



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

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

July 19, 2010

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

**Re: City of West Linn File No. AP-10-01; Additional Evidence to be Submitted at Evidentiary Hearing before the City Council**

Dear Mayor Kovash and Members of the City Council:

This office represents the applicants, Troy and Gina Bundy. Please find enclosed with this letter the following documents:

1. A letter from Mark and Carol Gronwold of 1307 9th Street, West Linn, Oregon 97068 supporting the applicants.
2. A five (5) page affidavit signed by Gina Bundy and a six (6) page affidavit from Troy Bundy (unsigned).
3. Fifteen (15) copies of "Wetland Determination and Delineation Map".
4. Three (3) pages from your 2000 wetland delineation report by AKS.
5. Fifteen (15) copies of Partition Plat 2001-120 that created the parcel on which the Bundys reside.

The City Council should note that the handwritten comments on attachment 4 are those of Oregon Department of State Lands (at that time Oregon Division of State Lands) ("DSL") Dana Field who reviewed the AKS report. Data points 7 and 11 in the report are on the Bundy parcel. You will note that ASK concluded that data points 7 and 11 were upland habitat, whereas the other data points north and west of the Bundy property in the Portland General Electric right-of-way were indicated by AKS to show evidence of a wetland. Thus, the City agreed that the Bundy property is upland, not wetlands, and protected only the very extreme edge of the

73108-0001/LEGAL18766931.1

Mayor John Kovash  
July 19, 2010  
Page 2

property and the Portland General Electric property. However, DSL responded to data points 2 and 4 (located in the Portland General Electric right-of-way with the comment "nope" (for data point 2) regarding the delineations conclusion that the soil indicated prolonged saturation, and for data point 1 that "soil characteristics indicate that there are saturated and/or inundated soil for prolonged periods".

In other words, DSL questioned the results of the delineation for the area that the City accepted as a delineated wetland. In fact, notwithstanding the City's reliance on the wetland, the cover page of the AKS wetland determination delineation report indicates that it was rejected by DSL. Thus, while none of the data points for the Bundys' property show the presence of wetlands, DSL rejected the delineation report (and neither the City nor the applicant ever followed up on it) and specifically questioned the findings relating to the presence of wetland soils.

I am placing this letter and its attachments before you and ask that they be placed in the official Planning Department file for this applicant.

Very truly yours,



Michael C. Robinson

MCR:sv

Enclosures

cc: Mr. and Mrs. Troy Bundy (via U.S. Mail) (w/encls.)  
Mr. Jason Clinch (via U.S. Mail) (w/encls.)

Hi Neighbors,

My name is Carol Gronvold I own Morrows Flowers and live at  
1307 9<sup>th</sup> st. I hope all went in your favor at the hearing.  
Having a pool in your own yard will not endanger one plant  
Or animal even if drained into the protected area. These  
Environmental laws are insane and destroying peoples  
Livelihoods. We just sprayed crossbow on the blackberries trying  
To climb over our easement on the neighboring PGE property.  
Should I just let it go and ruin my property value because  
It's natural? Keep having fun enjoying your pool.

We support your family 100%.

Mark & Carol Gronvold

I, Gina Bundy, having sworn to tell the truth, do hereby declare as follows:

1. I reside at 1215 9<sup>th</sup> Street, West Linn, Oregon.
2. I have lived there since 2003 with my husband, Troy Bundy. I have a 9 year old son, Logan, and a 5 year old son, Cole.
3. I have applied for a hardship permit allowing the construction of my pool and patio. The permit was denied, and I have filed this appeal for the sole purpose of preserving my back yard as it sits today.
4. It has always been my intention to work with DSL and the Army Corps of Engineers in remedying the situation involving work done on the PGE property located to the rear of my home. That land was always on a higher elevation than our back yard. I agree that our home inspector suggested we build that area up to assist with drainage. We did not ever change the elevation of our yard. The PGE area was a hazard due to the fact that it had been used as a construction dump site at some time before we owned our home. It was full of various construction debris and two large piles of gravel/fill on the lot as well. I watched my husband and others clear the site over the years. Our sons would play back there and find dangerous objects (rusty metal/nails/broken glass, etc.)
5. When we moved into the home in 2003, there was a pre-existing spillway at the rear of the property. We never changed the depth of, not did we excavate that spillway and I do not know when it came into existence.
6. In 2003, I consulted with multiple landscapers including Dave Zimmerman with Terra-Sol Landscaping. Several of the bids included a recommendation for installation of a drain in the rear corner of the property to allow some of the surface water to drain from the channel and prevent the formation of mud puddles/standing water within our backyard. Mr. Zimmerman seemed the most knowledgeable regarding our specific piece of property, and I discovered that several months prior, he was the hired landscaper for the neighbor's yard. He had placed a french drain at the rear of their property, that helped alleviate surface water collection. After the landscaping was complete, through the seasons, we realized that the drains did not work well, but it helped with the immediate surrounding area and during major rain storms. A couple years later, the neighbors on the opposite side (Evans property) hired Mr. Zimmerman to help reconstruct their backyard, in hopes of alleviating the water issues they had experienced.
7. Prior to the Fall of 2008, we decided that we would like to install a swimming pool for our family and friends, and we began looking into the process/costs. I spoke at length with John Nomie, Permit Director for City of West Linn, regarding the possibility of constructing a pool in our backyard. While on the phone with him, he looked up the aerial photo of our property and asked where we would place the pool (Front or Back). I informed him that we would be placing the pool within the pre-landscaped area in the

backyard. He noted the neighbor's shed (Evans) and the other neighbors' play structure (Walkers). I stated that the pool would be no further out than the play structure nor the shed. He stated that he did not foresee any problems with the permit being approved, as long as I could get the application to him within one year. He stated that the reason for this would be to allow us to be grandfathered in for the measure 32.

