they commented in writing on the application (by submitting the application) to the Director.

2. CDC 99.250.B.

Response: This letter of appeal is accompanied by the required fee of \$400. The \$400 appeal fee amount is stated on page 16 of the Director's decision.

3. CDC 99.250.C.

Response: This section provides that the hearing on appeal is *de novo*.

73108-0001/LEGAL17822185 1

Mr. John Sonnen
March 5, 2010
Page 2

4. CDC 99.250.D.

Response: This section provides that the appeal *may* state the grounds for appeal or review. The petitioners are aggrieved and adversely affected by the Director's denial of the application. The petitioners will provide additional argument and evidence prior to the *de novo* Planning Commission hearing.

I am the applicants' representative. Would you please send me all notices of public hearings, requests for additional evidence or argument, staff reports and correspondence to or from the City, including emails, regarding this appeal?

Thank you in advance for your courtesy and assistance.

Very truly yours,



Michael C. Robinson

MCR:sv

Enclosure

cc: Mr. and Mrs. Troy Bundy (w/o encl.)

Nomie, John

From: Ryan, Corinne F. (Perkins Coie) [CRyan@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Friday, March 05, 2010 1:22 PM
To: Nomie, John
Cc: ginabundy@comcast.net; Robinson, Michael C. (Perkins Coie)
Subject: Appeal by Gina and Troy Bundy of Director's Decision in WAP-09-03

Dear Mr. Nomie:

Please find attached a completed and executed copy of a Development Review Application form signed by me on behalf of my clients. An additional copy of the completed and executed form will also be sent to you via facsimile. You have received earlier today a letter addressing the requirements in CDC Chapter 99 for an appeal of the Director's decision and a check made payable to the City in the amount of \$400.00 as the applicable appeal fee.

Thanks for your assistance.

Mike

<<DR app.PDF>>

Michael C. Robinson | Perkins Coie LLP
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MOBILE: 503.407.2578
FAX: 503.346.2264
E-MAIL: mrobinson@perkinscoie.com

sent by Corinne F. Ryan | Perkins Coie LLP
LEGAL SECRETARY TO:
Michael C. Robinson | Seth J. King
1120 N.W. Couch Street
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PHONE: 503.727.2137
FAX: 503.727.2222
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* * * * *

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DEVELOPMENT REVIEW APPLICATION

PLANNING & BUILDING
CITY OF WEST LINN
PERMITS, USES & STRUCTURES

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

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

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

TOTAL FEES/DEPOSIT \$400.00 * No CD required / ** Only one copy needed

Troy and Gina Bundy **1215 9th Street** **West Linn** **97068** **503-723-0855**

OWNER'S	ADDRESS	CITY	ZIP	PHONE(res. & bus.)
SAME				

APPLICANT'S	ADDRESS	CITY	ZIP	PHONE(res. & bus.)
Michael C. Robinson	1120 NW Couch St., 10th Flr., Portland	97209	4128	503-727-2264

CONSULTANT	ADDRESS	CITY	ZIP	PHONE

SITE LOCATION 1215 9th Street

Assessor's Map No.: 31E02AB Tax Lot(s): 8201 Total Land Area: 21,539 SF

- All application fees are non-refundable (excluding deposit).
- The owner/applicant or their representative should be present at all public hearings.
- A denial or grant may be reversed on appeal. No permit will be in effect until the appeal period has expired.

4. **Four (4) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format.**

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

SIGNATURE OF PROPERTY OWNER(S)
X Michael C. Bundy Date March 5, 2010
SIGNATURE OF APPLICANT(S)
X _____ Date _____
of Attorneys for Owners

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

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

p:\development review\forms\Development review app 2008 (11-4-08)

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

PLANNING RECEIPT
 Receipt: # 935479
 Date : 03/05/2010
 Project: #AP-10-01
 BY: SR

NAME : TROY AND GINA BUNDY

ADDRESS : 1215 9TH ST

CITY/STATE/ZIP: WEST LINN OR 97068

PHONE # : 503-723-0855

SITE ADD. : 1215 9TH ST

TYPE I HOME OCCUPATIONS		HO	\$	
PRE-APPLICATIONS	Level I (), Level II ()	DR	\$	
HISTORIC REVIEW	Residential Major (), Minor (), New ()	DR	\$	
	Commercial Major (), Minor (), New ()			
SIGN PERMIT	Face (), Temporary (), Permanent ()	DR	\$	
SIDEWALK USE PERMIT		DR	\$	
APPEALS	Plan. Dir. Dec. (X), Subdivsion (),	DR	\$	400.00
	Plan Comm./City Coun. (), Nbhd ()			

LOT LINE ADJUSTMENT		LA	\$	
CITY/METRO BUSINESS LICENSE		BL	\$	

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

DESIGN REVIEW	Class I (), Class II ()	RD	\$	
VARIANCE	Class I (), Class II ()	RD	\$	
SUBDIVISION	Standard (), Expedited ()	RD	\$	
ANNEXATION	"Does Not Include Election Cost"	RD	\$	
CONDITIONAL USE		RD	\$	
ZONE CHANGE		RD	\$	
MINOR PARTITION		RD	\$	
MISCELLANEOUS PLANNING		RD	\$	
Boundry Adjustments	()			
Modification to approval	()	Water Resource		
Code Amendments	()	Area Protection	()	
Comp. Plan Amendments	()	Street Vacations	()	
Temporary Permit Admin.	()	Easement Vacations	()	
Temporary Permit Council	()	Will. River Greenway	()	
Flood Management	()	Tualatin River Grwy.	()	
Inter-Gov. Agreements N/C	()	Street Name Change	()	
Alter Non-Conforming Res.	()	Code Interpretations	()	
Alter Non-Conforming Comm.	()	Type II Home Occ.	()	
Measure 37 Claims	()	Planned Unit Dev. PUD	()	

TOTAL REFUNDABLE DEPOSIT		RD	\$	0.00
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GENERAL MISCELLANEOUS Type:		PM	\$	
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TOTAL	Check # 5018	Credit Card ()	Cash ()	\$	400.00
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Thanks Peter for the photo. I'm going to see if I can't get a cease & desist order out to them. Even though this is just a couple of ornamental bridges, it's indicating to me that they plan to continue to do work in the wetlands. I won't be able to attend a meeting, but would definitely appreciate if you could continue to keep me apprised of the situation.

I am meeting tomorrow with my manager to discuss the route DSL will take with this enforcement action. I'll be sure to copy you on any correspondence.

Anita Huffman
Western Region Resource Coordinator
Wetland & Waterway Conservation Division

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Tuesday, March 02, 2010 2:14 PM
To: HUFFMAN Anita
Subject: FW: Message from PWKonica

Anita
Here is a photo taken two days ago by Mrs. Evans that shows two new bridges have been installed by the Bundy's across the gravel ditch in the past week or so...this coming only days after Mr. Bundy wrote to say he wished they had never done any of these improvements etc etc etc.
Cindy Phillips, John Sonnen and I are meeting with the Bundy's lawyer on Thursday at 2pm. You are certainly welcome to attend.
Peter

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

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

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

From: PWKonica@ci.west-linn.or.us [mailto:PWKonica@ci.west-linn.or.us]
Sent: Tuesday, March 02, 2010 3:04 PM
To: Spir, Peter
Subject: Message from PWKonica

Spir, Peter

From: Troy S. Bundy [TSB@hbw.com]
Sent: Friday, February 26, 2010 8:10 AM
To: Spir, Peter
Subject: Re: wetland permit (WAP-09-03)

Peter: To follow up, I spoke at length with Steve Pfeiffer yesterday. He speaks "land-use" quite well and I think we are all on the same page. He will call you next week to discuss ideas and how best to proceed. I apologize for creating so much work for you all. Please tell Anita "hello" for us if you are meeting with her today. Take care.

Troy
Troy S. Bundy
Hoffman, Hart & Wagner

From: Spir, Peter <pspir@westlinnoregon.gov>
To: Troy S. Bundy
Sent: Thu Feb 25 13:52:35 2010
Subject: wetland permit (WAP-09-03)

Mr. Bundy

First let me say how much I hope Mrs. Bundy remains healthy and well. It was very kind of her to bring in the land use sign yesterday.

On the subject of the land use permit, March 5, 2010 at 5pm is deadline to file an appeal to City Council. The cost is 400 dollars.

If that period lapses we expect to begin discussions with DSL as to the most appropriate course of action. Hopefully we can meet to discuss the outcome of those discussions in the coming weeks but we appreciate the fact that family comes first.

Best wishes

Peter Spir
Associate Planner

West Linn
Peter Spir
pspir@westlinnoregon.gov
Associate Planner
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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.

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Thursday, February 25, 2010 3:04 PM
To: Spir, Peter
Subject: RE: wetland permit (WAP-09-03)

Thank you, Peter. It has been a rough week to say the least. We are very hopeful that everything turns around after the procedure. I am generally an optimist. So, we shall see.

With everything going on, I am meeting with Steve Pfeiffer, of Perkins Coie, to discuss the issues. I wanted you to know that I do this not to be adversarial, but to simply help me understand the process and risks involved. I recognize that I need an objective representative who understands land use issues like this. His expertise is something I simply do not possess. Plus, with my wife's sudden health issues, I really don't think I can function well enough on an emotional level to deal with that, my children, this wetland situation, and my own busy law practice.

I am still confused about the status of the pool. I read the order again, and I initially read it as instructing us to remove the pool and patio (It talks about a firepit too, but that is our neighbor's firepit. There is a water feature though, so, I assumed this is what John was talking about). This \$45,000 project ended up costing us \$100,000. It literally crippled us, financially. The value of the improvement is far greater though. We purchased the stone at \$4 per square foot due to some good business connections and Gina's leg work. It actually retails for \$42 per square foot. If I had it to do over again, I would not have ever put the pool in. Nevertheless, it is my understanding that there might be some accommodations we can make that would allow us to keep the pool while restoring the wetland. I might have Steve call about this issue, because if I waive appeal, then I might be relegated to removing my pool and placing my family into deeper financial turmoil because I will have flushed our savings down the proverbial drain. The pool and patio is really what I want to save here. I have no problem working with a wetland landscaper and getting that in order for the City. We also spoke with Anita about purchase of wetland credits for the hard-scape. We are fine with all of that. As a lawyer, I am always working towards a compromise because I know what conflict really does to people. This is what we would like to do here. So, perhaps we are on the same page with this already. Perhaps we can meet in the middle and accomplish both our goals. We can both save face and just move on together positively.

Feel free to call me anytime to discuss further. I appreciate your warm thoughts though. We will get through this. We always do.

Cell: 503-703-2052
Work: 503-222-4499

Troy Bundy

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Thursday, February 25, 2010 1:53 PM
To: Troy S. Bundy
Subject: wetland permit (WAP-09-03)

Mr. Bundy

First let me say how much I hope Mrs. Bundy remains healthy and well. It was very kind of her to bring in the land use sign yesterday.

On the subject of the land use permit, March 5, 2010 at 5pm is deadline to file an appeal to City Council. The cost is 400 dollars.

If that period lapses we expect to begin discussions with DSL as to the most appropriate course of action. Hopefully we can meet to discuss the outcome of those discussions in the coming weeks but we appreciate the fact that family comes first.

Best wishes

Peter Spir
Associate Planner

West
Linn

Peter Spir
pspir@westlinnoregon.gov
Associate Planner
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2539
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Web: westlinnoregon.gov

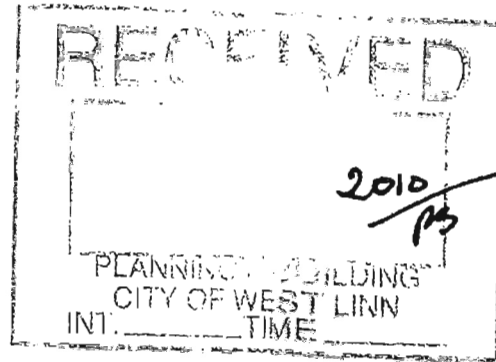
West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

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

City of West Linn
Attn: Peter Spir
22500 Salamo Rd.
West Linn, OR 97068

February 24, 2010

Peter,



This letter is in regard to the Water Resource Area Permit application (WAP-09-03) submitted by Troy Bundy for his property at 1215 9th street. My property is adjacent to the Bundy property at 1221 9th street. To date, I have remained silent on their request for a water resource area permit. In short, I believe this matter is best handled between the Bundys and the City of West Linn. I have no specific objection to the Bundy's use and enjoyment of their property as long as it doesn't unreasonably impact my property and as long as their improvements meet City code and don't endanger my family.

