



CITY OF West Linn

PLANNING AND DEVELOPMENT

STAFF REPORT

PLANNING DIRECTOR DECISION

DATE: April 5, 2009

FILE NO.: MIS-08-22 (Planning Director's Decision)

SUBJECT: Tualatin River Protection Permit to build new house on existing lot of record on lot directly south of 1312 and 1338 Evah Lane

PLANNER: Peter Spir, Associate Planner

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SPECIFIC DATA

OWNER/

APPLICANT: Kathleen and John Kreitzburg, 3590 NE Hancock St. Portland, OR.
97212

SITE LOCATION: Parcel immediately south of 1312 and 1338 Evah Lane

SITE SIZE: 23,005 square feet

LEGAL

DESCRIPTION: 3 1E 02BC, Tax Lot 3801

COMP PLAN

DESIGNATION: Low-Density Residential

ZONING: R-10, Single-Family Residential

APPROVAL

CRITERIA: CDC Chapter 29 Tualatin River Protection Permit

120-DAY RULE: The application became submitted and vested on October 29, 2008. It was deemed complete on March 17, 2009. The 120-day period ends on July 15, 2009.

PUBLIC NOTICE: Notice was mailed to property owners within 100 feet of the subject property and the Willamette Neighborhood Association on March 19, 2009. Therefore, public notice requirements of Community Development Code Chapter 99 have been met.

EXECUTIVE SUMMARY

The applicants originally applied for a Minor Partition along with the Tualatin River Protection permit. The plan was to divide the 23,005 square foot lot in two. The underlying R-10 (10,000 sq ft min lot size lots) allows it. But the applicants changed their mind and decided to build just one house on the large lot. Because the 100 year floodplain line extends onto the southern edge of the site, the Tualatin River Protection permit still applies. It should be noted that the applicant's proposed building envelope is well above the 100 year floodplain boundary.

Because the applicant proposes only one house the application is simplified. The applicant has a guaranteed right to build on this lot of record. The applicant is also guaranteed the right of access to the lot via the Evah Lane ROW and an access easement. The only consideration related to the Tualatin River Protection Permit is that the applicant's new house must be kept a reasonable distance from the 100 year flood boundary and minimize removal of native vegetation.

Because the applicant initiated the application prior to subsequent code changes, this application is vested and reviewable by CDC Chapter 29 only.

PUBLIC COMMENTS

Anne and Mike Goetze of 1378 Evah Lane contacted staff on a number of occasions expressing interest in the proposal. Concerns included, among other things, tree and vegetation protection and the height of the proposed home. Patrick O'Brien of 1236 14th Street e-mailed about access and how this application may affect future development of his property.

RECOMMENDATION

Based on findings contained in the applicant's submittal in the City record and staff findings, I have determined that there are sufficient grounds to **approve** this application with the following conditions of approval.

1. The house shall be single story as seen on the uphill side with opportunities for basement or daylighted floors on the downhill side.
2. Significant trees identified by the City Arborist shall be protected and retained by installation of a fence prior to site clearing and grading. The significant 22" maple tree in the northeast corner shall be protected to the degree possible but this decision recognizes the need to access the site and the associated grading that accompanies driveway and house construction.
3. Removal of non-native and native vegetation for site development and utilities shall require replanting with native vegetation per a plan that has been approved by the Planning Director.
4. The applicant must contact TVFR (Karen.mohling@TVFR.com) and provide all necessary facilities and/or access per TVFR standards.
5. Storm water treatment will be required per City Engineering standards.
6. Utility access via the easement to the west of 1312 Evah Lane is allowed by existing easement and plat document.
7. The applicant shall establish a protective easement for that portion of the property within the 100 year floodplain which declares that the native vegetation shall be undisturbed and that any removal of non-native material shall be pursuant to a planting plan of native material as approved by the Planning Director. The easement shall be approved by the Planning Director then recorded by the applicant at the County Recorder's Office.
8. Minimum access of 12 foot wide all weather (non gravel) driveway shall be provided to access the house. Wider surface may be required to meet TVFR standards

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


CHRIS KERR, Acting Planning Director

4-7-09
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 the Planning Director's decision date above. Approval will lapse 3 years from effective approval date unless an extension is obtained.

Mailed this 7th day of APRIL, 2009.
Therefore, the 14-day appeal period ends at 5 p.m., on

April 21, 2009.

p:/devrvw/staff reports/MIS-08-22-EVAH

ADDENDUM

APPROVAL CRITERIA AND FINDINGS

MIS-08-22

Staff recommends adoption of the findings for approval contained within the applicant's submittal. In addition, staff offers the following findings:

29.060 APPROVAL STANDARDS

A permit shall be issued for a Tualatin River Protection upon written findings that:

- A. The setback provisions of Section 29.070 are met;*
- B. The design standards of Section 29.080 are met; and,*
- C. A buffer or filter strip of existing vegetation will be preserved in accordance with the standards of Section 29.080(A); or the buffer will be adequate based on the standards in Section 29.080(B) or the existing vegetation will be replaced by comparable vegetation as provided by Section 29.080(C).*

29.070 SETBACK REQUIREMENT AND EXCEPTIONS

- A. All structures and non-water oriented accessory structures shall only be allowed at an elevation above the 100-year flood plain elevation of the Tualatin River as established by the Corps of Engineers.*
- B. The following exceptions shall apply.*
 - l. Residential lots of record which have a lot depth which precludes compliance with the setback standards of this section, shall be exempt from the strict application of these standards. Such structures shall be set back the maximum practicable distance.*

2. *Water dependent commercial and industrial uses and such uses as private boat docks, marinas, or boat ramps shall be exempt from the setback requirements.*
3. *Additions to existing structures which are located closer than the setback requirements of this section shall be permitted.*
4. *Public uses, such as bridges for public roads, shall be allowed within the setbacks stated in this section provided that adverse impacts are mitigated.*

FINDING NO. 1: The house will be above the 100 year floodplain and above the 1996 flood elevation, therefore the criterion is met.