8. In addition to our savings, in March 2009, we opted to refinance the house and take out some improvement funds for the construction of a pool. The approval process took a couple of months. In mid June, I started calling several pool builders, both plaster and vinyl companies. The bids I was receiving over the phone seemed exceptionally higher than anticipated. I called John Nomie to discuss the pool application with him. I informed him about the pool bids I was receiving. He had asked if they were for plaster or fiberglass pools. I explained to him that they were for both, but after hearing some of the issues with fiberglass, I was leaning towards plaster. He could not believe the estimates I was receiving and pulled a few pool permits issued within the last year. He gave me the names of the contractors and their stated bids on the pool applications. Anderson Poolworks was one of the names John Nomie gave me.

9. After talking with Dana Anderson, Anderson Poolworks, we quickly learned he was the right contractor for our backyard pool. I explained to Dana my conversations with John Nomie and the information he had previously shared with me. After applying for our pool permit, Dana Anderson, of Anderson Pools, met with the City and discussed the application that was submitted for their approval. I was unable to attend the meeting in person. Immediately following Dana Anderson stopped by our house to discuss the details. He stated that everything went well and there were no expected hiccups. An hour later I showed up at city hall to bring coffee and pastries, which I had gotten for the earlier meeting. John Nomie met me at the desk and reassured me that everything went well during the meeting and he would call as soon as the permit was ready to be picked up. Based on this information, my husband and I decided to pay our \$12,000 pool deposit to Anderson Pools.

10. I had been in contact with John Nomie almost daily since the application was submitted. At one point he mentioned he would be off for a couple of days and offered for me to call him on his personal cell if I were to have any questions or problems. The number he provided me with 971-563-0180. Prior to leaving, he stated he would find out where in the process it was and what might be pending. I was told that a couple of the key city planners were on vacation, and the temporary staff was trying to determine the language as written in the set back/ water resource area. I was assured that everything was fine, but may have to wait until the staff returns from vacation. Sometime around the middle of July, John Nomie called me to tell me that he did not know why he ever told me that my permit would be approved. He was really sorry that they had denied it. He stated that everyone in the department wants us to have the pool and were trying to figure a way around the wordage, but at this time were unable. I became very tearful during our conversation. John informed me that if we appealed and went through the process, we would be approved. He stated the only hold up was that this process could take a couple of months, and that it would be in the winter climate that we would receive the permit.

Both of us recognized that this would not be an opportune time to dig and plaster an in ground pool. I asked how long the permit would be good for if we continued down this path, he informed me that it would be valid for six months. At that point, it brought the time line into early spring of 2010. I asked him how it was that all these other people put up sheds, buildings, motorbike tracks in or near wetland without any problems. He told me that most of the time people do not seek permits, and if they get caught that in the history of West Linn nothing has ever been asked to be removed. That people have to pay an after the fact fee for a permit. Prior to getting off the phone, he mentioned a possibility of getting things done sooner. John Nomie told me that we could try appealing to the Mayor. I thought he said that she had the authority to overturn the planning departments decisions. He was unsure if this could work, but it was worth trying. He gave me her email address and some direction of how to word the letter.

11. John Nomie continued to send me emails with information to relay to the mayor, things that we should mention in our letter. I forwarded these emails and instructions to my husband, in hopes of helping him formulate the letter. I called John a couple of times during the letter writing process to clarify or ask questions, which he would provide informative information. When the letter was complete I asked John if he would review it for accuracy and recommendations; he agreed. I sent the letter via email to John Nomie. I called to ensure that he received the email. He stated that he had and joked that my husband was obviously an attorney, based on the language. He told me that he had made a few corrections to the document, but all in all it was well written and ready to go. I forwarded the email to my husband, with the suggested corrections. That email is included in these submissions. The letter was sent to former Mayor Patty Galle on Wednesday.

12. Thursday, July 16, I called John Nomie, to ask if anything had happened with the mayor. At this point, Troy nor I received any confirmation back from her. John told me that she had in fact been down to city planning and had spoken with a couple of people in the department regarding our issue. He stated that she was inquiring why we were not allowed to have the pool and how she could help move the process along in a favorable way. I asked John if this was good or not. He expressed that it was good, they did not always see the Mayor in their department. That she had obviously seen the letter and was trying to help them, help us get the approval for the permit. I called my husband and told him the news.

13. The next day, Mayor Galle called my husband at home in the evening. She asked me about the situation and stated she would check into it and let me know what happened.

13. That Sunday afternoon, Mayor Galle came to our home and examined the area behind our home, stating that there was no reason why we could not have a pool. She then said that the Code that was giving us problems was in the process of being amended "in October" because it was far too burdensome on residents/taxpayers. She asked if we had spoken to our neighbors about the pool. I told her we had, and there were no objections. She told us that she had a pool in her backyard while growing up, that she

understood the reasons for us wanting one. She told us if the neighbors agreed, then she saw no problem with the pool. Her words to us were: "Go ahead and put in your pool. Do not go through the city, you do not need a permit. If anyone has any questions about it, have them call me directly." She gave us her personal number. Prior to leaving she looked around the surrounding area and stated that there seemed to be a lot of "hummm uhmms" done with other properties. She reiterated the fact that in the history of West Linn, after a complaint was filed, nothing had been asked to be removed.