However, given the denial of the WAP application, I now feel compelled to document / explain the construction of the fence that stands between our two properties (and also partially in the water resource area). As the City makes decisions over the next few days regarding potential remedies / penalties for the Bundys WRA encroachments (including potentially my fence), please consider the intent of the fence and its minimal impact on the WRA.

Background

When the Bundys began construction of their pool I asked them when they planned to install a full safety enclosure as required by City building code (Oregon Residential Specialty Code Section AG105). The Bundys told us at the time that they planned to install a motorized safety cover that would qualify as a protective enclosure and they did not intend to install a full fence enclosure. They also stated that they had received all the required building permits and land use permits required for the pool. I notified them immediately that a safety cover, while it may or may not satisfy City requirements, did not satisfy my safety requirements as a father and pet-owner. I have two young children (ages 10 and 13) and numerous other visiting friends / family members with small children. We also have two dogs (one of which does not swim).

I notified the Bundys that I intended to have a fence installed between the properties to fully enclose my yard (since they refused to fully enclose theirs) and suggested that we split the cost (even though the cost should have been fully borne by them). They declined to participate financially and we built the fence at our cost for the safety of our children and pets. They have since told us that they had always intended to enclose the pool (a change of heart likely caused by a call from the City following my wife's complaint regarding the unenclosed pool). However, the pool has been full since the Summer and is still not enclosed as of this date.

City of West Linn
Attn: Peter Spir
22500 Salamo Rd.
West Linn, OR 97068

We only became aware of the requirement for a WRA permit on the day of fence construction. We had been told by our fencing contractor, Austin's Custom Fencing, that permits are not required for fences under 6' high. They were apparently unaware of the additional permit requirements due to the WRA status of our property. We proceeded with the construction of the fence, without permit, as an **emergency safety response** to the fact that the pool was installed, filled, and not surrounded by a protective enclosure.

We had the contractor begin the fence several feet back from the back edge of our property so as to avoid obstructing the flow / pooling of water in the wetland area. The design / construction of the fence was also intended to minimize impact on the wetland area by allowing water to flow under the fence if necessary in a flood situation. I have installed a silt fence as a temporary measure to complete the enclosure of my yard and contain my dogs until the Bundys complete whatever remaining enclosure they have planned (if any).

Please be assured that my wife and I do respect the WRA status of our property. We have protected the wetlands that exist on our property and constructed the fence to have absolute minimum impact on the WRA while still providing adequate safety for our family. My wife, Jerilyn, has gone to the City several times to obtain the required WRA permit paperwork. She was told, on each visit, to wait for an outcome of the Bundys permit request before submitting a permit application for the fence. We still intend to apply for the required WRA permit at the time the City deems appropriate.

In summary, the fence in question was constructed as a safety barrier in direct response to an open attractive nuisance next door. In other words, it exists only because the City has failed to enforce the building code with regard to the open pool. Any required modification or removal of the fence would expose the City to massive liability should an accident occur. I recommend and request that the fence be excluded from any remedies to be imposed by the city following the denial of WAP-09-03.

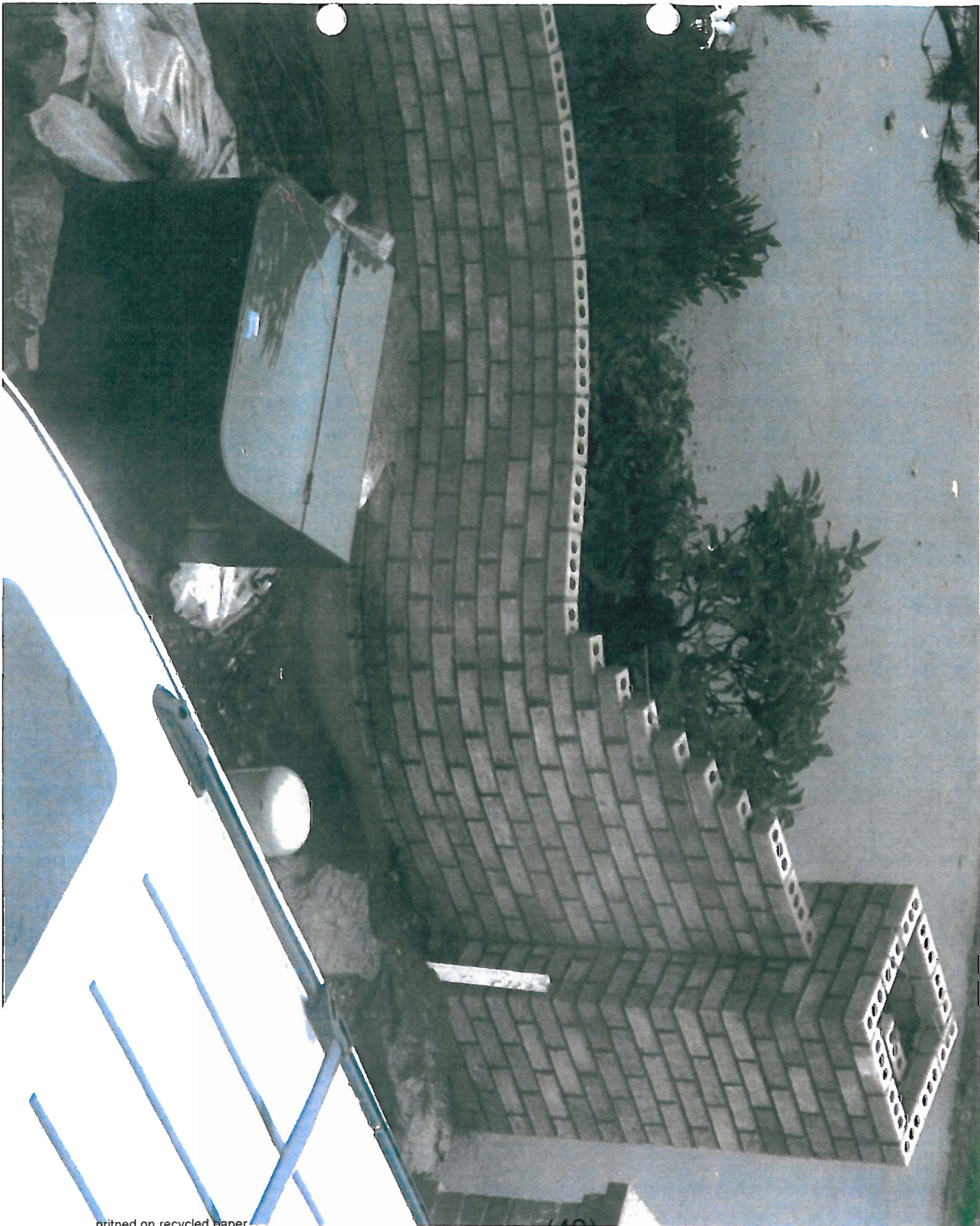
Respectfully

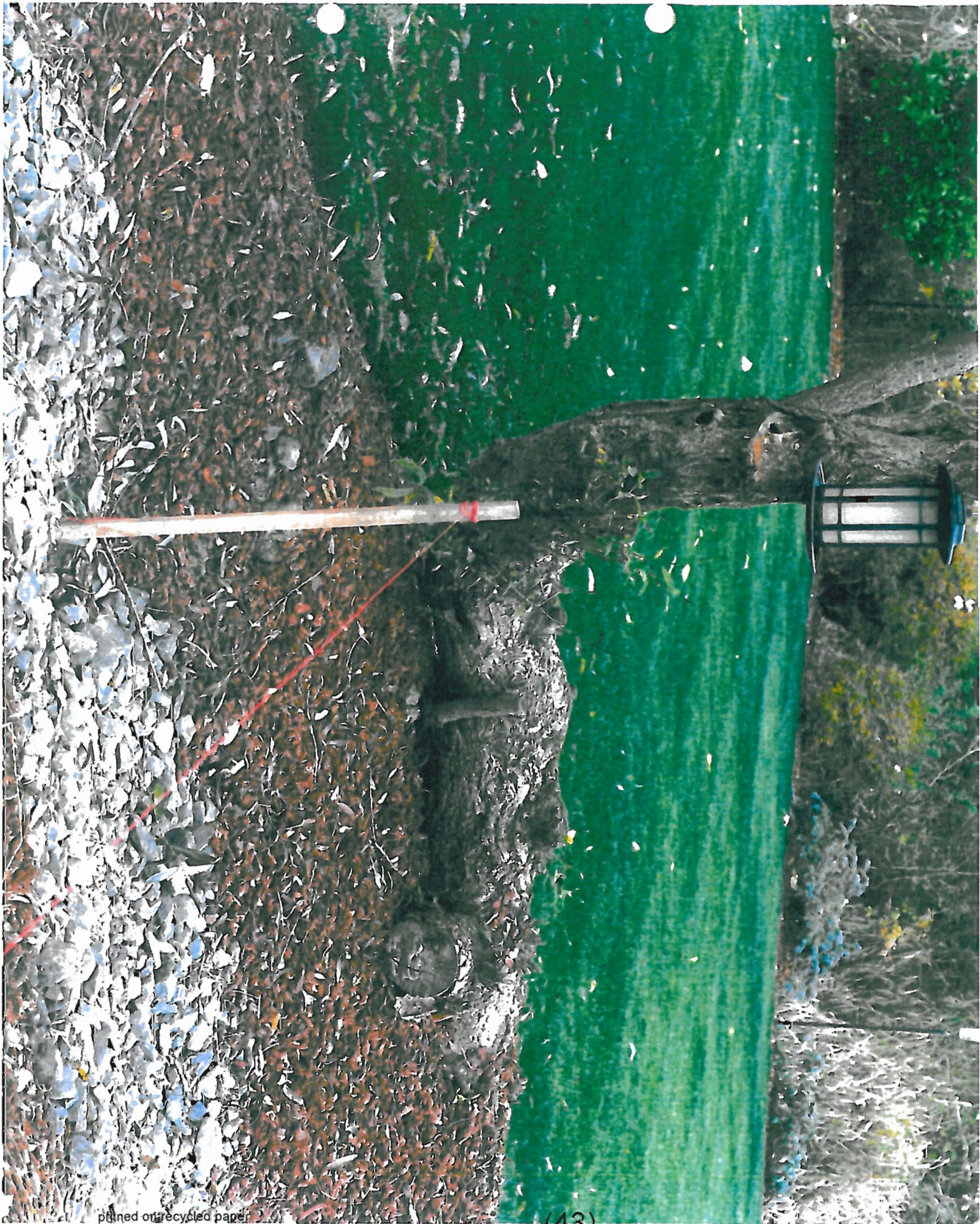
A handwritten signature in black ink, appearing to read "Brian P. Evans". The signature is fluid and cursive, with a long horizontal stroke at the end.

