

NOTES of Robert Marshburn for the Planning Commission Appeal Committee Hearing of February 10th

There has been so much misinformation regarding this Partition application that my neighbors and I filed this Appeal to the approval of the Partition Application and want to briefly and as quickly as possible set the record straight with the facts. I would like to do this with the following items referenced in the packet provided by Mr. Hazelton for consideration at this appeal hearing:

First, from Page 54 Review of our Appeal Letter of January 3, 2022

Second, from Page 20 Consideration of Appeal Concerns inaccurately represented or dismissed in the packet by Mr. Hazelton in his recommendation to the Committee.

Finally, I will provide to the Appeal Committee a copy of my notes of this presentation dealing with a summary and application of the disputed items in this matter.

Consideration of item 1 above. From Page 54 Review of our Appeal Letter

Consideration of item 2 above. From Page 20 Consideration of “Appeal Concerns” inaccurately represented or dismissed in the packet by Mr. Hazelton in his recommendation to the Committee:

This includes Mr. Hazleton's memory recall of oral statements, rather than written quotations from Dan Cary SPWS, the Regulatory Person serving as the Senior Aquatic Resource Coordinator for Clatsop County, that contradict the quoted statements I will present directly from Mr. Cary.

Consideration of item 3 above. My notes of this presentation dealing with a summary and application of the disputed items in this matter.

Dan Cary SPWS, is the Regulatory Person serving the Oregon Department of State Lands (DSL) as the Senior Aquatic Resource Coordinator for Clatsop County.

In his email of December 21, 2021 RE: Wetlands partition on Lake Leinenweber, Warrenton, OR Mr. Cary stated [I have added emphasis below to his quoted comments]:

“I don’t know if any wetland delineation has been done on the site. I couldn’t find any record of one.

There is a possibility of wetlands along the eastern fringe of the lake as indicated by hydric soil mapping and the National Wetland Inventory from 2017 and a local wetland inventory from 1996.”

He also stated that...

“having inventoried wetlands on site will likely require the City to require the property owner to get a wetland delineation to develop the site.”

In addition to the Wetland Delineation he stated:

“As far as the Department of State Lands is concerned the property owner must abide by the Removal Fill Law during development. That means at that site, filling more than 50 cubic yards in wetlands or the lake would require a permit from the Department. I hope they get a wetland delineation done prior to development. It will assist them in knowing where wetland boundaries actually are so they can avoid them. I have already encouraged them to do so.”

Then in a later email earlier this month he stated:

If wetland delineations were done by consultants they were not official because they were not sent into DSL for concurrence.

He continued:

I believe the Wilsons may be hiring a wetland consultant to delineate the property. We will see what an official wetland delineation concurred with by DSL looks like.

NOWHERE does the survey by Mr. Magyar EVEN CLAIM IT IS AN OFFICIAL DELINEATED WETLANDS SURVEY, and to the best of our current knowledge as of a week ago Dan Cary confirmed (as quoted above) that neither this nor any other survey in support of the Partition Application has BEEN SENT TO DSL FOR CONCURRENCE!

The Impact Study in support of the Wilson Short Partition Plat Application on Leinenweber Lake is shown on page 25 of the packet. This document was submitted by the applicants only after we pointed out to Mr. Hazelton that, despite his telling multiple people it was not required, it was indeed a requirement of the code.

This so-called "Impact Study" shown on page 25 is no such thing. There is no consideration or mention whatsoever even of the existence of Wetland Areas on the property, much less any study or consideration of them as to their Impact in this so-called "Impact Study." The Wetland Boundaries and Areas are not shown at all on any document or survey and as such NO determination can be made if any allowable buildable area even exists! This supposed "Impact Study" does not constitute even a minimal attempt at a serious study regarding drainage issues, noise impacts, impact to wetlands, and other impact issues. However most noteworthy is that there is no Delineation of the Wetlands boundaries and Areas.

The Survey submitted by Mr. Magyar deceptively suggests that wetland boundaries have been considered and marked by showing a 50' setback from an 'OBSERVED TOP OF BANK' survey line that has nothing to do with an official delineated Wetland Survey Line!