14. We then called our contractor and told him about these events. He consulted with his lawyer and also called Chris, West Linn City Planning Department. He was informed that they were all really working on a solution for us to have the pool, they would be able to make it happen during the review process. We went forward on the basis that the Code would be removed or amended, and our hardship permit would be accepted as long as we passed inspection. During construction of the pool, we obtained the County electrical permit, had the concrete professionally inspected, and had the gas company inspection. Everything passed inspection.

15. Late October, I called and spoke with John Nomie about a potential complaint by my neighbors regarding the pool. He informed me that they had called and stated that they wanted a fence on their property. He informed them that they would have to go through the same process we did for the pool, they would need to apply for the permit.

16. A couple days later, John Nomie called and asked if the pool was in. I confirmed it was already in. He immediately reassured me that everything was okay, but this changes things for the permit. This was now an after the fact permit. I told John the whole story with the mayor. I asked him not to tell anyone about our conversation. He told me that he needed to, that it was not anything I did wrong, but more of what the mayor did. Later that afternoon, he called me back and told me that he spoke with John and Chris regarding the incident with the mayor and they were all going to choose to ignore the comments made regarding the mayor. John said, "We are going to pretend like the mayor did not tell you to install the pool without a permit. We all like our jobs too much, we do not want to get involved with that mess." He told me that they were trying to decide what to do regarding the permit situation, to apply or just leave it alone.

17. John Nomie and I spoke several times over the course of a week. He told me that he received a call from our neighbor asking about the complaint of safety regarding their children and our pool. John told me that he mentioned to them about how funny safety was with kids. That he had told his grandson multiple times not to climb the shed he built out back. Despite those multiple attempts of telling his grandson about the dangers of the shed, he still climbed it. John told me that they quickly addressed the analogy by recognizing it was because they had a shed. John said that they told him, they do have a shed and it did not have a permit.

18. Several days later, John called me and asked me to guess who was up there painting me in a bad light. He stated that my neighbor was up there as we spoke talking with Peter. That I should hear the things she is saying and accusing me of. He said I know

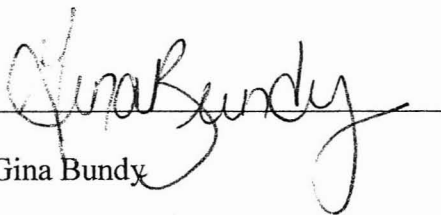
the statements are not true, but she trying to be pretty convincing to Peter about our disregard for safety and what we did to the wetland behind our house. He told me he would talk with Peter and get his take on things and call me back.

19. I called John a couple days later to inquire as their decision about applying for a permit. He told me at that time not to apply for the permit.

21. November 4, 2009 Peter Spir came to the house to look at the neighbors' fence and our yard. He took some pictures and asked some questions about the pool and surrounding area. I went inside and called John Nomie immediately to find out what was going on. He told me that Peter was out there to see what all was really going on and to see the fence the neighbors constructed. John also informed me during that conversation that the City was comparing us to an incident that occurred in the Rosemont area near Tanner Creek, where a lady had removed native wetland plants and restored the area to a beautiful garden. That apparently she had really created this beautiful garden, not on her property and some of the neighbors complained. My husband and I looked up the area and noticed that the situations were in fact not similar at all. I expressed my concern to John and asked if they were going to make us take out the pool? John assured me that they would not make us take out the pool, they were just trying to figure out how to handle the situation.

22. After considering the situation, we decided we should just go ahead and get the hardship exception. We thought it would be better for everyone involved. John Nomie said he would look over the hardship letter my husband prepared, and he did. He wrote an email back stating that it "looked like it covered all the bases." We thought it should go fine. It would just mean more fees and inspections.

23. Since that time, we have been dealing with false accusations and people who are simply covering for themselves, lying about conversations we had, and trying to create more stress and hardship for us. This pool was an investment of our savings. It was for our children and neighbors to enjoy in hopes of bringing together our community.

  
Gina Bundy



I, Troy Bundy, having sworn to tell the truth, do hereby declare as follows:

1. I reside at 1215 9<sup>th</sup> Street, West Linn, Oregon.
2. I have lived there since 2003 with my wife, Gina Bundy. I have a 9 year old son, Logan, and a 5 year old son, Cole.
3. I have applied for a permit allowing the construction of my pool and patio. The permit was denied, and I have filed this appeal for the sole purpose of preserving my back yard as it sits today.
4. It has always been my intention to work with DSL and the Army Corps of Engineers in remedying the situation involving work done on the PGE property located to the rear of my home, and the matter has been resolved with those agencies. That land was always on a higher elevation than our back yard. In fact, our home inspector suggested we build our back yard higher to assist with drainage. We never bothered to do that. The PGE area behind our property was a hazard due to the fact that it had been used as a construction dump site at some time before I owned my home. It was full of various construction debris as well as engine parts, rusty gas cans, boards, broken glass, nails etc. There were two large piles of gravel/fill on the lot as well, located in the north corner of the PGE property.

As I stated in my earlier submission, and has now been confirmed by PGE, in the Spring of 2008, a large cottonwood tree uprooted and fell across the spillway and onto my fountain. I called PGE and spoke with someone in landscaping about it. I wanted them to remove the tree. I was told at that time that "its better if you remove it and then just ask for forgiveness." I responded that he didn't get my point. I wanted PGE to remove it. He then said "what for?" I said: "your tree fell in my yard and damaged my property." He said: "What do you mean MY tree?" I informed him that the land was owned by PGE and the tree fell over from that area. He informed me that "PGE doesn't own any land over there." I disagreed and he said he would look into in. Approximately one week later, he called me back and informed me that I was right, and he could get someone over in a couple weeks. When the crew showed up, I asked them if they would go ahead and remove that construction debris while they were at it. It was a hazard and my kids were playing back there around the nails and other sharp pieces of metal. Their response was that, if it doesn't interfere with the power lines or my property, it was not a "priority." I then stated that: "Well, what if I go back there and remove it?" The response was "More power to you. Just don't plant or remove any trees and don't run any equipment under those wires. Otherwise, you need a permit." When no one showed up to do the work for over a year, I assumed they were never coming back.

