

CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: Planning Commission

FROM: Jacob A. Graichen, AICP, City Planner

RE: Appeal AP.1.23 of Sensitive Lands Permit SL.2.23

DATE: April 6, 2021

This packet constitutes the items submitted to the record after the "live" public hearing on May 9, 2023.

The "record" consists of the following:

1. The staff report dated May 2, 2023 with attachments.

The Commission received this previously as part of your hearing packets for the May 9th meeting.

2. Items submitted after May 2nd staff report and before the May 9th public hearing.

<u>This packet has this item</u>. The Commission received a revised appeal narrative from the appellant at the hearing on May 9th.

3. Items submitted into the record within the two weeks after the May 9th public hearing.

This packet has these items. It includes materials from the appellant and applicant, one item each, submitted in the first week (May 10 to May 16).

The second week (May 17 to May 23) was intended to respond in writing to any new evidence. Again, one item was submitted each by the appellant and applicant this week.

4. Applicant's final written argument.

The applicant did not submit any final written argument. Thus, nothing to attach.

You will deliberate on this matter at your June 13, 2023 meeting. Please consider all items in the record you have already received, oral testimony at the May 9, 2023 public hearing, and the new items for the record attached to this memo as you contemplate your decision.

Some observations of the new material by staff:

Much information has been presented. However, staff observes that some does not appear to be applicable based on an objective review of the code.

- 17.44.040(1)(a) through (d) does apply. These are the specific criteria for steep slopes.
- 14.44.040(2) does not apply. There is no drainageway as defined by Chapter 17.16 SHMC.
- Site Development Review (SDR) does not apply. Any reference to Chapter 17.96 SHMC is moot. Refence of SHMC 17.44.040(5)(b) to make the SDR connection to this application is incorrect as this is not a listed cultural area or site. This is not an archaeological site.
- Tree issues. A large mature oak (>12" dbh) was removed within the boundary of Lot 10 as noted by the appellant. The appellant notes the potential \$500 civil penalty per SHMC 17.132.070.
 - O Tree removal permit required if within a sensitive land per Chapter 17.44 SHMC. The Oak tree is not in a sensitive land as photos from appellant show the tree not within a steep slope (25% or greater).
 - o This tree should have been inventoried as part of the Hannah Place Subdivision since it is >12 inched diameter. Tree inventories are required for land divisions. For some reason, this tree was missed. If deemed to be protected as part of the Subdivision process, it would have been flagged as part of this process.

But the applicant still has the burden of proof.

O A tree as defined by SHMC 17.132.020 within a sanative land (Tract A) was killed. The applicant had no permission from the city to use Tract A for development including pushing debris off the cliff. This act was contrary to law given the upland protection zone. In the original staff report for this Sensitive Lands Permit (page 3) there is a before and after photo, where a big leaf maple is shown alive and atop the cliff (before) and then towards the bottom with a mass of loose rock that was pushed over the edge (after).

Being under 12" dbh, it wasn't inventoried with the subdivision, but being at least 6" dbh, is still a tree per Chapter 17.132 SHMC.

- Not fish and wildlife habitat. References to 17.44.040(4) are moot. No listed habitat at the subject property per 17.44.015(5). "Active wildlife area" due to the presence of deer does not beget regulated wildlife habitat.
- Emergency vehicle access via an adjacent property's setback is not based on any standard to require such. A yard does not grant access. Its purpose is air, light and space.
- The subject property is not part of a riparian area or wetland protection zone, but the adjacent tract (Tract A) is, which was determined as part of the subdivision process (via an Environmental Assessment) that created the subject property and the other lots of the Hanna Place Subdivision.

Some impacts occurred to a generally confined area. This should not have happened and is addressed in the original conditions.

• The applicant was not able to produce a geotech report for the record.

* * *

Recommendation for the Planning Commission?

<u>Denial</u>. The application doesn't address SHMC 17.44.040(1)(a) well and a condition of approval is not necessarily the best option because of the findings to determine minimum extent. Could be hard to determine this without specificity lacking in the application. SHMC 17.44.040(1)(a):

The extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than that required for the use;

In this case the Commission should make a finding that this denial has no impact on needed housing as it is still a developable lot; an attached single-family dwelling is still possible without the retaining wall proposed with this application.

This decision should also note that sensitive land impacts still need to be addressed with a Sensitive Lands Permit and any requirements thereof.

<u>Approved with conditions</u>. The conditions of the original decision with <u>suggested changes</u> (in red) based on this appeal:

- 1. This Sensitive Lands Permit approval is valid for a limited time (to establish use or conduct activity) pursuant to SHMC 17.44.030. This Sensitive Lands Permit approval is valid for 1.5 years. A 1-year extension is possible but requires an application and fee. If the approval is not vested within the initial 1.5 year period or an extension (if approved), this is no longer valid and a new application would be required if the proposal is still desired. See SHMC 17.44.030.
- 2. The following shall be required before any development or building permit issuance for the proposed wall or before any commence of wall construction:
 - a. Revised wall plans to ensure the wall, outfall, and all related outfall infrastructure is located entirely on Lot 10 (the subject property). Note that per condition 2c, the wall must be set back from property line to contain outlet protection rip rap. In addition, the yard requirements of the zoning district shall apply based on appliable policy including but not limited to the definition of "structure" and "yard," the zoning district, and SHMC 17.64.050.
 - b. Additional wall profile and edge conditions to detail how the wall will tie into the existing rock bluff to ensure all rock/fill will be contained on Lot 10 (the subject property).
 - c. Outfall and related infrastructure shall match the Outlet Protection Rip Rap & Rip Rap Details attached. In addition, stormwater infrastructure shall not be designed to encourage runoff onto existing pavement below which is along the west side of Lot 10's north lot line. The final outfall drainage plan shall be reviewed and approved by City Engineering.
 - d. Plans detailing how removal of rock and fill dumped onto City-owned property will be removed and how the wall and outfall will be installed without causing additional impact to the wetland and upland protection zone to be approved by City staff.

Applicant shall attest in writing that they understand further impacts to the upland protection zone will result in additional permitting and/or enforcement.

e. The applicant shall pay a civil penalty of \$500 (or \$1,000 if you want to include both trees) for unauthorized tree removal. In addition, tree(s) shall be replaced in accordance with SHMC 17.132.070(4) including a minimum two-year contract with a landscape contractor for installation and maintenance. See condition 3.f.

Note: SHMC 17.132.070(4)(d) states that "The planting of a replacement tree shall take place in a manner reasonably calculated to allow growth to maturity." 2 years is a duration from Chapter 17.40 SHMC, but this could be a different number. Does not 100% guarantee tree survival but will increase the odds.

3. The following shall be required before any development or building permit issuance to develop Lots 9 and 10 with dwellings:

- a. The proposed wall shall be completed and approved with all requirements met. This includes written confirmation from the registered professional engineer who designed the wall that they have personally and physically inspected it and acknowledge that it has been constructed per the final approved plans.
- b. All previous unpermitted impacts to wetlands or wetland protection zones shall be abated.
- c. Any new impacts to wetlands or wetland protection zones shall be resolved including any necessary permitting. This condition does not indicate this SL permit allows such. See condition 4.
- d. Revegetation of all areas where natural vegetation has been removed due to grading on Lot 9 and Lot 10 of the Hanna Place Subdivision.
- e. Plans for development shall specify revegetation of bare earth as a specific requirement of completion of the dwelling(s).
- f. Any replacement tree per condition 2.e shall be protected from development activities. Plans shall indicate how this will be done, as applicable.
- 4. This SL permit does not allow any new impacts to wetlands or wetland protection zones. It does require previous unapproved impacts to be abated.
- 5. Owner/Developer shall be solely responsible for obtaining all approvals, permits, licenses, and authorizations from the responsible Federal, State and local authorities, or other entities, necessary to perform land clearing, construction and improvement of the subject property in the location and manner contemplated by Owner/Developer. City has no duty, responsibility or liability for requesting, obtaining, ensuring, or verifying Owner/Developer compliance with the applicable State and Federal agency permit or other approval requirements. This land use approval shall not be interpreted as a waiver, modification, or grant of any State or Federal agency or other permits or authorizations.
- 6. Owner/applicant is still responsible to comply with the City Development Code (SHMC Title 17).