Furthermore, after falsely suggesting that this is the line from which the required 50' setback should be measured, the survey does not even mention wetlands or in any way confirm or document that this is the line from which to begin the setback. The 50' setback is required from the official delineated Wetland Survey Line and not from any 'OBSERVED TOP OF BANK' survey line that has nothing to do with the Wetlands setback!

Even a most cursory examination of the County maps show a distinct contradiction compared to the applicants' survey line starting point for measuring in 2 important aspects:

1. The Eastern boundary of the Lake itself extends much further to the east than the survey shows, dramatically reducing or even eliminating completely any remaining buildable area after consideration for the setbacks of 50' in back and 20' in front; and
2. The Eastern County map boundary of the Wetlands area (not just the Lake) shows even more significant reduction by clearly showing what appears to allow no buildable area at all after consideration for the setbacks of 50' in back and 20' in front when measured from the Wetlands area Boundaries.

(Note: This County map of the Wetlands area in item #2 was attached to my original email of November 21st and was conveniently omitted from the packet Mr. Hazelton prepared for this

hearing that has obvious visual impact on any decision on this matter. I am submitting it for your consideration.)

Yet, despite the factual matter of the actual accurate starting point for measuring the wetlands boundaries not even being considered in the purported 'Impact Study' as required by the code. Mr. Hazelton has stated that he will choose to accept the survey submitted by the applicants' Agent and Advocate, Mr. Magyar, instead of the County maps or requiring a Certified **Wetlands** Consultant to delineate the property and become official after the wetland delineation was concurred with by the DSL per Dan Cary's recommendation as quoted above.

This puts the City in a very tenuous situation with regard to future liability. The applicants could later argue, either administratively with the City or through litigation, that their survey, the starting points, and the setbacks were accepted by the City and there was no reason to pursue an actual Wetlands Delineated Boundary. As Dan Cary noted in his quote above, "having inventoried wetlands on site will likely require the City to require the property owner to get a wetland delineation to develop the site." Put simply, it is the responsibility of the City, not DSL, to require the Wetlands Delineated Survey Boundary in order for it to be done.

Another potential liability for the City: What if the Wilson's get offered a good price for the 3 lots and decide to sell them? The new owners could also argue or litigate that the City should not have approved the 3 lots if they were not buildable, especially since an "impact study" was accepted by the City with no reference to or study of the most obvious and important Impact: the Wetlands Impact.

The flaw as I see it in the current Warrenton Code system is that (at least according to Mr. Hazleton's explanation which may or may not be true) we would not be noticed and would not be invited for public comment related to any applications for future permits such as development, grading, off site improvements, construction, etc. **All of these should require a Wetlands Delineation Survey prior to consideration for partition approval since it is part of the required Impact Study that was not done!** Warrenton Code grants specific authority to the City for studies or exhibits prepared by qualified professionals as follows: Section 16.216.040 **Preliminary Plat Submission Requirements**. This was not observed by Mr. Hazelton and has not been done. Instead he continues to say it is not required.

We already know that NO Permit or Delineation Survey was done prior to the grading and destruction of habitat in the Wetlands setback area that was done in May of last year before the Wilsons applied for the Partition. Yet, neither the City nor anyone else has taken any enforcement action for that violation to the best of my knowledge! This only encourages further disregard for future actions.

The code as it stands now apparently puts the obligation on the Wilsons to obtain a current Delineation Survey, but their history indicates that they will not do so unless the City takes enforcement action requiring them to do so and does so prior to approval of this partition application that has NOT included the most obvious and reasonable need for an Impact Study of the Wetlands Delineated Survey to determine proper setbacks and bounded per the Preliminary Plat Submission Requirements of Warrenton Code Section 16.216.040.