5. When we moved into the home in 2003, there was a pre-existing spillway at the rear of the property. I did not dig or excavate that spillway and I do not know when it came into existence. Our wetland biologist has since obtained aerial photographs of the property, however, indicating that the lot was "scalped" prior to construction of the home, which would be consistent with the elevation change observed between the PGE property and our lot.

6. In 2003, we consulted with a landscaper who recommended installation of a drain in the rear corner of the property to allow some of the surface water to drain from the transition area and prevent the formation of mud puddles/standing water. It did not work well, but it helped with the immediate surrounding area and during major rain storms. I have attached that receipt to this affidavit.

7. In 2007, we decided that we would like to install a swimming pool for our family and friends, and we began looking into the process/costs. My wife carried on a number of conversations with the City of West Linn at that time about what was required. She told me she spoke with someone in charge of the permits up there. I later learned that his name was John Nomie. He provided what I thought was helpful advice and instruction about the process. We began saving money for the pool at this time based upon the conversations she had with him.

8. In July, 2009, we secured the services of a pool contractor who agreed to put the pool in at a price we thought was within our budget. Our pool contractor met with the City and discussed this. My wife knows more about this part of the facts because I was not there. But, my understanding was that everything "looked good," and so we paid our \$12,000 pool deposit.

9. Later that week, our contractor informed us that there was a problem because of a wetland set-back. My wife later informed me that John Nomie told her over the phone that our permit was denied. We never received a written determination or confirmation concerning this fact.

10. That night, I called my father, who is an architect in Colorado and asked him what could be done. He then called the City and spoke with someone about the Code. They pointed him toward the hardship exception and told him that they "really wanted to make this work for us."

11. In the meantime, Gina had asked John Nomie what we could do. He told her that we should appeal to the Mayor. On that basis, I wrote up an email detailing the events and sent it to my wife. She then sent it to John Nomie at his request. His response is attached after he made changes to my original letter to her. That email is also attached.

12. The next day, the Mayor Galle called me at home in the evening. She asked me about the situation and stated she would check into it and let me know what happened. I believe we had one other phone call that was similar in nature.

13. That Saturday, Mayor Galle came to our home and examined the area behind our home, stating that there was no reason why we could not have a pool. She then said that the Code that was giving us problems was in the process of being amended "in October" because it was far too burdensome on residents/taxpayers. Her words to us were: "Go ahead and put in your pool. If anyone has any questions about it, have them call me directly." She gave us her personal number.

14. We then called our contractor and told him about these events. He consulted with his lawyer and it was on this basis that the pool construction went forward. During construction of the pool, we obtained the County electrical permit, had the concrete professionally inspected, and had the gas company inspection. Everything passed inspection.

15. Shortly after completion of the pool, my neighbors, the Evans, asked about an enclosure. I offered to put up a fence of their choice on an area that had been previously identified as an easement for my benefit on their property. I had previously landscaped and irrigated that section of the property. It is also where the original rear surface drain box is located. I also offered to lease that section of his property, which comprises approximately 315 square feet. The property actually lies directly behind our home, which is why we obtained the easement from the previous property owners in the first place. The Evans refused and suggested a trade of land. I considered it and we ultimately reached a tentative agreement until I discovered that our mortgagor would not allow the granting of that easement as a property line adjustment together with the fact that the Evans intended to construct a permanent structure on our land. It would be deemed a default on our home mortgage. In any event, the situation became untenable, and the Evans filed a complaint about the pool.

16. Shortly after this, John Nomie called my wife and asked if we had installed the pool. She responded that we had and we had done so with the consent of the Mayor. She asked if we should file another permit application, and he responded in the negative.

17. After a multitude of phone calls and John Nomie's uncertainty about filing for the permit, we decided we should just file the second application. Mr. Nomie reviewed my letter submission and stated that "it looked good" and "seemed to cover all the bases."

18. When I took the application up to City Hall, I gave it to Mr. Nomie. I asked him at that time if I should schedule a pre-application meeting. He told me, in no uncertain terms, that I did not need to do that since the pool was already installed. I paid the fee and he then proceeded to hold onto my application for three weeks. [Of note, I have learned that he claims to have informed me that our application was "incomplete." This is false. He said no such thing to me then or ever.

19. When our application was denied, I retained counsel to advise me about the situation. We met with Peter Spir and John Sonnen who told us it was the City's position that the pool and patio should be removed. I offered to "restore" the PGE land, pay penalty, buy wetland credits from a wetland bank, etc. We were told that it could not be done. That

is the reason for our appeal, despite Mr. Spir's mischaracterization of those facts on his multitude of public notices, which is quite unnerving given that he disclosed many photos of our home and property to the public which has made my wife and kids feel unsafe.

20. I have told Mr. Spir about the supposed "fill" seen in aerials from 2008, and provided photos of the site as it existed back then. The brown areas are dead grass, not fill.

I have provided photos of the spillway/transition area as it existed when I bought the home, which conclusively demonstrate that the spillway was always in existence. It is even documented on city maps. Yet, he continues to insist that I excavated it in 2008.