Lots 9 and 10, Hanna Subdivision Appeal of Site Development Recommendation

(Supplemental material for Land Use Appea Application, filed April 3, 2023)

Submitted by:

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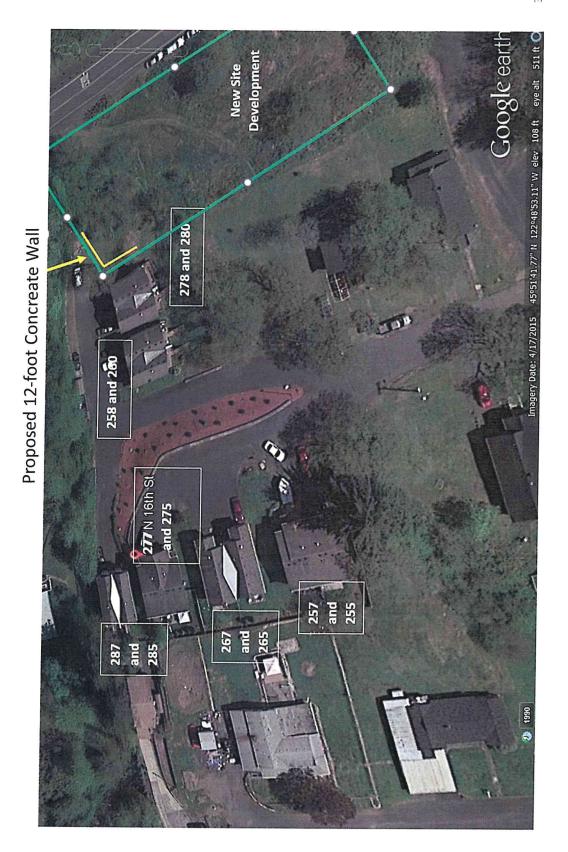
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STORY MENTER OF THE STATE OF TH Infinity Investments-Puget Sound LLC

(An Oregon limited liability company)

Background

- A letter to adjacent property owners was received on March 30, 2023, which provided details regarding the staff findings and proposed Site Development Plan.
- A letter was sent to city planning staff on March 31, 2023, indicating a number of issues with the determination and asking for an appeal to the determination.
 - A formal appeal was filed on April 3, 2023.
- responded that there "been no amendments to the plan or anything since the initial application," which was included in the initial mailing. Additionally, there is A communication to Mr. Jake Graichen requesting all information relating to this Site Development Application was sent via e-mail on April 13, 2023. Mr. Graichen no filing from the applicant on the City website.
- The appeal hearing was scheduled for May 9, 2023
- NOTE: All items in italics are quoted from St Helens Municipal Code. The aerial view on the next page provides the location and context for this appeal.



Basis for Appeal

- SHMC 17.96.120 attached as Exhibits A and B. Additionally, the submission is subject to SHMC 17.44.050 through 17.44.100 No detailed plans and elevations to scale are it is subject to two Chapters of the SHMC - 17.44 and 17.96. The material provided does not meet the basic standards for submission of a Site Development contained in provided to clearly describe the proposed site revisions and meet the criteria of SHMC listed above. Based on these and other deficiencies, staff should have rejected the The proposed plan is a Site Development Proposal in a Sensitive Land area. Therefore, application until such time that all required materials were submitted. ~i
- The plan appears to show a 12-foot wall constructed of prefabricated concrete 2.(a),(d). The wall construction goes well beyond what is necessary for building stability was cut without site plan approval, diminishing the views and aesthetic of the adjoining property. Additionally, ground was graded and native vegetation removed barriers, which are inconsistent with SHMC 17.96.180 and SHMC 17.44.040 1.(a),(d) In fact, a tree conforming to requirements of this section and providing ground construction in a Sensitive Land Area. No landscape plan is included in the submittal. without and approved Site plan or tree cutting permit as required by SHMC.

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Basis for Appeal

- The proposed revision is part of a wetland/drainage stream, which has exhibited site development structures) be "Located in areas not subject to ground slumping or evidence of soil instability. SHMC 17.96.180 requires that buildings (and associated ო
- SHMC 17.96.180 (4) requires "Buffering shall be provided between different types of land uses (for example, between single-dwelling units and multi-dwelling units residential, and residential and commercial), and the following factors shall be considered in determining the adequacy of the type and extent of the buffer:

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The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier;

Additionally. 2 (a) iii requires that buildings (and structures) be:

Located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire fighting;

No buffering plan or setback data are included in any documents that were provided to the appellant.

Basis for Appeal

and within a designated wetland. SHMC 17.44.040 4. (2) requires that creates a large and impassable barrier that fundamentally disturbs the existing SHMC 12.44.028 requires that land with the wetland/riparian zone comply with approvals create minimal site disturbance. This Site Development Proposal This Site Development Application is in an active wildlife area (riparian zone) landscape and topography and does not comply with this provision of SHMC. wetland provisions of SHMC Chapter 17.40. Ŋ.

Appeal #1

- SHMC Chapter 17.96 Requirement: The site development plan, data, and narrative shall include the following:
- An existing site conditions analysis, SHMC 17.96.110;
 -) A site plan, SHMC 17.96.120;
-) A grading plan, SHMC 17.96.130;
- (d) A landscape plan, SHMC 17.96.150;
- ?) Architectural elevations of all structures, SHMC 17.96.140;
 -) A sign plan, SHMC 17.96.160; and
- (g) A copy of all existing and proposed restrictions or covenants. (Ord. $2875 \ \S 1.128.090, 2003)^*$

The highlighted applicable requirements are missing from the application.

 st A driveway and shared parking easement was filed on January 14, 2021, which is not disclosed in the application.

Appeal #1

- SHMC 19.44.050 has similar requirements to 19.96. These include:
- (1) All applications for uses and activities identified in SHMC 17.44.015(2) through (5) shall be made on forms provided by the director and shall be accompanied by:
 - (a) Copies of the sensitive lands permit proposal and necessary data or narrative which explains how the proposal conforms to the standards (number to be determined at the preapplication conference) and:
 - (i) The scale for the site plan(s) shall be a standard engineering scale; and
- (ii) All drawings or structure elevations or floor plans shall be a standard architectural scale, being one-fourthinch or one-eighth-inch to the foot.
 - (b) The required fee.
- (2) The required information may be combined on one map.
- (3) The site plan(s), data and narrative shall include the following:
 - (a) An existing site conditions analysis, SHMC 17.44.070;
 - (b) A site plan, SHMC 17.44.080;
- (c) A grading plan, SHMC 17.44.090; and
- (d) A landscaping plan, SHMC <u>17.44.100</u>. (Ord. 3031 Att. A, 2007; Ord. 2875 § 1.092.050, 2003)

The **highlighted applicable requirements** were not included in the application packet.

Appeal #1 Issues

accurately assessment the design and impacts of the proposed Site Development Plan. At best, it is necessary to interpret from the documentation and staff narrative basic terms of the applicant's proposal. Due to the incomplete data included in the application, it not possible to At a minimum, the following issues created significant limitation in understanding the proposal:

▶The hand-drawn site plan is not to scale as required and does not provide clear setback information regarding lot lines and adjacent buildings as required by SHMC.

instance, the site plan shows a vertical wall. The wall detail appears to show a tilting ▶The hand-drawn site plan appears to be in conflict with the elevations provided. For

▶No detailed elevation drawings are provided for each side of the lot affected by the proposal.

▶No building structures are shown on any detail.

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Appeal Issues #1

▶No wetland setbacks are shown to demonstrate that the subject development complies with state and federal law, and the 2021 St. Helens Stormwater Plan, sections 5 and 6.

unrelated to the 15th Street Site Development Plan. The proposed wall for this project application should be shown. There is no evidence of any tilted walls in the ▶The "UltraWall" shown in the submission is for a different project (271-275 N. 11th), vicinity of this project.