29.080 VEGETATIVE PRESERVATION REQUIREMENTS AND EXCEPTIONS

- A. *A buffer or filter strip of existing vegetation shall be preserved along the Tualatin River for the area between the mean low water line and the mean high water line, and within the 100-year flood plain.*
- B. *Areas that are to be protected shall be dedicated to the City by deeding the land title to the City or 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 or other means which shall serve to protect the resource to City standards. Protective easements are not preferred because resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Protected areas shall be clearly identified with City approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals which clearly delineate the extend of the protected area.
(ORD. 1442)*
- C. *Exceptions to the width of the buffer or filter area may be granted as part of the approval process based on the following standards:*

1. *The character and size of the proposed development and its potential for adverse impacts on the river is minimal and, therefore, the buffer area may be reduced.*
 2. *The topography of the area will act as a buffer.*
 3. *The type and density of the existing vegetation is such that the width of the buffer may be reduced.*
 4. *The type and stability of the soils will preclude erosion.*
- D. *Vegetative improvements to areas within the Tualatin Protection Area may be required if the site is found to be in an unhealthy or disturbed state. "Unhealthy or disturbed" includes those sites that are heavily populated by exotic or non-indigenous species, areas overgrown with invasive plants, and soil stabilizing groundcovers. "Vegetative improvements" consist of submitting a plan which calls for removal of non-indigenous, exotic, or invasive species which will be replaced by plant species in a manner to be approved by the City Parks Director and consistent with the purposes of Chapter 30. Once approved, the applicant is responsible for implementing the plan prior to final inspection. (ORD. 1382)*
- E. *The existing vegetation may be removed provided it is replaced by comparable vegetation.*

FINDING NO. 2: The buffer or filter strip of existing vegetation shall be preserved along the Tualatin River for the area between the mean low water line and the mean high water line, and within the 100-year flood plain. To achieve this, the applicant shall prepare a protective easement that will be recorded by the applicant at the Clackamas County Recorder's Office. Therefore the criterion is met.

**CITY OF WEST LINN
PLANNING DEPARTMENT**

FILE NO.: MIS-08-22

REQUEST: Tualatin River Protection Permit to build new house on existing lot of record on lot directly south of 1312 and 1338 Evah Lane

APPLICANT'S SUBMITTAL

March 3, 2009

The parcel of vacant land, tax lot 3801 of Assessor's map 31E 2BC south of Evah Lane, has been purchased with the intent to place a single home on the property. It is our aim to build a home with one above ground floor and a day light basement. The materials for the home's exterior will be selected so that the home blends into the natural setting as much as possible.

29.020 D It is intended that the home be well above the 100 year flood plain as the flood plain only encroaches
29.070A onto the very bottom of the property. The site begins approximately 131 feet from the bank of the river, thus the structure development will be over 150 feet from the mean low water line.

29.080 Invasive species of English ivy and blackberries currently cover the property. These will be removed and replanted with native vegetation per Metro's list of recommended plant material. In addition, the English ivy in the surrounding area adjoining our lot will be removed from the trees.

All water run-offs from the driveway and home shall be captured and used as irrigation for plantings or will drain into bio swales to be naturally filtered as it returns to the ground. No water from the property's structures will directly flow into the Tualatin River as per the erosion control requirements of the city engineers department.

29.140 We are requesting a waiver of 29.140 Grading Plan and 29.150 Architectural Sketch as the house plans have not been started. Any grading will be on the northern portion of the lot and fully protected by appropriate erosion control measures.

29.150 The house will be set back the maximum practicable distance on the property. As a one story, with a partial daylight basement, the home will not block views of existing home to the north as they are much higher on the slope. At this time it is intended that the square footage will be between 2500 and 3000 feet with detached garage. A generalized envelope of the house placement is attached. This envelope is larger than needed but shows the area in which the structures will sit.

EVAN LANE
(40' R-O-W)