PGE confirmed my phone call from the Spring of 2008, yet he neglected to put this section of the correspondence in his staff report to the City Manager. He did this to twist the facts and provide less than truthful information to the City Manager.

When I saw how Mr. Spir added language to a second and even a third Notice to our neighbors, I asked him why he added this language, arguing that it was untrue. His response was "You appealed." Yet, he was present at the meeting with our attorney where we specifically told them the reason for our appeal was not about the PGE land.

My wife did internet research about our land and learned that the Portland Tribune and the Tidings published the notice. Is it common for the City to advertise in Portland newspapers? The Answer: No. The work order indicates publication in the Tidings. Why would he wish to publish false statements in the Tribune, if not to garner support for his private cause from the local wetland advocates in the metro area?

Mr. Spir wrote in his report that we installed a "fire pit" on the wetland. This is patently false, and I informed him of this without seeing any form of correction or acknowledgement of the falsity of this statement.

Mr. Spir previously relied on Bing aerial photos that he claimed were from 2009. However, the photo shows the condition of my neighbors land that has not been in existence since at least 2007. It is not known to me now whether he will use these photos at the hearing.

Mr. Spir claims in his report that the Oregon Fire Code does not apply to the CDC because it is not mentioned in the CDC. This is absurd. The OFC applies to all lands bordering residential communities. It is shocking that his response was as dismissive as it was as it relates to the safety of our family and homes.

Mr. Spir claims our patio is 1 foot from the wetland in his report to the City Manager (p13). This is false. Mr. Spir claims he is relying on the 2000 delineation and that the wetland extends into our yard 5 feet. This is also false. The delineated boundary lies on our property line.

Mr. Spir claims we "installed bridges" across the waterway. This is false. We purchased ornamental bridges from Costco for \$100, so that our children would not walk across the mud when they go out to play. They are not "installed" in anything. I demonstrated this for Mr. Spir personally, by lifting the bridges off the ground with two fingers. Still, he persists with his mischaracterizations.

Mr. Spir printed a personal email between my neighbor, Brian Evans, and I and made it public record. However, he initially failed to make the entire exchange public record in which Mr. Evans admits he was mistaken about statements he had made about the spillway and we ended the situation on good terms and as good neighbors once again.

Mr. Spir references the fact that the original drain was installed on the Evans' property. Thus, insinuating that we somehow stole our neighbor's land. What he fails to mention is that the drain was installed by agreement with the previous owners and with an easement which was secured at the time of purchase. The easement was never entered in the county records, but I have the documents and a common law easement does exist. There was never any issue with this because the land rests directly behind my home. Only when Mr. Evans, our new neighbor, wished to expand his garage space did it become an issue when he demanded a like kind exchange for the 315 square foot area.

Mr. Spir references test holes dug in 2000 on the north end of the property during a delineation. However, what he fails to mention is that those test holes lie completely outside the area in question and, in fact, lie in the front of the home in the open space area that is clearly a wetland, not in the rear of our home.

Mr. Spir relies upon a bogus map that outlines the wetland area in blue. The only problem with that is that the property lines, which were used to create the map, have been intentionally shifted, giving the illusion that the wetlands take up more of my property. The "error" is flagrant and obvious when the map is examined in total.

Mr. Spir writes in his correspondence to the City Manager that had we left the rear yard as it was when we moved in (p10), we would have minimized impacts. It is interesting that he now claims the entire yard must be returned to mud and weeds. This clearly demonstrates his punitive motivations.

Mr. Spir claims that the Army Corps of Engineers "will pursue enforcement" if the city declines to do so. (p19) This is patently false. In fact, their letter (which is an exhibit) states just the opposite, and we were informed that Mr. Spir was furious with this determination. The Corps did come to our back yard and was shocked that the city would take such an aggressive approach. In fact, the US ACE representative found it quite absurd, as has everyone we have been in contact with, including Senator Wyden. Moreover, the Army Corps stated this activity would have been permitted under the residential use exception, and they will issue a retroactive permit for the activity, again much to Mr. Spir's chagrin. On two occasions, Mr. Spir spoke for the Corps without authority, and on both occasions, he misrepresented their position. He was publicly chastised by the federal government representative for this unprofessional behavior.

Further, despite his assurances that he would correct his misstatements in the record, I have not seen any documentation suggesting he has even attempted to do so.

When confronted with the reality that these homes flood from below without the proper drainage, the City's response is "Well, you should have exercised better due diligence." Forget about the fact that the City never bothered to work with the DSL before they allowed the homes to be built in the first place and relied upon a wetland delineation that DSL did not accept. Where was the City's due diligence when it came to confirming these facts?

Mr. Spir made repeated assurances to me that we had received the entire city file relating to this matter pursuant to our request for disclosure under the Freedom of Information Act. After arguing with him over reportedly "Missing" pages, which he claimed were not missing (he claimed it was simply how the file was paginated), we subsequently learned that his representations were false. Our FOIA request was being denied in part based upon concerns that the materials could subject the City to liability and was privileged. No privilege log was ever produced. Moreover, for the record, I find it hard to believe there was so little communication between Mr. Sonnen and Mr. Spir about this matter in the way of email exchanges.