Finally, based on the information presented above and in the packet information my neighbors and I are asking that this committee:

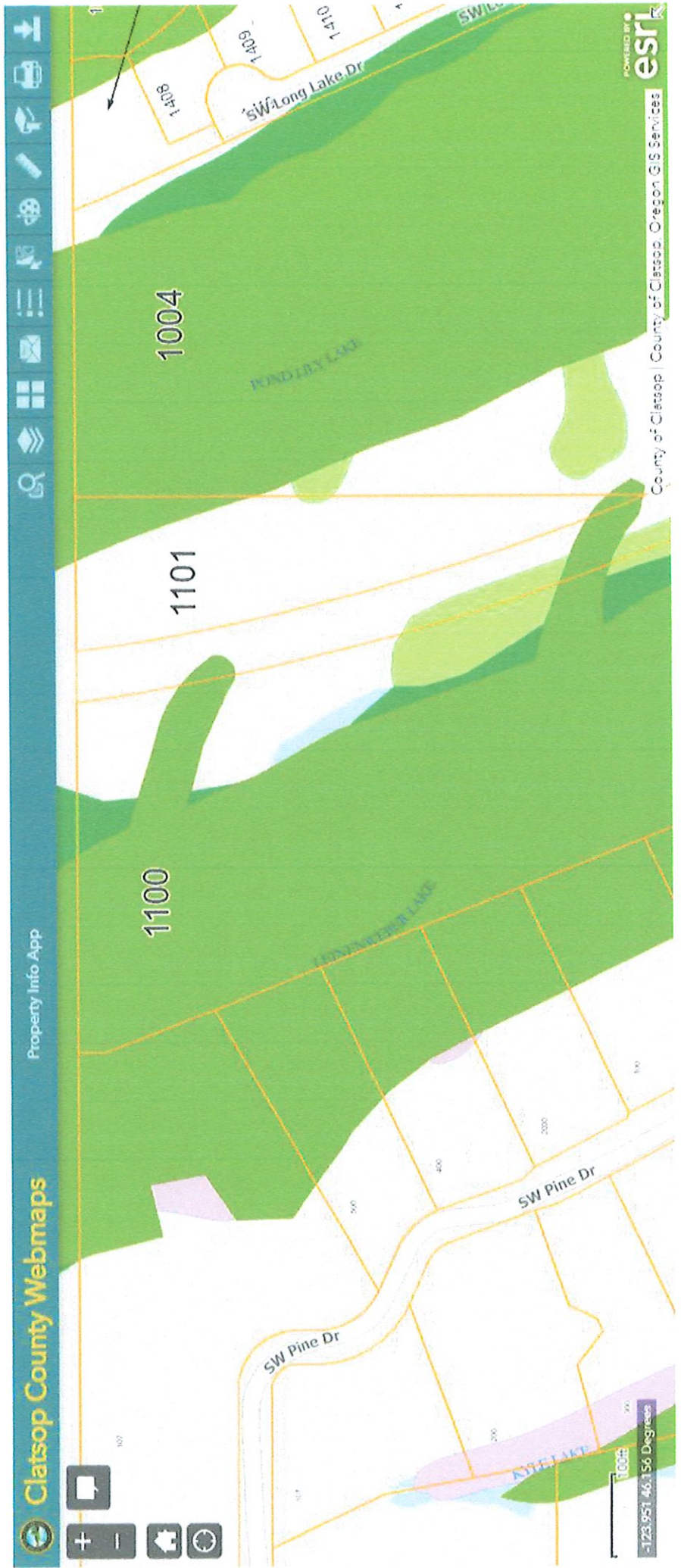
1. Uphold our appeal and reverse the Preliminary Approval of the Application for Partition;
2. Require Independent verification of the correct Lake and Wetlands Delineated Boundaries and their accurate setback starting points and measurement with all costs to be paid by the Applicants, NOT the City, since it is the Applicants' responsibility;
3. The submission of an Impact Statement to meet the Warrenton Administrative Procedures Requirement for ALL Land Division Applications as noted above.

Thank you for your time and consideration in this matter.

Sincerely,

Robert Marshburn

Now some of my neighbors would like to speak briefly...



Oak St Development **Conditions of Approval**

The Oak St Development **Conditions of Approval** required the following as shown in City records:

Exhibit F, Conditions of Approval to a final partition plat dated June 18, 2002 on that development which states: **4. Prior to final partition plat approval, the wetland boundary adjoining Leinenweber Lake must be permanently monumented in the field sufficient to afford City officials the opportunity to readily confirm required setback distances to proposed structures.**