Project: 271 and 275 North 11th Street Location: St. Helens, Oregon Designer: 8/12/2022 Section: Section 1 Design Method: NCMA_09_3rd_Ed, Ignore Vert. Force

Appeal Issues #1

Due to the lack of clarity in the applicant's submittal, this wall should be part of the building structure and part of the Site Development Plan as defined in SHMC 17.16.010. The proposed structure may also be considered a "wall" under 17.72.90 Under this portion of the code 2. (a) Fences or walls may not exceed four feet in height in a required front yard along local or collector streets or <u>six feet in all</u> other <u>yards</u> and, in all other cases, shall meet vision clearance area requirements (Chapter 17.76 SHMC)

Appeal #1 Solution

- The applicant's plan should have been rejected on procedural grounds that it Before any further consideration, a complete plan that complies with St Helens Municipal was incomplete and did not comply with SHMC requirements. Code should be submitted. This includes:
- Plans and elevations to architectural scale for the Site Development Plan for Lots 9-10, Hanna Subdivision (15th Street), showing setbacks from proposed and existing structures.
- Copies of the sensitive lands permit proposal and necessary data or narrative which explains how the proposal conforms to SHMC standards.
- An existing site conditions analysis, including a geotechnical study with soils analysis.
 - d. A grading plan.
- e. A landscape plan.
- f. A buffering plan.
- Architectural scale elevations of all structures, including walls.

Appeal #2

SHMC 17.96.180 (2)requires that:

Buildings (presumably related structures) shall be:

(i) Located to preserve existing trees, topography, and natural drainage in accordance with other sections of this code;

(ii) Located in areas not subject to ground slumping or sliding;

(iii) Located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire fighting; and

(iv) Oriented with consideration for sun and wind; and

(b) Trees having a six-inch DBH (as defined by Chapter 17.132 SHMC) or greater shall be preserved or replaced by new plantings of equal character.

Appeal #2 Issues

- SHMC 17.44.040 1.(a),(d) 2.(a),(d). These sections require in areas of Additionally, any approval of the proposed Site Development is subject to significant slope and potentially unstable ground to:
- (a) The extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than that required for the use; and
- development, the areas not covered by structures or impervious surfaces will • (d) Where natural vegetation has been removed due to landform alteration or be replanted to prevent erosion in accordance with Chapter 17.72 SHMC.

above. It is not possible to tell if the applicant's proposal complies with (d) The Site Development Plan as proposed does not comply with provision (a) above because no landscape plan was included in the submittal.

Appeal #2 Issues

• SHMC 17.96.180 2.(b) states that: Trees having a six-inch DBH (as defined by Chapter 17.132.030 SHMC) or greater shall be preserved or replaced by new plantings of equal character. The approved wall structures does not maintain "trees, natural topography and natural drainage." A mature oak of more than 27" in diameter, which was within inches of the property line, was cut without permit or notice. The natural topography is fundamentally changed in an area near a wetland. Additionally, this tree and other vegetation were removed with site grading, which is out of compliance with SHMC and diminishes ground stability.

BEFORE CUTTING



AFTER CUTTING



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Appeal #2 Solution

- Require a landscape plan, which takes advantage of the existing Unfortunately, it is too late to preserve "Trees having a six-inch DBH (as including plantings for slope stabilization and replacing the illegally cut topography and creates minimal impact as required by SHMC. defined by Chapter 17.132 SHMC) or greater" as required by code. Mitigation for this failure to follow city code should be required, tree with new trees of similar type (Oak) at least 15-20 feet in height.
 - Under SHMC, a civil penalty may be imposed for cutting this tree without a permit. 7

Appeal #3

- City code SHMC 17.96.180 requires that the:
- 2) "Relationship to the Natural and Physical Environment" be considered
 - (a) Buildings (presumably associate structures) shall be:
- (i) Located to preserve existing trees, topography, and natural drainage in accordance with other sections of this code;
- (ii) Located in areas not subject to ground slumping or sliding;
- (iii) Located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire fighting;
- The proposed wall is clearly within an area subject to ground movement, especially during a catastrophic earthquake or extraordinary event.

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Appeal #2 Issues

 The proposed wall is located in an area that is prone to "ground slumping or sloping." A city provided or required barrier has been sliding down an adjacent slope next to the end of a public street.

Existing concrete barriers at the end of City street sliding toward wetland due to unstable slope, located within 15 feet of proposed structure.



wall location

Proposed

Appeal #3 Solution

Require a geotechnical study, including soils analysis, to verify stability of the area related to the site development. This will give adjacent property significant proposed wall and fill structure will not settle and/or fail in an owners assurance that any buildings or other structures with such earthquake or other catastrophic event.

Appeal #4

Buffering between properties is required by SHMC 17.96.180 4.(a).

Buffering shall be provided between different types of land uses (for example, between singledwelling units and multi-dwelling units residential, and residential and commercial), and the following factors shall be considered in determining the adequacy of the type and extent of the

(a) The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or **to provide a visual barrier;**

"Relationship to the Natural and Physical Environment" be considered 2(a) Buildings (presumably associate structures) shall be:

(i) Located to preserve existing trees, topography, and natural drainage in accordance with other sections of this code;

(ii) Located in areas not subject to ground slumping or sliding;

(iii) Located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire fighting;

Additionally, SHMC 17.44.070 5 (b) requires that "All requirements of a full site development review have been met" including the buffering requirements in 17.96.180.

Appeal #4 Issues

- No buffering is shown or proposed, including any landscaping that may be No provision for such buffering is shown in any of the Site Development documents. Lots 9 and 10 are designed to be owner-occupied separately deeded properties. The adjacent property is multi-family rental property. part of the buffering.
- It is also likely that the distance between the proposed 12-foot wall and the existing building is inadequate for firefighting and/or rescue during such events describe above, assuming the wall does not deteriorate or collapse during such an event.
- All survey markers were removed and one was replaced (without survey confirmation) as described on the following page, following the illegal felling of the tree.

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Appeal Issues #4

 While it is difficult to determine actual 12-foot concrete wall setbacks from the documentation provided in the application, the property marker that was replaced after being dislocated due to the tree felling is 9′2″ from the 17.32.070 4.(d) requires that side yards shall be "10 feet for multi-dwelling fhe adjacent structure is both a duplex and a corner lot. Furthermore, the 10-foot minimum does not provide adequate circulation for emergency equipment should it be needed to access the rear of the adjacent property. structures. Corner lots shall have a minimum exterior side yard of 10 feet. This is the only vehicle access point for the rear of the adjacent properties. foundation of the existing building on the adjacent property.





Issue #4 Solution

- Require that a buffering plan be submitted as part of a complete Site Development Plan packet.
- Require submission of a complete Site Development Plan that includes all buildings, property lines and setback as required by SHMC.
- line of at least twenty-five (25) feet to accommodate emergency vehicle If the city and state ultimately permit the placement of a 12-foot wall in this Sensitive Land Area, require a minimum setback from the property and equipment access to existing buildings. ო

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Appeal #5 Issue

- Lot #10 of Site Development Application is in an active wildlife area and in an area of a wetland/riparian zone. SHMC 17.44.040 4. (2) requires that "the extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than the minimum required for the use." The proposed 12-foot wall creates a major impediment to wildlife migration, frequently seen in the area.
- Although the Site Development Plan shows no building structures as required by SHMC, current practice and existing buildings demonstrate that a habitable structure can be built, which create minimal "site disturbances" using foundations that a contoured to the topography. A large concrete barrier is not required.