EXISTING
SEWER EASEMENT
BY 90 57998

Significant tree

Generalized
Area for house

Significant tree

Significant tree

NEE & TACK
7.84

EXISTING 20'
SEWER EASEMENT
BY 562/PG 688

VACANT LAND

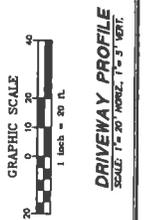
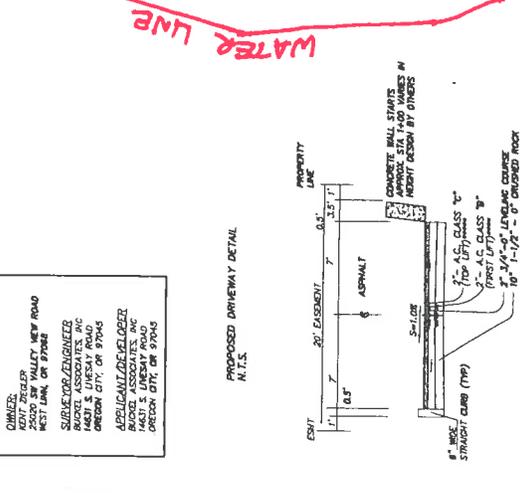
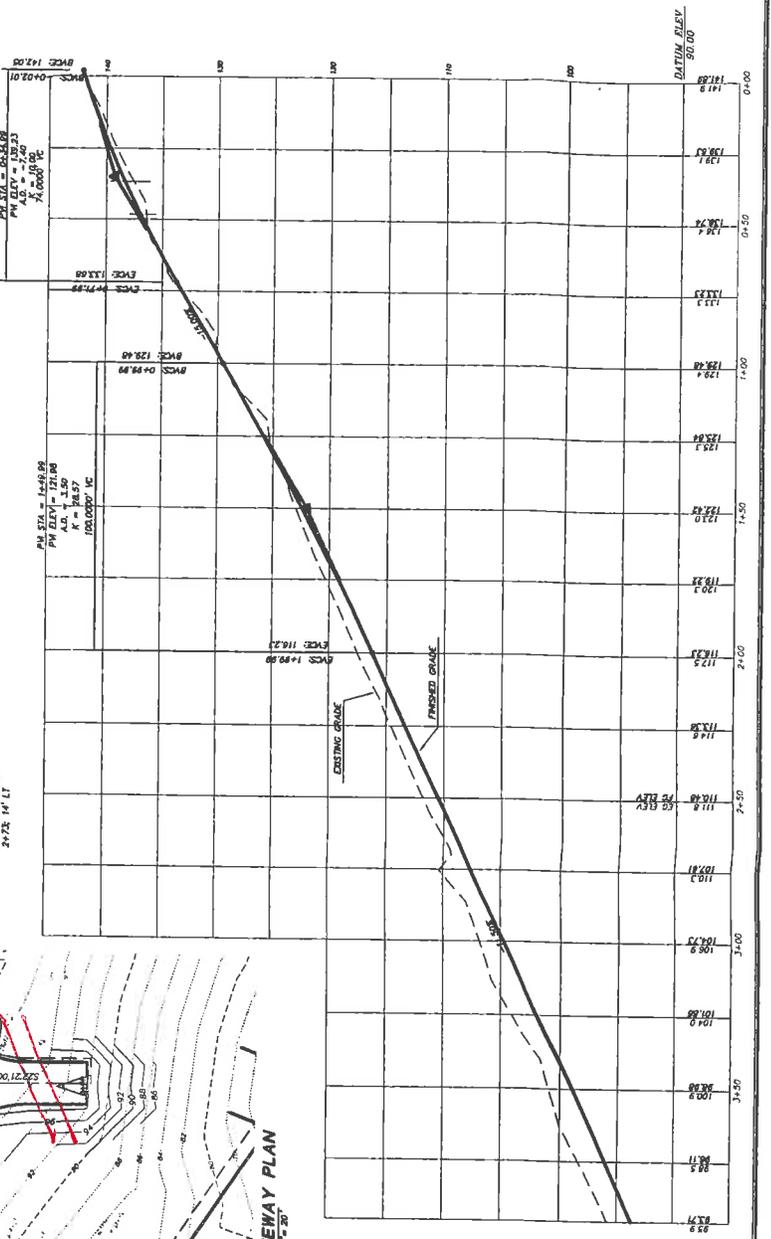
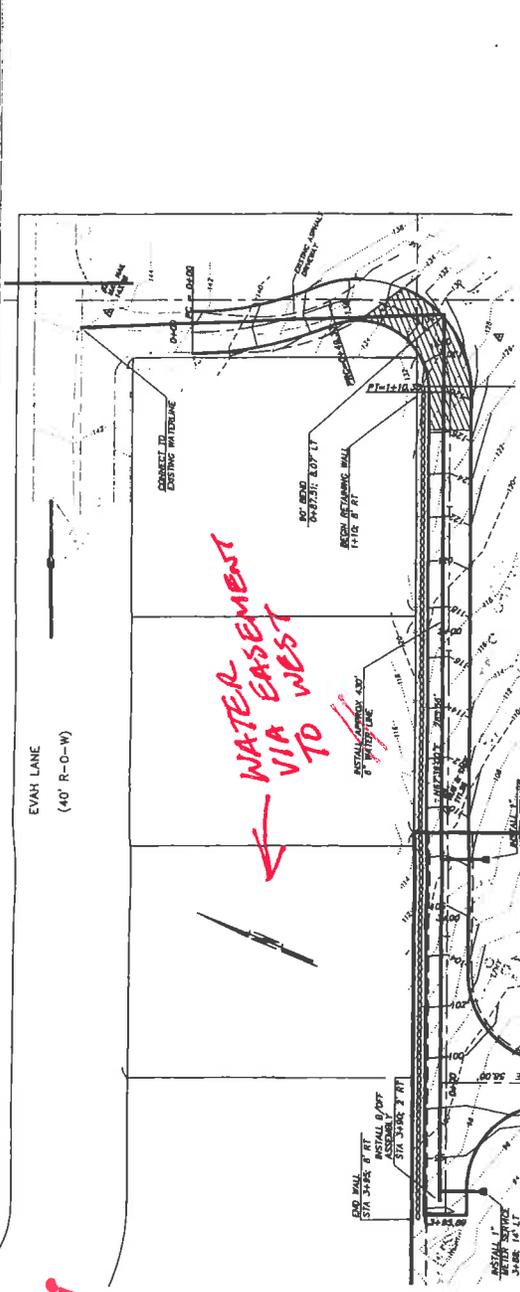
NO.	DATE	DESCRIPTION