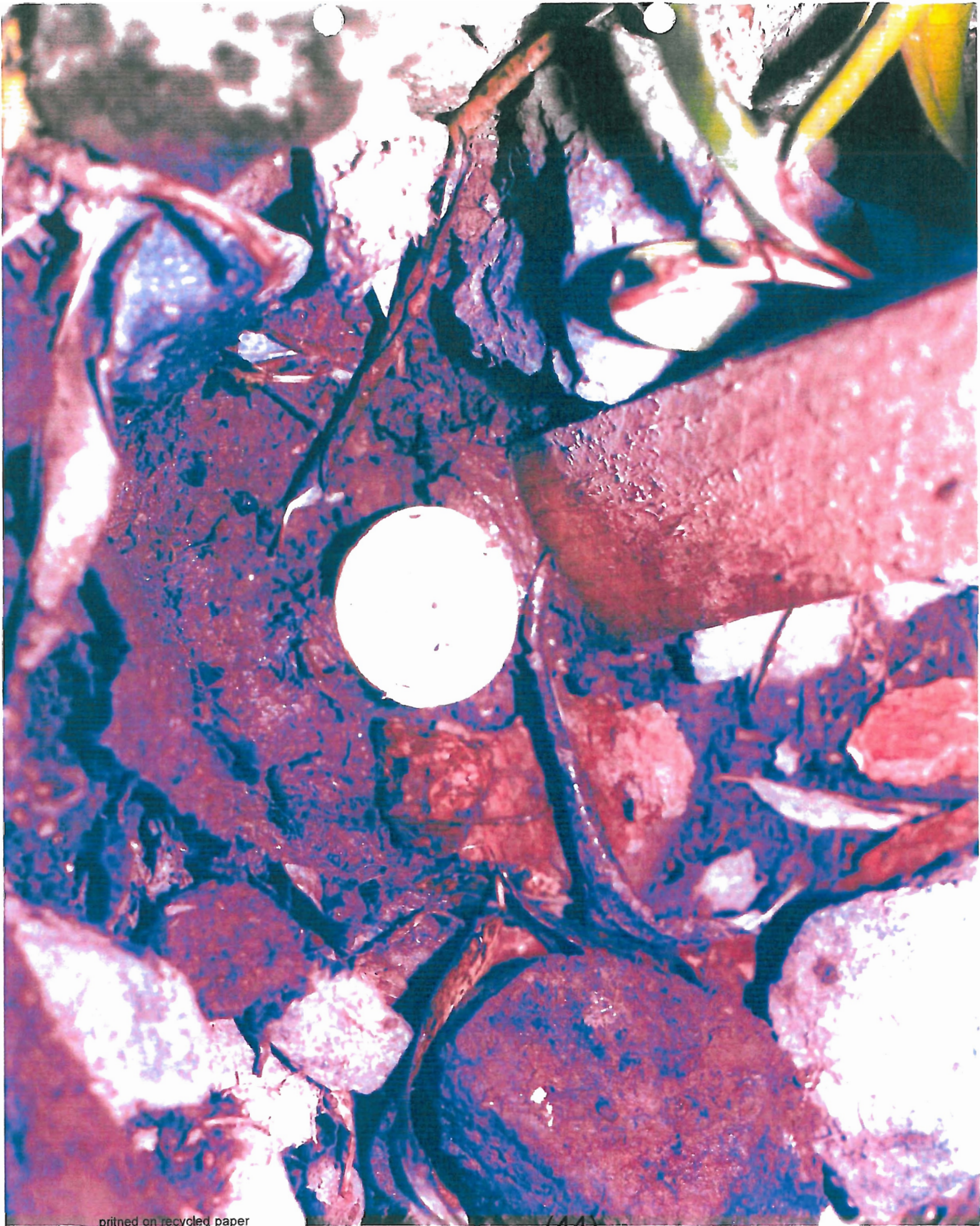
Brian P. Evans

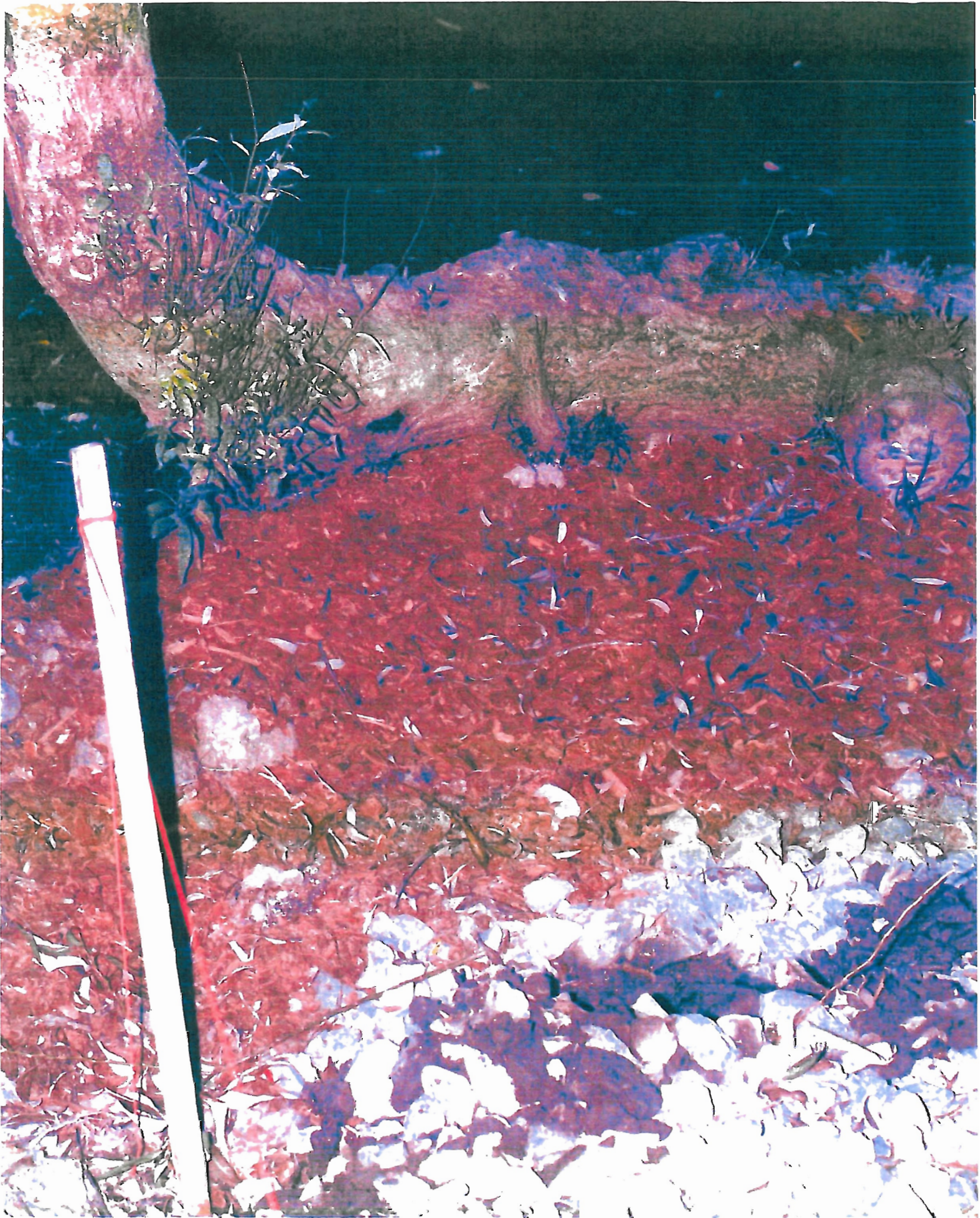


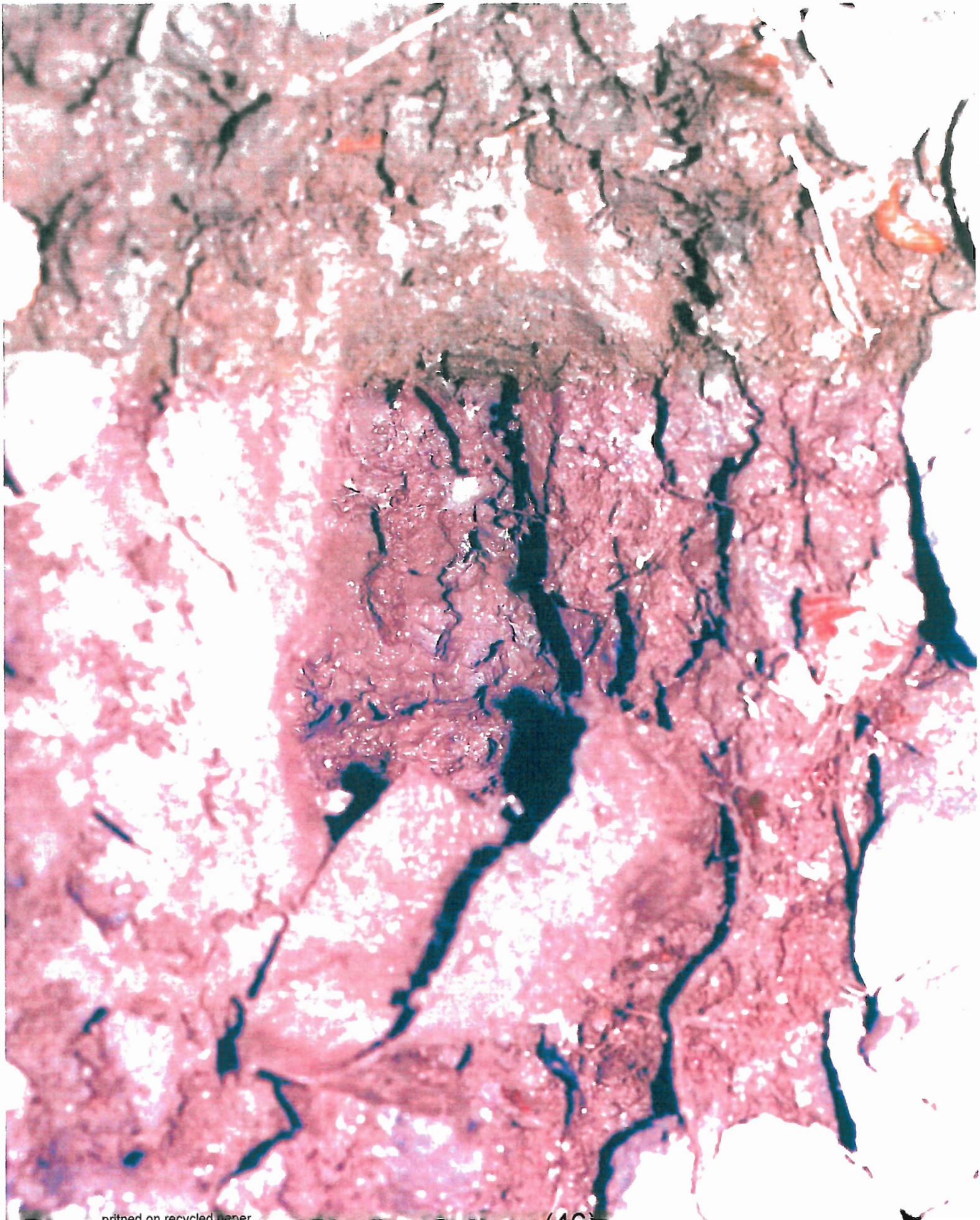












Spir, Peter

From: karieokee@aol.com
Sent: Thursday, February 18, 2010 3:24 PM
To: Sonnen, John
Cc: Spir, Peter
Subject: Re: Karie Oakes letter for WAP-09-03

Thank you, Mr. Sonnen.

I understand that enforcement will occur, but I do strongly believe that you should not accept the application. Considering a WAP for an application that does not even meet the prerequisite of the pre-application conference is folly and is a disservice to the applicant and wastes public time. In fact, accepting the application without a pre-app is like building a pool without a permit. I don't see why the City, like the applicant, is putting the cart before the horse.

I hope that the City attorney will read my letter before you make your decision and that you and he may consider my argument that you have the authority to accept or not except an application based on if it meets the requirements of 99.030, specifically the requirement of a pre-app. This is clearly evident when you look at your duties collectively. Your duties are sequentially ordered as they apply to the procedure for a quasi-judicial decision (see code below.)

The applicant will not be deprived of his opportunity to apply for a permit, for he can apply for a pre-app conference and proceed accordingly. The public, then, will have it's opportunity for input, and in fact, a pre-app conference often initiates more public participation because neighborhood associations become involved. The applicant may decide not to pursue a permit after gaining a better understanding of the code and hearing NAs' comments at the pre-app.

If you find that the application is not acceptable, then you could immediately begin with enforcement to restore the WRA, which is in everyone's best interest. It is a shame that Mr. Bundy leaves the City and DSL no other option. I hope that he will act cooperatively to rectify the deplorable situation that he has created.

Following proper procedure per City code avoids the City looking stupid for considering such a ridiculous application. Following proper procedure ensures that all parties are treated fairly.

Please answer these questions:

- 1) Is the legal advice to proceed with the application based on the fact that you have already accepted the application, determined it is complete, and therefore cannot rescind your acceptance of it?
- 2) Would you please send me an electronic file of your staff report for this application?
- 3) When will your staff report be available to the public on the City web site?

Thank you for your time. I look forward to your reply. I hope you will read the code following and identified with red text.