Wildlife migrate from Lot 10 to drainage



Appeal #5 Issues

- This proposed site is within a designated wetland and riparian zone as mapped by the State Department of Lands. (See map on next page.) The riparian zone referenced above is defined in SHMC as: "the area adjacent aquatic ecosystem to a terrestrial ecosystem. These areas are part of significant riparian corridors identified in the PHS riparian area report to the city, designated in the comprehensive plan, Ordinance 2824 and SHMC to a river, lake, or stream, consisting of the area of transition from an 17.40.015(2)."
- A minimum requirement of any construction within a wetland area is the preparation of an Environmental Assessment to meet the requirements of SHMC Chapter 17.40. A mitigation plan must be part of the Site Development Application.

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Site of Site Development Application Jackas Department of State Lands – Wetlands map for St. Helens, Oregon

Appeal #5 Issues

ullet A minimum requirement of any construction within a wetland area is the preparation of an Environmental Assessment, which requires:

appropriate to determine the precise location of the top of bank, steep slopes, wetland, riparian "that the property owner contract with a registered engineer and/or wetlands biologist as boundary survey that shows the locations of the tops-of-bank, steep slopes, wetlands, riparian corridors, and the protection zone setback locations on the subject property. Minimum corridor and protection zone or on a property. A licensed surveyor must then conduct a requirements for environmental assessments are set forth in SHMC 17.40.065."

 A Site Development Plan must meet the requirements of SHMC Chapter 17.40, which requires that a mitigation plan must be part of the Development Application.

Appeal #5 Issues

- The SHMC 17.40.040 (2) sets forth standards for approving residential construction in a "protection zone" such as a wetland/riparian zone. essential condition for approval include:
 - (b) <u>The building footprint encroaching into the protection zone shall be limited to that which is the minimum necessary to</u> obtain reasonable use of the property for the primary use of residential purposes. Preference in location of the building footprint shall be given to areas devoid of native vegetation; and
- (c) The director or approving authority shall adjust the underlying zone setback standards to the extent necessary <u>to r</u>educ<u>e</u> or minimize encroachment into the protection zone. Design shall be to this adjustment. The director or approving authority may approve up to a 50 percent adjustment to any dimensional standard (e.g., front yard, side yard or other setbacks, including height or lot area) to permit development as far outside or upland of the protection zone as is possible; and
- (d) The proposed development shall minimize disturbance to the protection zone by utilizing design options to minimize or reduce impacts of development: (i) multistory construction shall be used; (ii) parking spaces shall be minimized to no more than that required as a minimum for the use; (iii) no accessory structures allowed; (iv) paving shall be pervious; (v) engineering solutions shall be used to minimize additional grading and/or fill...

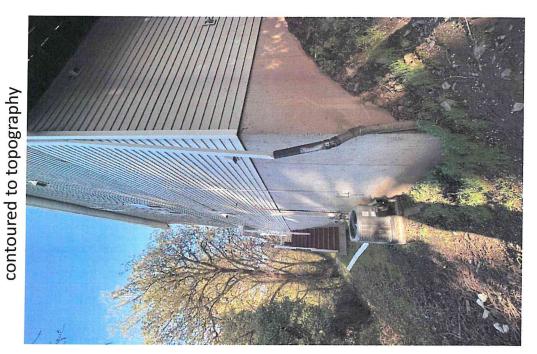
Appeal #5

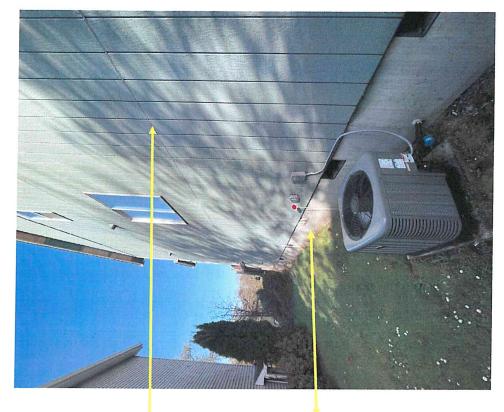
- No Environmental Assessment is included in the Site Development Application.
- No plan is provided to minimize disturbance to the Protective Zone and to minimize additional fill and grading.
- There is a clear precedent in the area for development that minimized impact The proposed construction method substantially changes the topography and the existing natural landscape. The precedent for alternative construction is at 287 N. $16^{ ext{th}}$ Street and demonstrates that a foundation contoured to the topography is of concrete barriers with backfill creates. (See example of alternate construction and does not require the use of a 12-foot wall constructed of concrete barriers. precedent exists for extraordinary site disturbance that a 12-foot wall constructed possible, while maintaining the integrity of the surrounding terrain. method the complies with SHMC on next pages.)



10+-foot slope with contoured foundation

Use of 10-foot stem wall





First Floor

Alternate Construction using short concrete stem walls with wood building wall.

Appeal #5 Solution

- Require the requisite Environmental Assessment and plan to comply with SHMC Chapter 17.40 regarding wetlands/riparian zone development within Sensitive Lands.
- provides buffering and soil stabilization should be part of this update Site structures, which do not require massive wall structures and are in Require construction methods that have been used in surrounding topography and wildlife impact. A compatible landscape plan that compliance with the St. Helens Municipal Code related to minimal Development Plan application. 7

Conclusion and Recommendations

slopes and in an environmentally sensitive area. There is a precedent on the Helens where significant number of buildings have been built on challenging There are no precedents for the scale and type of major wall construction, grading and fill proposed by the land use action in this neighborhood of St respect the existing topography, vegetation and wildlife. Therefore, the adjacent property for grading and use of construction techniques that following recommendations are offered in compliance with St Helens Municipal Code (SHMC):

Conclusion and Recommendations, Cont.

- meeting the full requirements of the St Helens Municipal Code, be submitted application in a Sensitive Land area, require that a complete application, 1. Due to a procedural error in accepting an incomplete Site Development prior to further consideration of the proposed Site Development Plan.
- slope stability in the event of an earthquake or other major catastrophic event. 2. A geotechnical study, including soils analysis, should be conducted and made part of the applicant's Site Development Plan submission to ensure soil and
- wetland/riparian zones designations as listed on the State Department of Lands mapping of St. Helens wetlands. Include mitigation plans to minimize impact in Require an Environmental Assessment to comply with SHMC related to this wetland/riparian zone. ო

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Conclusion and Recommendations, Cont.

- 4. Use construction methods that incorporate steel reinforced stem walls for building construction, which contour to the existing topography. This will eliminate the need for unsightly and potentially unstable retaining walls.
- native vegetation was removed without an approved Site Development Plan, a detailed landscape and buffering plan to mitigate these violations should be replanting of vegetation and trees of the similar type and species to provide submitted, which includes adequate setbacks for emergency access and the 5. Since a mature oak tree was cut without a permit as required by SHMC and buffering with the adjacent property and ground stability.

Finally, there is a simple commonsense question to consider: Would any of us want homes, in Seismic Zone 5 (most potential hazard) to be constructed less than ten a 12-foot wall made of concrete barriers, a wall taller than the first floor of most feet away from the back or side of the place we live?

Request to Keep Record Open

questions or new information that is provided during the hearing. Following the hearing, this is a formal request to keep the record open for seven days through May 16, 2023 to respond to any

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Exhibit A - SHMC 17.96.180

17.96.180 Approval standards.

The director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

- (1) Provisions of all applicable chapters of the Community Development Code per SHMC 17.04.010.
 - (2) Relationship to the Natural and Physical Environment.
 - (a) Buildings shall be:
- (i) Located to preserve existing trees, topography, and natural drainage in accordance with other sections of this code;
 - (ii) Located in areas not subject to ground slumping or sliding;
- (iii) Located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire fighting; and (iv) Oriented with consideration for sun and wind; and
- (b) Trees having a six-inch DBH (as defined by Chapter <u>17.132</u> SHMC) or greater shall be preserved or replaced by new plantings of equal character;
- unit structures, offsets shall occur at a minimum of every 30 feet by providing any two of the following: (3) Exterior Elevations. Along the vertical face of single-dwelling units – attached and multi-dwelling
 - (a) Recesses (decks, patios, entrances, floor area, etc.) of a minimum depth of eight feet;
- (b) Extensions (decks, patios, entrances, floor area, etc.) of a minimum depth of eight feet, and maximum length of an overhang shall be 25 feet; and
- (c) Offsets or breaks in roof elevations of three or more feet in height;

Exhibit A Cont.