BUCKLE ASSOCIATES, INC.
 LAND SURVEY & CIVIL ENGINEERING CONSULTANTS
 1401 S. LAMAR ROAD
 PORTLAND, OREGON 97202
 (503) 835-8310

KENT ZIEGLER
 WEST Linn, OR 97146
 PREPARED FOR

**TENTATIVE DRIVEWAY
 RIVER PARTITION
 WEST Linn, OR**

Sheet No.	5 of 6
Date	11/18/18
Project No.	18-001
Client	
Scale	



12B

**STAFF EXHIBITS
AND CORRESPONDANCE**

MEMO

To: West Linn City Record
From: Chris Kerr, Interim Planning Director 
Re: Waiver of Submittal Requirement (MIS-08-22)
Date: March 24, 2009

This memorandum is to waive, under the authority of CDC 29.120(B), the submittal requirement of CDC 29.110(C)(3) and (4) of the former Tualatin River Protection chapter under which this application (MIS-08-22) is vested. The sections in question are (3) grading and (4) architectural drawings.

Certainly grading and architectural plans are appropriate when the house is to be built adjacent to the river and its design has a visual physical impact on the river. It would also be relevant if the house was in the floodplain. In that case, a floodproof design would have to be proposed and a separate flood management permit applied for. Those conditions do not exist at this site.

I find that this house will be constructed on a legal existing lot of record at the furthest reasonable distance from the river (200 feet) at a location well screened by trees on the City owned parcel and trees on the applicant's property. The house footprint will also be 45 feet from or above the 1996 flood elevations and 65 feet from or above the 100 year flood elevations. No floodproof design is needed.

As submitted, the information provided in this application will allow full and comprehensive determination as to whether or not the approval criteria of this chapter (CDC 29.060) will be met. The approval criterion is reprinted below to demonstrate the inapplicability of grading and architectural plans in this case:

29.070 SETBACK REQUIREMENT AND EXCEPTIONS

- A. *All structures and non-water oriented accessory structures shall only be allowed at an elevation above the 100-year flood plain elevation of the Tualatin River as established by the Corps of Engineers.*
- B. *The following exceptions shall apply.*
 - I. *Residential lots of record which have a lot depth which precludes compliance with the setback standards of this section, shall be exempt from the strict application of these*

standards. Such structures shall be set back the maximum practicable distance.

2. *Water dependent commercial and industrial uses and such uses as private boat docks, marinas, or boat ramps shall be exempt from the setback requirements.*
3. *Additions to existing structures which are located closer than the setback requirements of this section shall be permitted.*
4. *Public uses, such as bridges for public roads, shall be allowed within the setbacks stated in this section provided that adverse impacts are mitigated.*

29.080

VEGETATIVE PRESERVATION REQUIREMENTS AND EXCEPTIONS

- A. *A buffer or filter strip of existing vegetation shall be preserved along the Tualatin River for the area between the mean low water line and the mean high water line, and within the 100-year flood plain.*
- B. *Areas that are to be protected shall be dedicated to the City by deeding the land title to the City or 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 or other means which shall serve to protect the resource to City standards. Protective easements are not preferred because resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Protected areas shall be clearly identified with City approved permanent markers at all boundary direction changes and at 30- to 50-foot*

intervals which clearly delineate the extend of the protected area.

(ORD. 1442)

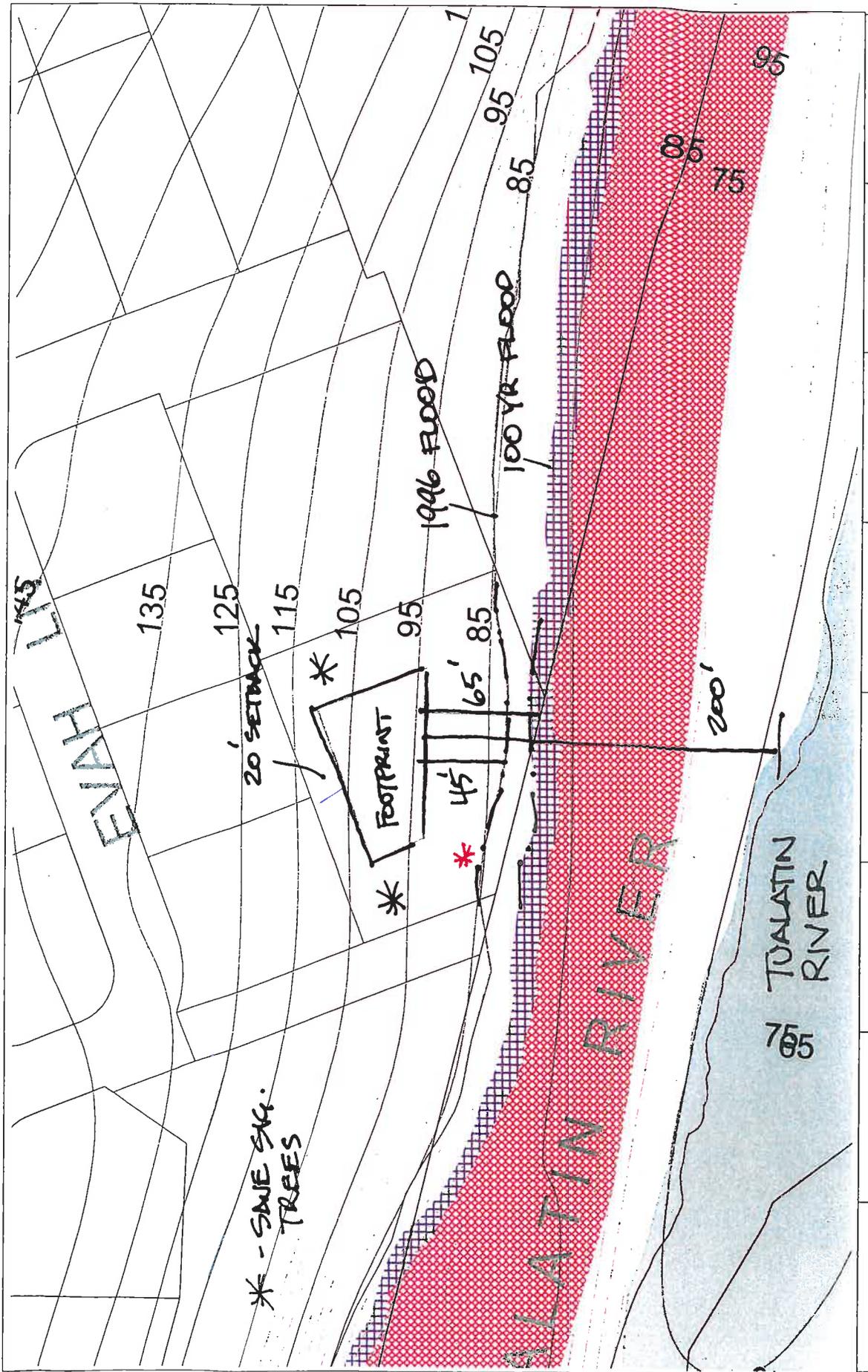
C. *Exceptions to the width of the buffer or filter area may be granted as part of the approval process based on the following standards:*