Karie Oakes

99.040 DUTIES OF THE DIRECTOR

- A. The Director shall:
1. Prepare application forms made pursuant to the standards contained in the applicable state law, Comprehensive Plan and implementing ordinance provisions;
 2. Accept all development applications that comply with the provisions of Section 99.030 of this chapter;
 3. After accepting an application pursuant to this chapter:
 - a. Determine whether an application is complete, and comply with state statutes governing the completeness determination for applications. The determination of the Director is subject to review by the Approval Authority in its deliberation on the application.
 - b. Give notice as provided by Sections 99.080 and 99.090;
 - c. Prepare a staff report which shall include findings as to whether or not the application meets the approval

criteria of the applicable Community Development Code sections as presented in the application, and whether or not the criteria can be met with conditions.

d. Make the application, all documents or evidence relied upon by the applicant and applicable criteria available at least 20 days prior to the hearing or date of the Director's decision. Make the staff report available at least 10 days prior to the scheduled date of the public hearing(s).

e. Act on the development application pursuant to Sections 99.060(A) and 99.160 of this chapter or cause a hearing to be held pursuant to Section 99.060(B) through (D) and Sections 99.170 to 99.230 of this chapter, unless the applicant has requested or consented to a delay; (ORD. 1474)

4. Administer the hearings process pursuant to Sections 99.170 through 99.230 of this chapter.

5. Maintain a register of all applications that have been filed for a decision. The register shall at all times identify at what stage the application is in the process. The register shall be posted on the City website unless technical problems prevent this. (ORD. 1474)

6. File notice of the final decision in the records of the Planning Department and mail a copy of the notice of the final decision to the applicant and all parties with standing.

The notice of the final decision shall contain the information set forth under Section 99.130(B).

7. Maintain and preserve the file for each application. The file shall

include, as applicable, a list of persons required to be given notice and a copy of the notice given pursuant to Section 99.080 and the accompanying affidavits; the application and all supporting information; the staff report; the final decision including the findings, conclusions, and conditions, if any; all correspondence; the minutes of any meetings at which the application was considered; and any other exhibit(s), information, or documentation which was considered by the hearing body with respect to the application; and,

8. Administer the appeals and review process pursuant to Sections 99.240 through 99.310.

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

From: Sonnen, John <jsonnen@westlinnoregon.gov>

To: kariookee@aol.com <kariookee@aol.com>

Sent: Wed, Feb 17, 2010 12:43 pm

Subject: RE: Karie Oakes letter for WAP-09-03

Hi Karie,

Your letter is in the record. We are pursuing enforcement in cooperation with the state. We are concurrently processing the application based on advice from legal council.

John

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

From: kariookee@aol.com [mailto:kariookee@aol.com]

Sent: Wednesday, February 17, 2010 3:24 AM

To: Spir, Peter; Sonnen, John

Cc: hitesman@comcast.net; WLHSNA@msn.com

Subject: Karie Oakes letter for WAP-09-03

Dear Mr. Spir and Mr. Sonnen:

Please find attached my letter of written testimony for WAP-09-03. Thank you for submitting it to the record.

Karie Oakes

Spir, Peter

From: Galle, Patti
Sent: Wednesday, February 17, 2010 2:17 PM
To: GARY; kariookee@aol.com
Cc: WLHSNA@msn.com; Spir, Peter; Sonnen, John; City Council
Subject: RE: Karie Oakes letter for WAP-09-03

Karie,

We did not get to read your letter. Can you forward it please? Thanks

Patti Galle
Mayor

From: GARY [hitesman@comcast.net]
Sent: Wednesday, February 17, 2010 1:54 PM
To: kariookee@aol.com
Cc: WLHSNA@msn.com; Spir, Peter; Sonnen, John; City Council
Subject: Re: Karie Oakes letter for WAP-09-03

Karie,

I enjoyed your reading your scholarship and interpretation of the code.

The implication of your interpretation has staggering consequences in how the City processes and applies the code.

With so many other properties out of compliance or in violation, the City does not appear to be equipped to deal with these problems in a transparent fashion. Planning appears understaffed and under managed starting at the city managers position.

The next logical step is to connect this current practice of the City over to the Stafford Basin. Either we change our ways immediately, or we risk losing further credibility as proper stewards of WRA's.

Let's start by getting rid of Coffey and hire a real planner that can get the City out of this morass it is in.

Gary

----- Original Message -----
From: kariookee@aol.com
To: pspir@westlinnoregon.gov, jsonnen@westlinnoregon.gov
Cc: hitesman@comcast.net, WLHSNA@msn.com
Sent: Wednesday, February 17, 2010 3:24:01 AM GMT -08:00 US/Canada Pacific
Subject: Karie Oakes letter for WAP-09-03

Dear Mr. Spir and Mr. Sonnen:

Please find attached my letter of written testimony for WAP-09-03. Thank you for submitting it to the record.

Karie Oakes

Spir, Peter

From: GARY [hitesman@comcast.net]
Sent: Tuesday, February 16, 2010 1:31 PM
To: Spir, Peter
Cc: karieokee
Subject: Re: WAP-09-03, 1215 9th ST

Peter,

I agree with your perspective and appreciate your time in clarifying the City's position.

I see how appealing the Planning Director denial could derail a positive outcome. I withdraw my appeal pending further consideration.

But, I think going to the Courts would be even a longer process forestalling repairs or even worse, not at all. I made the mistake of cutting a wide swath for a new City Manager and Planning Director last time and we are now far worse off. I feel we are badly off by the short vision of leadership, unfit policies, and lack of administration of managers, directors, and council.

And I see no way of the City enforcing actions and see this being swept under the rug after Planning has issued its findings.

Again, I sincerely appreciate your professionalism and thank you for your time.

Gary

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

From: "Peter Spir" <pspir@westlinnoregon.gov>
To: "GARY" <hitesman@comcast.net>
Cc: "John Sonnen" <jsonnen@westlinnoregon.gov>
Sent: Tuesday, February 16, 2010 10:38:41 AM GMT -08:00 US/Canada Pacific
Subject: RE: WAP-09-03, 1215 9th ST

Gary

We both want the same things: a better written and better understood Chapter 32.
We both want this property owner on Ninth St. to re-establish the filled and damaged wetland
But I do not see how appealing the Planning Director denial will contribute positively to any of these outcomes.

Certainly it will shine a light on the shortcomings of the chapter and our collective (Planning Commission, City Council, staff, public, LUBA)

difficulty in interpreting it consistently but the pressing issue is getting this wetland repaired ASAP.

An appeal will have the effect of delaying the repair by many months and the end result of an appeal would be to arrive at the exact same place we should be able to get to in a few weeks: a Chapter 106 Consent Order.

If the applicant had done a pre-application conference, as required, we would have advised **against** applying for a WAP permit and moved instead to a Ch 106 Consent Order.

Under Chapter 106 we are able to bill our time to the owner of the property on Ninth Street. The conservation easement recorded in 2001 is a very well written and spells out exactly what the restricted uses are.

We also have the riparian and WAP transitions/setbacks identified.

I believe we will succeed in our negotiated consent order but I also believe that the Circuit Court would also yield positive results for the City

given the quality of the evidence and, especially, the clarity of the conservation easement.

I would be happy to meet you and discuss this at greater length.

Peter

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

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Peter Spir, Associate Planner
Planning and Building, #1539

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From: GARY [mailto:hitesman@comcast.net]
Sent: Tuesday, February 16, 2010 9:09 AM
To: Spir, Peter
Cc: karieokee; Jordan, Chris; City Council; Sonnen, John
Subject: Re: WAP-09-03, 1215 9th ST

Peter,

I think had you been involved with some of these other applications dealing with chapter 32, a better city solution might have been rendered.

And I do not disagree with your desire. But woulda, shoulda, coulda must not be allowed to prevail. This application is more about failed policy than it is an individuals' actions.

'Sweeping things under the rug' or 'remaining hush on some things' is also poor policy.

I am participating in this application because I would like to think there might be a better way to deal with Water Resource Areas than what is currently codified and enforced. As it has been proven time and time again, councilors, commissioners, applicants, Advocates, developers, and some of your own managers have trouble interpreting, applying, and enforcing this code. Especially with enforcement, which has led to a scattered record of costly mistakes and missed opportunities.

There are too many homes and homeowner associations that have built on top of, in, and too close to streams for water resource areas to remain protected as defined by the State of

Oregon. As is the case with this application, there is a blatant disregard and ignorance of the Code. The end result is that with no effective code, the City is open to these types of transgressions.

Most of all, I do not agree with allowing well positioned developers to get away with one standard while the rest of us get dragged through the ringer.

I think it is a waste of money to have to go to Circuit Court if the City is to persue enforcement for Chapter 32. (I think it is better to find out at Planning that Chapter 32 does not work as applied than finding it out after going to Circuit Court. YOU may lose if you go to Circuit Court because applications have been so sloppy.) Better the Commission decide what the course of action should be. If the City has done it's homework, and you are fair about it, then the City can better enforce the remediation.

Besides, when the applicant does not withdraw his application, then the process for that application must be enforced, regardless of how staff would desire it to dealt with.

To start with, Is Ms. Oakes claim regarding a pre-app correct? Regardless of her claim, per instructions on the notification forwarded to me by my NA, I will request the decision be appealed based on misapplication of Chapters 99 and 32.

My one caveat would be that we find a way to remove the applicant's name so that we might be able to have an objective discussion without causing any grief to the individual family. If the Applicant and City are amendable to the idea, I propose removing the family name and referring to them as "applicant". And since this is a citywide issue that has not been properly administrated, I also suggest we move forward without referring to the address. Because this is not an isolated case; better to rectify the status quo as a whole.

Once having set the proper precedent, then those who are out of compliance might be granted a window to rectify damage they have caused to the water resource areas. The City saves time and money in Circuit Court and in dragging in the DSL. Secondly, since the City has proven ineffective in protecting areas where they have allowed private interests to become THE stakeholder, that the City develop a new process that keeps these WRA's in the public's hands of stewardship. And in the end, the City can actually save face and act like the civic institution it should be.

Gary

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

From: "Peter Spir" <pspir@westlinnoregon.gov>

To: "GARY" <hitesman@comcast.net>

Sent: Tuesday, February 16, 2010 7:14:03 AM GMT -08:00 US/Canada Pacific

Subject: RE: WAP-09-03, 1215 9th ST

Gary

As the planner responsible for WAP-09-03 on Ninth St., I will apply the CDC as it is written.

My desire is that the applicant withdraw the WAP permit (which will be denied) and agree to a consent order per CDC Chapter 106 to re-establish the wetlands and pay all penalties appropriate for their actions. I can safely say there is no sympathy for the "build first then ask for permission later" approach.

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If they are unwilling then I want to take it to Circuit Court. This is a view shared by John Sonnen. I plan to meet w/ DSL again in about two weeks to coordinate our enforcement. I can't comment on the other cases since I was not involved in them.
Peter

West
Linn

Peter Spir
pspir@westlinnoregon.gov
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From: GARY [mailto:hitesman@comcast.net]
Sent: Monday, February 15, 2010 11:03 AM
To: karieokee@aol.com; Spir, Peter
Cc: Kevin Bryck
Subject: Re: WAP-09-03, 1215 9th ST

Peter, in order to take the high road, how would I best present past precedent and other council decisions that contradict an anticipated denial?

I see a tough road ahead in enforcing, what under most circumstances, should be clear and concise code.

I cite the Cedaroak application, Ole's creek walls, and the Rosemont Road subdivision that ignored DSL memos.

Gary

Sent: Tue, Feb 2, 2010 7:21 am
Subject: RE: WAP-09-03, 1215 9th ST

Karie:
Thank you for the letter.
The facts are rather simple, albeit depressing, in this case.

The property owner installed a pool **without any approved permits** and without any inspections by the City of West Linn.
The property owner then applied for a Water Resource Area permit without any pre-application conference.

City staff visited the site and found that the pool, patio area and firepit had been built in a wetland conservation easement area.
The property owner had also graded and cleared a large wetland area behind his house and installed a lawn in its place.
The watercourse was then re-directed into a gravel trench.
You are welcome to look at the files collection of photos of the disturbed area.

We are obliged to process the property owner's WAP application.
A Planning Director decision of denial is anticipated.

The Department of State Lands (DSL) also visited the site with staff and is expected to require site restoration plus possible financial penalties for on or off site mitigation of the pool area.

The City will be pursuing a consent order per CDC Chapter 106.

The consent order would require full wetland restoration and other penalties as appropriate.

The adjacent property owners are also expected to have similar requirements imposed on them by the City and DSL.

I have forwarded your email to Teresa.
Peter

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From: karieokee@aol.com [mailto:karieokee@aol.com]

Sent: Tuesday, February 02, 2010 12:00 AM

To: Spir, Peter

Subject: WAP-09-03, 1215 9th ST

Mr. Spir:

I am interested in learning more about the water resource area permit application, WAP-09-03, for 1215 9th ST. The information posted as the applicants submittal on the City web site is insufficient to understanding it; comprising a letter dated October 21, 2009 from Mr. Troy Bundy of Hoffman, Hart, Wagner, Attorneys at Law and Exhibit A from Anderson Poolworks, depicting a proposed pool and fence.