- (4) Buffering, Screening, and Compatibility between Adjoining Uses (See Figure 13, Chapter 17.72 SHMC).
- example, between single-dwelling units and multi-dwelling units residential, and residential and commercial), and the following factors shall be considered in (a) Buffering shall be provided between different types of land uses (for determining the adequacy of the type and extent of the buffer:
- (i) The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier;
- (ii) The size of the buffer required to achieve the purpose in terms of width and height;
 - (iii) The direction(s) from which buffering is needed;
- (iv) The required density of the buffering; and
- (v) Whether the viewer is stationary or mobile;

Exhibit B - SHMC 17.44.080

- The proposed site development plan shall be at the same scale as the site analysis plan and shall include the following information:
 - The proposed site and surrounding properties;
- (2) Contour line intervals (see SHMC <u>17.44.070(</u>3));
 - (3) The location, dimensions, and names of all.
- (a) Existing and platted streets and other public ways and easements on the site and on adjoining properties; and
 - (b) Proposed streets or other public ways and easements on the site
 - (4) The location and dimension of:
 - (a) Entrances and exits on the site;
- (b) Parking and traffic circulation areas;
- (c) Loading and services areas; (d) Pedestrian and bicycle facilities;
 - (e) Outdoor common areas; and (f) Utilities.

(2)

- The location, dimensions, and setback distances of all.
- (a) Existing structures, improvements, and utilities which are located on adjacent property and are permanent in nature; and
 - (b) Proposed structures, improvements, and utilities on the site.
 - (6) The location of areas to be landscaped;
- (7) The concept locations of proposed utility lines; and
- (8) The method for mitigating any adverse impacts upon wetland, riparian, or wildlife habitat areas. (Ord. 3031
 - Att. A, 2007; Ord. 2875 § 1.092.080, 2003)

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Exhibit B - 17.44.090 Grading plan

- The site plan shall include a grading plan which contains the following information:
- (1) Requirements in SHMC 17.44.070 and 17.44.080;
- (2) The identification and location of the benchmark and corresponding datum;
- (3) Location and extent to which grading will take place indicating contour lines, slope ratios, and slope stabilization proposals, and
- (4) A statement from a registered engineer supported by factual data substantiating:
 - (a) The validity of the slope stabilization proposals;
 - (b) That other off-site impacts will not be created;
 - (c) Stream flow calculations;
- (d) Cut and fill calculations; and
- (e) Channelization measures proposed. (Ord. 3031 Att. A, 2007; Ord. 2875 § 1.092.090,

Exhibit B - 17.44.100 Landscape plan

(1) The landscape plan shall be drawn at the same scale as the site analysis plan, or a larger scale if necessary, and shall indicate:

(a) Location and height of fences, buffers, and screenings;

(b) Location of terraces, decks, shelters, play areas, and common open spaces where applicable; and

(c) Location, type, and size of existing and proposed plant materials.

(2) The landscape plan shall include a narrative which addresses:

(a) Soil conditions; and

(b) Erosion control measures that will be used. (Ord. 3031 Att. A, 2007; Ord. 2875 § 1.092.100, 2003)

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May 15, 2023

City of St. Helens Planning Department 265 Strand Street St. Helens, OR 97051

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CITY OF ST. HELENS

Attn: Jacob Graichen/Jennifer Dimsho

Appeal Lot 10 of Hanna Place Subdivision Response to Hearing Questions and Input

Dear Mr. Graichen and Ms. Dimsho:

This is a follow up to questions and issues raised in the St. Helens Planning Commission hearing on May 9, 2023. The response is based on the five issues outlined in the supplemental material provided as testimony at the hearing. All comments in *italics are citations* from the St. Helens Municipal Code.

Appeal Issue #1: The applicant's record is incomplete and does not contain sufficient and required information to act on the development plan. Additionally, staff contends that SHMC Chapter 17.96 is not applicable to the applicant's plan.

Rebuttal 1A: This plan is a Major Modification of an approved plan or existing development under 17.96.070. Staff determined the proposed wall to be a building "Structure" which was not shown in any plans related to the approved Hanna Place subdivision provided by staff related to this appeal. (See Exhibit A-Preliminary and Final Subdivision Plans) Therefore, this must be considered a new part of the building "Structure" requiring site review under 17.96.070 (2) (e), which requires "an increase in structure height to be reviewed." There was no structure prior to this application, hence this is a Major Modification. Additionally, 17.96.070 2 (j) (ii) and (iii) require site review when "amenities are reduced, including screening and landscaping." The applicant proposes replacing a green space buffer that has native vegetation and grass with a 12-foot-high concrete block Structure. This Structure fundamentally changes both screening and landscaping, which requires a Site Review application under Chapter 17.96. (See more in Appeal #4 below)

Rebuttal 1B: The applicant acknowledged during the hearing that "the wall doesn't have to be twelve feet tall and could come in some" from the property line. Commissioner Cary asked the applicant if there could a "shorter wall or do a pony wall." Therefore, it is unclear what the applicant's proposal actually is. The purpose of requirements set forth in 17.96.090 (3), 17.96.110 and 17.44.050 is to have sufficient detail regarding a Site Development Plan in a

Sensitive Land area to render an informed decision regarding compliance with the code. Insufficient data exists and conflicting testimony from the applicant, which even contradicts the submitted plan, requires further submittals before this applicant's final plan should have further consideration. Additionally, the applicant's hand-drawn map and the incorrectly identified site location of the block wall do not meet SHMC submission criteria. "The following items required by SHMC should be submitted for review:

- A. The site size and its dimensions;
- B. Contour lines at two-foot contour intervals for grades zero to 10 percent and five-foot intervals for grades over 10 percent;
- C. The location of drainage patterns and drainage courses;
- D. The location of sensitive lands;
- *E.* The location of site features including:
 - (a) Rock outcroppings; and
 - (b) Trees with six inches caliper or greater measured four feet from ground level;
- F. The location of existing structures on the site and proposed use of those structures; and
- G. Copies of the <u>sensitive lands permit proposal</u> and necessary data or narrative which explains how the proposal conforms to the standards (number to be determined at the preapplication conference) and:
 - (i) The scale for the site plan(s) shall be a standard engineering scale; and
 - (ii) All drawings or structure elevations or floor plans shall be a standard architectural scale, being one-fourth inch or one-eighth inch to the foot.
- H. An existing site conditions analysis, SHMC 17.44.070;
- I. A site plan, SHMC 17.44.080;
- J. A grading plan, SHMC 17.44.090; and
- K. A landscaping plan, SHMC 17.44.100. (Ord. 3031 Att. A, 2007; Ord. 2875 § 1.092.050, 2003)"

<u>Rebuttal 1C</u>: The applicant indicates that the rules contained within the SHMC are: "Like the Bible. Four people have different ideas of what it says." The above standards are clear and unequivocal. These are required by St Helens Municipal Code in order for any Sensitive Land development proposal to be considered in a Sensitive Land area.

Appeal Issue #2: SHMC 17.96.180 requires that structures should be located to "preserve trees, topography, and natural drainage...and trees having six-inch DBH be preserved or replaced." Grading was done and a tree, meeting the above criteria, was felled without an approved plan or permit. (See Exhibit B – Protection Zone Map from Environmental Assessment)

Rebuttal 2A: The applicant indicated that "that's where we was going to put the wall and that's why the tree came down." No site plan permit for Site Development within Sensitive Land was approved. Therefore, the tree was removed illegally. Grading was also done without permit and the felled oak were pushed into the Riparian Zone and Protection Zone as identified by the city staff when discussing the Environmental Assessment. Additionally, the staff recommends a requirement that all "unpermitted impacts to wetlands or wetland protection zones shall be abated." However, there is no plan documentation to clearly demonstrate what the mitigation plan entails. This should be a requirement prior to final review of any complete Sensitive Land development plan.