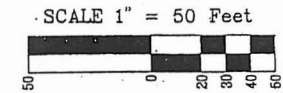
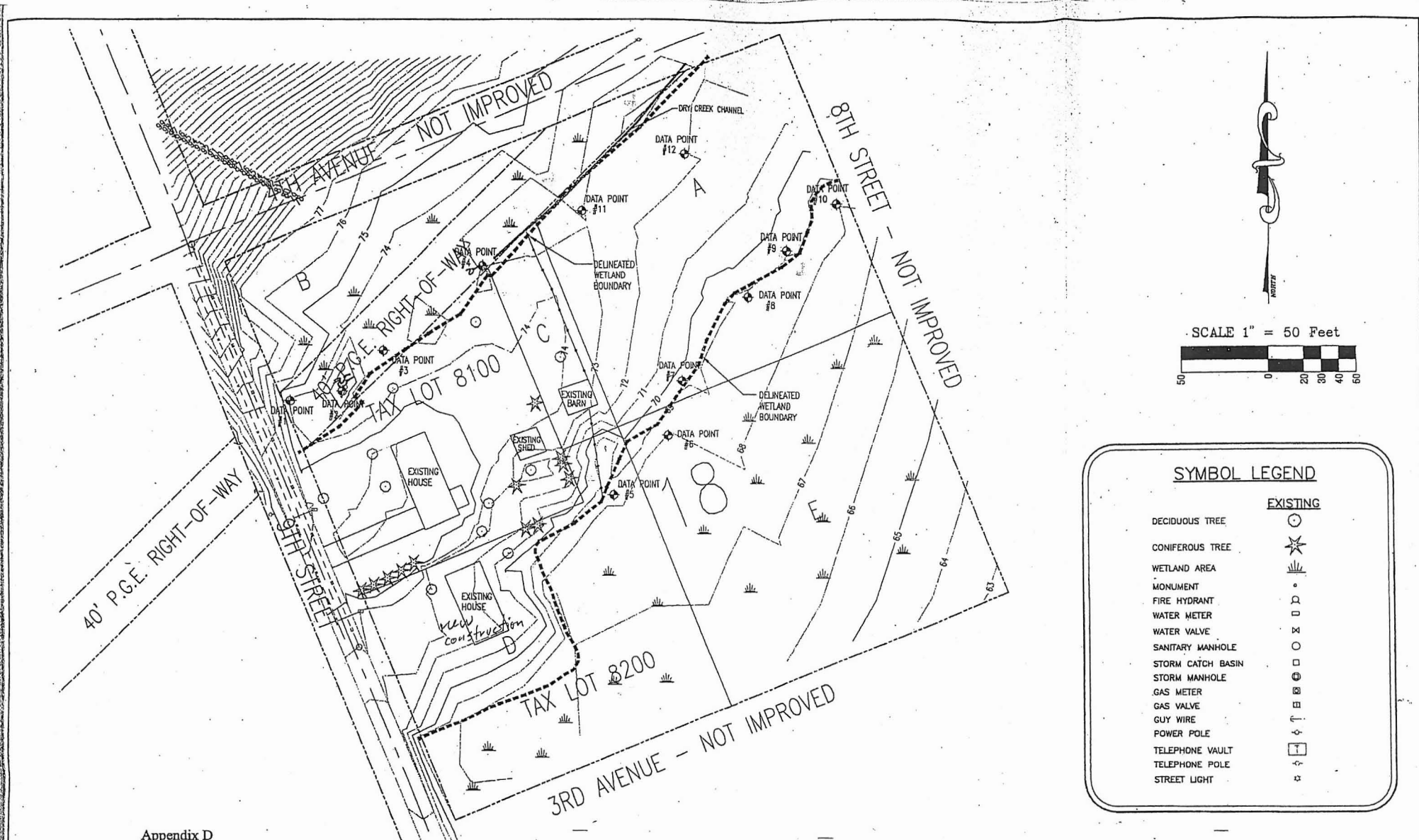
In addition to the half-truth Mr. Spir produced about PGE's "official position" in regard to this matter that he included in his staff report to the City Manager, Mr. Spir insisted that he did not request a statement or make inquiry with PGE about the matter. Yet, we contacted PGE and spoke with their representative who confirmed for us that Mr. Spir's representation about this was, once again, false. There had, indeed, been a letter of inquiry asking for PGE to make a statement in this regard. This letter has also, presumably, been withheld, since it is not part of the record.

We invested in this community and, like this City Council, continue to do so. Our masonry work was done by a West Linn resident. Our ironwork and fencing was done by a West Linn resident. Our landscaping and sprinkler work was done by West Linn companies. Our concrete, supplies and tile were all purchased through West Linn outlets and companies. We have spent nearly \$100,000 on this project and invested in this community, increasing property values for my surrounding neighbors who have signed declarations in support of this improvement. We spent personal funds to clean up a dangerous dump site sitting on land we did not even own.

We respectfully request this Council grant our hardship request under these unusual set of circumstances.

---

Troy S. Bundy



SYMBOL LEGEND	
EXISTING	
DECIDUOUS TREE	
CONIFEROUS TREE	
WETLAND AREA	
MONUMENT	
FIRE HYDRANT	
WATER METER	
WATER VALVE	
SANITARY MANHOLE	
STORM CATCH BASIN	
STORM MANHOLE	
GAS METER	
GAS VALVE	
GUY WIRE	
POWER POLE	
TELEPHONE VAULT	
TELEPHONE POLE	
STREET LIGHT	

Appendix D

REVISIONS:

**WETLAND DETERMINATION AND DELINEATION**



ENGINEERING - PLANNING - SURVEYING - FORESTRY  
 LICENSED IN OR, WA & AK  
 18961 SW 84TH AVENUE  
 TUALATIN, OR 97062  
 PHONE: (503) 692-5887 FAX: (503) 692-6437