Mr. Bundy requests a pool permit, but states that the pool is in existence and has passed all inspections as required by the local and city governments. Please post the verifying documentation and explain how it is that Mr. Bundy is applying for a WAP following building the pool and fence?

The web site does not have the public notice posted, although it is posted that the public notice is complete. A West Linn resident gave me a copy of the notice from which I learned that Mr. Bundy is the applicant. Please also post the application and the letter of completeness on the web site.

Please also post the summary of the pre-application meeting on the web site. I routinely receive email notifications from Teresa Zak of all pre-apps and I must have overlooked this one.

Finally, please also post a map of the property on the web site.

I am very disappointed that all this information is not posted on the web site, as is customary in an application. As always, my interest lies in seeing the City communicate effectively with citizens in an effort to encourage public participation.

The notice states that the Planning Director will make his decision on February 17, so your prompt reply is appreciated.

Thank you,

Karie Oakes

Spir, Peter

From: GARY [hitesman@comcast.net]
Sent: Monday, February 15, 2010 10:42 AM
To: Kevin Bryck; khansen@westlinntidings.com; Spir, Peter; Sonnen, John
Subject: Re: Swimming pool debacle

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

From:
To: hitesman@comcast.net
Sent: Sunday, February 14, 2010 7:26:03 PM GMT -08:00 US/Canada Pacific
Subject: Swimming pool debacle
Hi Gary,

I am so disgusted with City Staff, and that means Sonnen and Jordan, because they knew of this violation of a conservation easement by the homeowner, Mr. Troy Bundy, and yet, recommended to the PC and CC that the WRA in the Suncrest application be privately owned.

I was so thankful to Lynn Fox for forwarding the notice and lame application to me. ---- also forwarded to me your comments and City response. Thank you for making them.

I think that the City conspired to hide this, likely due to the Suncrest application. Chapter 32 requires a pre-application meeting, requiring notification. If this had been noticed, MNA pre-app representatives, MNA Pres. Jeff Treece, all NAs and Teresa Zak's list serve of other interested parties would have been informed earlier. If we had known about this, it would have been tremendous fire power in support of City ownership of the Suncrest WRA.

As it stands, the application is incomplete due to it lacking a pre-app, which appears insignificant to the many other criteria it falls short of, but this way the City covered its butt and noticed only the Planning Director decision, which conveniently followed the CC decision for the Suncrest appeal.

Mr. Bundys application submittal was dated October 21, 2009; the same date of the PC Suncrest decision.

The CC doesn't appear capable of upholding its duty to oversee the City Manager, whom I believe is ultimately responsible for this. I am interested in pursuing an independent investigation, possibly by the Attorney General's office? What do you think?

FYI- Mr. Bundy is a partner at Hoffmand, Hart, and Wagner, Attorneys at Law. He knew what he was doing.
http://www.hhw.com/index.php?option=com_content&view=article&id=23:troy-bundy&catid=3&Itemid=22

BTW- Since the application is incomplete without a pre-app, Mr. Sonnen has no authority to make a decision.

To concerned parties,

How do I best forward this continuing issue to the Oregonian and Tidings?

To answer the question below,

1) From what I have been told, City managers are not the purview of State attorneys, but of City Councils.

2) Staff wrote me back and it appears the APPLICANT decided to file because he got caught (?). And the applicant is an attorney. And the attorney did not want to pay to bring this unpermitted project into compliance(?). Against the suggestions of the City, the applicant went

through with filing for a waiver instead of following enforcement direction from the City.

3) But given past City Manager style and approach, I would not put your claims outside the range of possibilities.

In no priority, here are some issues in need of clarification;

A ultimate goal should be to seek complete transparency and test the bounds of municipal enforcement.

The appropriateness of privately owned WRA's and enforcement abilities. This is a loophole, along with 32.090, that should be closed.

WHY CAN'T THE CITY PROCESS THEIR OWN CHAPTER 32 PER CODE?!! Please verify the requirement for a publicly notified pre-app. There should have been a duly noted pre-application notice and once again, the City will now have to either fess up to making a mistake OR, as they are wont, to begin covering it up. (It already appears that they are in process of a cover up.)

The restructuring and restitution of environmental resources when they are encroached upon or damaged by private parties.

The Palomino Loop Trail encroachments from private property owners sets precedent for the Bundy's. The infraction of the Palomino Loop Trail was an allowed infraction from the days when Scott Burgess was City Manager.

In all likelihood, because of past practices and questionable timing, the city manager, burgess, and carson will need to recuse themselves from this application.

How does the City incorporate community comments and concerns from Willamette and Tualatin Riverkeepers, from which all our streams lead to.

Given how the City Council, Tidings, and Oregonian are sublimely intertwined in all this, now will be a good time to call all parties out for being complicit partners in the continued degradation of Oregon resource areas. Seeing how almost everyone is dug in politically these days, an objective decision is possible only through LUBA.

This pool application is linked with the Cedaroak application in tempo and degree of violation. Revisit the Cedaroak application and resolution that the King council, with Burgess, Carson, (and Kovash) rigged up behind closed doors. An approach towards LUBA will likely lead to similar practices employed for the Cedaroak application, which ended up costing the City \$70,000 to settle the manner.

I still have not conclusively heard how much the City spent on the Holiday Inn debacle, but have heard of unsubstantiated amounts in the \$100,000's. I am looking for someone who can get information on this. I suspect a City employee was forced out as the scapegoat but cannot prove nor connect the dots without transparency.

How much cost to the City, because of 32.090, will there be this time? The point is moot, because there is no will to write code that benefits the public welfare or adequately protects dwindling environmental resources or work with resident advocates.

Discover what "taking the high road" really means.

Gary

Spir, Peter

From: Sonnen, John
Sent: Thursday, February 11, 2010 8:43 AM
To: Spir, Peter
Subject: FW: Hear say in memorandums

John Sonnen, Planning Director
Planning and Building, #1524

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

From: Galle, Patti
Sent: Wednesday, February 10, 2010 11:41 PM
To: Sonnen, John
Subject: FW: Hear say in memorandums

From: Galle, Patti
Sent: Wednesday, February 10, 2010 11:39 PM
To: City Council; Jordan, Chris
Cc: tim.ramis@jordanschrader.com; yuxingzheng@news.oregonian.com; khansen@westlinntidings.com
Subject: Hear say in memorandums

Mr. Jordan,

I am questioning the policy of putting hear-say information in public documents, specifically hear-say that I told a citizen they did not have to get a WRA permit for a swimming pool. Since your accusation of sexual harassment and age discrimination from the city recorder, a completely fabricated story, you have been spinning out of control on false accusations against me. I find this action complete harassment as I know of no other documents or memorandums that contain "hear-say" information. I have added this to my civil lawsuit of harassment by you towards me, and I advise you now to cease this unprecedented policy. It is ludicrous to state that I would tell a citizen that they did not have to get the proper permits for any development. Equally ludicrous that I would have the authority to tell someone to do this.

Patti Galle
Mayor

Spir, Peter

From: HUFFMAN Anita [anita.huffman@state.or.us]
Sent: Wednesday, February 10, 2010 10:51 AM
To: Spir, Peter
Subject: RE: 9th street wetland

Sounds good. For the 1st week of March, I'm open Tues (3/2), Thursday and Friday (3/4,3/5) all day. Thanks.

Anita Huffman
Western Region Resource Coordinator
Wetland & Waterway Conservation Division

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Wednesday, February 10, 2010 10:46 AM
To: HUFFMAN Anita
Subject: RE: 9th street wetland

Anita

Once our local permit is denied on Feb 17 we will contact the various property owners including the Bundys, yourself, as well as our attorney. We would probably meet in the last week of February or first week in March. I am tending to the first week of March. Are there days that work best for you? (Staff and attorney would meet at least an hour before meeting the Bundys et al to agree on appropriate action/penalties)
Peter

 Peter Spir
pspir@westlinnoregon.gov
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From: HUFFMAN Anita [mailto:anita.huffman@state.or.us]
Sent: Wednesday, February 10, 2010 10:33 AM
To: Spir, Peter
Subject: RE: 9th street wetland

Peter, I think combining enforcement action would be a good idea. I'd be happy to meet with your counsel to discuss options, and I agree meeting with the Bundys would be a good idea. Our enforcement will entail a civil penalty, but it may be waived contingent upon meeting certain factors. I believe that the most I could fine them initially would be \$3000, but the bigger bite will come from the restoration and mitigation credits I'll be pursuing. I'd also like to see them put the wetlands in the front of their property under a type of deed restriction or conservation easement. Mrs.. Bundy seemed agreeable to that proposal. She also mentioned they're buying additional wetlands and that could be rolled into deed restriction also. My goal is to protect the resource, so the more land I can get under protection, the better.

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(62)

AH

Anita Huffman
Western Region Resource Coordinator
Wetland & Waterway Conservation Division

From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Wednesday, February 10, 2010 9:19 AM
To: HUFFMAN Anita
Subject: RE: 9th street wetland

Anita

Thanks for your sleuthing.

We are going through the exercise of processing the Bundy's land use permit.

The Planning Director's decision is slated for Feb 17.

The permit will be denied.

Once that phase is complete we will encourage them to enter into a Consent Order which will require wetland and drainageway restoration.

Removing the pool is always an option but realistically we would probably pursue off site mitigation.

If we are both going down the same enforcement path it would be good if we can coordinate on the Consent Order. Our attorney would participate.

We will probably try to meet with the Bundys in the latter part of February and if you can attend we could avoid enforcement duplication. Conversely, if you feel your agency has more enforcement leverage we could agree to tie into your process.

Peter

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From: HUFFMAN Anita [mailto:anita.huffman@state.or.us]
Sent: Wednesday, February 10, 2010 9:01 AM
To: Spir, Peter
Subject: 9th street wetland

Hi Peter,

I had a long talk with Gina Bundy yesterday (she'd received the letter) and advised her to get a wetland consultant so we can come to a settlement agreement for the wetlands violation. She seemed amenable to this, and I hope that we'll be able to get a good resolution.

As for the other folks, the Butlers...I discovered a hiccup in the system...they're not the owners of the property. According to tax records from Clackamas Co, it's owned by PGE. The map & tax lot # are the same as the property on Willamette Falls, but after speaking with Mrs.. Butler, I concurred they do not own that wetland area. I've just sent them a letter that notes they're no longer considered in this violation.

Gina Bundy said that PGE told her that they (PGE) don't own the property, just that they have an easement and that the Bundy's are responsible for maintenance of the property. Clackamas Co says that PGE is noted as the owner and is sent tax assessment bills. I am getting no where with PGE so far, but will keep trying to find out who I need to work with there.

I'll continue to keep you in the loop as I learn more. Do you know what (if any) the City is going to take? I'm not going to require removal of the pool, I'll seek mitigation bank credits for that portion, and will likely require restoration of the rest of the wetlands, and may include the rest of their yard...not sure yet how I'll go, but there will definitely be restoration required for the majority of the property.

Let me know if you've got any other questions.

Anita M. Huffman
Resource Coordinator-Josephine and Clackamas Counties
Wetlands and Waterway Conservation Division
Oregon State Lands
775 Summer St. NE
Salem, OR 97301
503-986-5250 FAX 503-378-4844
<http://www.oregonstatelands.us>

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Tuesday, February 02, 2010 2:15 PM
To: Spir, Peter; Sonnen, John
Subject: WAP-09-03

Dear Mr. Spir and Mr. Sonnen:

I am in receipt of an email from an anonymous individual referencing our pool permit request. They purport to represent a neighborhood association, but do not identify themselves, their position, or whether they actually have the authority from the association to send the letter. Neighborhood associations have jurisdiction over their own neighborhood and owners who sign neighborhood covenants. It seems unusual for this individual to be speaking on behalf of an association who has no authority over Willamette and my neighbors. For that matter, I do not even know if they are a resident of this city or not. Presumably, you two gentlemen might know who this person really is. I do not. Nevertheless, the letter is from an individual, not an association.

That said, I do not intend to be long-winded about this; however, I should address the points this individual has raised. I believe they have made some assumptions that are probably based upon misinformation.

First, the anonymous person clearly has disdain for lawyers and city council. However, to the extent that it is relevant, I am a managing partner and shareholder of Hoffman, Hart & Wagner. I am a trial attorney and have been practicing for 15 years now. I defend physicians and hospitals throughout the Pacific Northwest. As it turns out, lawyers have families and homes. Some of us even live in West Linn. Believe it or not, we also have children and pay taxes. I am also the petitioner, land owner, and father in this case. So, hopefully that clears up any confusion about letterhead.