Rebuttal 2B: Commissioner Carlson asked, "As to the question of the tree being cut down, we don't have codes for that?" The answer is yes, the City of St Helens has specific codes to address tree removal. SHMC 17. 132.030 (1) states that "Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 17.44 SHMC." The subject tree (near the property line) was removed without first obtaining a permit. SHMC 17.132.070 (1) defines that:

"The following constitute a violation of this chapter:

(a) Removal of a tree:

(i) Without a valid tree removal permit..."

Additionally, SHMC 17.132.070 (3) states: "Notwithstanding any other provision of this code, any party found to be in violation of this chapter pursuant to Chapter 17.12 SHMC shall be subject to a civil penalty of up to \$500.00 and shall be required to remedy any damage caused by the violation. Such remediation shall include, but not be limited to, the following:

- (a) Replacement of unlawfully removed or damaged trees in accordance with subsection (4) of this section; and
- (b) Payment of an additional civil penalty representing the estimated value of any unlawfully removed or damaged tree, as determined using the most current International Society of Arboriculture's Guide for Plant Appraisal."

Based on SHMC, appropriate remedial and/or civil action must be taken by the City of St. Helens.

Rebuttal 2C: Commissioner Pugsley stated that "Appeals 1,2,3,4 all reference SHMC Chapter 17.96. That's not part of our criteria." SHMC 17.44.050 (5) (b) states that "All requirements of full site development review have been met" for issuance of a Sensitive Land Permit. The correct understanding is that Appeals 1,2,3,4 also refer to issues in the Sensitive Land permit application process, which significantly mirrors Chapter 17.96. Therefore, the first four appeal issues are within the purview of the St. Helens Planning Commission for the applicant's proposal.

<u>Rebuttal 2D:</u> Vice Chair Cary stated that "It's not really our purview to require a building plan." The correct interpretation of SHMC 17.44 is found in Rebuttal 2B above. SHMC 17.44.050 requires submission of "structure elevations and floor plans" as part of the application submission package. These are to be at "standard architectural scale."

Appeal Issue #3: SHMC Chapters 17.96 and 17.44 both require "site analysis drawings...showing (b)Slopes in excess of 25 percent;

(c) Unstable ground (areas subject to slumping, earth slides or movement)"

Additionally, approval criteria 17.44.040 (2) (d) requires that: "The proposed landform alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property." The preferred method of meeting this standard is to perform a study by a licensed engineer, which provides data to support the conclusion that the ground is stable and that structures constructed will not create any off-site hazards to life or property.

<u>Rebuttal 3A:</u> The applicant stated that he "talked with the engineer" and concluded that the ground was suitable for a 12-foot concrete wall. No documentation of the conversation or official report was provided, nor was any geotechnical analysis attached to the application. Because of demonstrated ground instability in proximity to the proposed wall, the only way to provide assure safety is to have a certified geotechnical report.

Appeal Issue #4: SHMC 17.44.050 (5) (b) states that "All requirements of <u>full site development review</u> have been met." This includes provisions of 17.96.180, which requires buffering, including visual barriers between lots and adequate distance between adjoining buildings (structures) to provide for adequate firefighting. The applicant proposes a 12-foot concrete wall set on the property line, which provides inadequate setbacks for buffering and emergency access to the appellant's property.

Rebuttal 4A: The staff stated that "We are struggling with the Site Review connection...this is not a Site Review process." The staff comment regarding the inapplicability of Site Review criteria does not take into account the requirement of 17.44.050 noted above requiring that site review criteria be met in Sensitive Land applications. Nor does the staff position reflect the fact that the proposed 12-foot wall is a Major Modification to any Subdivision plan or any other previous application filed by the applicant. To state this more clearly, the applicant's proposal constitutes a site review proposal in a sensitive land area. Therefore, it is not possible to fully separate the criteria contained in Chapter 17.44 from the criteria contained in Chapter 17.96.

Rebuttal 4B: The staff report states that "structures are required to have 10' rear yards and 5' side yards. It is recommended that a condition be added to require revisions to the plan to meet yard requirements." While not clearly stated, this would require that the minimum setback of the 12-foot wall structure, if permitted, must be at least ten feet from the rear property line of Lot 10. Of note is that the fencing on Lots 1-8 of the Hanna Place development is at least 15 feet from the rear property line. At least 20-30 feet are required for emergency access to the side of the appellant's building to provide for emergency vehicle access and/or setting ladders or other emergency equipment to access the upper stories or rear portions of the three-story building.

Appeal Issue #5: The Environmental Assessment provided to the appellant following the hearing confirms that at least ten feet of original Lot 10 falls within the Protection Zone of the adjacent wetland/riparian zone. (See Exhibit B – EA Map showing Protection Zone and Tree Location). It was also stated that a portion or all of the Protection Zone that was within Lot 10 was deeded to the city, apparently to minimize or eliminate any applicability of Chapter 17.40 to the applicant's property and to ensure city protection. SHMC 17.44.080 (8) requires that: "The method for mitigating any adverse impacts upon wetland, riparian, or wildlife habitat areas" must be provided in the site plan. Because Lot 10 is immediately adjacent to a Wetland and its Protection Zone, it is a wildlife habitat area through which wildlife regularly migrate, seeking a fresh water source. More important, in Sensitive Land areas, 17.44.040 (1) (a) requires findings that "The extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than that required for the use." No evidence was presented that either criteria has been met.

<u>Rebuttal 5A</u>: The applicant stated that Lot 10 "is not a wetland" or in a wetland, which is true. However, it is immediately adjacent to the Wetland Protection Zone and has wildlife regularly migrate through the lot to a fresh water source. The applicant provided no data regarding mitigation related to any protection of this wildlife habitat. A 12-foot wall Structure would substantially disrupt any wildlife habitat, including the adjacent Protection Zone.

<u>Rebuttal 5B:</u> The applicant stated that the "back yard is 34 feet in back of the house." This presumably is the distance between the back of the house foundation to the property line. Because there is no plan or documentation of this claim as required by SHMC, it can only be assumed this is correct. If so, the 12-foot concrete wall proposed to be on the property line, or if set back ten feet from the property line as recommended by the staff, there is no specific justification for such a wall, since the 12-foot wall is at least 25 feet from the foundation of the house structure.

Rebuttal 5C: The applicant testified that the proposed 12-foot Structure Wall would be "50 feet long by 45-50 feet." Neither the applicant nor staff provided any evidence of findings that the proposed 12-foot wall Structure minimizes site disturbance "no greater than required for the use," which is a two-story residential structure. No evidence was presented that the 12-foot wall structure is required to build the two-story residence as designed. Further, the applicant was not able to accurately state why and where the location of the residential building would be. representative for the applicant noted that the buildings "were staggered." representative argued "they are not staggered...! laid them out." Notwithstanding this confusion, the appellant's testimony and the sample building location in Exhibit C – Presumed Building Location not Requiring 12-foot Structural Walls, demonstrates that the design of the applicant's existing structures in Lots 1-8 can be built without the need for a wall. There is only a 10-12-foot difference in elevation from the south side to the north side of the applicant's proposed house structure. Based on this draft of a presumed building location, the house can be built using construction techniques described during the appellant's testimony on May 9, 2023. Building a 12-foot wall structure on or near the property line does not comply with the requirement "not to create disturbances to an extent greater than that required for use."

Conclusion/Summary

There are two overriding issues in this appeal:

- A. The typical procedure is to hold consideration of any Site Development of Sensitive Land proposal until the applicant has submitted a complete application as required by the code. The applicant's filing for Lot 9 and 10 Hanna Place Subdivision is incomplete at this time and requires the addition of a number of items to meet St. Helens Municipal Code requirements. Until that time, it is not possible for staff or affected parties to adequately judge the details of the development and the application should be set aside until the application is complete.
- B. The St. Helens Municipal Code is clear in 17.44.040 that unnecessary structures should be minimized in Sensitive Land areas. With viable alternatives for constructing the residential

dwelling, a large wall is unnecessary and not in keeping with the intent or terms of the St. Helens Municipal Code and should be eliminated from the application.