1. *The character and size of the proposed development and its potential for adverse impacts on the river is minimal and, therefore, the buffer area may be reduced.*
2. *The topography of the area will act as a buffer.*
3. *The type and density of the existing vegetation is such that the width of the buffer may be reduced.*
4. *The type and stability of the soils will preclude erosion.*

D. *Vegetative improvements to areas within the Tualatin Protection Area may be required if the site is found to be in an unhealthy or disturbed state. "Unhealthy or disturbed" includes those sites that are heavily populated by exotic or non-indigenous species, areas overgrown with invasive plants, and soil stabilizing groundcovers. "Vegetative improvements" consist of submitting a plan which calls for removal of non-indigenous, exotic, or invasive species which will be replaced by plant species in a manner to be approved by the City Parks Director and consistent with the purposes of Chapter 30. Once approved, the applicant is responsible for implementing the plan prior to final inspection.*

(ORD. 1382)

E. *The existing vegetation may be removed provided it is replaced by comparable vegetation.*

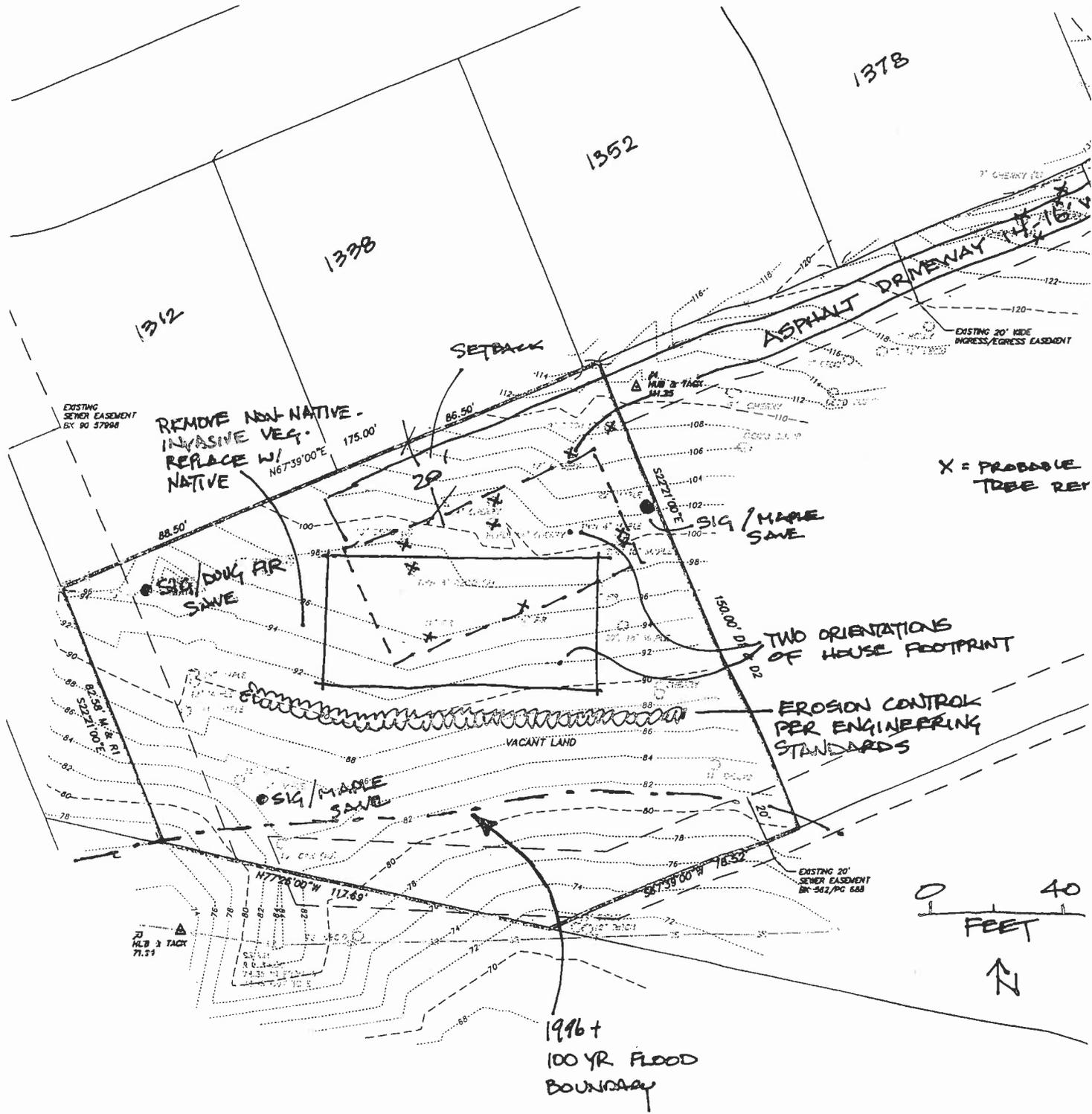


* - SAVE SKY TREES

Scale: 098 Feet

City of West Linn GIS (Geographic Information System), SnapMap Date: 3/25/2009

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Scale: 0.53 Feet

GENERALIZED
FOOTPRINT OF
HOUSE

City of West Linn GIS (Geographic Information System), SnapMap Date: 3/17/2009

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Scale: 114 Feet

FLOOD BOUNDARIES

City of West Linn GIS (Geographic Information System), SnapMap Date: 3/17/2009

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Spir, Peter

From: Spir, Peter
Sent: Monday, March 23, 2009 7:32 AM
To: 'Mike & Anne Goetze'
Subject: RE: File No. Misc-08-22

Mr. and Mrs. Goetze:

The easement that will provide access to the property goes from the end of Evah Lane adjacent to your house and travels along a 20 foot wide corridor across the lot below your property before it terminates on the applicant's property further west below 1312 and 1338 Evah Lane.

That means that vehicles will be building and using a driveway just beyond your rear property line to access the house. Both the driveway and house are scooted as far up on the applicant's site as possible towards the northeast corner to help keep development away from the Tualatin River, habitat areas and the 100 year floodplain. The 100 year floodplain cuts across the bottom 20 feet of the applicant's property.

The applicant has proposed that the house will be one story tall with a daylight basement/floor tucked underneath. The maximum allowable height of a single family home is 35 as measured to the peak of the roof from the grade at the front/uphill side of the house. Most single story homes however only measure 21-27 feet to peak of roof. The applicant has proposed this lower profile house presumably in part to be deferential to the neighbors above however I must point out that there is nothing in the development code that guarantees view protection. Because your property is east of the applicant's property the construction of the home should have only peripheral impact upon your current views downhill towards the river.