In regard to the other points, I will respond as follows:

1. The writer of this letter has clearly not visited our property. We have no storm drain access to the sewer or to the river from the backyard. We are not on a city street. There is no sidewalk, gutter, or storm drain entryway. The rain water runoff has, does and always will flow into the wetland located in the front of my property.
2. As for the pool drain, the pool has a reverse drain. The reverse pressure drain does not drain water from the pool, it relieves pressure by allowing water into the pool. To get the water out, it must be pumped out with a pump truck. And, we have no intention of doing so for many years. Pool water is safe and clean for a decade or more. Further, we would certainly not pump it into the wetland. It goes directly into the truck tank. By the way, the pool is also plumbed for a natural salt system, which does not require chlorine.
3. How can this individual claim the pool constitutes a "different use" when they do not even know what the property looks like in the first place? A back yard is for recreational use. A pool is for recreational use. If one puts a trampoline or play structure in their back yard, does that constitute a different "use" of the property? What about a patio? Is a patio a different use? I think not. The use is the same. We would be having this same discussion if we were just putting in the patio. The fact that it is a pool is immaterial. Hence, the use remains the same. So, we must disagree with their argument in this respect.
4. The pool is up to Code. We submitted all inspection certificates. And, as I said, the pool will never be drained from the reverse flow drain. The water table and gravity does not work that way.
5. They have a concern about pumping the excess ground water off the property. The pump I referred to earlier is a small sump that can be inserted into the water monitoring station, which is a 10 inch control

tube in the ground on my property next to the pool. It is sunk 7 feet down. When the water level rises in the winter, it rises from below, and floods the crawl space under my home. It does not drain into the house from the spillway. When the water is properly monitored from the station, a small pump can be dropped into the tube with a hose on the end, and the rising water is pumped from the ground to the naturally occurring spillway that leads to the wetland. This is necessary two months out of the year. To claim that a "little mold in the basement is just a fact of life" is a poorly uneducated response to the real situation. First, it is a dirt crawlspace, not a basement. When water and dirt mix, the result is mud. I had the privilege of crawling through 2 feet of mud and water two years ago when my sump plunger got stuck, and I had to crawl down there in my wetsuit to fix it. Even with the sump, the crawlspace was always muddy because of seepage from below. If you get to the water before it reaches the surface of the crawlspace ... no more mud, no more swimming pool under our home instead of beside it.

6. They are worried about downstream properties. But, there is really no "downstream" on this property. We are not on the river, and there is no stream. Moreover, I think they should actually speak with the "downstream neighbor," because the writer would quickly find out how much my efforts have improved my neighbor's lives and property.
7. They worry about a dwindling bat population. Respectfully, "bat food" or no bat food, the City sprays mosquitoes to help curtail the diseases they spread. West Nile virus has been a big problem in this state. Further, there is still no shortage of mosquitoes in our neighborhood and they are not a protected species. We do not need an entomologist to come in and measure that. Now, we can just sit out in our back patio in the evenings a little longer without being attacked now. They are still around, of course. They will always be around.
8. The writer assumes the ecosystem behind our home was "healthy" to begin with. However, the "clean-up" involved was construction debris and fill left by someone other than us. Again, the writer bases the complaint on assumptions that are false.
9. If the writer is concerned about water flow, they can just knock on my door, be a neighbor, and I will gladly show them everything they want to know about the water, drains, etc. It is far better to do that than to write a letter condemning something they know little to nothing about. I thought a neighborhood association was supposed to be about neighbors helping neighbors? In looking at the map, it appears that Hidden Springs is across the highway from us and that it is not even visible from our neighborhood. It does sound like they have a bone to pick with the City about their own issues, but before making assumptions about something, it is always best to arm yourself with knowledge.
10. In regard to sandstone runoff, sandstone is called sandstone for a reason. Again, it's just a patio. Its far more environmentally friendly than the tarpaper roof and asphalt driveway runoff, which does flow into storm drains from the Hidden Springs community. Further, our patio is solid stone that has been around for millions of years. We are not talking about a mountain of sand runoff here from a backyard patio.
11. In regard to the reference to a "retention pond," I, frankly, do not understand this point. Are they claiming we should have put in a retention pond in my back yard, rather than a pool? Where should that have been placed? Again, I think the comment is based upon a misunderstanding of my land.

In closing, I must say that this individual is sadly mistaken if they think this process has been a walk in the park for my family. I obviously have no problem with advocacy. Uninformed advocacy is another question, though. The letter closes by stating that they have chosen to give us deference, and will not appeal the result, which is greatly appreciated and a sign of a good neighbor. We understand their concerns, but they are ill-founded. They would have learned this, if they just would have stopped by and asked. The matter is in capable hands, and I also thank them for their wishes that the City continue working with us to help us reach our goals. That is our wish as well. I guess they have said their peace, and we can move on from here. I simply did not want the query to go without a response. Thank you.

Sincerely,

Troy S. Bundy



CITY OF
West Linn

PLANNING DIRECTOR DECISION

APPLICANT: TROY AND GINA BUNDY, 1215 NINTH STREET

FILE NO.: WAP-09-03

REQUEST: WATER RESOURCE AREA PROTECTION PERMIT (WAP) TO ALLOW STRUCTURES, LANDSCAPING AND OTHER DEVELOPMENT IN A WATER RESOURCE AREA TRANSITION AND SETBACK, A RIPARIAN CORRIDOR AND AN OPEN SPACE EASEMENT LOCATED AT 1215 NINTH STREET.

APPROVED
2/19/10 SK

TABLE OF CONTENTS

	<u>Page</u>
STAFF ANALYSIS AND RECOMMENDATION	
SPECIFIC DATA.....	1
SPECIFIC PROPOSAL	1-2
BACKGROUND	2-4
ISSUES	4-6
ADDENDUM	
STAFF FINDINGS.....	6-16
EXHIBITS	
PD-1 Completeness letter.....	17
PD-2 Staff photographs of site.....	18-31
PD-3 CDC Chapter 106.....	32-33
PD-4 Public Notice.....	34
PD-5 Open Space Conservation Easement	35-42
PD-6 West Linn Goal 5 Inventory	43-46
PD-7 Letters from Public.....	47-65
PD-8 Applicant’s Submittal.....	66-98

SPECIFIC DATA

**OWNER/
APPLICANT:** Troy and Gina Bundy, 1215 Ninth Street, West Linn, OR 97068

LOCATION: 1215 Ninth Street

SITE SIZE: 21,539 square feet

LEGAL

DESCRIPTION: Clackamas County Assessor's Map 3-1E-2AB, Tax Lot 8201

ZONING: R-10

COMP PLAN

DESIGNATION: Low Density Residential

APPROVAL

CRITERIA: Community Development Code (CDC) Chapter 32, Water Resource Area Protection

120-DAY RULE: The City of West Linn is required to exhaust all local review of this case prior to April 9, 2010.

PUBLIC NOTICE: Public notice was mailed to all Neighborhood Associations and affected property owners within 500 feet of the perimeter of the property on January 27, 2010. The property was posted with a sign on January 28, 2010. The application has also been posted on the City's website. Therefore, notice requirements have been satisfied.

SPECIFIC PROPOSAL:

The applicant requests a Water Resources Area Protection (WPA) permit to allow a swimming pool and associated patio, fire pit, landscaping, drainage and other development in (1) the 65-foot wide transition area and structural setback area of an inventoried wetland designated per CDC Chapter 32, (2) in a recorded open space conservation easement that was conveyed to the City of West Linn; and (3) in a 100-foot wide Riparian Corridor designated per CDC Chapter 32.

Wetlands designated on the City of West Linn's adopted West Linn Wetland, Riparian and Wildlife Inventory, 2003 (WI-02) lie to the north of the applicant's rear property line. The wetlands are located on property owned by Portland General Electric (PGE). Aerial photographs taken in 2007 show the wetland area was intact at that time. Subsequent to that date, the applicant apparently removed the native trees and vegetation, filled and graded the wetland and landscaped it with turf edged with bark mulch and tiki lights. This landscaped fill area extends

about 35-40 feet beyond the rear property line of the lot at 1215 Ninth Street as well as behind the neighboring lot at 1221 Ninth Street (see Attachment PD-2). The applicant explains in their submittal (Attachment PD-8) that they cleared this area and landscaped it to reduce a perceived fire hazard associated with trees and vegetation in the wetland area, to reduce mosquitoes and to clear the area of debris and materials that had been dumped by previous homebuilder(s). The applicant states in their submittal that no fill or dirt was dumped in the wetlands.

BACKGROUND:

Chronology of Events

June 12, 2001

In concert with a lot line adjustment, an open space conservation easement document was recorded with Clackamas County primarily to protect the wetland. The conservation easement encumbered both lots at 1215 and 1221 Ninth Street, extending between 30-40 feet onto both properties from their respective north lot lines. The easement prohibits, among other things, any construction in those areas, manipulation or alteration of natural water courses, marshes, or habitat area, removal of native vegetation or planting non-native plant material without written approval from the City of West Linn (see Attachment PD-5).

2001

A house was constructed at 1215 Ninth Street house outside of the conservation easement.

February 2003

The West Linn Wetland, Riparian and Wildlife Inventory was prepared to address Statewide Planning Goal 5 requirements. That inventory identified and cataloged (WI-02) the wetlands at the rear of the subject property and the natural attributes and functions that made them worthy of protection. The inventory indicated that the wetlands are the largest in the city.

July 9, 2009

Gina Bundy submitted an application for a building permit (Permit 09-454) for pool construction at 1215 Ninth Street.

July 15, 2009

At the Development Review Committee meeting, staff identified the conflict between the proposed pool location and the wetlands identified on the City's GIS mapping system and associated wetlands transition zone that covers much of the lot at 1215 Ninth Street. Consequently, the requested building permit for a pool was not issued. The property owner was advised that the proposed pool location was in the wetlands transition zone, and within the riparian corridor and a recorded conservation easement. Staff stated that further review would be required and that work in such areas requires a water resource area permit.

July/August 2009 (exact date unknown)

The property owner, Gina Bundy, telephoned John Nomie of the Building Department and asked about the status of the permit. In the course of the conversation, Mrs. Bundy admitted that the pool had already been installed.

November 2009

Jerilyn Evans of 1221 Ninth Street, which abuts the lot at 1215 Ninth Street, called to complain about the lack of a fence around the swimming pool and that it represents an attractive nuisance and hazard for her children.

November 4, 2009

Associate Planner Peter Spir and Shaun Rohret, Storm Drainage Engineer, visited 1215 Ninth Street and noted that the pool had been installed along with extensive poolside features (e.g., a patio, decking and a fire pit). In addition, the PGE property to rear of site had been cleared and grubbed, including the removal of all native vegetation and trees. The area had then been apparently filled, graded and covered with grass turf. This landscaped area on PGE land extends 110 feet across the width of the applicant's property, about 40 feet to the north, and about 20 feet westward behind the lot at 1221 Ninth Street (see Attachment PD-2). In order to drain water that would have been captured by the wetlands, the applicants had a shallow gravel and rock drainage channel, edged in bark mulch, constructed along their rear property line. The drainage extends westward onto the adjacent property at 1221 Ninth Street. The applicants were beginning to install a gate and fence around the property. Structural encroachments (i.e., a tool shed and fence) on the lot at 1221 Ninth Street were also noted.

Staff explained the restrictions on construction and site modification in the conservation easement and wetland areas and associated transition/setback areas. Staff also told Mrs. Bundy that it looked as if excavated dirt from the pool site had been dumped in the wetlands. Staff also spoke to Brian Evans of 1221 Ninth Street regarding the encroachments at the rear of his yard, including the fence and tool shed.

November 9, 2009

Troy Bundy mailed a letter to Peter Spir, received on November 10, 2009, explaining circumstances at the site. Although he did not contest the basic facts, he stated that the dirt excavated from the pool was not dumped in the wetlands and that it had been transported away from the site. (Regardless of the source of the dirt, grading and filling occurred in the wetland based on the fact that the landscaped area is elevated 1-1.5 feet above the average wetland grade. Aerial photos of the site in 2007 showed that the PGE land behind the applicant's lot was covered with native vegetation. An aerial photograph from 2008 showed only bare dirt on a large portion of the PGE property adjacent to 1215 Ninth Street. The current fill/landscaped area is much larger still.)

November 11, 2009

Troy and Gina Bundy applied for Water Resource Area permit to allow the swimming pool. The Bundy's did not apply for a required pre-application conference.