I welcome the opportunity to address any questions of staff or the Planning Commission. I will be traveling on June 13, 2023, the date of the next Planning Commission meeting, and would like to connect via video link. Please provide the information to connect to the meeting virtually.

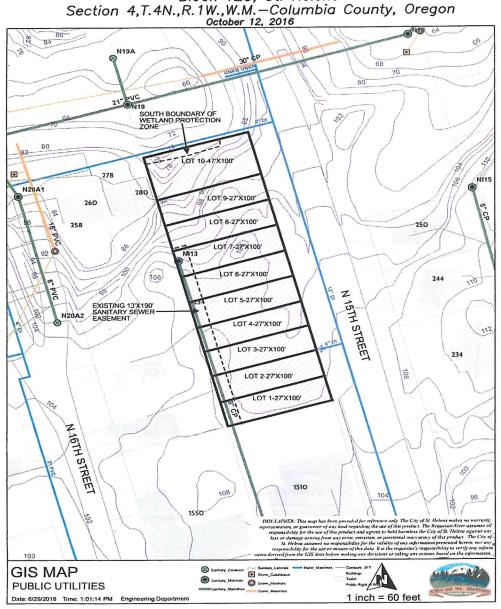
Sincerely,

Alan R. Yordy Managing Director

Enclosures

Exhibit A - Preliminary and Final Hanna Place Subdivision Plats

Preliminary Plat "Hanna Place" A Re—Plat Of Lots 15 Through 19 Block 128, St. Helens tion 4,T.4N.,R.1W.,W.M.—Columbia County, Oregon



Property Owner: La Grand Townhomes LLC C/O Dan Hatfield 2035 SE Evergreen Street Milwaukie, OR 97222 503–803–6112 Surveyor: Reynolds Land Surveying, Inc. David E. Reynolds 32990 Stone Road Warren, OR 97053 503–397–5516 Zoning—R 5 Tax Lot No. 4104—AC—06500 Water Service—Existing Water Line in 15th Street

Sanitary Sewer Service Existing Sewer Line on the West property line.

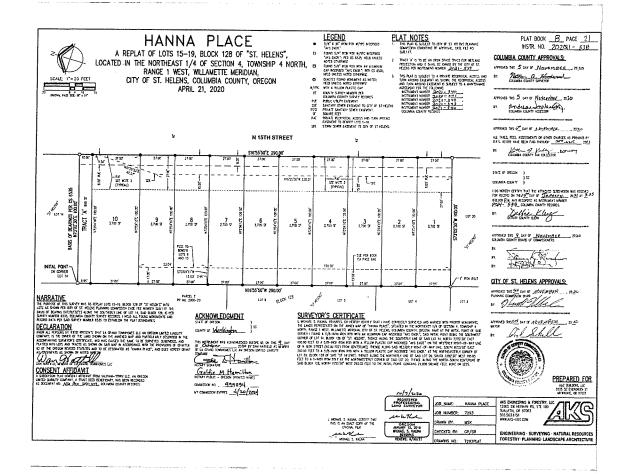


Exhibit B – EA Map showing Protective Zone and Tree Locations

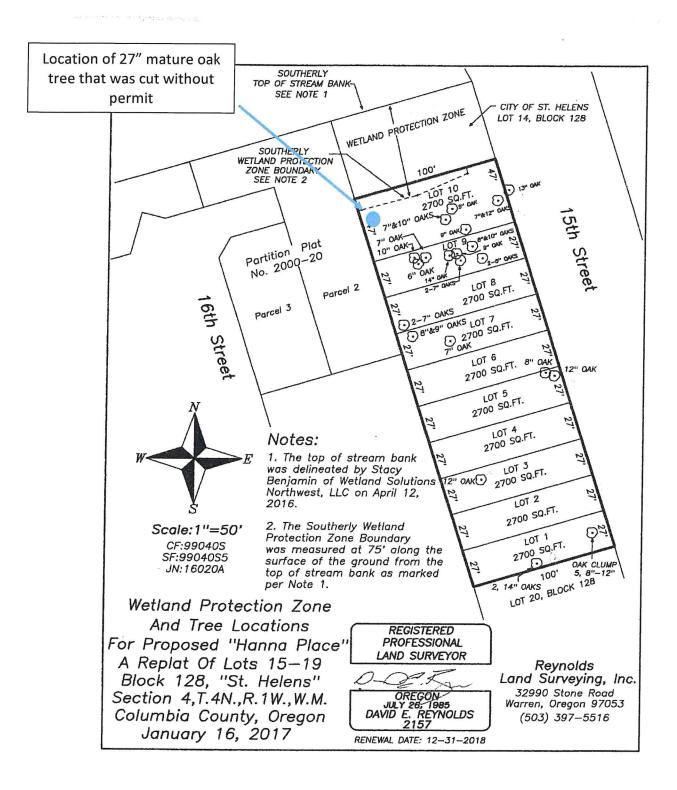
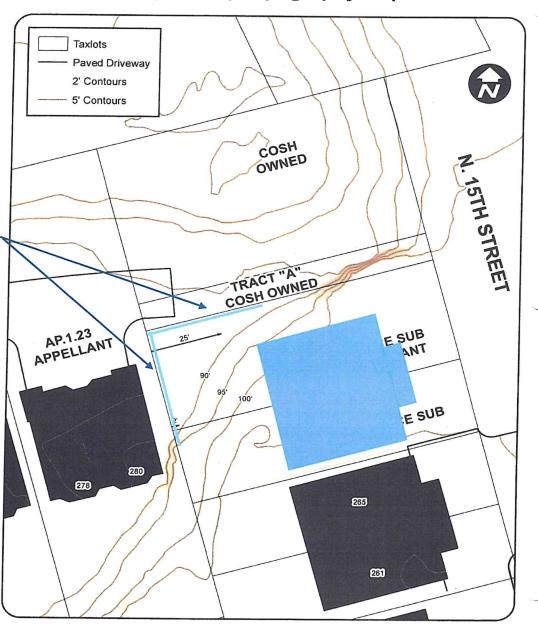


Exhibit C - Presumed Building Location not Requiring 12-foot Structural Walls (map provided by staff)

AP.1.23 (SL.2.23) Topography Map Exhibit



Proposed 12foot Wall Structure (approx to scale as described by applicant)

LaGrand Town Homes, LLC

1010 NE 102nd Ave, Vancouver WA 98664

To: City of St. Helens

To Whom It May Concern,

Dan Hatfield, manager of LaGrand Town homes, submitted the application for 10 units subdivision on 15th street, Hanna Place, and it was approved for all 10 units.

8 Units were completed, and the remaining 2 units are in the process of starting construction as they are presold already. We had a wetland expert review the plan and giving 10 feet to the city would relieve the wetland problems and this has been resolved by giving the city 10 feet of lot #10.

Due to the slope of the remaining land for 2 units, the retaining wall is absolutely necessary and we took all the steps to build the retaining wall. We hired the engineering firm to design the retaining wall.

Geotech reviewed the site 2 years ago and they said the retaining wall could be built and they will inspect the wall during the construction of the wall for the stability of the wall.

As far as the row houses down below the wall, I should not have to give them extra land as it is not my responsibility for their parking or anything else. I will work with them anyway I can but I do not like to be forced to give them the land.

I have taken all necessary steps to secure the wall and there should be no issues for city of St. Helen not to approve to build the retaining wall.

Respectfully,

Dan Hatfield, Sr.

Manager of LaGrand Town Homes

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CITY OF ST. HELENS

MAY 22, 2023

Appeal Lot 10 of Hanna Place Subdivision Response to Applicant Filing

Abstract

Responses Regarding Five Appeal Issues

Infinity Investments – Puget Sound
An Oregon limited liability company

May 22, 2023

City of St. Helens Planning Department 265 Strand Street St. Helens, OR 97051

Attn: Jacob Graichen/Jennifer Dimsho

Appeal Lot 10 of Hanna Place Subdivision Response to Applicant's Submission

Dear Mr. Graichen and Ms. Dimsho:

This is a follow-up to the applicant's response to the hearing (no date indicated on the letter). Similar to the appellant's response to questions and issues raised in the St. Helens Planning Commission hearing, this response is based on the five appeal issues outlined in the supplemental material provided by the appellant at the hearing. All comments in italics are citations from the St. Helens Municipal Code.