This property was originally proposed to be divided in two with two single family homes.

The applicant has dropped that minor partition plan and proposes instead to use the existing lot of record for one home.

I think that is a better idea and so does the applicant.

A second application was the Tualatin River Protection permit.

Land use applications are reviewed based on the codes that were in effect at the time the application was applied for. (It is intended to help avoid the "moving goal posts" syndrome)

Because this application was applied for on October 30, 2009 the existing language of CDC Chapter 29 applies and not the new code amendments relating to the Willamette and Tualatin River which came into effect a month later. Thus the applicant is **vested** under the code in place at the time of the original application. I have a copy of the old code language for you to review.

Re: trees the city arborist visited the site and identified about three trees as significant particularly the big Douglas fir at the north west corner of the site. The plan is to protect these trees.

Trees within the footprint of the house and along the 16 foot wide paved driveway will be removed. As stated, the main changes will occur below 1312 and 1338 Evah Lane (Malolepsy and Bays homes). From their homes the short range views will be altered to the extent that they will be looking down upon a roofscape. For them and all other properties, mid to long range views should remain unchanged preserving all the trees on the middle to lower portions of the site. The applicant is expected to remove non-native invasive plant material such as blackberries and replant with native material.

I will see if I can get the applicant to meet with me at the site some time next week (March 30-April 3) so you can also be there and discuss the proposal.

The applicant is a teacher and I believe she is able to be at the site after 1-2:30pm on most days... Please let me know what days work best for you.

Thanks
 Peter Spir
 Associate Planner

From: Mike & Anne Goetze [mailto:mjgoetze@comcast.net]

3/23/2009

20

Sent: Friday, March 20, 2009 8:43 PM
To: Spir, Peter
Subject: File No. Misc-08-22

Peter,

We received the notification regarding the permit for Tax Lot 3801 and are very interested in more details about the plans for that space. We will be out of town next week, but will have e-mail access. Are there any documents you could e-mail to us?

Specially, we would like as much information as possible regarding the easement behind our house and how the new house will be situated, how many trees will be removed and how high it will be.

The area in question, as well as the area behind our property clearly is habit to many natural species as well as protection for the waterway. We consider it very important that any development disrupt this treasured area as little as possible.

I will review Chapter 29 of the Community Development Code. What does it mean for the application to be vested under the code?

Thank you for any information you can provide.