DESIGNED BY:	DATE:	04/20/09
DRAWN BY:	SCALE:	AS NOTED
CHECKED BY:	DATE:	06/08/09
PREPARED FOR:	HARRIS REALTY 2008 WILLAMETTE FALLS DRIVE WEST LINN, OR 97068 503-657-1094	

**WEST LINN REPLAT**  
 WEST LINN  
 TDS-RE, MC 1/4 SECTION 2, W.M.  
 OREGON  
 TAX LOT 8100

JOB NUMBER	647
SHEET	1 OF 1

# PARTITION PLAT

A REPLAT OF PORTIONS OF LOTS A AND E, TRACT 18, WILLAMETTE AND TUALATIN TRACTS PLAT NO. 193 IN THE NE 1/4 OF SECTION 2, T3S, R1E, WILLAMETTE MERIDIAN, BEING A PART OF THE AMBROSE FIELDS DLC NO. 52, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON  
CITY PLANNING FILE NO. MIP-01-03

DATE: NOVEMBER 9, 2001

TRACT 62, WILLAMETTE TRACTS PLAT NO. 198  
4TH AVENUE - NOT IMPROVED

8TH STREET - NOT IMPROVED

9TH STREET - IMPROVED

3RD AVENUE - NOT IMPROVED

### LEGEND

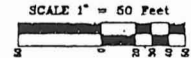
- △ SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." ON NOVEMBER 9, 2001
- FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." PER PS 29,249
- ⊙ FOUND MONUMENT AS NOTED
- S<sup>2</sup> SQUARE FOOT
- PS PROPERTY SURVEY
- (RECORDED) PS 29,249
- DOC. NO. DOCUMENT NUMBER
- PUE PUBLIC UTILITY EASEMENT

I DO HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

REGISTERED PROFESSIONAL LAND SURVEYOR

*Anthony C. Benthin*

OREGON  
ANTHONY C. BENTHIN  
2855  
EXPIRES 12/31/01



I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PRODUCT #51845A ON CONTINENTAL # JPC-642 POLYESTER FILM

PREPARED FOR  
SHERIDAN CLASSIC HOMES, LLC  
P.O. BOX 1268  
SHERWOOD, OR 97140

CC-122

Printed on recycled paper

JOB NAME: 9TH STREET MINOR PARTITION	
JOB LOCATION: NE 1/4 OF SECTION 2, T3S, R1E, W.M.	
DRAWN BY: DENNIS KEISTER	DATE DRAWN: AUGUST 2, 2001
CHECKED BY: TONY BENTHIN	DATE SURVEYED: NOVEMBER 9, 2001
DESIGNED BY:	REVISED:
DRAWING NO.: 744PLAT	SHEET 1 OF 2

ENGINEERING • PLANNING • SURVEYING • FORESTRY  
LICENSED IN OR & WA

13910 S.W. GALBREATH DR.  
SUITE 100  
SHERWOOD, OR 97140  
PHONE: (503) 925-8799  
FAX: (503) 925-8969  
E-MAIL: aks@aks-eng.com

P.P. 2001-120 31E02AB 0820108204

FILE COPY



WD#2000-0550  
Submitted 7/19/2010 CC Mtg  
(Rejected)

DIVISION OF STATE LANDS  
RECEIVED

200 OCT 31 P 1:58

# WETLAND DETERMINATION AND DELINEATION REPORT

**WEST LINN REPLAT**  
1233 S.W. 9<sup>th</sup> Street  
West Linn, Oregon 97068

Prepared by: AKS Engineering & Forestry  
18961 S.W. 84<sup>th</sup> Avenue  
Tualatin, Oregon 97062  
503-692-5887

Prepared for: Handris Realty  
2008 Willamette Falls Drive  
West Linn, Oregon 97068  
503-657-1094

sampling depths. The MUNSELL SOIL COLOR CHART provides a guide for classifying the three attributes of color: value, hue, and chroma.

## HYDROLOGY

Wetland hydrology is the force in which wetland habitats are created. They are characterized as having permanent or periodic inundation, or soil saturation during a significant portion of the growing season. Ponding and soil saturation for more than 5% of the growing season is direct evidence of wetland hydrology. Bare soil, dried algae, watermarks, and drift lines are evidence of periodic inundation. When some of these common positive indicators are present, wetland hydrology is assumed.

## RESULTS

Data Point #1 is located 20 feet from the edge of pavement on SW 9<sup>th</sup> St. in the PGE Right-of-Way. In this area, reed canary grass dominates in thick mats. Also present is Douglas spirea and Scouler willow. The soil test pit in the soft, moist Wapato silty clay loam revealed a layer in the A horizon of 7.5 YR <sup>2.5</sup>/<sub>1</sub>. Then from 12-24 inches, the soil transitions to a Gley 1 <sup>4</sup>/<sub>N</sub> with orange mottles (5YR <sup>5</sup>/<sub>8</sub>). No hydrology was observed at this time, however soil characteristics indicate that there is saturated and/or inundated soil for prolonged periods. This stop supports evidence of a wetland. (Figure 2)

Data Point #2 is located 37 feet to the east of DP #1. There too, reed canary grass dominates in thick mats. Himalayan blackberry, velvet grass, Pacific willow, and slough sedge were also in this area. This stop had 10YR <sup>3</sup>/<sub>1</sub> soil to a depth of 18 inches and then transitioned to 5Y <sup>4</sup>/<sub>1</sub> with 5Y <sup>6</sup>/<sub>4</sub> mottles. No hydrology was observed at this stop but the reduced state of the soil indicates prolonged saturation and/or inundation. These findings are consistent with the presence of a wetland. (Figure 3)

Data Point #3 is located 45 feet to the northeast of DP #2. Reed canary grass dominates. Also present are Nootka rose and Douglas spirea. There, the soils have low chroma values and some mottling. At 12 inches of depth, the soil is 2.5 YR <sup>3</sup>/<sub>1</sub>; and at 30 inches of depth, it is a 5Y <sup>4</sup>/<sub>1</sub> with 5% mottles. This stop is also absent of hydrology due to the dryer portion of the year. This stop supports evidence of a wetland.