Appeal Issue #1: The applicant's record is incomplete and does not contain sufficient and required information to act on the development plan. Additionally, staff contends that SHMC Chapter 17.96 is not applicable to the applicant's plan.

<u>Response</u>: There was no staff response to the fact that SHMC 17.44.040 (5) (b) states that "All requirements of full site development review have been met" for issuance of a Sensitive Land Permit. The applicant's letter provided no additional detail regarding the items that are missing from the original application. The following required items, among others, remain missing from the application:

- A. Copies of the <u>sensitive lands permit proposal</u> and necessary data or narrative which explains how the proposal conforms to the standards (number to be determined at the preapplication conference) and:
 - (i) The scale for the site plan(s) shall be a standard engineering scale; and
 - (ii) All drawings or structure elevations or floor plans shall be a standard architectural scale, being one-fourth inch or one-eighth inch to the foot.
- B. Contour lines at two-foot contour intervals for grades zero to 10 percent and five-foot intervals for grades over 10 percent;
- C. The location of drainage patterns and drainage courses;
- D. The location of sensitive lands;
- E. The location of site features including:
 - (a) Rock outcroppings; and

- (b) Trees with six inches caliper or greater measured four feet from ground level;
- F. The location of existing structures on the site and proposed use of those structures; and
- G. An existing site conditions analysis, SHMC 17.44.070;
- H. A site plan, SHMC 17.44.080;
- I. A grading plan, SHMC 17.44.090; and
- J. A landscaping plan, SHMC 17.44.100. (Ord. 3031 Att. A, 2007; Ord. 2875 § 1.092.050, 2003)"

The applicant's incomplete proposal should not be considered further until the missing elements are provided.

Appeal Issue #2: SHMC 17.44.040 (5) (b) states that "All requirements of full site development review have been met" for issuance of a Sensitive Land Permit. SHMC 17.96.180 (Site Development Review) requires that structures should be located to "preserve trees, topography, and natural drainage...and trees having six-inch DBH be preserved or replaced." Grading was done and a tree meeting the above criteria was felled without an approved plan or permit. Additionally, SHMC 17.132.030 (1) states that "Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 17.44 SHMC."

Response: There was no response to the issue of illegal cutting and grading. No mitigation plan for these acts was included as staff has recommended, except for a brief reference during the May 9 hearing to "clean up" once the Stop Work order is lifted. A mitigation plan remains a requirement to include replanting/replacing the tree that was felled, according to the terms of Chapter 17.132 of SHMC. The mitigation plan should be submitted as part of the complete application. The other outstanding issue is the fine and civil damages for cutting the tree without permit under Chapter 17.132 of the SHMC, which were previously referenced in more detail.

Appeal Issue #3: SHMC Chapters 17.96 and 17.44 both require "site analysis drawings...showing (b)Slopes in excess of 25 percent;

(c) Unstable ground (areas subject to slumping, earth slides or movement)"

Additionally, approval criteria 17.44.040 (2) (d) requires that: "The proposed landform alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property." The preferred method of meeting this standard is to perform a study by a licensed engineer, which provides data to support the conclusion that the ground is stable and that structures will not create any off-site hazards to life or property.

<u>Response</u>: The applicant's letter references a Geotech consultation of the "site 2 years ago and they said the retaining wall could be built..." No specific documentation nor engineering study with an official stamp and certification that the site is stable for a 12-foot-tall wall structure was included in the letter. An official geotechnical study that confirms the applicant's representations should be a requirement in a Sensitive Land area within seismic zone 5, which has a demonstrated pattern of ground slumping of existing concrete barriers as shown in the appellant's original hearing testimony.

Appeal Issue #4: SHMC 17.44.050 (5) (b) approval criteria states that "All requirements of <u>full site development review</u> have been met." This includes provisions of 17.96.180, which requires buffering, including visual barriers between lots and adequate distance between adjoining buildings (structures) to provide for adequate firefighting. The applicant proposes a 12-foot concrete wall set on the property line, which provides no buffering or landscaping plan and inadequate setbacks for emergency access.

Response: The applicant's letter states that "I should not have to give them (the appellant) extra land as it is not my responsibility for their parking or anything else." There is no documentation that either the staff or the appellant has requested that the applicant donate any land to the City or appellant, other than the land the applicant has already donated to the City of St. Helens. In keeping with St Helens Municipal Code regarding structure setbacks, the staff is requiring a 10-foot setback of any wall structure from the rear (West side) of Lot 10 and a 5-foot setback of any wall structure from the North side of Lot 10. The issue of adequate space for emergency access to the side and rear of the appellant's building in the event of an earthquake, fire or other emergency remains an unresolved matter. Provision for such access, including vehicles and/or ladders, lifts, etc. should be specifically addressed by the applicant.

Appeal Issue #5: The staff provided the related Environmental Assessment following the hearing on May 9, 2023. It confirms that revised Lot 10 is immediately adjacent to the Wetland Protection Zone. Further, the initial staff report notes that the applicant has caused damage to the Wetland Protection Zone as detailed in Appeal Issue #2. SHMC 17.44.080 (8) requires that: "The method for mitigating any adverse impacts upon wetland, riparian, or wildlife habitat areas" must be provided in the site plan. Because Lot 10 is immediately adjacent to the Wetland Protection Zone, it appears to be part of a wildlife habitat area through which wildlife regularly migrate, seeking a fresh water source. More important, in Sensitive Land areas, 17.44.040 (1) (a) requires findings that "The extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than that required for the use." 17.44.040 (2) (a) contains similar requirements. 17.44.040 (4) (b) requires findings that "The extent and nature of the proposed landform alteration or development will not create site disturbances to an extent greater than the minimum required for the use..."

Response: The applicant states that "giving them (the City) 10 feet of land would resolve wetland problems and this has been resolved by giving the city 10 feet of lot #10." Because the applicant has caused damage to the Wetland Protection Zone, there remains the requirement of a mitigation plan noted in the staff report. No mitigation plan was attached to the applicant's letter. Additionally, the applicant states that "Due to the slope of the remaining land for 2 units, the retaining wall is absolutely necessary..." No evidence was provided as to why the 12-foot wall is necessary. The applicant's contention is contradicted by the fact that a local St Helen's contractor built a dwelling on the appellant's property with a similar topographic profile. Until such time that the applicant provides engineering evidence that it is impossible to construct the Lot 10 residential dwelling without a 12-foot wall structure, such a wall structure will be out of compliance with SHMC 17.44.040 (1) (a), (2) (a) and (4) (b).

Conclusion/Summary

The applicant's letter provides no new evidence that mitigates or eliminates any of the original appeal issues. It misrepresents that staff and/or the appellant are asking the applicant to "give them (the appellant) extra land..." There is no intention on the part of the appellant to seek a donation of the applicant's land for parking or other use. The intent is to require the applicant to meet all terms, conditions and requirements of the St. Helens Municipal Code.

I am available to address any questions from staff or the Planning Commission.

Sincerely,

Alan R. Yordy Managing Director

Jacob Graichen

From:

Dan Hatfield <aebuildersllc@gmail.com>

Sent:

Tuesday, May 23, 2023 3:57 PM

To:

Jacob Graichen

Subject:

Re: [External] Appeal AP.1.23 - first post hearing 7 days stuff in record

Thanks Jacob,

I have been in touch with the geo tech. He is currently out of town until next week but when I meet with him next week he is going to give me a report on the geo. Once I get that I will forward it over to you.

Thanks, Dan Hatfield AE Builders LLC 503-803-6112

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CITY OF ST. HELENS