Anne and Mike Goetze
1378 Evah Lane



Scale: 063 Feet

City of West Linn GIS (Geographic Information System), SnapMap Date: 3/23/2009

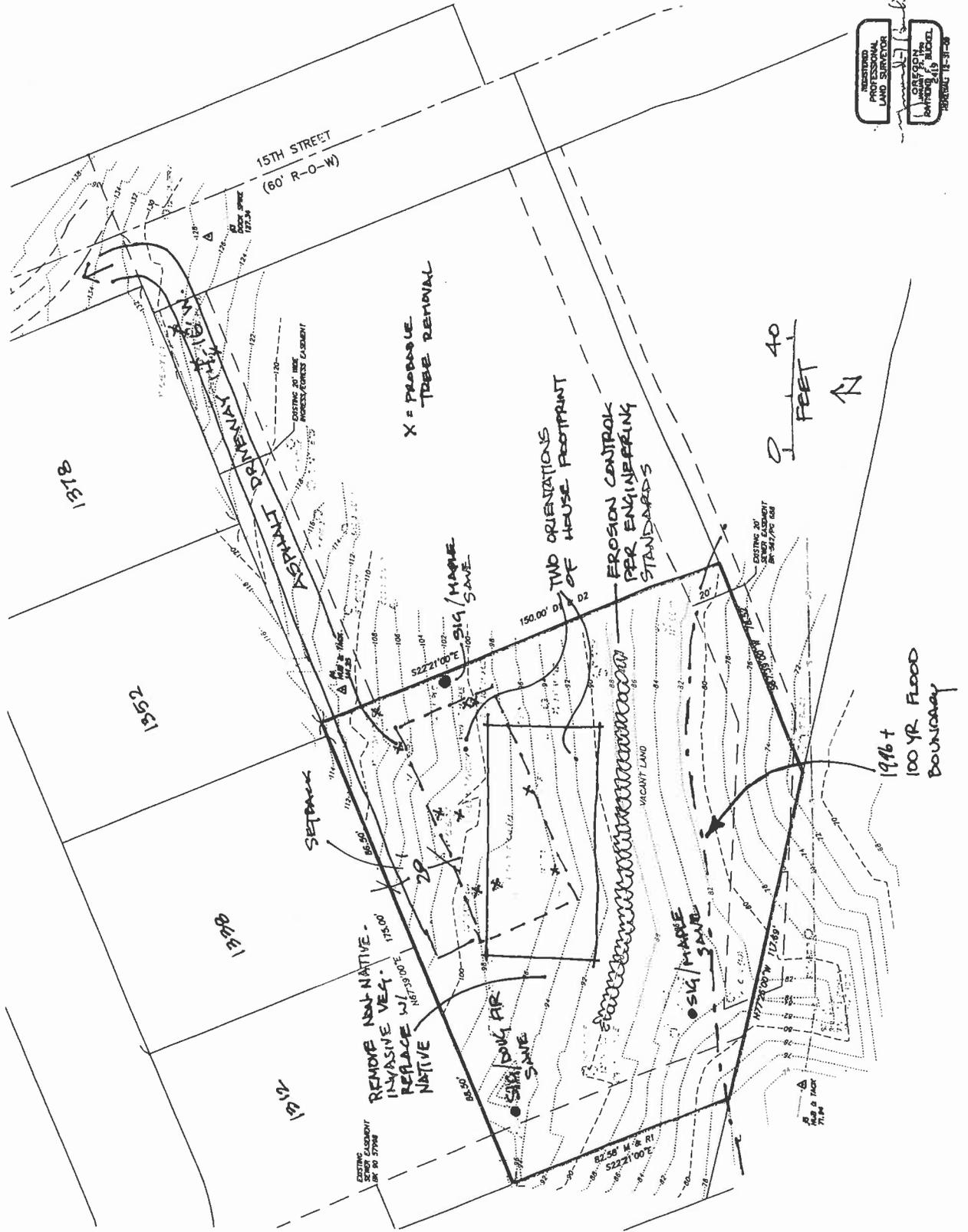
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Scale: 114 Feet

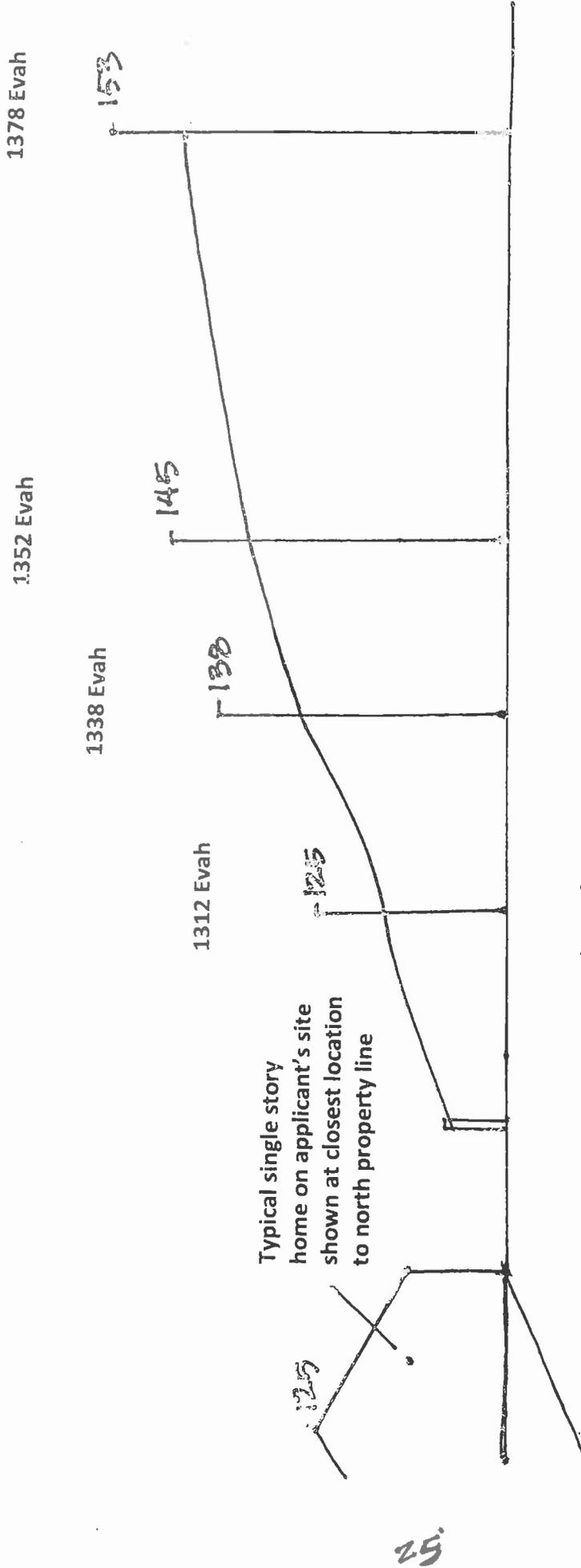
City of West Linn GIS (Geographic Information System), SnapMap Date: 3/17/2009