January 26, 2009

Senior Planner Chris Kerr, Anita Huffman of Department of State Lands (DSL), Peter Spir and Shaun Rohret visited the site at 1215 Ninth Street again. Mrs. Bundy was in attendance. Anita Huffman explained that DSL regulations prohibit removal/fill of wetlands. She stated that she would take action in the coming week(s) which could include a requirement for full site restoration to wetland status plus penalties.

January 27, 2010

The application for a Water Resource Area permit was deemed complete since the 30-day completeness review period had expired. The City has 150 days (30+120) to exhaust all local review and appeals. That period lapses on April 9, 2010.

January 27, 2010

Public notice was mailed to all property owners within 500-foot radius of site, DSL, US Army Corps of Engineers and all neighborhood associations.

January 28, 2010

Staff posted a public notice sign at the entrance driveway to 1215 Ninth Street.

ISSUES:

ISSUE 1:

The applicant constructed a swimming pool without obtaining a building permit.

The applicant applied for a building permit (09-454) but built the swimming pool, patio area, and fire pit prior to issuance of a permit. The applicant does not have an approved building permit. No building inspections were conducted by the City of West Linn Building Inspectors. This is in violation of Chapter 8 of the West Linn Municipal Code which requires an approved building permit prior to any construction.

ISSUE 2:

The applicant constructed a swimming pool in a Water Resource Area without applying for and receiving approval of a Water Resource Area permit.

Community Development Code (CDC) Chapter 32 states:

32.025 PERMIT REQUIRED

No person shall be permitted to fill, strip, install pipe, undertake construction, or in any way alter an existing water resource area without first obtaining a permit to do so from the decision making authority, paying the requisite fee, and otherwise complying with all applicable provisions of this ordinance.

32.030 PROHIBITED USES

Prohibited uses in water resource areas include the following:

- A. *Any new lawn area or garden area consisting primarily of non-native vegetation.*

ISSUE 3:

The swimming pool, patio area, fire pit, removal of native vegetation, grading, and planting non-native vegetation occurred within an Open Space Conservation Easement (see Attachment PD-5). The terms of the easement conveyed to the City of West Linn provide explicit and clear restrictions on the use and development of the areas subject to the easement. The easement language states that without prior and express written consent from the Grantee (City of West Linn), there shall be no:

A. Construction of buildings...fences....

B. Filling, excavating...no removal of topsoil...nor any ...change in the topography of the land....

C. Removal, destruction or cutting of trees or plants (except removal of Himalayan blackberry, poison oak, English Ivy), planting of non-native trees or plants including lawn....or disturbances or change of the natural habitat in any manner.

D. ...no changing of the topography through the placing of soil or other substance or material such as land fill....

E. Manipulation or alteration of natural water courses...marshes or uses detrimental to water purity, drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife habitat preservation.

Most of the provisions of this easement have been violated by constructing the swimming pool, patio, and fire pit; filling the wetland area, removing native plant material and associated habitat; constructing a new water course; and installing lawn and modifying topography to the extent that drainage is altered and the flood storage capacity of the area is diminished.

ISSUE 4:

The failure of the property owner(s) to obtain Department of State Lands (DSL) permits prior to development. As previously noted a DSL field representative visited the site and will be pursuing parallel enforcement of DSL regulations.

ISSUE 5:

The applicant provided a letter dated November 16, 2009 contending that the vegetation in and around the wetlands constitute a fire hazard and that removing trees and native vegetation was an appropriate response to fire codes cited in the letter (see Attachment PD-8). Staff finds no criterion in CDC Chapter 32 relating to fire hazards and the appropriateness of removing wetlands to address that potential hazard. Therefore, this argument is not germane.

ISSUE 6:

The applicant states that no fill was used in the wetlands.

An Anderson Poolworks billing statement itemizing the trucking of excavated dirt from the swimming pool site was provided by the applicant as evidence (see Attachment PD-8). The statement notes that 178 cubic yards of excavation spoils were removed from the site. However the statement also notes that 22 cubic yards of gravel was delivered to the site. That translates into two dump truck loads of fill. The applicant states that no fill was dumped on site as evidence by the remaining uncovered tree trunks in the wetland. Staff, including three engineers, visited the site and noted that the lawn area on the PGE property, which displaced the wetland, was about 1 to 1 1/2 feet above the elevation of the grade of the adjacent wetlands. In the professional opinion of engineers, fill had been used in the area.

The applicant stated in a letter dated November 9, 2009 that after heavy equipment had parked (on the wetlands/PGE property) during pool construction, the "area was pretty much leveled out as a result of the (heavy truck) traffic. Rather than letting it (native vegetation) grow back in, we did turn, rake and plant it."

PUBLIC COMMENTS

Lynn Fox e-mailed inquiring about the permit
Karie Oakes e-mailed primarily about the notice posted for the permit; urged the department not to accept the application, but if it is, to deny the request.
Gary Hitesman e-mailed in favor of denial of the permit
Roberta Lapeyre telephoned about status of the permit

(The e-mails are attached as correspondence)

Staff Findings

32.050 APPROVAL CRITERIA

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

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

FINDING NO. 1

The applicant did not provide maps delineating drainage ways, riparian corridors and wetlands as required above. Therefore, the applicant did not satisfy this criterion.

Staff notes that the drainageway/wetlands are identified in the Surface Water Management Plan and as a wetland in the Wetland, Riparian and Wildlife Habitat Inventory (identified as wetland WI-02). There is a 100-foot wide riparian corridor on both sides of this wetland.

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

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

FINDING NO. 2:

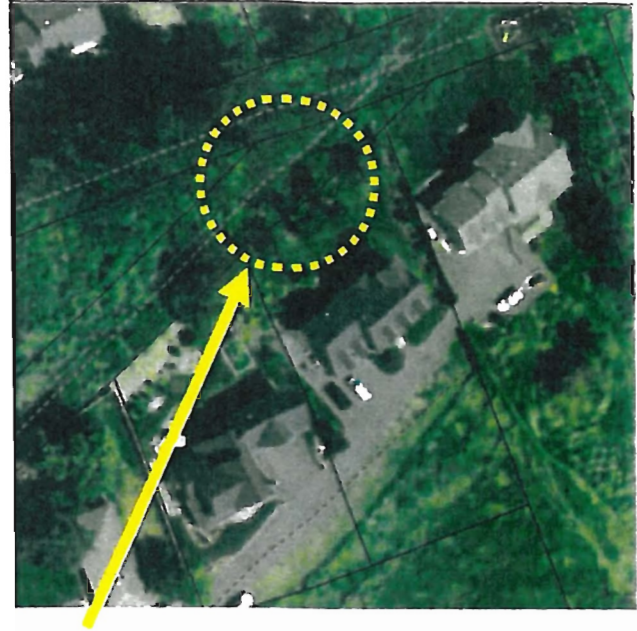
The 2007 aerial photo of the site below shows that at that time, the PGE property to the north of the applicant's lot was covered with native trees and other vegetation. The natural drainage way and wetland system were severely damaged, reconfigured and stripped of the native vegetation. Wetlands form at low points that collect water. City Engineering and Planning staff visited the site twice and found that the elevation of the lawn area that displaced the wetland was higher by 1-1.5 feet than the adjacent undisturbed wetland area. Staff also noted a distinct downhill slope from the landscaped wetland area to the north property line of 1215 Ninth Street. The elevation of the altered wetland relative to its surroundings indicates that fill had been used. As previously noted, the applicant said that no fill or material was dumped in this area. The applicant submitted an Anderson Poolworks statement dated 8/31/09 listing the removal of 178 cubic yards of pool excavation spoils to Anderson Poolworks. It also listed the delivery of 22 cubic yards of gravel which is two dump truck loads.

The natural drainage way and wetland that existed in this area has been filled/covered over and the water flow has been redirected by the applicant. 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. No mitigation plan has been offered. Therefore, the criterion has not been met.

2008 photo



2007 photo



Trees and wetland/ native vegetation shown in this 2007 aerial photo have since been removed

- D. Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot wide structural setback areas do not require preservation by easement or dedication.

FINDING NO. 3:

There already is a recorded easement in place that prohibits any construction, grading or development without approval from the City of West Linn. These provisions have been ignored and thus the intent of this criterion has not been met.

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

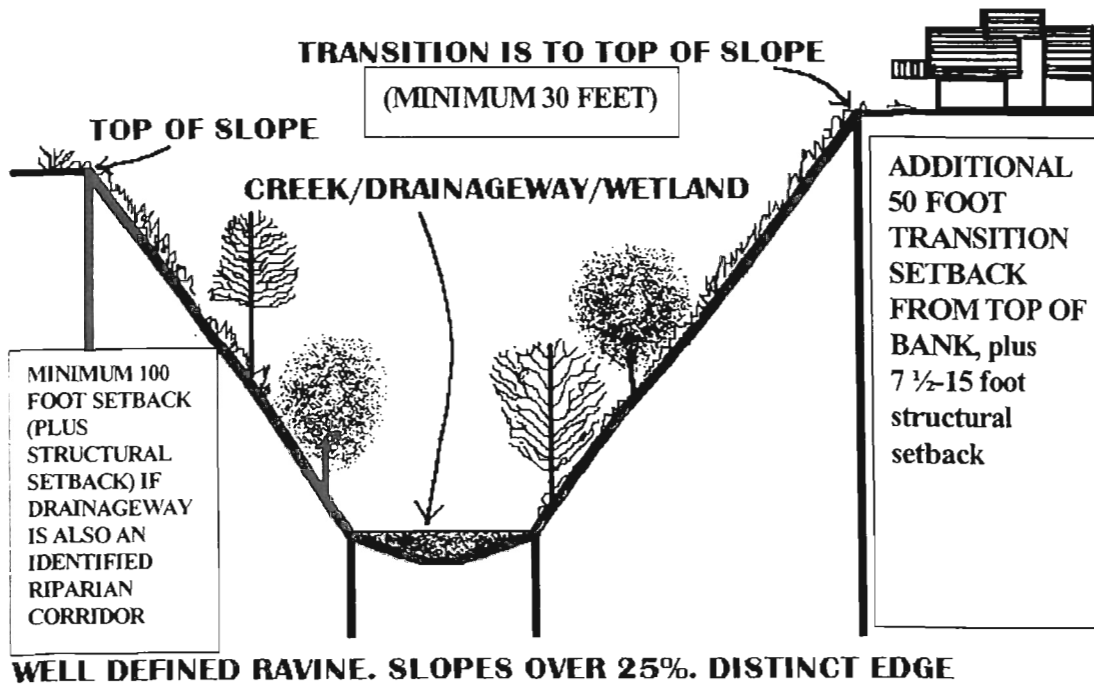
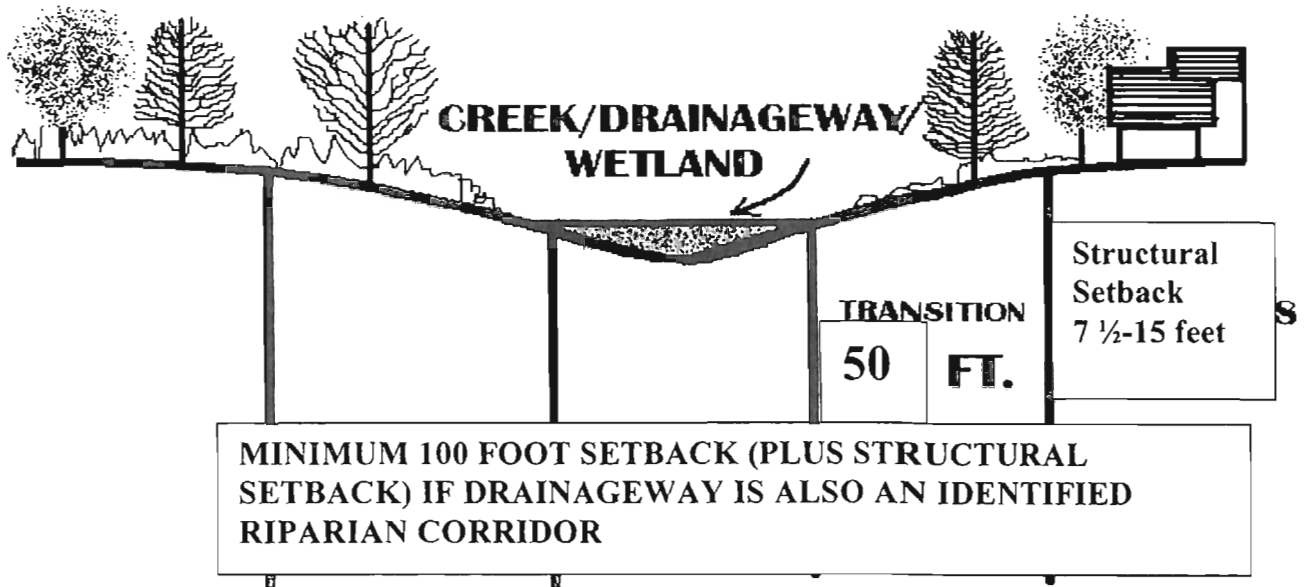
Table 32-1. Required Widths of Setback and Transition Area.