Data Point #4 is located 90 feet to the northeast of DP #3. Reed canary grass again dominates with Himalayan blackberry. The soft, moist Wapato silty clay loam has a matrix color of 10YR <sup>3</sup>/<sub>1</sub> at 12 inches of depth. At a depth of 30 inches, the color transitions to a Gley 1 <sup>4</sup>/<sub>10Y</sub>. Additionally, a small dry creek channel is observed beneath the vegetation. The channel has bare soil free from leaf litter and drift lines. This stop supports evidence of a wetland. (Figure 4)

Data Point #5 is located 20 feet east of the eastern property corner of Tax Lot 8100. Reed canary grass dominates. Also present are Himalayan blackberry and small-fruited

data sheet says  
sat at 24

bulrush. The soft wet soil had a distinct sulfidic odor. The depth to free water within the test pit was 24 inches. These findings are consistent with the presence of a wetland.

Data Point #6 is located 60 feet to the northeast of DP #5. Here reed canary grass dominates with Himalayan blackberry. The depth to saturated soil was 18 inches. The soil's color was 10 YR <sup>3</sup>/<sub>1</sub>. At a depth of 18 inches some dark concretions were found. Most likely these are traces of manganese oxide. This stop supports existence of a wetland.

Data Point #7 is located 40 feet to the north of DP #6. This site is vegetated almost entirely by reed canary grass in thick mats and some Himalayan blackberry. The organic horizon of the soil, (depth 8 inches) was a silty loam 5YR <sup>3</sup>/<sub>3</sub>. At a depth of 18 inches, orange concretions (iron oxide) appeared in the 2.5 YR <sup>4</sup>/<sub>3</sub>. The soil transitioned to a sandy loam, Gley 1 <sup>5</sup>/<sub>5GY</sub> at the depth of 30 inches. No hydrology was observed and the soil conditions are not conclusive for evidence of a wetland. The chroma values were greater than 2 with the presence of mottles. Not all of the criteria were met. This stop is an upland habitat. (Figure 5)

Data Point #8 is located 75 feet northeast of DP#7. This stop is vegetated with reed canary grass, small-fruited bulrush, Himalayan blackberry, and red alder. The moist, sandy loam soil stayed consistent through a depth of 18 inches, 10 YR <sup>3</sup>/<sub>1</sub>. At a depth of 30 inches, the soil transitioned to a 2.5 Y <sup>4</sup>/<sub>1</sub> with some slight gleying. No hydrology was observed but the reduced state of the soil indicates prolonged saturation. This stop indicates the presence of a wetland.

may not  
infer  
hydrology

Data Point #9 is located 43 feet northeast of DP #8. There, vegetation consisted of a visible transition of reed canary grass to Himalayan blackberry, and giant horsetail. The dry, sandy loam was extremely hard and difficult to penetrate. The soil was consistent to a depth of 18 inches with color of 10 YR <sup>3</sup>/<sub>3</sub> and some tiny granules of iron oxide concretion (>2%). The ground surface under the blackberry vines was clean and absent of leaf litter. Not all criteria were met. This stop is an upland habitat.

?  
Data Point #10 is located 47 feet northeast of DP #9. There, reed canary grass dominates. Also present were Himalayan blackberry, skunk cabbage, and giant horsetail. At a depth of 12 inches, just below the organic horizon, some gleying was present (2.5 Y <sup>3</sup>/<sub>1</sub>). At a depth of 24 inches, the saturated soil transitioned to a Gley 2 <sup>3</sup>/<sub>5BG</sub> with some iron oxide concretions. Groundwater began to leach into the test pit at a depth of 18 inches. This stop supports evidence of a wetland. (Figure 6)

Data Point #11 is located 77 feet northeast of DP #4. Here the canopy cover is greater than 50% with red Alder and red currant. Also found was Himalayan blackberry. The soil was a dry, sandy loam with color 10YR <sup>3</sup>/<sub>2</sub>. This stop is an upland habitat.

Data Point #12 is located 80 feet northeast of DP #11. This stop is dominated by Himalayan blackberry. Also found were giant horsetail, reed canary grass, and a few

sparse tufts of soft rush. The dry, hard soil was consistent through a depth of 24 inches. The color was a 10 YR <sup>3</sup>/<sub>2</sub>. This stop is an upland habitat. (Figure 7)

### CONCLUSIONS

*tacking*  
On August 11, 2000, Matt Johnson (AKS) examined vegetation, soils, and hydrology on and near the property of 1233 S.W. 9<sup>th</sup> Street (Tax Lot 8100). It was determined that areas of wetland do exist along the northern boundary of this site as well as the and in the southeastern portion of Tax Lot 8200. At the time of the site inspection, some of these areas were absent of hydrology. However, soil characteristics indicate saturation and/or inundation during a significant portion of the growing season. The United States Army Corps of Engineers and the Oregon Division of State Lands are the final authority of concerning wetlands. This determination is subject to their confirmation.



Matt Johnson  
AKS Engineering & Forestry