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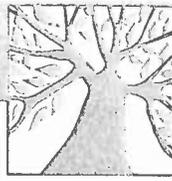


REGISTERED
PROFESSIONAL
LAND SURVEYOR
STATE OF MICHIGAN
No. 2419
BIRMINGHAM, ALA.
BIRMINGHAM, ALA.

ELEVATIONS AND LINES OF SIGHT



Lines of sight from homes on Evah Lane. Figure shows elevation of homes on Evah Lane at point 10 feet above grade. Most view windows are more than 10 feet above grade. (Please note that CDC Ch 29 does not protect views or lines of sight)



CITY OF
West Linn

CS

March 17, 2009

Kathleen and John Kreitzburg
3590 NE Hancock St.
Portland, OR. 97212

SUBJECT: MIS-08-22

Dear Mr. and Mrs. Kreitzburg:

The Planning Department finds that your Tualatin River Protection permit application is complete on March 17, 2009 based on your re-submittal of the same date. Pursuant to Oregon Revised Statutes Chapter 227.178, the city is obliged to exhaust all local review in 120 days by July 15, 2009, including any potential appeal of the director's decision to the West Linn City Council.

It is noted that the companion minor partition proposal to create two lots at this site has been withdrawn.

A public notice describing your proposal will be mailed to property owners within 100 feet of the property boundary, allowing for a 10-day comment period. The Planning Director will then issue an administrative decision on your application. If you have any questions, it is best to e-mail at pspir@westlinnoregon.gov, alternately, you may call me at 503-723-2539.

Sincerely,

Peter Spir
Associate Planner

p:/devrvw/completeness check/compl-MIS-08-22-tualatin river

Mr. O'Brien

Thanks for your e-mail.

To access the lot being developed in this application, the applicant must rely upon a 20 foot wide ingress/egress easement across the adjacent property you own (tax lot 3800).

They will be required to construct a driveway that meets not only West Linn's standards but also satisfies TVFR. Typically TVFR has the more stringent requirements but it is my understanding that so long two of the three following requirements are met: (1) a hydrant is provided, (2) the house is sprinklered and a (3) turnaround per their specs- then TVFR will agree to the proposal. Of course the driveway must be at least 12-14 feet wide and paved. To accommodate the driveway I agree with you that a retaining wall may be required.

These improvements should work to your advantage too, in that it will make your lot 3800 much more attractive to prospective purchasers or for your own personal use.

Regarding a master plan, the concern was that the area would be carved up into multiple lots (possibly six additional lots) and there needed to be a coherent overall plan. With current land use regulations and development patterns, the multiple lot scenario is unlikely.

In this case, no partition is proposed. They are simply proposing access to a legal existing buildable lot, much like your tax lot 3800. If you want to market or use 3800 in the future you should expect similar support from us.

Development of tax lot 4001 at 1236 14th Street might allow one additional lot with access either from 14th or Evah Lane. A minor partition would be required in that case and I would be happy to work with you on any such plans.

Peter Spir
Associate Planner

From: PRO'BRIEN [mailto:pat@oblcc.com]
Sent: Thursday, April 02, 2009 5:15 PM
To: Spir, Peter
Subject: File No. Misc-08-22

Peter, As you know I am part owner of the property at 1236 14th st. Although I understand that this lot is "buildable", I am concerned about the access. The current easement has been encroached upon by the Eva Lane Properties to the point that I do not think the easement is suitable for driveway and fire truck access without extensive retaining wall improvement. I have not been approached about granting more easement but would not be inclined to do so, if asked.

Several years ago I inquired about partitioning our property and I think you told me that I need a master plan for the entire parcel before you would consider such a thing. I am a little surprised that an attempt was not made to provide a better access plan for the property in question by developing a master plan for the adjoining properties. Maybe this is not required but I think that the folks considering this development could benefit from better access to their property of such a plan was developed.

Patrick R. O'Brien
O'Brien Constructors, LLC
Office: 503.241.2875 Ext. 17
Cell: 971.219.5423
E-mail: pat@oblcc.com