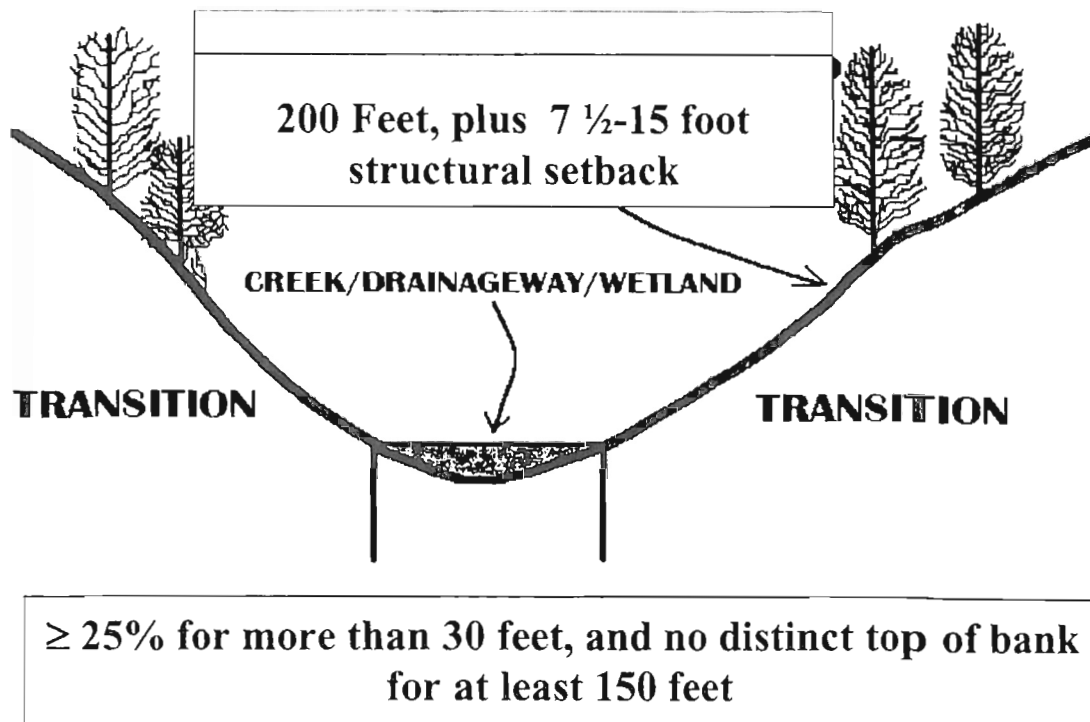
Protected Water Feature Type (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Setback and Transition Area on each side of the water feature
Wetland, Major Drainageway, Minor Drainageway	0% - 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	50 feet plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	$\geq 25\%$ to a distinct top of ravine ¹	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	Distance from starting point of measurement to top of ravine ¹ (30 foot minimum), plus an additional 50-foot setback, plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	$\geq 25\%$ for more than 30 feet, and no distinct top of ravine for at least 150 feet	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	200 feet, plus structural setback
Riparian Corridor	any	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	100 feet or the setback required under major and minor drainageway provisions, whichever is greater., plus structural setback
Formerly Closed Drainage Channel Reopened (see 32.050(N))	n/a	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	Variable: See CDC 32,050(N)

¹Where the protected water feature is confined by a ravine or gully, the top of ravine is the location where the slope breaks at least 15% and the slope beyond the break remains less than 25% for at least 50 feet.

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

SLOPE IS UNDER 25 %





FINDING NO.4:

Staff finds that the water resource area or drainageway has a slope of under 25% and therefore all structures must be 65 feet from the edge of the wetland. Staff finds that the pool, patio, fire pit, and a fence are located within 65 feet of the wetland edge. The wetland edge is determined by extending the existing edge in the undisturbed portion west of 1215 Ninth Street. Therefore the criterion is not met.

Staff also finds that the Riparian corridor extends 100 feet from the edge of the wetlands, which extends across the applicant's rear yard right up to the rear elevation of the house. The Riparian Area section of CDC Chapter 32 was adopted in February 2007. Structures in place prior to that date are grandfathered in as existing non-conforming structures. The recent pool and associated construction in that riparian area fail to meet the criterion.



- F. Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:
- a. For utility facility connections to utility facilities, no greater than 10 feet wide.
 - b. For upgrade of existing utility facilities, no greater than 15 feet wide.
 - c. For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of Water Quality Resource Area, or 20% of the total linear feet of Water Quality Resource Area, whichever is greater.

FINDING NO. 5:

No driveways, utilities or passive recreation facilities are proposed therefore this criterion does not apply.

- G. Prior to construction, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction is complete. The water resource

area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.

FINDING NO. 6:

Fencing is not necessary at this time since the site disturbance has already occurred.

- I. Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.
- J. Appropriate erosion control measures based on CDC Chapter 31 requirements shall be established throughout all phases of construction.

FINDING NO. 7:

There is no evidence presented that any of the grading and de-vegetation undertaken by the applicant relied upon accepted engineering principles regarding downstream impacts. Storm drainage clearly has been diverted from its natural course as noted by the construction of a gravel drainage channel along the north property line of 1215 and 1221 Ninth Street. Therefore the criterion is not met. (Erosion control measures will be required during water resource area /wetland restoration but at this time that portion of the criterion is not applicable).

- K. Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80% of the water resource area and less than 50% tree canopy coverage in the water resource area. "Vegetative improvements"-will be documented by submitting a revegetation plan meeting CDC Section 32.080 criteria that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC Section 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.

FINDING NO. 8:

The site contained vegetation that supported wetland functions, such as cleansing of stormwater and wildlife habitat. This vegetation was removed and replaced primarily with turf, the pool, patio and associated development. In addition, the water absorption and flood storage capacity of the

area were diminished. Restoration will be required to restore these wetland functions. According to the DSL representative, the site is definitely recoverable. Prior to the restoration, a full mitigation plan will have to be prepared by a wetland specialist. No mitigation or revegetation plans per CDC 32.070 and 32.080 have been submitted by the applicant. Therefore the criterion is not met.

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

FINDING NO.9:

The applicant's structures and hardscapes (e.g., pool, patio, fire pit, etc) all encroach within the conservation easement, the 100-foot wide riparian corridor and the 65-foot wide water resource transition and setback as measured from the wetland edge. Therefore, the criterion is not met.

- M. Stormwater Treatment Facilities may only encroach a maximum of 25 feet into the outside boundary of the water resource area; and the area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property. Facilities that infiltrate storm water onsite, including the associated piping, may be placed at any point within the water resource area outside of the actual drainage course so long as the forest canopy and the areas within ten feet of the drip lines of significant trees are not disturbed. Only native vegetation may be planted in these facilities.

FINDING NO. 10:

Gravel and bark surfaced drainage facilities were installed to accommodate water that would have flowed in the natural drainage way and wetland where it would have been cleansed. This criterion does not apply.

32.090 REDUCTION IN STANDARDS FOR HARDSHIP

The purpose of CDC Section 32.090 is to ensure that compliance with CDC Chapter 32 does not cause unreasonable hardship. To avoid such instances, the requirements of CDC Chapter 32 may be reduced. Reductions are also allowed when strict application of CDC Chapter 32 would deprive an owner of all economically viable use of land. The decision making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

- A. Lots located completely inside the water resource area. Development may occur on lots located completely within the water resource area that are recorded with the County Assessor's Office on or before the effective date of this ordinance. Development shall disturb the minimum necessary area to allow the proposed use or activity, and in any situation no more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards in CDC Chapter 31, and subject to a finding that the proposed development does not increase danger to life and property due to flooding and erosion.
- B. Lots located partially inside the water resource area. A reduction to avoid the loss of all economically viable use of a vacant lot recorded with the County Assessor's Office on or before the effective date of this ordinance that is partially inside the water resource area is permitted. Development on such lots shall not disturb more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards of CDC Chapter 31. Applicants must demonstrate the following:
 - 1. Without the proposed reduction, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
 - 2. The proposed intrusion is the minimum necessary to allow economically viable use of the subject property.
 - 3. The proposed reduction will comply with CDC Chapter 31, Erosion Control;
- C. If a reduction in standards is granted pursuant to criteria of CDC 32.090(B), the reduction shall be subject to the following conditions:
 - 1. The minimum width of the water resource area's transition and setback area shall be 15 feet on each side of a wetland or drainage course.
 - 2. As mitigation for the permanent disturbance of any portion of the normally required water resource area, an equal area on the property which would not normally be within the water resource area shall be revegetated to meet the standards of CDC 32.050(K). If there does not exist enough site area to meet this requirement, the applicant shall revegetate the entire area of the property that would not normally be within the water resource area, adjacent to the actual water resource area, and is not proposed for permanent disturbance to meet the standards of CDC 32.050(K)
- D. Any further reduction of the standards of this chapter shall require approval of a Variance pursuant to CDC Chapter 75.

FINDING NO. 15:

The applicant asked in the last paragraph of their October 21, 2009 submittal for consideration under the hardship provisions above. Those provisions are intended to make reasonable, modest accommodation for development of a property where the owner otherwise would be deprived of all economically viable use of land. For example, it allows for construction of a house on a legal lot of record that would otherwise be rendered unbuildable due to the setbacks and transition areas. Up to 5,000 square feet of disturbed area is allowed to accommodate a house, utilities, all hardscapes (e.g., , driveways and walkways) and all grading. In a recent 2009 case, the Holiday Inn Express proposed for Willamette Falls Drive was denied a hardship when City Council found that a smaller, completely different use of the property, such as an espresso stand, could be regarded as an economically viable alternative to a hotel. The driveways, front sidewalk and the house footprint at 1215 Ninth Street total approximately 7,175 square feet. The house at 1215 Ninth Street has been assessed by Clackamas County at 509,830 dollars.

Staff finds that there is no evidence in the record demonstrating that the applicant would be deprived of all economically viable use of the land if construction of a swimming pool or associated facilities: patio, fire pit, lawn, etc within the water resource area/transition area was denied. There is already is significant economic development at this site. Denial of the hardship request is also appropriate since the existing disturbed areas exceed the 5,000 square foot disturbed area allowed by the hardship provision. Therefore, staff finds that this hardship criterion is not met.

Decision

Based upon the above staff findings, this application is hereby denied.

I declare to have no interest in the outcome of this decision due to some past or present involvement with the applicant, the subject property, or surrounding properties, and therefore, can render an impartial decision. The provisions of the CDC Chapter 99 have been met.



JOHN SONNEN, Planning Director

2/19/2010

DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of mailing date. Cost is \$400. The appeal must be filed by an individual who has established standing by submitting written comments prior to February 17, 2010.

Mailed this 19 day of February, 2010.
Therefore, the 14-day appeal period ends at 5 p.m., on March 5, 2010.

EXHIBITS

PD-1	Completeness letter.....	17
PD-2	Staff photographs of site.....	18-31
PD-3	CDC Chapter 106.....	32-33
PD-4	Public Notice.....	34
PD-5	Open Space Conservation Easement	35-42
PD-6	West Linn Goal 5 Inventory.....	43-46
PD-7	Letters from Public.....	47-65
PD-8	Applicant's Submittal.....	66-98

Sent



CITY OF
West Linn

January 27, 2010

Troy and Gina Bundy
1215 Ninth Street
West Linn, OR 97068

Re: WAP-09-03

Dear Mr. and Mrs. Bundy,

Your land use application submittal received November 11, 2009 is deemed complete by default. The City is obliged to exhaust all local review by April 9, 2010. The Planning Director's decision date is expected to be February 17, 2010.

Please call me at 503-723-2539 if you have any planning related questions or, for faster response, e-mail me at pspir@westlinnoregon.gov.

Sincerely,

Peter Spir
Associate Planner

Devrev-completeness-complete-WAP-09-03